
KAPIOLTAS & FORNI, P.L.L.C.

4514 Cole Avenue, Suite 600
Dallas, Texas 75205

Mike Forni
Attorney at Law

Thomas L. Kapioltas
Attorney at Law

Tel: (214) 764-9232
Fax: (214) 764-4041

website: <http://www.kflawpllc.com>

06.04.09

Legislative Update Report

State Issues – Pending Legislation of Interest

Monday, June 1 was the last day of 81st Regular Legislative Session.

HB 10, 2779, 2774, 2840 mentioned in prior Legislative Update Reports all passed. – HB 10 was the model legislation for Texas to be in compliance with the federal S.A.F.E. law for licensing of residential mortgage loan originators; HB 2779 was the regulatory structure for licensing and regulation of mortgage banker loan officers who originate residential mortgage loan; HB 2774 passed with the added provision for the budgeting independence of the Finance Commission financial regulatory agencies; and HB 2840 related to mortgage fraud and providing for criminal penalties. A copy of the legislation may be found below:

<http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=HB10>

<http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=HB2779>

<http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=HB2774>

<http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=HB2840>

Federal Issues

House Passes HR 1728 Anti-Predatory Lending Bill. On May 7, 2009, the House passed HR 1728. HR 1728 is the Mortgage Reform and Anti-Predatory Lending Act. Among other things, HR 1728 amends the Truth in Lending Act to specify duty of care standards for originators of residential mortgages; prohibits steering incentives in connection with origination of mortgage loans; directs the federal banking agencies to prohibit or condition terms, acts, or practices relating to residential mortgage loans that are abusive, unfair, deceptive, predatory, inconsistent with reasonable underwriting standards, or not in the interest of the borrower; prescribes minimum standards for residential mortgage loans, including a mandatory net tangible benefit to the consumer for refinancing a residential mortgage loan; subjects a creditor to civil actions for rescission of a residential mortgage loan in the case of specified abuses; limits the liability of good faith assignees or securitizers of a residential mortgage loan to loan rescission and certain other obligor costs; permits a consumer to assert a right to mortgage loan rescission as a defense to foreclosure; prohibits specified practices, including: (1) certain prepayment penalties; (2) single premium credit insurance; (3) mandatory arbitration (except for reverse mortgages); (4)

mortgage loan provisions that waive a statutory cause of action by the consumer; and (5) mortgages with negative amortization. A copy of the HR 1728 may be found at: <http://thomas.loc.gov/cgi-bin/query/D?c111:3:./temp/~c11125ISD0::>

The Federal Reserve Finalizes Final Truth In Lending Regulation Z Disclosures. The Federal Reserve Board approved final rules that revise the disclosure requirements for mortgage loans under Regulation Z (Truth in Lending). The revisions implement the Mortgage Disclosure Improvement Act (MDIA), which was enacted in July 2008 as an amendment to the Truth in Lending Act (TILA). The MDIA requires creditors to give good faith estimates of mortgage loan costs ("early disclosures") within three business days after receiving a consumer's application for a mortgage loan and before any fees are collected from the consumer, other than a reasonable fee for obtaining the consumer's credit history. These requirements are consistent with the Board's July 2008 final rule, which applied to loans secured by a consumer's principal dwelling. The MDIA broadens this requirement by also requiring early disclosures for loans secured by dwellings other than the consumer's principal dwelling, such as a second home. A copy of the Federal Reserve Board press release and a copy of the notice in the Federal Register may be found at: <http://www.federalreserve.gov/newsevents/press/bcreg/20090508a.htm> and <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20090508a1.pdf>

The Federal Reserve Board Releases Its Bank Stress Test Results. The Fed Stress Test assessed 19 of the largest U.S. bank holding companies to determine how much of an additional capital buffer, if any, each institution required to ensure that it maintains sufficient capital if the economy "weakens more than expected." A copy of the results may be found at: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20090507a1.pdf>

Other Industry News

FHA Allows Advances of the First Time Home Buyer Tax Credit. Certain lenders will now be allowed to finance bridge loans of up to \$8,000 for first time home buyers who qualify for tax credits under The American Recovery and Reinvestment Act of 2009 economic stimulus plan. FHA Mortgagee Letter 2009-15 allows government agencies, non-profits, and FHA-approved lenders can give advances on the tax credits. A copy of FHA Mortgagee Letter 2009-15 may be found at: <http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/09-15ml.doc>

HUD Secretary Donovan Announces Intent to Move Forward with RESPA Reform. "U.S. Housing and Urban Development Secretary Shaun Donovan today announced his intention to implement the mortgage reforms under the *Real Estate Settlement Procedures Act (RESPA)* that are scheduled to take full effect on January 1, 2010. For the first time in more than 30 years, HUD is updating mortgage rules to help consumers shop for the lowest cost mortgage, avoid costly and potentially harmful loan offers, and save an average of \$700. Meanwhile, HUD is withdrawing, and announcing its intent to propose revised language relating to, a narrow provision of the final RESPA rule that redefines a prohibited practice called 'required use' where consumers are steered toward higher cost mortgage services provided by affiliated businesses." A complete copy of the HUD press release may be found at:

<http://www.hud.gov/news/release.cfm?content=pr09-058.cfm>

FTC Helps Entities That Have Low Risk of Identity Theft Comply With “Red Flags” Rule.

In addition to the ‘Red Flags’ guide mentioned in last month’s legislative update, to help entities that have a low risk of identity theft – such as businesses that know their customers personally – the Federal Trade Commission has created a template that guides such businesses and organizations in developing written identity theft prevention programs to comply with the Red Flags Rule. The template has guidance and instructions that enable companies to complete and print the fill-in-the-blank form online. A link to the complete FTC bulletin with a link to the fill-in-the-blank form may be found at: <http://www.ftc.gov/opa/2009/05/redflags.shtm>

HUD ANNOUNCES SANCTIONS AGAINST MORE THAN 120 FHA-APPROVED LENDERS.

The sanctions resulted in more than \$1.5 million in payments to HUD. Violations range from failure to conduct sufficient quality control, to failure to continue to meet FHA recertification requirements, to falsifying loan documents. A copy of the HUD press release may be found at: <http://www.hud.gov/news/release.cfm?content=pr09-070.cfm>

President Obama Signs the H.R. 627 – The Credit Card Accountability Responsibility and Disclosure Act of 2009, or the Credit CARD Act of 2009.

The purpose of the Act is to amend the Truth in Lending Act to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan, and for other purposes. The Act provides for additional disclosure requirements, prohibits “pay to pay” fees, restricts “over the limit” fees, and restricts certain interest rate increases by the credit card company. A summary as well as the complete text of the legislation may be found at:

<http://www.govtrack.us/congress/bill.xpd?bill=h111-627&tab=summary>