

If you would like to be updated on important legislation and other developments that occur between issues of our quarterly newsletter, PLEASE SEND AN E-MAIL WITH YOUR E-MAIL ADDRESS TO: cdiresta@franzen-salzano.com, and we will send you periodic updates as events warrant.

Welcome to the thirteenth issue of our quarterly newsletter. Your comments are welcomed.

GEORGIA ENACTS TOUGHEST "ANTI-PREDATORY LENDING" LEGISLATION IN U.S.

Georgia has enacted the Georgia Fair Lending Act (the "Act") to combat "predatory lending," effective October 1, 2002. The Act applies to "home loans," "covered home loans" and "high-cost home loans." The Act applies to lenders, brokers, loan purchasers and assignees.

The term "home loan" includes an open-end or closed-end consumer loan secured by a borrower's principal dwelling with a loan amount up to the Fannie Mae conforming loan size. Purchase money loans and refinances are also included in the definition of home loan under the Act.

A "high-cost home loan" means a home loan for which: the APR exceeds the "HOEPA" threshold; or "points and fees" exceed 5% of total loan amount (excluding two "bona fide" discount points).

The term "points and fees" is defined by reference to HOEPA, plus the definition includes (among other items):

All broker compensation (including yield spread premiums unless disclosed and used to pay specifically listed third party closing costs);

- The maximum prepayment penalties on the loan; and
- All prepayment penalties paid on a loan made by the same lender or an affiliate.

The Act restricts several practices for all "home loans," such as mandatory arbitration clauses. Additional thresholds are set for "covered home loans." The Act provides further restrictions for "covered home loans," including a broad "flipping" prohibition.

A number of additional restrictions apply to "home loans" meeting one of the "high cost" thresholds. For

example, mandatory counseling is required, as well as a special disclosure. The Act provides for liberal rights to cure and reinstate a loan in default.

Remedies vary by violation but include actual damages, statutory damages equal to two times interest paid and forfeiture of interest due, and punitive damages. The borrower has a right to rescind a high-cost home loan for 5 years from the loan closing. The statute of limitations is 4 years after the date of the last scheduled payment or 5 years after the first scheduled payment (whichever is earlier).

To review the Act in its entirety, go to www.legis.state.ga.us/legis/. If you would like further information about the Act, please contact Franzen and Salzano, P.C. at 770-248-2885.

NEW 8TH CIRCUIT YSP CASE DENIES CLASS CERTIFICATION

The Eighth Circuit Court of Appeals recently rejected Culpepper's yield spread premium class certification analysis and denied class certification. The court in Glover v. Standard Federal Bank relied upon HUD's recent policy statement clarifying HUD's position that yield spread premiums are not *per se* illegal.

FREDDIE MAC

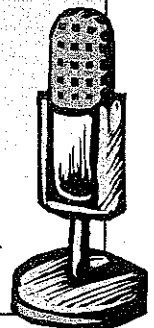
Freddie Mac has announced that it will no longer invest in subprime mortgages with prepayment penalties exceeding three (3) years. The new policy is effective for all subprime mortgages originated on or after October 1, 2002.

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"TALKING THE TALK"

Loretta Salzano appeared on the *Layman's Lawyer* on May 3, 2002 to discuss predatory lending.

Terry Franzén will be speaking on June 11, 2002, at the Georgia Mortgage Bankers Association meeting regarding the Georgia Fair Lending Act.



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Freddie Mac has previously announced that it will require lenders to provide borrowers with the opportunity to choose alternatives to mortgages with prepayment penalties. Further, Freddie Mac will not purchase mortgages with single premium credit life insurance.

AMENDMENTS TO REGULATION C (HMDA)

The Federal Reserve Board has approved amendments to Regulation C (implementing the Home Mortgage Disclosure Act ["HMDA"]) effective for data collection beginning January 1, 2004. The amendments add three data collection items, and the definitions of "application," "home improvement loans" and "refinancing transactions" are expanded to include additional types of loans.

STATES IN BRIEF

CONNECTICUT

Connecticut has enacted legislation impacting the calculation of prepaid finance charges for second mortgages.

DISTRICT OF COLUMBIA

The District of Columbia has enacted new predatory lending legislation and has repealed the prior, more cumbersome "Protections from Predatory Lending Legislation and Mortgage Foreclosure Improvements Act of 2000."

FLORIDA

The Florida Fair Lending Act ("Act") becomes effective on October 2, 2002. The Act applies to "high-cost home loans," and the thresholds are the same as HOEPA's.

GEORGIA

The Georgia Residential Mortgage Act was recently amended, effective July 1, 2002. The revisions require licensees to obtain background checks on employees who work in Georgia and also have the authority to enter, delete, or verify any information on any mortgage loan application, form or document. The revisions also change the advertising requirements.

MINNESOTA

Minnesota law, effective January 1, 2003, will impose a limitation on prepaid finance charges in connection with first mortgage loans and will require a disclosure if a licensee charges prepayment penalties above a certain threshold.

OHIO

Ohio has enacted predatory lending legislation with triggers mirroring HOEPA. The legislation specifically preempts local ordinances concerning predatory lending.

PENNSYLVANIA

The Pennsylvania Department of Banking has adopted new regulations requiring continuing education for licensees under the Mortgage Bankers and Brokers Act.

WEST VIRGINIA

West Virginia has revised its mortgage lending licensing law so as to require individual licenses for loan originators.

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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