

DISCLOSURE PACKAGE FOR GEORGIA FAIR LENDING ACT

Our firm has drafted a set of documents to assist lenders and brokers with compliance with the Georgia Fair Lending Act ("GAFLA"). These documents include the following and instructions for each:

- Points and Fees and APR Worksheet for Calculations Under GAFLA.
- Georgia Attorney Preference Check List Under GAFLA.
- Reasonable Tangible Net Benefit Worksheet and Borrowers' Certificate Under GAFLA.
- Bona Fide Discount Points Worksheet and Borrowers' Certificate Under GAFLA.
- Broker Certification and Correspondent Certification.
- Pre and Post-Closing Check List.
- Recordkeeping and Servicing Guidelines.
- No Default Disclosure.

The fee for these documents is \$500.00.

Please contact Terry Franzén or Loretta Salzano in order to purchase this compliance set.

11TH CIRCUIT OVERRULES CULPEPPER

The Eleventh Circuit Court of Appeals has dealt what many industry insiders believe to be the final blow to yield spread premium class action litigation. Relying retroactively on HUD's 2001-1 Statement of Policy, the court vacated class certification in the yield spread premium case *Heimmerman v. First Union Mortgage Corp.*, effectively overruling *Culpepper*.

OTS ISSUES PARITY ACT RULE

The OTS has issued a new rule limiting federal preemption under the Alternative Mortgage Transaction Parity Act for state-licensed lenders and state-chartered thrifts. Effective January 1, 2003, state limitations on prepayment fees and late charges are no longer preempted for these entities.

Announcement

We are pleased to announce that **Michelle Canter** has become associated with our firm. Michelle has practiced for ten years, most recently as Assistant General Counsel to the Texas Bankers Association. Michelle is a member of the Texas and the Kansas State Bars.

NEW SOFTWARE TOOL DEVELOPED BY experITy HELPS LENDERS MONITOR PREDATORY LENDING

experITy recently announced the release of its Predatory Lending Monitor, a new Web-based software product designed to help lenders monitor predatory lending at the point of origination or as a post closing audit. The software tool compares user entered loan parameters with a back-end, centralized database that includes a lender's loan program information, HUD fees, and federal, state, and municipal compliance regulations. A results page communicates whether the loan is acceptable, cautionary, or in violation of statutory limits. The product can be licensed and fully integrated into a lender's LOS system, or is available on a subscription basis for lenders or brokers with fewer than 50 loans per month.

Franzén and Salzano, P.C. provides legal support and works with experITy to ensure that its products and system parameters are compliant in light of "anti-predatory" lending thresholds and limits in all states and local municipalities which have enacted such restrictions. Franzén and Salzano monitors high-cost home loan initiatives in all 50 states and will ensure that experITy's Predatory Lending Monitor remains current as new laws become enacted and effective.

"TALKING THE TALK"

In **November** Terry Franzén and Loretta Salzano will be speaking at the Southeastern Mortgage Brokers Conference in New Orleans regarding predatory lending legislation across the US and trends after the enactment of the Georgia Fair Lending Act.



STATES IN BRIEF

CALIFORNIA: LOS ANGELES

The Los Angeles City Council has adopted a resolution authorizing the drafting of a predatory lending ordinance applicable to all lenders making mortgage loans within the City of Los Angeles; not just lenders doing business with the City.

COLORADO

The state of Colorado has enacted legislation requiring creditors to disclose certain credit score information to consumers. The legislation takes effect July 1, 2003.

MARYLAND

Maryland's anti-predatory lending legislation became effective October 1, 2002, with both APR and points and fees thresholds one point lower than HOEPA.

MASSACHUSETTS

Massachusetts has adopted revisions to its own version of the Truth In Lending Act limiting creditors to excluding no more than three bona fide discount points from the points and fees calculation.

NEW YORK STATE

New York State has enacted a new predatory lending law, effective in April of 2003. The legislation provides for a number of additional restrictions for "high-cost home loans." For first mortgage loans, a home loan is high-cost if it meets HOEPA's APR threshold. For second mortgage loans, the APR threshold is 9% over Treasury securities (one point less than HOEPA). A home loan is also high-cost if the "points and fees" exceed 5% for loans of

\$50,000 or more (or 6% if the loan is \$50,000 or more and is a purchase money VA or FHA guaranteed loan) or the greater of 6% or \$1500 for loans of less than \$50,000. The "points and fees" calculation includes indirect broker compensation (yield spread premiums) and financed credit life and similar products.

NEW YORK CITY

The New York City Council has also adopted a predatory lending ordinance. The Mayor of New York City has vetoed the ordinance, but it is possible that the City Council will override the veto. The ordinance applies to lenders seeking financial aid or tax abatements from the City, lenders contracting with the City, and lenders accepting City deposits or investments.

OHIO: CLEVELAND

Cleveland, Ohio's emergency anti-predatory lending ordinance is being enforced by the City as of July 26, 2002. Ohio enacted an anti-predatory lending law this spring which included a provision preempting local ordinances. Despite this specific preemption, the City of Cleveland subsequently enacted an emergency predatory lending ordinance. The American Financial Services Association ("AFSA") immediately sought and received a court order temporarily enjoining enforcement of the ordinance. The court later denied AFSA's request for a preliminary injunction. AFSA is continuing to pursue the matter in court.

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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