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Truth in Lending Amendment Requires Assignee of Mortgage Loan to Send Transfer

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Pursuant to a recent amendment to the Truth in Lending Act (the "Act"), a new owner or assignee of a mortgage loan secured by a consumer's principal dwelling must send a written notice to the borrower within 30 days after the mortgage loan is sold or otherwise transferred or assigned.

This amendment was part of the Helping Families Save Their Homes Act of 2009, which was the foreclosure prevention and mitigation legislation signed into law by President Obama on May 20, 2009. Pursuant to the amendment, not later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned to a third party, the creditor that is the new owner or assignee of the mortgage loan must notify the borrower in writing of such transfer. The notice must include:

A. the identity, address, telephone number of the new creditor;
B. the date of transfer;
C. how to reach an agent or party having authority to act on behalf of the new creditor;
D. the location of the place where a transfer of ownership of the debt is recorded; and
E. any other relevant information regarding the new creditor.

A "mortgage loan" means any consumer credit transaction that is secured by the principal dwelling of a consumer.

Please note that the language of the amendment is broad enough to include the typical mortgage assignment that is done in New York State to avoid or reduce the mortgage recording tax on a new loan transaction. Such a transaction typically involves an assignment of a mortgage to a new lender, and the execution of consolidation, extension and modification agreement ("CEMA") between the borrower and the new lender. Accordingly, a lender that takes a mortgage loan by assignment in connection with the origination of a new mortgage loan should, as a matter of caution, provide this newly-required notice to the borrower.

The amendment states that a violation of this notice requirement is subject to a consumer's private right of action under the civil liability provisions of the Act. This potentially could result in a penalty of not less than $200 or more than $2,000 per violation. There is also the potential for a class action lawsuit.

The amendment took effect on May 20, 2009, the date the legislation was signed by the President. If you have any questions regarding the amendment, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at

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