A Mortgage and Consumer Finance Law Update

06/10/09

Helping Families Save Their Homes Act of 2009

On May 20, 2009, President Obama signed into law the Helping Families Stay in Their Homes Act ("the Act"). Much of the new Act, which became effective immediately, is designed to revitalize the Federal Housing Administration's Hope for Homeowners Program (*i.e.*, loan modification) and to provide more assistance to attack the problems of mortgage fraud and homelessness. However, two other provisions of the Act will also be of keen interest to mortgage lenders and servicers. First, the Truth in Lending Act ("TIL") is being amended to require mortgage holders to notify a borrower when the ownership of their loan is transferred to another party. Today, borrowers are only notified when the servicing of their loan is transferred. It remains to be seen whether borrowers will truly find the new disclosure helpful or just confusing.

The Act also requires that any party purchasing a foreclosed property that was secured by a federally-related mortgage loan (as defined by the Real Estate Settlement Procedures Act) must provide at least 90 days notice to any tenant before the tenant can be required to vacate the property. In addition, unless the purchaser intends to reside at the property, the new purchaser's rights are subject to the rights of a tenant under a bona fide lease entered into before the foreclosure. In such cases, the purchaser must allow the tenant to remain in the property for the remaining term of the lease and as long as the tenant complies with the terms of the lease. Although the Act does not expressly say so, this presumably includes making the rental payments to the new property owner.

Final Truth-in-Lending Rules to Implement the Mortgage Disclosure Improvement Act

On May 19, 2009, the Federal Reserve Board published the final amendments to Regulation Z to implement the Mortgage Disclosure Improvement Act of 2008. The final rules are substantially similar to the proposed rules issued last December and apply only to closed-end mortgage loans. *The rules will apply to all applications for such loans received on or after July 30, 2009.*

The rules require that, for all dwelling-secured closed-end loans, creditors must deliver or mail good faith estimates of the required TIL disclosures within three business days of receiving a written application for a loan. For the purposes of this requirement, "business day" means any day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. In other words, early TIL disclosures will be required on both purchase money and non-purchase money loans, and on loans secured by owner-occupied properties and second homes.

In addition, the new rules prohibit the creditor from closing the loan until seven business days after the early disclosures are mailed or delivered. For purposes of the seven day rule, "business day" means any day other than Sunday or a federal legal holiday. In the event of a bona fide personal financial emergency, an exception can be made to the seven- and three-day waiting periods. However, the request for the waiver cannot be made on a pre-printed form.

If, after the early disclosures are issued, the Annual Percentage Rate ("APR") changes from the good faith estimate by more than the applicable tolerance, the creditor must re-disclose all changed terms no later than three business days before consummation of the loan. Again, business day means any day other than Sunday or a federal legal holiday.

No fees, other than a reasonable charge for obtaining a credit report, may be imposed before the required early disclosures have been made. However, no early disclosures are required if the application is denied or withdrawn within the three-day period.

The final rules also apply to closed-end loans secured by time-shares. However, in the case of time share loans, even if the APR in the early disclosures changes by more than the applicable tolerance, the lender is not required to redisclose by any specified period before consummation or closing.

Proposed Rules to Implement the Secure and Fair Enforcement for Mortgage Licensing Act

On June 1, 2009, the Department of the Treasury, Office of the Comptroller of the Currency; the Federal Reserve System; the Federal Deposit Insurance Corporation; the Department of the Treasury, Office of Thrift Supervision; the Farm Credit Administration; and the National Credit Union Administration proposed a joint rule to implement the Secure and Fair Enforcement for Mortgage Licensing Act of 2008. The public comment period will begin when the proposed rules are published in the Federal Register and will last for 30 days.

The rules will require mortgage loan originators (commonly called loan officers or account executives) employed by financial institutions regulated by one or more of the agencies to register with the Nationwide Mortgage Licensing System and Registry by supplying their name, home and work addresses, financial services work experience in the past ten years and financial information for the past ten years. Registrants must also disclose any felony convictions, civil judicial actions, actions or orders by regulatory agencies, final orders by regulatory agencies, revocation or suspension of authorization to act as an attorney, accountant or contractor, any customer-initiated financial services-related arbitration or civil action, terminations resulting from allegations of wrongdoing and any pending actions. However, the registration requirements would not apply to mortgage loan originators who originate five or fewer loans per year and are employed by institutions originating 25 or fewer loans per year in aggregate.

To complete registration, the mortgage originator must supply fingerprints for a background check, authorize the registry and their employer to obtain information regarding any administrative, civil or criminal findings, attest to the correctness of the information provided and authorize the registry to make some of the information available to the public.

Each mortgage originator must renew their registration annually and update their registered information within 30 days of any change in name, employment or other information provided. In the event of a merger, the registrant has 60 days to update the registry.

Upon registering, the mortgage originator will be issued a "unique identifier" that will allow the public to access some of the information in the registry. The unique identifier must be provided to consumers upon request, before acting as a mortgage originator, and through the originator's initial written communication with the consumer.

The financial institutions themselves will also be required to provide information to the registry including the name and office address, the Employer Identification Number, the Federal Reserve number, identification of the primary federal regulator, the name of individuals who have the authority to act as a contact for the registry and the name of the parent bank. The financial institutions must also update their information within 30 days of any changes.

The financial institutions will also be required to implement a process to identify employees who need to be registered and inform them of the registration requirement. They will also be required to establish procedures for monitoring compliance with the registration requirements, confirming the accuracy of employee registrations, reviewing criminal histories and background reports on employees, and provide that corrective action be taken if an employee violates the registration requirements. Finally, the financial institution must develop procedures for making the unique identifiers for their mortgage originators available to the public.

We anticipate that the final rules will be substantially similar to the proposed rules. The final rules will take effect 180 days after the registry becomes available for use.

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