

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

Welcome to the ninth 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!**

PREDATORY LENDING UPDATE

The number of states considering predatory lending legislation this session continues to grow. Some of those initiatives have been enacted, while others have died.

Virginia has enacted legislation aimed at curbing “predatory lending.” Virginia House Bills 2787 and 2708, effective July 1, 2001, are limited in scope. Virginia House Bill 2708 prohibits flipping and encouraging default. Virginia House Bill 2787 also prohibits encouraging default and increases the bond requirements and maximum penalties under the Mortgage Lender and Broker Act.

The **District of Columbia** adopted extensive and complex legislation. The legislation does not contain the typical “predatory lending thresholds.” Instead, the legislation applies to “home loans” and contains a six-page definition of the term.

The **Illinois** Office of Banks and Real Estate has adopted administrative regulations imposing significant restrictions on “high-risk home loans.” These regulations are effective May 17, 2001. By enacting these rules, Illinois joins Massachusetts and New York, two states with currently effective predatory lending administrative regulations.

In May, the **Connecticut** and **Texas** legislatures passed anti-predatory lending legislation. Those bills are awaiting the Governor’s signatures.

The **Philadelphia** City Council recently approved a “high-cost home loan” ordinance, effective in July of 2001. The City of **Chicago** enacted an anti-predatory lending ordinance last fall.

This session, “Predatory Lending” initiatives failed to

“TALKING THE TALK”

In **May**, Terry Franzén spoke about predatory lending and other recent real estate finance law developments at the Conference on Consumer Finance Law in Dallas. In **November**, she will address the Conference on Consumer Finance Law in Dallas, “Doing Business on the Web.”

In **June**, Loretta Salzano will speak in Hawaii at the Conference on Consumer Finance Law regarding Consumer Credit in the 21st Century. In **September**, she will address the Southeastern Mortgage Brokers Conference in New Orleans.

pass in the following states: **Arkansas, Colorado, Georgia, Louisiana** and **Oklahoma**. Legislation aimed at curbing predatory lending is pending, as of May 2001, in **Alabama, California, Illinois, Massachusetts, Minnesota, Missouri, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania**, and **Tennessee**.

Atlanta “Anti-Predatory Lending” Ordinances

Three “anti-predatory lending” Ordinances have been introduced in **Atlanta**. Similar legislation has been introduced in **DeKalb County** also.

FEDERAL DEVELOPMENTS

“Bill of Rights” Legislation

In March, representative John LaFalce introduced ten bills in the U.S. House of Representatives as part of his consumer financial services “bill of rights” legislation. The legislation includes a bill entitled “Predatory Lending Consumer Protection Act of 2001” (H.R. 4250). This bill would lower HOEPA’s “high-cost” loan APR trigger to 6% for first mortgages and 8% for second mortgages. The bill would also lower the fee trigger to the greater of 5% or \$1,000. The “points and fees” calculation would include yield spread premiums. For “high-cost home loans,” the bill would prohibit credit insurance, balloon payments, call provisions,

Continued on back

Continued from front

mandatory arbitration, and lending without regard for repayment ability. Consumers must be given warnings regarding the high risk of high-cost home loans and the need for credit counseling, as well as a list of local certified counselors. The financing of points and fees would be limited to 3% (reduced by the amount of any prepayment penalty). Similarly, prepayment penalties would be limited to 3% (but reduced by the amount of any fee financing).

Representative LeFalce's proposals also include significant changes to HMDA and TILA, among other laws.

LICENSING LEGISLATION

Ohio and **West Virginia** are considering legislation concerning mortgage lender and mortgage broker licensing. The Ohio legislation would require licenses for loan officers and the successful completion of an examination by loan officers and designated operation managers. Operation managers would also be required to successfully complete continuing education. The **West Virginia** legislation would modify a licensing exemption currently relied upon by many lenders and brokers in that state. **Alabama's** legislature recently approved a new law requiring mortgage broker licensing. The law is effective, for the most part, January 1, 2002.

GEORGIA UCC CHANGES

Georgia recently adopted Revised UCC Article 9 which becomes law on July 1, 2001. Revised Article 9 is broader in scope than the current Article 9. Some of the differences are as follows:

Definitions of existing types of collateral are expanded to include additional classes of property. For example, "goods" now includes manufactured homes.

The choice of law rules now address the law governing perfection, the effect of perfection/nonperfection, and the law governing priority of security interests. In many cases, the law governing perfection will be different from the law governing the effect of perfection/nonperfection and priority of a security interest.

National financing statement forms are introduced and in many cases the borrower or guarantor's signature is not required on such forms.

Three new types of original collateral are introduced: deposit accounts, commercial tort claims and letter-of-credit rights.

The sale of promissory notes and payment intangibles, consignment transactions and agricultural liens are now covered.

Some of the perfection rules are changed by expanding the types of collateral which can be perfected by filing and allowing other means of perfection, such as by control.

Given that there are new types of collateral, new ways to perfect security interests, new rules for where to file and new requirements for describing collateral and completing financing statements, many lenders will face new issues on July 1, 2001, the effective date for Revised Article 9.

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
Atlanta, Georgia 30071-1315