

LITIGATION UPDATE

The Illinois Appellate Court held in *U.S. Bank v. Clark* that the Illinois 3% fee cap applies to both first and second mortgage loans. Despite prior rulings to the contrary, the Court held that the 3% cap was not preempted by DIDMCA.

FTC REQUIRES TELEMARKETERS "SCRUB" CALL LISTS EVERY 31 DAYS

The FTC adopted a final rule to amend the "Do Not Call" ("DNC") provisions to require telemarketers to access the national DNC Registry at least every 31 days, instead of quarterly.

★ HR TIP ★

Exemptions to the Minimum Wage and Overtime Pay Provisions Amended

The Department of Labor has issued new rules that affect the "white-collar" exemptions to the minimum wage and overtime pay provisions of the Fair Labor Standards Act. Financial services employees are specifically addressed in the new rules. Please contact us for assistance in determining whether employees fall within the exemptions.

FEDERAL RESERVE BOARD ADOPTS FINAL REGULATION Z RULES

The Federal Reserve Board adopted final rules which amend Regulation Z to clarify the word "amount" and to clarify where borrowers may send the rescission notice, among other things. The Board did not adopt the proposed amendment to define the standard for providing "clear and conspicuous" disclosures.

FACT ACT MODEL NOTICES FINALIZED

The Federal Reserve Board adopted final rules adding two model notices that financial institutions may use to comply with the FACT Act's notice requirement when furnishing negative information to nationwide consumer reporting agencies.

Announcements

We are pleased to announce the arrival of **Zachary Bowden** on June 9, 2004, and **John Henry Bedard III** on June 26, 2004. Congratulations to Krista and Nathan Bowden, and to Kim and John Bedard!

STATES IN BRIEF

Connecticut recently amended its law relating to mortgage rate lock-ins.

The **District of Columbia** Department of Banking has issued administrative rules concerning mortgage application requirements, record keeping, annual assessments, escrow accounts, underwriting, appraisals and commitment and lock-in agreements.

Florida recently enacted the Electronic Mail Communications Act prohibiting certain email solicitations. Effective July 1, 2004, **Georgia** legislation changed the Residential Mortgage Act financial requirements and employee background investigation procedures. The Georgia Department of Banking issued proposed regulations (up for comment until August 23, 2004) concerning check sellers, Residential Mortgage Licensees and others.

"TALKING THE TALK"

Terry Franzén will speak in **November** at the Conference on Consumer Finance Law's Consumer Credit 2004 Seminar in Grapevine, Texas regarding updates to federal, state, and local predatory lending laws.

In September, **Loretta Salzano** will speak on compliance issues in Captiva Island, Florida and she will speak at the Southeastern Mortgage Brokers Conference in **November**. She will moderate the NHEMA Attorneys' Roundtable in **October** in Chicago. In **November**, she will also speak at the ACI Predatory Lending and Mortgage Servicing Conference in Las Vegas.

John Bedard will address the Conference on Consumer Finance Law's Consumer Debt Collection and Bankruptcy Seminar in **October** in Dallas, Texas.



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The **Illinois** OBRE recently issued emergency regulations establishing a “Provisional Certificate of Registration” for loan originators and requiring a new disclosure.

Effective July 1, 2004, **Idaho** mortgage formatting requirements have changed.

The **Kentucky** Department of Financial Services, as a matter of policy, now requires that each branch office handling Kentucky loans be HUD-approved in order for the lender to qualify for the HUD exemption from mortgage company licensing.

The **Massachusetts** Division of Banks has adopted emergency regulations concerning disclosures and advertising.

Legislation was enacted amending the **Minnesota** Residential Mortgage Originator and Servicer Licensing Act, effective August 1, 2004.

Mississippi now requires registration of exempt entities and registration of loan originators of those exempt entities under the Mortgage Consumer Protection Law.

New Hampshire has revised its law concerning first and second mortgage licensing, effective July 23, 2004.

New Jersey has amended its predatory lending law to, among other things, lower the threshold for high-cost loans, remove the “covered home loan” category and clarify the liability provisions.

The **New Mexico** Financial Institutions Division has adopted new regulations under New Mexico’s predatory lending law to clarify restrictions pertaining to, among other things, “flipping.”

The **New York** Banking Department adopted an emergency regulation under Part 41 to redefine “points and fees.”

Last August, an **Ohio** trial court held that Dayton, Ohio’s predatory lending ordinance was void and unenforceable. The Ohio Court of Appeals has now upheld the trial court’s

ruling and determined that the ordinance is preempted by Ohio state law.

Effective November 1, 2004, lenders doing business in **Oklahoma** are prohibited from requiring homeowners insurance exceeding the replacement value of the dwelling. H.B. 2322.

Oregon has adopted an administrative regulation concerning the criminal background check for loan originators.

The **South Carolina** loan broker licensing provisions were recently amended by the Legislature to, among other things, require loan officer licensing. As of press time, the legislation was awaiting the Governor’s signature. S.B. 682.

Tennessee now requires a restrictive covenant in certain low cost mortgages. S.B. 3259.

The **Texas** Finance Commission has adopted amendments to the mortgage broker regulations concerning disclosures, discount points and advertisements.

West Virginia has adopted rules under the Residential Mortgage Lenders, Brokers and Loan Originators Act .

Wisconsin has enacted predatory lending legislation and has enacted legislation amending mortgage licensing.

Please contact Leslie Howell if you would like additional information concerning legislative and administrative changes.

DID YOU KNOW? We provide high cost loan worksheets for a flat fee for many states. Please contact Shannon Howe for additional information.

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

Terry Franzén’s e-mail address: tfranzen@franzen-salzano.com Loretta Salzano’s e-mail address: lsalzano@franzen-salzano.com



FRANZÉN AND
SALZANO, P.C.

ATTORNEYS AT LAW

40 Technology Parkway South
Suite 202
Norcross, Georgia 30092-2906