

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 eleventh 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!

ATLANTA PREDATORY LENDING ORDINANCES ADOPTED

Two "predatory lending" ordinances were recently passed by the Atlanta City Council. The first ordinance, #01-O-0843, is applicable only to entities doing business with the City of Atlanta and prohibits such businesses and their affiliates from making "high-cost" mortgage loans. A loan is high-cost if the APR equals or exceeds 5% over the rate of comparable treasury security yields. A loan is also high-cost if the "points and fees" exceed 3% of the loan amount. A challenge of the ordinance is anticipated.

The second ordinance enacted is 01-O-1448. This ordinance establishes a commission to investigate and refer complaints regarding mortgage loans and home improvement contracts. The ordinance also requires a disclosure to be given before executing a home improvement contract or performing any work on homes located in the City of Atlanta that have a fair market value of less than \$100,000.

The ordinances were signed by the Mayor on September 25, 2001, and became effective immediately upon his signature.

HUD'S NEW POLICY STATEMENT ON BROKER COMPENSATION

HUD issued a Policy Statement reiterating its position on yield spread premiums. In the new Statement, HUD criticizes the 11th Circuit Court of Appeals' analysis in the *Culpepper v. Irwin Mortgage* decision certifying a

class action. HUD states that neither RESPA nor its 1999 Policy Statement supports the conclusion that a yield spread premium can be presumed to be an illegal referral fee "based solely upon the fact that the lender pays the broker a yield spread premium that is based upon a rate sheet, or because the lender does not have specific knowledge of what services the broker has performed." Instead, HUD provides, the legality of a yield spread premium is determined by the application of HUD's two-step test to each transaction on a case-by-case basis.

The Policy Statement also reiterates the importance of disclosing all broker compensation. HUD indicates in its Statement that regulations addressing required disclosures will be forthcoming.

"TALKING THE TALK"

On **October 9th**, Loretta Salzano will address local predatory lending initiatives in Colorado Springs at the AFSA Conference. On **October 26th**, she will address the NHEMA Attorneys' Roundtable in New Orleans on the aftermath of the *Culpepper* decision.



GRAMM-LEACH-BLILEY UPDATE

In the Summer 2001 edition of our newsletter, we cautioned lenders about placing loan numbers on recorded loan documents. In response to a letter from the Consumer Mortgage Coalition, six federal regulatory agencies issued a joint letter in September in which they concluded that the inclusion of loan numbers on recorded loan documents is permissible pursuant to one of the exceptions to the Gramm-Leach-Bliley Act.

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U.S. SUPREME COURT REFUSES TO HEAR *NHEMA v. FACE*

The U. S. Supreme Court has denied certiorari in *NHEMA v. Face*. In that case, the Fourth Circuit Court of Appeals held that Virginia's prepayment penalty restrictions were preempted by the federal Alternative Mortgage Transaction Parity Act (commonly referred to as the "Parity Act").

GEORGIA "CRYSTAL BALL"

It is anticipated that the Georgia Department of Banking and Finance ("DBF") will seek the introduction of legislation in January "to further strengthen the Georgia Residential Mortgage Act." There are six areas where the DBF likely will act to:

- Revise the Georgia Residential Mortgage Act ("GRMA") to ensure the states' compliance with the Gramm-Leach-Bliley Act;
- Improve the DBF's methodology regarding background checks, authorize the DBF to advise licensees before revoking their license due to a criminal problem, and require fingerprint cards on every new application;
- Define "principal" so as to clarify who is a principal of an entity;
- Clarify that third party creditors may not file actions against surety bonds;
- Clarify that advertising disclosures apply equally to those domiciled outside of Georgia; and

- Require the exhaustion of administrative remedies in an effort to require consumers to first bring their complaints to the DBF before pursuing legal action.

PREDATORY LENDING UPDATE

This past year, a flurry of initiatives aimed at curbing predatory lending practices have been considered by legislatures, state regulatory agencies, and municipalities. About one-half of all state legislatures considered such legislation, and eight states enacted some sort of restrictions on "high-cost" home loans. Those states are: **Connecticut, District of Columbia, Illinois, Massachusetts, New York, Pennsylvania, Texas and Virginia.** As of press time, seven municipalities and counties had adopted measures (the **City of Atlanta, Oakland, California, the City of Chicago, Cook County, Illinois, Dayton, Ohio, DeKalb County, Georgia** and the **City of Philadelphia**), and proposed ordinances were still pending in a number of other localities. Three of the adopted local measures became unenforceable soon after enactment and it is anticipated that more will fail.

Please contact Franzén and Salzano, P.C. at (770) 248-2880 if you would like further information about any of these matters.

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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