

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 tenth issue of our quarterly newsletter. Please visit our website at www.franzen-salzano.com where you can find more information about our firm, our published articles, and special client services. **We welcome your input!**

YIELD SPREAD PREMIUM CLASS ACTION CERTIFIED BY 11TH CIRCUIT COURT OF APPEALS

The United States Court of Appeals for the Eleventh Circuit finally issued its long awaited opinion in the Culpepper case, affirming the District Court's certification of a class.

The Court held that the first step in the test for liability under Section 8 of RESPA is "not only whether the broker performed some of the services described in the HUD Statement (1999-1), but also whether the yield spread premium is payment for those services rather than for a referral." The second step of the analysis is "whether the broker's total compensation was reasonable."

In the Culpepper case, the lender and its mortgage brokers had a written agreement which contemplated a yield spread premium but did not define the term. The broker was paid a yield spread premium which was calculated using a formula that included the amount of the loan and the difference between the loan rate and the par rate. The Court found it significant that the formula for determining the amount of the yield spread premium did not take into account the amount of work the broker actually performed in originating the loan or how much the borrower paid in fees for the broker's services.

Please contact us if we may assist you in determining how this decision will impact your business practices and steps you can take to reduce your risk.

PREDATORY LENDING UPDATE

This past legislative session, anti-predatory lending legislation was enacted in **Connecticut, District of Columbia, Texas** and **Virginia**. Please call for details if you conduct business in these states.

DeKalb County, Georgia—

Effective on June 28, 2001, the DeKalb County Board of Commissioners adopted an ordinance concerning predatory lending. Our firm is co-counsel representing AFSA in an action challenging the enforceability of the ordinance based upon state law preemption.

The DeKalb County ordinance prohibits lenders doing business with the County from making high cost or threshold loans.

The DeKalb County ordinance defines a home loan as "high cost" if the APR is 5% or more over the yield on comparable treasury securities. A home loan is a "threshold" loan if the APR equals or exceeds 4%, but less than 5%, over comparable treasury securities.

A home loan is also "high cost" if the "points and fees" exceed 3% of the loan amount. The "points and fees" calculation is an "all-in" calculation and is defined to

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"TALKING THE TALK"

In **October**, Terry Franzén will address the NHEMA Attorneys' Roundtable in New Orleans regarding RESPA and yield spread premium litigation issues. In **November**, she will speak in Dallas at the Conference on Consumer Finance Law regarding "Doing Business on the Web."

In **September**, Loretta Salzano will speak in New Orleans at the Southeastern Mortgage Brokers Conference. In **October**, she will address the Dixie Land Title Association in Atlanta.

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include all third party fees, escrowed amounts, indirect broker compensation, prepayment penalties and financed credit life products. For high cost and threshold home loans, the ordinance deems a number of terms and practices as “predatory.” Please contact us if you would like the details.

City of Atlanta—

The City of Atlanta is considering two anti-predatory lending ordinances and three anti-predatory lending resolutions. The proposals purport to apply to all lenders, not just lenders doing business with the City of Atlanta. At a City Council Committee meeting held in August the proposed ordinances were tabled indefinitely to allow for discussions with the industry. Our firm is involved in these discussions. Please contact us for more information.

Dayton, Ohio—

Also in August, the City of Dayton, Ohio enacted an anti-predatory lending ordinance; however, enforcement of the ordinance has been temporarily stayed by the court in a lawsuit filed by the American Financial Services Association (AFSA) against the City of Dayton.

OVERTIME FOR LOAN OFFICERS

The Department of Labor has recently taken the position that loan officers and originators may be entitled to overtime pay. If your company is treating loan agents as exempt employees, you may wish to review this practice. Please call us if you would like more information.

LEGISLATIVE UPDATE

A number of states have recently enacted legislation or regulations impacting mortgage lenders and brokers. **Alabama** has adopted a new law requiring licensing for mortgage brokers. The **Ohio** legislature adopted significant revisions to the Ohio Mortgage Loan Act. The laws concerning mortgage lenders and brokers have also changed in the following states: **Delaware, Florida, Georgia, Indiana, Kansas, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, Tennessee, Vermont, Utah, Washington** and **West Virginia**. Please call us if you would like more information.

GRAMM-LEACH-BLILEY ACT

In the past, many lenders have placed loan numbers on loan documents which are to be recorded. The Gramm-Leach-Bliley Act prohibits disclosure of account numbers. We suggest lenders review their loan documents and practices in light of this new law.

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

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