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[COMMERCIAL LENDING UPDATE]

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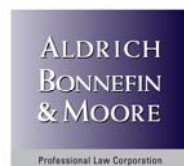
DFI AND DOC ADOPT MORTGAGE LOAN FOREIGN LANGUAGE TRANSLATION FORM UNDER AB 1160; MAY AFFECT COMMERCIAL LENDERS

As mandated under California Civil Code Section 1632.5, the Department of Financial Institutions and the Department of Corporations (collectively, the agencies) recently made available five different forms for use by lenders that negotiate a loan secured by residential real property in one of five specified foreign languages. The agencies' action stems from legislation (AB 1160) that was signed into law on October 11, 2009. The bill broadened the scope of existing law dealing with foreign language translation requirements to include residential real property-secured loans. Under the bill the agencies were required to create a form using the Department of Housing and Urban Development's (HUD) Good Faith Estimate (GFE) disclosure form as guidance. Lenders can begin using the form immediately, and must start applying no later than October 1, 2010.

Who is covered by the law? The law applies to "supervised financial organizations" that negotiate a loan secured by residential real property primarily in Spanish, Chinese, Tagalog, Vietnamese or Korean unless the applicant negotiates the terms of the contract through his or her own interpreter who is neither a minor, an employee of the lender nor provided by the lender. As defined, the term "supervised financial organization" means, and therefore applies to, state-

chartered banks, savings associations, credit unions (and their holding companies, affiliates and subsidiaries), industrial loan companies, California finance lenders and residential mortgage lenders licensed under the California Residential Mortgage Lending Act (CRMLA). By its terms, Section 1632.5 does not apply to federally chartered banks, credit unions, savings banks or thrifts.

What is the scope of coverage? Under the statute, the translation requirement applies to negotiating contracts or agreements for a "loan or extension of credit secured by residential real property." Unfortunately, the statute fails to define this provision. Thus, some may read the statute to apply to *all* mortgage loans, including purchase money loans, home equity loans, home equity lines of credit (HELOCs), refinancing transactions **and, more broadly, business-purpose loans secured by residential real property!** One might argue that the provision of the statute directing the agencies to use HUD's GFE would permit one to look to coverage rules under RESPA and, thus, exempt from the statutory requirements business-purpose loans since these types of transactions generally are exempt from RESPA. Unfortunately, however, the statute is not clear in this regard. Moreover, the statute does not define the term "residential real property." One could construe this term to be limited to one- to four-residential properties, again because those are the types of properties subject to RESPA and the GFE. And, in fact the various analyses of the bill seemed to focus on protecting non-English speaking applicants negotiating the purchase of a



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home. The statute, however, is not clear and, thus, the term “residential real property” could very well include multifamily properties. Neither the California Attorney General nor the DFI have taken as of yet an official position regarding the scope of the bill. Commercial lenders who secure loans by residential real property (e.g., multifamily dwellings or the residence of a principal owner of the business) should stay tuned for further developments.

What does the law require? Covered lenders must provide a summary translation of key terms using the form created by the agencies to the borrower no later than three business days after receipt of the written application. The agencies have literally taken HUD’s GFE and translated it into the five languages. The forms are available at the DFI’s website at www.dfi.ca.gov/forms/bank/bankforms.asp. The statute specifies that the following terms need not be translated: (i) names and titles of individuals and other persons; (ii) addresses, brand names, trade names, trademarks or registered service marks; (iii) make and model of goods or services, whether using full or abbreviated designations of such; (iv) alphanumeric codes; and (v) words or expressions having no generally accepted non-English translation.

What if changes are made to the loan terms? The statute specifies that if any of the summarized loan terms “materially” change after providing the form but prior to consummating the loan, the lender must provide an updated version of the translated form prior to consummation.

REVIEW COMMITTEE REACHES CONSENSUS ON NAMES OF INDIVIDUAL DEBTORS IN FINANCING STATEMENTS

The committee in charge of updating Article 9 of the UCC has reached a consensus on what standards to adopt for designating the proper name of individual debtors on financing statements. They proposed two approaches (states would select one or the other) called the “safe-harbor” approach and the “only-if” approach. Under the “safe-harbor” approach, creditors using the name appearing on the debtor’s driver’s license or state-issued identification card (if the debtor does not have a driver’s license) would be perfected, *even if* another name variation, for example, as stated in a birth certificate, would also bring perfected status. Under the “only-if” approach, the security interest would be perfected *only if* the financing statement designates the name on the debtor’s

driver’s license or state-issued identification card. The banking industry generally favors the “only-if” approach, which provides the less burdensome option. Alternatively, states could do nothing and keep unchanged the currently vague standard that the debtor’s “individual name” should be used. The revised provisions may be introduced in state legislatures as early as this year. Stay tuned for more information.

CITY OF LOS ANGELES ENACTS ORDINANCE IMPOSING REGISTRATION REQUIREMENTS ON LENDERS HOLDING PROPERTY IN FORECLOSURE

The city of Los Angeles has enacted an ordinance, no. 181185, which went into effect July 8, 2010, imposing registration and maintenance obligations on lenders for foreclosure properties. The purpose of the ordinance is “to establish an abandoned residential property registration program as a mechanism to protect residential neighborhoods from becoming blighted.” L.A., Cal., Municipal Code ch. 16, art. 4, Section 164.01 (2010).

The ordinance requires that for “any unimproved or improved residential real property or portion thereof” located in the City of Los Angeles and upon which a Notice of Default (NOD) has been issued, the lender who holds or has an interest in a deed of trust on the property, register the property in foreclosure with the Housing Department of the City of Los Angeles. Therefore, regardless of whether the loan is a commercial purpose loan, if it is secured by a residential property within the City of Los Angeles, upon which an NOD has been issued, the lender is required to comply with the applicable registration and maintenance requirements.

The lender must register the property, provide the required information, and pay the annual registration fee of \$155.00, within 30 days of the issuance of the NOD, if the NOD is issued after July 8, or within 30 days of July 8, where the NOD was issued prior to that date. The registration requirements may also be satisfied by providing the required information to the Mortgage Electronic Registration System (MERS).

The lender is also required to comply with the provisions of Los Angeles Municipal Code Article 1, Division 89, Section 91.8901 *et seq.*, regarding maintenance of the property, and Article 8, Division 7, Section 98.0701 *et seq.*, regarding security and maintenance of vacant properties.