

## ITEMS OF INTEREST

### F & S FRAUD LITIGATION PRACTICE

Since Georgia ranks #1 in the nation in mortgage fraud, our firm's litigation team is actively managing a docket of litigation in state, federal and bankruptcy courts involving mortgage fraud. While we don't advocate "throwing good money after bad," we are aggressive in investigating and pursuing the parties that caused the loss or should have prevented it. We help our clients mitigate losses by filing title claims or actions against closing attorneys, appraisers, borrowers and related co-conspirators. By tracking the fraud trends and maintaining regular contact with state and federal officials, we are your "go to" solution for mortgage fraud.

Due to today's litigious environment, we frequently defend lawsuits filed by borrowers hoping to avoid foreclosure or bankruptcy involving lender liability claims. The firm also represents clients in contract disputes, repurchase demands, and employment matters.

### F & S FRAUD WATCH

Watch the conversion of apartments to quadraplexes!  
Watch 1031 exchanges for investment properties!

### F & S FRAUD PREVENTION TIP

The recent Consent Order between the Georgia Department of Banking and Finance and Argent Mortgage Company, LLC identifies minimum requirements for closing instructions. The requirements relate to identification of parties attending closing; payoffs for liens; disbursement of funds at closing; verification of down payment; wet settlement; and notification of prior or future transactions. We assist our clients in re-drafting closing instructions to better protect you. Contact Michelle Canter at 770-248-2885 x 247.

### REGULATORY ENFORCEMENT

To complement our regulatory compliance expertise, our litigation team regularly defends regulatory enforcement actions and audits by HUD, Freddie Mac, the DBF and other state regulators.

## FEDERAL HIGHLIGHTS

**The Federal Reserve Board** published final rules implementing the FCRA's limitations on the use of a consumer's medical information.

## "TALKING THE TALK"

**Loretta Salzano** will instruct the Mortgage Bankers Association in state compliance in D.C. in **January**. In **March**, she will speak at the ACI conference in Palo Alto regarding mortgage fraud recovery, and in **August** she will address the Credit Law Institute in Hawaii.

**John Bedard** will speak at the Conference on Consumer Finance - Debt Collection Case Law Update in Santa Monica in **February**.



**Fannie Mae** and **Freddie Mac** have announced the 2006 conforming loan limits. Effective January 1, 2006, the single family housing limit is \$417,000.

In January, **Ameriquist** agreed to pay a settlement of \$325 million to 49 states and D.C. related to its sub-prime lending practices.

**Federal banking agencies** have issued proposed joint guidelines for non-traditional mortgage products, including interest-only loans, payment-option ARMs, piggy-backs and no/low doc loans. The comment period for the proposal expires February 27, 2006.

## STATES IN BRIEF

The **Alabama** Supreme Court ruled that yield spread premiums are not required to be included in the five percent limit on "points" under the Alabama Consumer Finance Act ("Mini-Code") (**Goldome Credit Corp. v. Burke**).

**California** amended the definition of "covered loan" used in its predatory lending law so that the law now applies to loans not exceeding Fannie Mae's conforming loan limit for single family first mortgage loans.

California now prohibits sending advertisements to a fax machine unless the sender has received prior approval from the recipient. Identification requirements for fax messages were also imposed.

**Connecticut** has announced an interest rate of 1.5% for mortgage escrow accounts for the period commencing January 1, 2006 and ending December 31, 2006.

**Illinois** established the Residential Real Property Disclosure Act. The law requires mortgage brokers and

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loan originators subject to the Residential Mortgage License Act to submit information about prospective borrowers to a predatory lending database. The Illinois OBRE imposed a temporary hold on the effective date of the new law pending the issuance of regulations. Subsequently, the OBRE issued regulations listing zip codes covered by the database. However, the temporary hold remains in place as of press time.

**Illinois** amended its rules relating to the registration, evaluation, and reporting requirements of loan originators.

The Montgomery County, **Maryland** Council has adopted an “anti-predatory lending” ordinance, effective March 7, 2006.

The Maryland Attorney General has opined that a loan officer does not engage in the unauthorized practice of law when the loan officer completes a computer generated mortgage loan form. However, the Maryland Court of Appeals ultimately determines whether a particular activity constitutes the unauthorized practice of law.

The **Massachusetts** Department of Banking has revised its regulations under the Unfair and Deceptive Trade Practices Act relative to high cost home loans to conform the regulations, in part, to the two other high cost loan laws in Massachusetts.

**Missouri** trial courts have a number of pending class actions concerning whether the preparation of closing documents for a fee constitutes the unauthorized practice of law. A trial court in St. Louis has decided

one of those cases in favor of a class of borrowers who were generally charged for document preparation fees or processing fees tied to document preparation.

The **New Jersey** Department of Banking has recently issued regulations to implement the New Jersey Home Ownership Security Act of 2002. It also has increased the maximum principal amount of a loan to which New Jersey’s high cost loan provisions apply to \$383,682.60 for 2006.

The **Ohio** Administrative Code was amended to allow the sale or assignment of second mortgages to non-registrants.

**South Carolina** now requires “good funds” at real estate closings.

**Texas** revised the record keeping requirements for regulated lenders making second mortgage loans, the plain language requirements relating to Spanish language disclosures, and the continuing education requirements of mortgage brokers.

A Texas trial court recently issued a preliminary ruling in the case of **ACORN, et al. v. Finance Commission of Texas, et al.**, involving interpretive rules developed by the Commission concerning the home equity loan provisions of the Texas Constitution. Of the nine issues presented to the court, seven were decided adversely to lenders.

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***Publisher’s Note:***

**Points of Interest** is published by Franzén and Salzano, P.C. for clients and colleagues in the lending industry and should not be construed as legal advice. The contents are for general information purposes only. You are urged to consult legal counsel concerning any specific situation or legal issue.

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