

FRANZÉN AND SALZANO WELCOMES SHIRLEY ATKINSON-SAMMS



We are delighted to tell you about one of our new attorneys, **Shirley Atkinson-Samms**. Shirley joined Franzén and Salzano, P.C. in May of 2003. Shirley graduated from Georgia State University College of Law in 1997. Prior to attending law school, Shirley was a federal regulator for several years. Shirley has worked for the

FDIC, HUD, EEOC and the Resolution Trust Corporation. Shirley advises our clients regarding compliance and regulatory matters.

FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

The Fair and Accurate Credit Transactions Act of 2003 (the "FACT Act") amends the Fair Credit Reporting Act by adding new consumer protection provisions addressing identity theft, imposing additional procedural and notice requirements on creditors, making the FCRA's preemption provisions permanent, and extending the statute of limitations. Under the FACT Act, a notice is required if a creditor furnishes negative information on a consumer to a credit bureau. The effective date will be established by final rules issued by the Federal Reserve Board and the FTC.

CAN-SPAM ACT OF 2003

The federal CAN-SPAM Act, effective January 1, 2004, prohibits the transmission of a commercial electronic mail message with false or misleading header information. Additionally, the Act prohibits the use of electronic mail addresses obtained through dictionary attacks or address harvesting.

STATE DISCLOSURE PACKAGES

Franzén and Salzano, P.C. offers flat fee "how to kits" and disclosure packages to address many states' predatory lending laws. For information, contact **Shannon Howe** at the firm.

★ HR TIP ★

Did you know that your loan officers may not be exempt employees, which would require you to comply with the minimum wage and overtime laws?

For help analyzing your loan officers' employment status and drafting an agreement which protects you from a wage and hour claim, contact **Terry Franzén** at the firm.

OCC ISSUES FEDERAL PREEMPTION RULES

The OCC has issued its final rule regarding state preemption for national banks and operating subsidiaries. The final rule specifies the categories of state lending laws that are preempted for these entities. The final rule also prohibits a national bank from engaging in asset-based lending.

FEDERAL RESERVE BOARD PROPOSED AMENDMENTS

The Federal Reserve Board, in an attempt to provide consistent guidance on the "clear and conspicuous" standard and similar standards among its regulations, is proposing to amend Regulations B (Equal Credit Opportunity), E (Electronic Fund Transfers); M (Consumer Leasing), Z (Truth in Lending), and DD (Truth in Savings), as well as the Staff Commentary to the regulations. Comments are due on the proposals by January 30, 2004.

"TALKING THE TALK"

Terry Franzén will address defense strategies in FDICPA litigation in Savannah, Georgia at a Lorman seminar in **January**. In **February**, she will provide a RESPA update in Atlanta for both the Georgia Real Estate Closing Attorneys Association, and later in the month, the Institute of Continuing Legal Education. In **March**, she will speak regarding the FDICPA, FOIA, and FCRA at the NBI Seminar. Also in **March**, she will speak at the ACI Predatory Lending Conference in Orlando.

Loretta Salzano will speak regarding predatory lending in Baltimore in **May**. Also in **May**, she will speak on servicing issues in D.C.



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RESPA REFORM

In December, HUD sent its RESPA Reform Proposal to the Office of Management and Budget for review and approval, which must be completed within 90 days. In January, the House Small Business Committee held a hearing on the proposal.

INCREASES IN CONFORMING LOAN SIZE AND HOEPA DOLLAR AMOUNT FOR 2004

Fannie Mae and Freddie Mac have raised their ceiling for single-family mortgage purchases to \$333,700 for the year 2004. Also, the Federal Reserve Board has increased the HOEPA points and fees dollar amount threshold to \$499 for the year 2004.

STATES IN BRIEF

CALIFORNIA

The California Supreme Court has agreed to hear the appeal filed by AFSA in the case involving the Oakland anti-predatory lending ordinance. Therefore, the stay enjoining enforcement of the ordinance will continue.

FLORIDA

The Florida Department of Banking and Finance adopted changes increasing the fee for processing fingerprint cards.

KANSAS

The Kansas State Bank Commissioner finalized two new rules regarding document retention for supervised lender and mortgage company licensees, effective October 31, 2003.

NEW YORK

New York has amended its insurance law to increase the amount of PMI permitted on first lien residential mortgage loans.

SOUTH CAROLINA

The South Carolina Department of Consumer Affairs has published a form disclosure that addresses certain new requirements under the High Cost and Consumer Home Loan Act, effective January 1, 2004.

LITIGATION UPDATE

11th Circuit Upcharge Case: In *Sosa v. Chase Manhattan Mortgage Corp.*, 348 F.3d 979 (11th Cir. 2003), a lender increased the courier fee charged to the borrower and retained the portion not paid to the third-party courier. Consistent with HUD's position, but contrary to other circuit court decisions, the appellate court held that a single party could violate Section 8(b) of RESPA and two culpable parties were not required. The court also found that if retention of a portion of a fee was justified, there was no violation of Section 8(b). In *Sosa*, the court stated that securing a third-party contractor to provide services may be sufficient justification to retain a portion of a fee charged to the borrower. If you upcharge, contact the firm for assistance in analyzing your practice.

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.

Visit Franzén and Salzano's corporate website at www.franzen-salzano.com

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