THE
Financier

THE FINANCIERS ASSOCIATION OF AUSTRALIA LIMITED NEWSLETTER

JUNE 2006

Welcome to the Winter 2006 edition of The Financiers Association of Australia Limited newsletter.

As usual we try to keep up with any legislative changes in the credit code as well as inserting any interesting general business pieces gleaned from various sources.

A welcome is also extended to new members at this time.

Bank of Qld's Liddy calls for more consistent regulation in finance sector

Bank of Queensland's managing director David Liddy has called for greater regulatory consistency, claiming some sections of the sector having been "tickled, but barely touched" by regulation.

Mr. Liddy said the finance sector faced major regulatory challenges. But he said while the banking sector had the burden of a strong regulatory regime, other sectors of the finance industry did not.

"So while the banks are regulated, regulated and then, just to be sure, regulated again, we have situations like Westpoint and the mortgage broking or financial planning industries which seem to sail blissfully on, tickled but barely touched by the regulation stick," he said.

"Don't get me wrong, I believe the finance sector should face stringent regulation to ensure it continues to meet the high standards it has set in Australia over the last 50 years. But we must ensure that these regulations actually achieve what the community demands and do not just insert layer upon layer of bureaucracy and cost to the process of doing business, taking out a loan, or making a deposit."

"After all, this all gets passed on to the consumer eventually."

He said the Australian Securities and Investments Commission, the Australian Prudential Regulation Authority and the Reserve Bank of Australia have had a dramatic impact on businesses over the past five years.

With any new regulation the protection of the shareholders, customers and cost should be analysed and "regulating for regulation's sake" should be avoided, Mr Liddy said.

"After all, none of us would like to think we are just constantly covering ourselves for the what-ifs just so no one could be accused of doing nothing the next time there is another HIH or, God forbid, Westpoint," Mr Liddy said.

He said he did not want to only single out the regulators but said sections of the media and some politicians found "bank bashing a national sport", especially in terms of bank fees.

He said everyone in the service industry charged fees.

"The fact of the matter is that in these days of low margins and rampant competition in the lending and deposit spaces, banks must charge fees to remain profitable," Mr Liddy said.

"At times, these fees may have been too high but, like all good markets, the Australian finance market shifts, adjusts, finds the competitive level and then squeezes it like hell.

"I know there is always a lot of talk about fees but competition is driving some fantastic results for consumers in the finance sector at the moment."

AAP

Chris Herd.

Sydney Morning Herald 26/05/06

Lenders look to North Carolina as model for predatory lending laws

NORFOLK — A law barring abusive mortgage lending in North Carolina could serve as a model for congressional efforts to curb predatory lending nationwide, a representative of a consumer advocacy group told bankers and bank regulators Friday.

“Lenders have changed their practices since 1999 when North Carolina imposed more stringent restrictions on residential lenders," said Christopher Kukla, director of state legislative affairs for the Center for Responsible Lending in Durham, N.C.

Critics of measures to stamp out abusive lending have argued that these laws often reduce the availability of credit, especially for consumers who have tarnished credit records. However, mortgage credit in North Carolina has remained widely available to a broad range of borrowers, Kukla said during a discussion at the Conference of State Bank Supervisors’ annual convention in Norfolk.

Definitions of predatory mortgage lending vary widely among those states barring the practice. The loans tend to have such features as excessive fees, hefty prepayment penalties and interest rates several percentage points higher than conventional home loans. According to North Carolina’s law, a mortgage lender must not knowingly and intentionally make a loan lacking a tangible net benefit to the borrower.

Proponents of the law, said Kukla, sought to reduce a high number of mortgage-refinancings that were generating additional fees for lenders but injuring the borrowers. While most mortgage lenders abide by the law, “there is a subset of people trying to make as much money as they can,” he said during the regulators’ convention at the Norfolk Waterside Marriott.

Several other states, including New Mexico, Massachusetts and New Jersey, have enacted similar laws in recent years. Congress, too, is considering a handful of bills that would curb predatory mortgage lending. States with strong anti-predatory lending laws are concerned that a congressional measure, if enacted, would pre-empt their laws, Kukla said.

The heightened attention to abusive lending comes amid much greater use of innovative mortgage products, including interest-only loans. However, there has been no demand yet for mortgages with 40-year maturities despite publicity about their availability, said Michael Fratantoni, senior director for single-family research and economics at the Mortgage Bankers Association in Washington, at the convention.

Earlier this month, the Mortgage Bankers Association predicted that the dollar volume of residential mortgage originations will fall 15 percent this year partly because of a sharp drop in refinancing. The industry, Fratantoni said, has already begun cutting jobs in response to the downturn in loan demand.

By TOM SHEAN, The Virginian-Pilot
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ATO investigates low-doc loans

Tax Commissioner Michael Carmody has restated his intention to require mortgage insurers to disclose the names and addresses of low-doc loan borrowers. The move is part of a data matching program under which the ATO wants to compare income disclosed to lenders with income disclosed on tax returns.

The Commissioner is particularly concerned with borrowers who apply for low-doc loans because they have not lodged income tax returns or business activity statements. Low-doc loans allow customers to take out loans with little or no documentation and usually do not require applicants to produce tax assessments or BAS records. They attract a higher interest rate to cover the increased risk of default.

At this stage, only the six mortgage insurers who cover low-doc loans are being targeted PMI Mortgage Insurance, GE Mortgage Insurance, St George, ANZ, Westpac and Sunsuper. The many lenders and mortgage managers who deal in low-doc loans do not appear to be on the ATO’s current hit-list.

Non-lodgement of tax returns is not the only reason why some borrowers seek low-doc loans. Self-employed, casual and contract workers often seek low-doc loans because they do not fit the standard borrowing criteria of many lenders.

Whilst the ATO is concerned about borrowers failing to declare or under-declaring their taxable income, the big risk for low-doc loan providers and mortgage insurers is that borrowers overstate their income on loan applications. The recent trend in falling low-doc loan interest rates could mean some lenders are not adequately factoring the higher risk of default into their interest returns.

The Commissioner's statement on 27 October 2005 is available at www.ato. gov.au/corporate/ content.asp?doc =/content/ 65329.htm

Business or consumer loan?

Rous v Australian Finance Direct Ltd (Commercial) [2006] NSWCTTT 2 (10 January 2006)

Ms Rous and her husband set up a company called RC Property Group Pty Ltd.
They were the sole directors and shareholders of the company. The company was involved in the furnishing and then reselling of properties.

They took out a loan from Australian Finance Direct to finance the cost of a business related course run by the National Investment Institute Pty Ltd. The course cost them $55,000. In order to partly finance the cost of the course, Ms Rous filled out an application for a loan from AFD of $20,345. The loan was approved by AFD on 11 November 2002.

When they filled in the enrolment forms they wrote that they wanted the invoice for the course to go to RC Property Group Pty Ltd. Loan repayments for the course were made from their business cheque account of the same name.

After establishing the business and entering into the credit contract with AFD Ms Rous left her job as a teacher. While she took the course, the company entered into various property transactions.

On 25 November 2003 NII, the training provider, was placed into administration and was subsequently wound up.

Ms Rous then sought to be relieved of any liabilities she had under the credit contract with Australian Finance Direct Ltd (AFD). She made this claim in reliance on the Consumer Credit Code.

The Code allows in certain situations that a credit provider be made liable if the debtor suffers loss or damage as a result of a misrepresentation in relation to a contract with a supplier. Under the code, proceedings should be brought against the supplier and the credit provider. (Here, due to their liquidation, it was not possible to bring an action against NII.)

The Code doesn't apply to all types of credit. It only applies if the credit is provided for personal/domestic/household purposes. If the credit is provided for a business purpose then the tribunal looking at the application has no jurisdiction to decide on the matter.

The judge said that the "knowledge gained by Ms Rous through the NII course was to be used by the company ... with a view to making profits... I am satisfied that the overall purpose was predominantly a business one." As the credit was related to a business purpose then the tribunal lacked jurisdiction to deal with the matter and so the application was dismissed.

When can a debtor be listed on the credit file?

S v Credit Provider [2005] PrivCmrA 18

S obtained credit from a credit provider. The debt wasn't paid in full but a repayment arrangement was agreed. The credit provider agreed not to list a payment default on the complainant's consumer credit information file.

Despite the arrangement the credit provider listed his name on the credit file and also added the arrangement on the complainant's credit file as an enquiry.

When S repaid the amount owing the credit provider argued that there were late fees and other additional charges. S then proved the debt was paid to the credit reporting agency and his file was updated.

S alleged that the amount listed as an enquiry on their credit file was greater than the amount of the arrangement. He also said that the amount owed was less than 60 days overdue and therefore could not be listed as a payment default on his credit file.

The Privacy Commissioner carried out an investigation into the matter. The credit provider claimed that it had received advice from a credit reporting agency that a default listing could be placed on an individual's consumer credit information file, if that individual had acted as a personal guarantor for a commercial loan. The credit provider also believed that in order to place a default on a credit file, there needed to be a corresponding application for credit (an enquiry).

The Commissioner asked the credit reporting agency about this. The agency said that the credit provider had interpreted the act incorrectly. The Commissioner found that there had been a breach by the credit provider. S's name should not have been placed on the credit file as the loan in question did not satisfy the definition of "credit" under section 6 of the Privacy Act.

Ultimately both the payment default and enquiry were removed from the credit file. The credit provider was made to provide written evidence that its staff had training on the guidelines of the credit reporting agency. A written apology was also made to S.

ASIC outlines better regulation initiatives

ASIC Chairman Mr Jeffrey Lucy today released ASIC's 'Better Regulation' initiatives.

Mr Lucy said the whole community benefits from well-regulated capital markets and financial services, and that while Australians can take comfort in the success of our markets and our regulatory system, we must always strive to do better.

ASIC today released a document outlining a number of regulatory enhancements it intends to deliver over the coming months.

The priority areas for ASIC over this period are:

- Improved transparency about how ASIC works, makes decisions and approaches its legislative functions;
- Better accessibility for industry and stakeholders, to enable an improved mutual understanding of decisions and policies;
- Engaging with business to identify and reduce areas where there is regulatory duplication or overlap;
- More fully understanding the impact on business of ASIC's regulatory decisions, by seeking more reliable and relevant information from business on the quantifiable impact of those decisions;
- Helping clients deal more efficiently with ASIC by streamlining and where possible reducing paperwork through better use of electronic communications; and
- More comprehensive engagement with the financial industry and businesses through more effective consultation and a better understanding of stakeholder views of ASIC decisions.

Mr Lucy said ASIC wants to continue to demonstrate its commitment to better regulation by rapidly delivering several key projects.

We are also establishing a Business Consultative Panel to help us identify emerging issues.

If you come across or would like to contribute any article that may be of interest for the newsletter please fax on (02) 9299 1433 or post to the Association c/- GPO Box 3463 Sydney NSW 1043.

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