

SPECIAL COMPLIANCE ALERT

June 10, 2008

WASHINGTON REQUIRES NEW RESIDENTIAL MORTGAGE LOAN DISCLOSURE SUMMARY EFFECTIVE JUNE 12, 2008

This year, the Washington Legislature enacted new predatory lending legislation (SHB 2770) designed to counteract a number of perceived abuses in the mortgage lending market. One part of the legislation requires residential mortgage lenders in Washington to provide a disclosure summary of “material” mortgage loan terms. The new requirements, including the required disclosure summary are effective June 12, 2008. These requirements apply to all state-chartered financial institutions and other state-regulated lenders (including out-of-state lenders operating in Washington). They do not apply to federal credit unions.

Disclosure Summary Requirements

Like the RESPA changes proposed by the federal Department of Housing and Urban Development, SHB 2770 requires lenders to deliver a short (one page or less) disclosure of “material” loan terms, including:

- Loan fees
- Discount points
- Interest rates (fixed or adjustable)
- Maximum rates for adjustable rate loans
- Adjustment terms
- Amount of initial payment
- Broker fees
- Balloon payment
- Prepayment penalty terms
- Broker fees
- Yield spread premium
- Whether the loan includes escrow for taxes and insurance
- Any fee or rate increase due to reduced documentation requirements

Status of Model Form

The statute requires the Washington Department of Financial Institutions to issue a model form of disclosure summary. The DFI has started rulemaking, and has created a draft form, but has not yet finalized the form and rules. The DFI indicates that credit unions must provide the new disclosure summary form even though the DFI model form has not yet been finalized.

NEW RESIDENTIAL MORTGAGE LOAN SUMMARY (CONT.)

The DFI has received a number of comments on the draft form of disclosure summary. Some of these comments raise issues that will need to be resolved before the final disclosure summary is adopted. For instance, the draft form does not clearly articulate that the disclosed terms are estimates and are subject to change unless the borrower signs a lock-in agreement. There should also be additional language informing the borrower that the terms are not a commitment and that the loan remains subject to approval.

We have prepared a version of the model disclosure form that contains several changes in order to address problems we have seen with the model. If you would like us to provide you with a sample disclosure, please call or email Hal Scoggins at hscoggins@fwwlaw.com.

Other Requirements

In addition to the new disclosure summary, the legislation prohibits prepayment penalties for prepayments made within 60 days of the first rate adjustment of an ARM. The statute requires the DFI to apply to federal interagency guidance on non-traditional mortgage products to Washington regulated institutions. Terms permitting negative amortization on non-traditional or subprime mortgage loans are prohibited.



Hal Scoggins

CREDIT UNION ATTORNEYS:

<i>Brian Witt</i>	<i>bwitt@fwwlaw.com</i>
<i>Hal Scoggins</i>	<i>hscoggins@fwwlaw.com</i>
<i>Karen Saul</i>	<i>ksaul@fwwlaw.com</i>
<i>Dean Sandow</i>	<i>dsandow@fwwlaw.com</i>
<i>Valerie Tomasi</i>	<i>vtomasi@fwwlaw.com</i>
<i>Dave Ludwig</i>	<i>dludwig@fwwlaw.com</i>
<i>Kathy Salyer</i>	<i>ksalyer@fwwlaw.com</i>
<i>Michelle Bertolino</i>	<i>mbertolino@fwwlaw.com</i>
<i>Michelle Kerin</i>	<i>mkerin@fwwlaw.com</i>
<i>Kimberley McGair</i>	<i>kmcgair@fwwlaw.com</i>
<i>Paul Migchelbrink</i>	<i>pmigchelbrink@fwwlaw.com</i>
<i>Chris Parnell</i>	<i>cparnell@fwwlaw.com</i>
<i>Cliff DeGroot</i>	<i>cdegroot@fwwlaw.com</i>

Portland Office:

121 SW Morrison, #600
Portland, OR 97204
Phone: 503.228.6044
Fax: 503.228.1741

Central Oregon Office:

750 Buckaroo Trail, #203
Sisters, OR 97759
Phone: 541.549.4958
Fax: 541.549.4959

www.fwwlaw.com

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