

Welcome to the seventh issue of our quarterly newsletter. Visit our website at www.franzen-salzano.com where you can find more information about our firm, our published articles, and special client services. As always, we invite your suggestions of topics you would like to see covered in the newsletter. **AND PLEASE SEND US YOUR E-MAIL ADDRESS!** We frequently send periodic updates via e-mail and would like to add you to our list.

PREDATORY LENDING UPDATE

Since many of the legislatures across the country are currently out of session, much of the anti-predatory lending initiatives have focused on city ordinances and state administrative rules. New York State Banking Department's high-cost home loan rules became effective October 1, 2000. The Massachusetts Division of Banks has proposed amendments to the existing Massachusetts Truth and Lending regulations relative to high-cost mortgage loans. The amendments would expand the scope of high-cost mortgage loan regulations to apply to all types of first and second mortgage loans. The amendments would lower the interest rate and fee thresholds. New disclosures would be required, and a number of practices would be restricted or prohibited.

The cities of Oakland, Baltimore and Cleveland are all following the City of Chicago's lead by introducing city ordinances concerning predatory lending. The ordinances attempt to impact predatory lending by limiting city business to banks that certify that they do not participate

COLLECTION CORNER

FAIR DEBT COLLECTION PRACTICES

In *Kojetin v. C U Recovery*, the Eighth Circuit Court of Appeals held that the collection agency's validation notice violated the FDCPA because it contained a collection fee based upon a percentage of the debt when the debtor's agreement provided for assessment of the "costs of collection." The Court found that since the percentage fee did not bear a direct correlation to the actual costs of the Defendant's collection effort, it was unauthorized. Thus, the validation notice's inclusion of the fee misrepresented the amount due and violated the FDCPA.

"TALKING THE TALK"

Layman's Lawyer: Terry Franzén will appear on the **PBS program "Layman's Lawyer"** to discuss predatory lending on **November 3**. Tune in!

December 1, 2000, Terry will present "Doing Business on the Web" at the Conference on Consumer Finance Law in Dallas.

In **October**, Terry gave an update on Consumer Credit Litigation at NHEMA's Attorneys' Roundtable meeting in Naples, Florida. Loretta Salzano addressed the Southeastern Mortgage Brokers Conference concerning a variety of topics, such as the new financial privacy rules and the electronic signatures law.

in certain practices. The District of Columbia is considering a bill that would apply to loans that do not meet Fannie Mae's and Freddie Mac's "prime" grade underwriting standards.

As many legislatures reconvene this winter, "anti-predatory lending" legislation is expected to be introduced in **Georgia, Idaho, Illinois, Maryland, Indiana, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Washington, and Wisconsin**. We will likely see a number of counties and cities introducing local measures.

Federal measures seem to be slowing down while politicians attempt to define "predatory lending." Nonetheless, yet another bill has been introduced on this issue in the House. H.R. 4893, introduced July 19, 2000, titled the Community Reinvestment Modernization Act of 2000, will impact an institution's CRA rating if it is engaged in predatory lending practices.

Other Points of Interest

\$20 MILLION AWARD FOR VIOLATION OF SOUTH CAROLINA ATTORNEY PREFERENCE LAW

An arbitrator has ordered Green Tree Financial Co., now Conseco Finance Inc., to pay \$20 million to a class of 3,739 mobile home and home improvement consumers. In the two separate class actions pending in circuit courts in South Carolina, the arbitrator found that Green Tree continually failed to advise borrowers of their right to select their own attorney and insurance agent. This failure constituted a “shocking level of callous and reckless indifference.”

TILA STATEMENT PREPARATION FEE

We have received loads of questions recently regarding when a closing agent’s fee must be included in the finance charge for Truth in Lending Act purposes as well as under North Carolina law. A recent case from the U.S. District Court for the Eastern District of Virginia advises that lenders must be careful to ensure that TILA statement preparation fees are included in the finance

charge regardless of the treatment of other document preparation fees.

MISSISSIPPI FEDERAL COURT HOLDS EQUIFIRST ARBITRATION RIDER IS ENFORCEABLE

A Mississippi federal court recently dismissed a case against Equifirst and World Mortgage Co. because the plaintiffs had signed an arbitration rider at closing. Among other things, the plaintiffs argued that the arbitration clause was unconscionable, and they had no real choice but to sign it. The court noted that Equifirst mailed the Notice of Arbitration provision to the plaintiffs prior to closing and found that the arbitration agreement expressly provided for arbitration not just of claims against Equifirst, but of any claim arising from the transaction. Therefore, the plaintiffs were compelled to arbitrate their claims against the broker who was not a party to the agreement. In addition, the court found that the allegations against the two defendants were “substantially interdependent” such that the arbitration provision should be applied to the broker.

Congratulations, Terry!

Terry Franzén was named Member Attorney Program (“MAP”) lawyer for Georgia for the American Collectors Association.

COMING SOON! A valuable new service from Franzén and Salzano: A one-stop gateway to all the latest lending industry information available on the Web!

LENDING LAW LINK.COMSM
the online national research tool for the lending industrySM

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

F&S

**FRANZÉN AND
SALZANO, P.C.**

ATTORNEYS AT LAW

3169 Holcomb Bridge Road
Suite 202
Norcross, Georgia 30071-1315