

NRMLA WESTERN REGIONAL MEETING

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Fairmont Newport Beach
Newport Beach, California

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PLEASE TAKE NOTE: The enclosed materials are only an overview of some of the federal and state laws and regulations that may affect housing finance operations. The materials are designed to alert the reader to the general provisions of law and regulation that may have a bearing upon the reader's business activities. The materials are not intended to and do not provide legal advice. Most provisions described are paraphrased, and a careful reading of the relevant laws, regulations or cases thereunder may reveal exceptions or different interpretations that might be applicable to particular facts. The materials cover areas in which the proper interpretation of law and regulation can be highly dependent upon particular facts. Accordingly, taking action simply upon the basis of information provided in these materials is not advisable. The materials are not a substitute for consultation with qualified legal counsel regarding the manner in which the laws and regulations referenced herein may be interpreted and apply to particular facts.

Federal Updates

Regulatory

Overview on HUD's Proposed Rule on Counseling

On January 9, 2007, HUD proposed a rule to amend its HECM regulations to set standards for individuals to qualify as counselors eligible to provide counseling services to seniors interested in applying for a HECM loan. Below is an overview of the proposed rule. A copy of the proposed rule also is attached. Comments are due by March 9, 2007.

The purpose of the proposed rule is to contribute to enhancing the quality of HECM counseling, thus further ensuring that seniors make informed decisions in considering whether to obtain a HECM loan. The proposed rule would amend HUD's HECM regulations to establish testing standards to qualify individuals as HECM counselors eligible to provide HECM counseling to prospective HECM borrowers. The rule proposed would establish a roster of eligible HECM counselors and provide for their removal for cause.

HECM Counselor Roster

The rule would provide for the establishment of the HECM counselor roster. HUD will maintain the roster and require an applicant for a HECM loan to use a counselor registered on the roster. However, the inclusion of a counselor on the HECM counselor roster means only that a listed counselor has met the qualifications and conditions prescribed by HUD for inclusion on the roster.

Testing and Qualification Standards

A HECM counselor must to apply to HUD to be considered for placement on the HECM roster. Among the requirements are that a counselor must be employed by a HUD approved housing counseling agency. Additionally, a counselor must pass a standardized HECM test that assesses minimum competencies. To remain eligible to counsel applicants seeking a HECM loan, approved HECM counselors must continue to receive training and education.

Removal from the Roster

The causes for the removal of a HECM counselor from the HECM counselor roster include, among others, failure to comply with the eligibility requirements, civil rights requirements, applicable statutes, regulations, or other written instructions or standards issued by HUD, and failure to maintain any registration or certification requirements of a state or local authority. A counselor may also be removed from the roster for steering clients to a particular lender. The proposed rule sets forth the procedure for removal of a HECM counselor from the HECM roster, including the detailed notice requirements that HUD must follow.

A HECM counselor who has been removed from the HECM counselor roster may be restored to the roster. Also, at any time, a HECM counselor may make a request to HUD, in writing, that he or she be removed from the roster. Nothing in the rule as proposed would prohibit HUD from seeking other remedies beyond those in the rule against an errant HECM counselor.

Administrative

Overview - Selected Portions of Mortgagee Approval Handbook 4060.1 REV-2

On August 14, 2006, HUD published a revised Mortgage Approval Handbook, Handbook 4060.1 REV-2. That Handbook was effective upon publication. Below is an overview of selected and limited excerpts from that Handbook that are of particular interest to reverse mortgage originators.

Types of Mortgagees

Handbook 4060.1 REV-2 reiterates and provides overview regarding the types of mortgagees that may participate in FHA-insured loan programs, such as the HECM loan program. Such mortgagees include non-supervised mortgagees, supervised mortgagees (such as depository institutions) loan correspondents and investors.

Supervised mortgagees are financial institutions that are members of the Federal Reserve System, and financial institutions whose accounts are insured by the Federal Deposit Insurance Corporation (FDIC), or the National Credit Union Administration (NCUA), such as banks, savings associations, and credit unions. Supervised institutions may also apply to be supervised loan correspondents or investing mortgagees. FHA approval only applies to the legal entity that is the actual applicant and does not cover any of its subsidiaries or affiliates. A subsidiary or an affiliate of a supervised mortgagee must apply separately for FHA approval as either a non-supervised mortgagee or non-supervised loan correspondent.

Non-supervised Loan Correspondents (i.e., mortgage brokers) are non-depository financial entities that have as their principal activity the origination of FHA-insured mortgages for sale or transfer to one or more Sponsors who underwrite the mortgages. Sponsors must have Direct Endorsement (DE) authority, (i.e., a DE mortgagee).

Non-supervised Mortgagee (i.e., mortgage lenders) are non-depository financial entities that have as their principal activity the lending or investment of funds in real estate mortgages. A non-supervised mortgagee may originate, underwrite, purchase, hold, service, and sell FHA insured mortgages and submit applications for mortgage insurance. A non-supervised mortgagee must maintain a warehouse line of credit or other mortgage-funding program acceptable to HUD. Acceptable programs include table funding and concurrent funding arrangements. The program must be adequate to fund the mortgagee's average 60-day origination production pipeline, but not less than a \$1 million warehouse line of credit or funding program. The line of credit must be issued directly to the mortgagee. In lieu of a warehouse line of credit, a mortgagee may have a letter from a financial institution stating that it will fund all mortgages originated by the mortgagee. A non-supervised mortgagee must spend a majority of its time and assets in the production of real estate mortgages and in the lending or investment of funds in real estate mortgages, or a directly related field. For FHA purposes, the principal activity of a non-supervised mortgagee, other than one organized as a not-for-profit entity, must contribute at least one-half of the entity's gross revenues, unless otherwise approved by FHA.

With single-family mortgage insurance programs processing and underwriting must be performed by approved lenders under the Direct Endorsement (DE) program. Under the DE program, approved lenders underwrite and close mortgage loans without prior FHA review or approval. This includes all aspects of the mortgage loan application, the property analysis, and borrower underwriting. The HECM mortgage insurance programs is eligible for DE processing. Mortgagee Letter 95-54 provides that mortgagees with or without regular DE approval, who have not closed at least 50 HECMs that were insured must submit five (5) HECM test cases to the local HUD office for pre-closing review prior to endorsement for insurance. If the underwriting processing of these 5 HECMs is satisfactory, the

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mortgagee is given unconditional authority by HUD to participate in the DE program for HECMs. After a mortgagee has completed the required test cases and received unconditional HECM DE approval from one local HUD office, unconditional DE approval will be granted for all HUD-approved branch offices of the mortgagee.

With few exceptions, a mortgagee must originate, close, fund, and submit mortgages for FHA insurance endorsement in its own name. A mortgagee may not perform only a part of the loan origination process, such as taking the loan application, and routinely transfer the underwriting package (appraisal report and/or mortgage credit package) to another mortgagee, except between a loan correspondent and its sponsor, and a principal and its authorized agent. A loan correspondent may process an application and submit it to one of its sponsors for underwriting. The loan correspondent must close the loan in its own name, or in the name of the sponsor that underwrites the loan. Sponsors must be DE mortgagees.

In the Principal-Agent relationship, an authorized agent may perform any part of the loan origination process, including underwriting, on behalf of its principal; however the loan must be closed in the name of the principal. The principal in the relationship can only be an FHA approved non-supervised mortgagee, supervised mortgagee or government mortgagee. FHA approved loan correspondents cannot serve as a principal. The authorized agent can only be an FHA approved non-supervised mortgagee or supervised mortgagee. FHA approved loan correspondents cannot serve as an authorized agent. Either party can originate or underwrite the loan as long as they have the appropriate approval. However, since the authorized agent typically underwrites the loan, its FHA lender ID number is shown in the sponsor field of an FHA case file. Also, since the principal typically takes the application, its ID number is placed in the originator field of the case file. Both mortgagees are responsible for the part of the origination and underwriting processing they perform. The loan must close in the name of the principal. Either party can submit the closed loan for insurance for the benefit of the principal. The relationship must be set up by the authorized agent on the FHA Connection. The amount of the origination fee each lender receives is a contractual matter to be determined by the two parties, the principal and authorized agent. The total fees charged to a mortgagor may not exceed the amount allowed for the type of FHA single-family loan as contained in the appropriate handbooks and mortgagee letters.

Each mortgagee that services or sub-services FHA insured single-family mortgages must be an approved mortgagee and must follow the requirements of HUD Handbook 4330.1.

HECM Advisor Program

Handbook 4060.1 REV-2 provides that Non-FHA approved mortgage brokers meeting the requirements in Mortgagee Letter 00-10 may participate in connection with FHA Insured Reverse Mortgages (HECMs). Thus, in addition to the provisions in the HUD HECM regulations, and ML 00-10, this provision of Handbook 4060.1 REV-2 provides further evidence of regulatory support of the HECM advisor program.

ML 00-10 provides that a HECM lender may charge a loan origination fee agreed upon by the borrower and lender. ML 00-10 capped the origination fee to the greater of \$2000 or 2 percent of the maximum claim amount. The borrower may finance the entire amount of the fee. As also provided in the HECM regulations, ML 00-10 reiterated that the financed origination fee is the full amount that the borrower can pay for the origination and underwriting of the mortgage and must also include the full amount of any mortgage broker fee or loan correspondent fee. The borrower is not permitted to pay any additional origination fees of any kind to a mortgage broker or loan correspondent. A mortgage broker fee can be included as part of the origination fee only if the mortgage broker is engaged independently by the homeowner. As also provided in the HECM regulations, a mortgage broker's fee is not allowed if there is any financial interest between the mortgage broker and lender. A copy of the agreement between the borrower and the mortgage broker to pay the broker fee must be submitted along with the loan application and other documents in the binder submitted to FHA.

Employees

Handbook 4060.1 REV-2 also provides that employees are those individuals who are under the direct supervision and control of an FHA approved mortgagee, where the individuals are exclusively employed by the FHA approved mortgagee in the mortgage lending and real estate fields. The mortgagee must demonstrate the essential characteristics of the employer-employee relationship upon inquiry by HUD.

A mortgagee may employ staff full time or part-time (less than the normal 40 hour work week). An employee may have other employment including self-employment. However, such outside employment may not be in mortgage lending, real estate, or a related field. Direct endorsement underwriters are included in this provision. An underwriter may not work on a part-time basis for any other mortgagee, even underwriting conventional mortgage loans. An underwriter may not underwrite loans for a parent or subsidiary of the underwriter's approved employer. However, on October 5, 2006, the Atlanta Home Ownership Center (or HOC) issued an informal letter providing that an individual acting as an FHA loan originator employee cannot act as an active real estate broker and originate FHA-insured loans. However, the informal letter provides that loan officers of a FHA-approved lender involved in other types of financing may concurrently originate loans and act as a real estate broker. [Further, however, some states' laws prohibit or place limits on real estate brokers also acting as mortgage brokers in the same transaction.]

Compensation of employees may be on a salary, salary plus commission, or commission only basis and includes bonuses. All compensation must be reported on Form W-2. Employees who perform underwriting and loan servicing activities may not receive commissions. Mortgagee Letter 06-30, discussed below, provides temporary relief regarding certain of these provisions of the Handbook.

Overview of Recent FHA Mortgagee Letters

ML 2006-30 (12/18/06) – This Mortgage Letter provides additional guidance, and temporary relief, on certain provisions in its Handbook 4060.1 REV-2 (“the Handbook”). The FHA issued the Handbook on August 14, 2006. Per ML 2006-30, the FHA will defer until March 1, 2007 its monitoring of mortgagees' employment compensation arrangements. FHA's stated purpose in providing the deferral is to give mortgagees more time to make changes to adjust to the provisions of the Handbook explicitly requiring that mortgagees pay their employees on a W-2 basis. The Handbook states that all employees' compensation must be reported on Form W-2. ML 2006-30 states that HUD's guidance has always been that FHA-approved lenders use employees rather than contract staff to perform critical loan functions. The Handbook provides specific guidance to mortgagees as to the type of documentation that will determine compliance with this requirement.

ML 2006-25 (09/28/06) [Attached] - This Mortgagee Letter clarifies the counseling requirements for prospective HECM borrowers, including who must receive HECM counseling, and what activities a HECM lender may perform prior to a prospective HECM borrower receiving HECM counseling. The Mortgagee Letter addresses HECM issues in connection with: (i) counseling requirements for the non-borrower spouse, (ii) counseling requirements for persons with a reversionary or remainder interest, trustees and trust beneficiaries, (iii) counseling requirements for a prospective HECM borrower's children.

This Mortgagee Letter also permits lenders to use automated valuation models (AVMs) to perform a preliminary estimation of the value of the real estate that will serve as security for the HECM. The AVM, however, does not take the place of the FHA appraisal. If the prospective borrower obtains a HECM, then the cost of the AVM should be included in the origination fee. Additionally, a HECM lender may order a preliminary title search prior to the prospective HECM borrower receiving counseling. However, the prospective HECM borrower may choose to seek counseling prior to or after the lender orders a preliminary title search. In other words a prospective HECM borrower does not have to wait until the

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HECM lender orders and reviews the preliminary title search to receive counseling. The costs associated with the preliminary title search will be paid at closing. If a prospective HECM borrower does not proceed to closing on the HECM, the borrower may not be charged for this service.

In order to combat fraud, HUD advises that HECM counselors to discuss the potential of mortgage fraud with their clients. Counselors are to explain the standard ways in which HECM borrowers can access their loan proceeds. Counselors should warn clients against signing over their funds to loan officers or other parties involved in the mortgage transaction.

ML 2006-23 (09/27/06) - With this Mortgagee Letter, the FHA announced that it will no longer require submission of photo identification as part of the HECM loan file. Mortgagees no longer need to provide any form of photo identification evidence for HECM borrowers when submitting case binders for FHA endorsement. This Mortgagee Letter replaces current FHA guidance found in HECM Handbook 4235.1 REV-1, paragraph 4-7 and Mortgagee Letter 2004-39.

In April 2004, FHA modified the FHA Connection to perform social security number validation checks against the Social Security Administration's database to help reduce the occurrence of identity theft and fraud in FHA programs. This validation check eliminates the need for photo identification. Mortgagees must ensure the borrower meets program eligibility requirements by verifying each borrower's age, social security number and identity, and not solely rely on the validation check being performed by the FHA Connection. Counselors should inform prospective HECM borrowers that a lender may require documents to be notarized and that the notary may require photo identification; however, this is not an FHA requirement.

ML 2006-22 (08/31/06) – With this Mortgagee Letter, the FHA extended the expected interest rate "lock-in" provision for HECMs to 120 days (from 60 days). The expected interest rate is used to calculate the principal limit for HECMs. The expected interest rate and principal limit are locked when the mortgagee takes the initial application. However, the "lock-in" period for counting the 120 days starts on the day that the FHA case number is assigned. In addition, FHA continues to allow the "float down" option whereby the principal limit may be recalculated at closing if the expected interest rate has declined and is lower than at initial application. This Mortgagee Letter replaced Mortgagee Letter 2003-16, and also revised instructions found in section "Requirements for Closing" contained in Chapter 6 of HUD HECM Handbook 4235.1 REV-1.

ML 2006-20 (08/16/06) [Attached]- This Mortgagee Letter clarifies and reiterates that under the HECM program the FHA permits existing liens to be subordinated to the first and second HECM liens. An existing lien of record against real property that serves as collateral for a HECM loan is permitted if the following two conditions are satisfied: (i) the subordinate lien does not intervene between the first and second HECM liens (it is the mortgagees responsibility to ensure that the first and second mortgages are the first and second liens of record, and that other liens do not intervene between the first and second mortgage); and, (ii) a lien against a HECM borrower's property, which is subordinate to the FHA-insured HECM first and second liens, cannot arise or be connected with obtaining a HECM loan. HECM regulations provide that there may not be any outstanding or unpaid obligations incurred by the HECM borrower in connection with the HECM transaction. Once a HECM loan is endorsed, however, the HECM mortgagor is not restricted from seeking a home equity loan, or engaging in another type of real estate financing transaction which would require an additional lien to be subordinated to the HECM first and second liens. This Mortgagee Letter also provides FHA guidance on the processing of HECM loan applications when a prospective HECM borrower is a person against whom a state or local court-ordered money judgment has been entered and remains unpaid.

ML 2006-07 (03/27/06) – This Mortgagee Letter clarifies that the "de-regulation" of closing costs for other FHA-insured single-family loans does not apply to HECM loans. FHA permits a HECM lender to charge a loan origination fee agreed upon by the borrower and lender, as specified in MLs 2000-10 and

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2004-18. The amount of the origination fee that can be charged to the HECM borrower and financed in the HECM loan is capped at the greater of \$2,000 or two-percent of the maximum claim amount on the HECM. The financed origination fee can include the costs for underwriting, processing, and any mortgage broker or loan correspondent fees. The HECM lender is not permitted to charge a HECM borrower any fees in addition to the origination fee to pay a mortgage broker or loan correspondent fee.

ML 2006-06 (03/17/06) - After changes made to the Texas Constitution, this Mortgagee Letter permits borrowers in Texas to choose a line of credit payment option in connection with a HECM loan. In 2005, voters in Texas ratified an amendment to the Constitution to authorize line of credit advances under reverse mortgages. The amendment was ratified on November 23, 2005. Seniors in Texas were given the flexibility to select from five (5) HECM payment options, which are currently available to HECM borrowers in the rest of the country.

State Law Updates

State Mortgage Licensing Updates

Colorado

Effective January 1, 2007, Colorado law requires the registration of mortgage brokers under the Colorado Mortgage Broker Registration Act (the "Act"). Under the Act, a mortgage broker includes any individual who, for compensation, negotiates, originates, or offers or attempts to negotiate or originate a loan to be consummated and funded by a mortgage lender. Individuals acting in the capacity of a Mortgage Broker will be required to register and, in connection with that registration, must provide an active surety bond and submit to a criminal background investigation.

Among others, those exempt from registration include certain financial institutions, wholesale lenders, and FHA-approved mortgagees or FHA-approved loan correspondents. Recently, however, some entities have reported receiving an exemption checklist and registration notice from the Colorado Department of Real Estate. In any event, informal consultations with personnel within the Colorado Department of Real Estate reveal that entities enjoying an exemption from the Colorado Mortgage Broker Registration Act are not required to complete the exemption checklist and provide the required attachments. Exempt entities reportedly may continue to originate mortgage loans, however, obtaining an exemption letter is a safe harbor for entities exempt from registration under the Act, and it may be prudent for mortgage originators otherwise exempt from the Act to take steps to obtain an exemption letter.

Idaho

Effective March 30, 2006, Idaho adopted administrative regulations establishing continuing education requirements. Licensed Idaho loan originators and branch managers of licensed locations must complete 16 hours of approved continuing education courses during each two-year reporting period. The initial two year reporting period for individuals registered with the Idaho Department of Finance commenced on November 1, 2006.

Montana

Effective September 8, 2006, the Montana Division of Banking and Financial Institutions implemented a regulation that details new recordkeeping obligations for licensees. The regulation sets forth each of the items that must be included in a Mortgage Broker Licensee's loan files and trust accounts. The new regulation also requires that a Mortgage Broker Licensee reconcile its trust accounts on a monthly basis.

Utah

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Effective October 11, 2006, the Utah Division of Real Estate amended its regulation that prohibits unprofessional conduct. The regulation was updated to prohibit mortgage licensees from engaging in certain real estate activities while also engaging in mortgage activities. Specifically, mortgage licensees may not: (1) provide a buyer or seller of real estate with comparative market analysis or otherwise assist such person in determining the offering price or sales price of real estate; (2) represent or assist a buyer or seller of real estate in negotiating the possible sale of real estate, except that a mortgage licensee may advise a borrower regarding the consequences that the terms of a purchase agreement may have on the terms and availability of various mortgage products; (3) perform any other acts that require a Utah real estate license; and (4) except in certain instances, advertise the sale of real estate. Personnel within the Utah Division of Real Estate have informally confirmed that the definition of mortgage loan under the Act only includes "closed end" credit. Most reverse mortgages are structured as open-end credit. Thus, entities making only reverse mortgage loans that qualify as open-end credit may be exempt from registration under the Mortgage Practices Act, but nevertheless may be required to file notifications under the Utah mortgage servicing and consumer credit regulations

Washington

Effective January 1, 2007, the Mortgage Broker Practices Act now requires that Loan Originators of Mortgage Broker Licensees obtain a license in order to conduct Washington business. Individuals that engage in purely administrative or clerical tasks, such as loan processors, are not required to be licensed. The revisions to the Mortgage Broker Practices Act also remove the exemption from licensing for subsidiaries and affiliates of Consumer Loan Licensees, and clarify that entities conducting business under the Consumer Loan Act are exempt from the Mortgage Broker Practices Act only to the extent that they conduct such business under the authority and coverage of the Consumer Loan Act.

The Washington Department of Financial Institutions ("Department") promulgated new regulations, effective January 1, 2007, that implement various changes made in connection with the recent amendments to the Mortgage Broker Practices Act. Similar to the Consumer Loan Act regulations that were revised in 2006 (discussed below), the Mortgage Broker regulations are in a question and answer format. Among other changes, Mortgage Broker Licensees must report certain information on their annual report, including the total number of residential mortgage loans originated and closed by the mortgage broker and the total dollar value of those loans. The revised Mortgage Broker regulations also discuss loan originator licensing requirements, including new continuing education requirements. Designated Brokers will be required to complete three courses, of no less than three hours each, and loan originators will be required to complete two courses, of no less than three hours each, in connection with renewing their licenses.

Effective March 1, 2006, the Department amended its Consumer Loan Act Regulations to clarify certain licensing and registration requirements. The regulations adopt the Department's position set forth in Interpretive Letter 02-02CL that, upon licensure under the Consumer Loan Act, all Washington loans are subject to the provisions of the Consumer Loan Act, regardless of whether the Consumer Loan License was required to make such loans prior to licensure. The regulations also clarify that branch locations that only conduct underwriting and "other back-office services" and which only have incidental contact with borrowers are not required to be licensed as branch locations. Also, Consumer Loan Licensees must either use their full business name, as it appears on their license, or include their Consumer Loan License number on all advertisements.

Conference of State Bank Supervisors Announces Nationwide Licensing System

In 2006, the Conference of State Bank Supervisors (CSBS) announced that it had entered into an agreement with the National Association of Securities Dealers to develop a nationwide licensing system for state residential mortgage regulators. The new Internet-based system is expected to be available

during January 2008. The proposed national licensing system and database will include uniform license applications for licensing of entities and individuals. In addition, licensees will be able to renew their licenses and registrations, as well as the licenses and registrations of their loan originators, using the national system and database.

The proposed database will maintain a central repository of information that will contain information regarding licensing, publicly adjudicated enforcement actions, and background data for every licensed mortgage broker, mortgage lender, and loan originator. State mortgage regulatory agencies, licensees, and consumers each will have varying degrees of access to the database.

The CSBS and the American Association of Residential Mortgage Regulators (AARMR) expect that the national licensing system and database will streamline the licensing process in each of the participating states. At least 30 state regulatory agencies have indicated that they intend to participate in the system. It is expected that between ten and twelve states will implement the national licensing system during 2008, with the remainder implementing the system during 2009 and 2010.

Importantly, the efforts by the CSBS, AARMR and the state mortgage regulatory agencies regarding a national licensing system and database do not create a more general uniform mortgage origination licensing law or regulation. While such a uniform mortgage origination licensing law or regulation has been discussed, and a committee formed by CSBS and AARMR, efforts to move forward with such a uniform law are not yet fully under-way.

Other Selected State Mortgage Law Updates

Arizona

Arizona Senate Bill 2081 restricts mortgage companies from referencing the trade name or trademark of other mortgage companies in solicitations for the offering of services or products without the consent of the entity referenced in the solicitation. The Governor of Arizona signed this bill into law on April 17, 2006.

Without the consent of the other mortgage company referenced in the solicitation, Arizona Senate Bill 2081 generally prohibits one from referencing an existing mortgage company, loan number, loan amount or other specific loan information when such information appears on the outside of an envelope, is visible through the envelope window or appears on a postcard in connection with advertisements that include or contain a solicitation for goods and services. The solicitation, however, may contain the trade name of another mortgage company when such use is limited to comparing the services and products offered by this mortgage company to the products and services offered by the mortgage company making the solicitation.

While Arizona Senate Bill 2081 generally prohibits references to the trade name or trademark of other mortgage companies in solicitations, it permits such references without the consent of the particular mortgage company referenced when the solicitation discloses all of the following: (i) the name, address and telephone number of the mortgage company making the solicitation; (ii) that the mortgage company making the solicitation is not affiliated with the mortgage company referenced in the solicitation; (iii) that the loan solicitation is not authorized or sponsored by the mortgage company referenced in the solicitation; and (iv) that any loan information referenced was not provided by the mortgage company referenced in the solicitation.

Arizona Senate Bill 2081 provides that the only manner by which to permissibly reference a loan number, loan amount or other loan specific information that is publicly available in a solicitation for the purchase of products and services is by disclosing the required information above. These requirements do not apply, however, to communications by a mortgage company or its affiliates with a current customer

of the mortgage company or with a person who was a customer of the mortgage company during the eighteen (18) months immediately preceding the solicitation.

Even when the required disclosures are provided, Arizona Senate Bill 2081 prohibits mortgage companies from referencing other mortgage company's customer's information, such as the loan number, loan amount or other specific loan information in solicitations for the purchase of services or products, when this information is not publicly available. Importantly, mortgage companies must also refrain from using the name of another mortgage company or a name similar to other mortgage company in solicitations directed to consumers if such use may cause a reasonable person to be confused, mistaken or deceived as to either of the following: (i) the other mortgage company's sponsorship, affiliation, connection or association with the mortgage company using the name; or (ii) the other mortgage company's approval or endorsement of the mortgage company using the name or of that other mortgage company's services or products.

California Senate Bill 1609

California Senate Bill 1609 revised California Civil Code Section 1632 and California Civil Code Sections 1923.2 and 1923.5. The bill made four changes to California law applicable to reverse mortgages, as follows: (i) adding a language translation requirement in certain circumstances, (ii) prohibits the "tying" of an annuity to a senior's obtaining a reverse mortgage, and prohibits solicitation of annuities to reverse mortgage borrowers for a specified period after closing, (iii) requires that counseling be provided by a HUD approved counselor in connection with any reverse mortgage transaction, and (iv) changed a disclosure requirement for reverse mortgages. This law became effective January 1, 2007.

Section 1632 of the California Civil Code was amended several years ago to require any person engaged in a trade or business that negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese or Korean (hereinafter "Other Language") in the course of entering into specified contracts to deliver to the other party, prior to the execution of a contract or agreement, a translation of it in the language in which it was negotiated. As previously drafted, the translation requirement did not apply to contracts secured by real property unless a Real Estate (DRE) or California Financial Lender (CFL) Licensee undertook such transaction. Senate Bill 1609 amends Section 1632 of the California Civil Code to require reverse mortgage originators to comply with this translation requirement if certain conditions are met.

Thus, a loan originator or lender that, in the course of entering into a loan contract, negotiates orally or in writing primarily in the Other Language must deliver to the consumer, prior to the closing of the loan, a translation of the loan contract or agreement in the language in which the contract or agreement was negotiated, which includes a translation of every term and condition in the contract or agreement. This requirement applies to Real Estate and California Lender Licensees, as well as financial institutions entering into reverse mortgage loan contracts. However, the term "contract" or "agreement" does not include any subsequent documents contemplated by the original document such as periodic statements.

Even when the lender or originator negotiates the loan contract or agreement in the Other Language, the requirement to provide a translation of the loan contract or agreement does not apply if the consumer has his or her own interpreter. "His or her own interpreter" means a person, not a minor, able to speak fluently and read with full understanding both the English language and the Other Language in which the contract or agreement was negotiated, and who is not employed by, or whose service is made available through, the person engaged in the trade or business.

However, for loans made by DRE Licensees, if such an originator delivers a translation of the mortgage loan disclosure statement to the borrower (as required by Section 10240 of the Business and Professions Code) in the Other Language in which the loan contract or agreement was negotiated, then the DRE Licensee is deemed to have complied with the translation requirements of section 1632.

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If a supervised financial organization provides a translation of the disclosures required by Regulation Z, and, if applicable, Industrial Loan or California Finance Lender laws in the Other Language in which the contract or agreement is negotiated, prior to the execution of the contract or agreement, this shall also be deemed in compliance with the translation requirements of section 1632. "Supervised financial organization" means a bank, savings association, credit union, or holding company, affiliate, or subsidiary thereof, or a DRE, Industrial Loan or California Finance Lender Licensee.

If negotiated in the Other Language, the lender or originator must provide the consumer with a notice at closing in the Other Language in which the loan was negotiated. The notice must be in the Other Language in which the loan contract or agreement was negotiated and must be conspicuously displayed to the effect that the lender or loan originator is required to provide a loan contract or agreement in Other Language in which the contract or agreement was negotiated, or a translation of the disclosures required by law in the Other Language in which the contract or agreement was negotiated, as the case may be. If a lender or originator does business at more than one location or branch, these notice requirements only apply with respect to the location or branch at which the contract was negotiated in the Other Language.

A translation may retain the following elements of the executed English-language contract or agreement without translation: names and titles of individuals and other persons, addresses, brand names, trade names, trademarks, registered service marks, full or abbreviated designations of the make and model of goods or services, alphanumeric codes, numerals, dollar amounts expressed in numerals, dates, and individual words or expressions having no generally accepted non-English translation. It is permissible, but not required, that this translation be signed.

The terms of the contract or agreement which is executed in the English language shall determine the rights and obligations of the parties. However, the translation of the contract or the disclosures in the Other Language in which the contract or agreement was negotiated shall be admissible in evidence only to show that no contract was entered into because of a substantial difference in the material terms and conditions of the contract and the translation.

California Senate Bill 1609 also prohibits the "tying" of an annuity to a senior's obtaining a reverse mortgage, and prohibits solicitation of annuities to reverse mortgage borrowers during the rescission period after closing. California Senate Bill 1609 requires that counseling be provided by a HUD approved counselor in connection with any reverse mortgage transaction. California Senate Bill 1609 also revises a disclosure that lenders must provide to reverse mortgage applicants.

CFL Licensees' Use of AVM's

Effective January 1, 2007, a Finance Lender or Broker Licensee may collect a fee for the use of an Automated Valuation Model (AVM) prepared by a third party. Such fee must be for the actual cost charged by the third party in connection with such service. To the extent that a borrower pays a fee for the licensee's use of an AVM, that entity must, in writing, advise the borrower of his or her right to receive a copy of the AVM within 15 days after the licensee receives the loan application. Of course, entities originating FHA-insured HECM loans also must follow HUD rules with respect to such loans.

California S.B. 1018

California S.B. 1018 enacts the California Financial Elder Abuse Reporting Act of 2005 and amends, repeals and adds Section 7480 of the California Government Code, amends, repeals and adds Sections 15634, 15640 and 15655.5, and adds and repeals 15630.1 of the California Welfare and Institutions Code relating to elder and dependent adult abuse. This law facilitates the reporting of elder financial abuse, as well as to include officers and employees of financial institutions in the class of individuals that are mandated to report such financial abuse. Financial abuse is defined as those instances in which a person or entity takes, secretes, appropriates, or retains real or personal property of an elder or

dependent adult to a wrongful use or with intent to defraud, or both. Assisting in any of these activities also constitutes financial abuse.

The Act requires mandated reporters, including officers and employees of financial institutions, who observe or know of elder abuse to immediately report the suspected abuse. The mandated reporter: (i) who had direct contact with the abused individual or (ii) who reviews or approves the individual's financial documents, records, or transactions (iii) in connection with providing financial services for the individual (iv) that observes an incident or reasonably suspects abuse on the information before him/her (v) must report the abuse by telephone and written report. Please note that an elder's allegation of abuse is insufficient to trigger the reporting requirement if the reporter does not have any corroborating or independent evidence of the abuse, or if the reporter reasonably believes that the abuse did not occur.

The Act defines a financial institution as a depository institution, as defined in 12 U.S.C. 1813(c): banks, savings associations, uninsured branches or agencies of foreign banks, and certain commercial lending companies owned or controlled by foreign banks. Thus, it would not appear that non-depository institutions, including trust companies and their subsidiaries, are subject to the reporting requirements under the law.

The civil penalty for failure to report the abuse is \$1,000, unless the failure is willful. The civil penalty for willfully failing to report the abuse may be up to \$5,000. The financial institution that employs the mandated reporter must pay the civil penalty to the party bringing the action. The Act amended the law to address the financial industry's concerns that the law could give rise to costly litigation removing a private right of action. Only the California Attorney General, a district attorney or county counsel may bring a civil action for violation of the law. The Act also amended the law to make clear that all reports by mandated reporters that report financial abuse under the law are confidential, and may be disclosed as required by law or court order. Finally, any reports made by bank personnel under the law are privileged against defamation liability.

Other States' Elder Financial Abuse Reporting Requirements

As of the end of 2006, all but six jurisdictions had some sort of mandatory reporting of elder abuse. The remaining six states authorize voluntary reporting. Three states already mandate that bank personnel report suspected elder abuse: Florida, Georgia and Mississippi. Fifteen other states have universal mandatory reporting laws, where banks are included in the persons required to report abuse: Delaware, Indiana, Kentucky, Louisiana, Missouri, New Hampshire, New Mexico, North Carolina, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, Utah and Wyoming. The remaining states allow bank personnel to voluntarily report suspected elder abuse.