Construction Lending News
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What's Ahead for 2009?

Mortgage Legislation, TARP and Appraiser Independence

By Bill Garber, Appraisal Institute Director of Government and External Relations[1]

If you thought 2008 was a busy year, you haven't been paying enough attention to 2009! Where 2008 brought us the Home Valuation Code of Conduct, TARP, Regulation Z, new Interagency Appraisal and Evaluation Guidelines, 2009 is likely to usher in a new era of regulation of the mortgage sector, including potential changes to the appraisal regulatory structure, economic stimulus – and the good news is – a plethora of opportunity for professional real estate appraisers. What specifically will be on the minds of the Obama Administration and the 111th Congress in the coming months? Here are a few items already high on their agenda:

Mortgage Relief

The Obama Administration released The Homeowner Affordability and Stability Plan, which aims to help 7 million to 9 million families restructure or refinance their mortgages to avoid foreclosure. The plan mostly involves refinancing existing Fannie Mae/Freddie Mac loans that are in distress, while encouraging private loan servicers to modify existing loans. Treasury will develop uniform guidance for loan modifications across the mortgage industry, working closely with the bank agencies and building on the FDIC's current proposal. Other elements of the plan involving appraisals include:

- Allowing judicial modifications of home mortgages during bankruptcy for borrowers who have run out of options
- Provide $1.5 billion in relocation and other forms of assistance to renters displaced by foreclosure and $2 billion in neighborhood stabilization funds
- Improve the flexibility of Hope for Homeowners and other FHA programs to modify and refinance at-risk borrowers

The Appraisal Institute supports the overall intention of the plan-keeping homeowners in their homes-but is urging the Administration to protect homeowners, and all taxpayers, by ensuring an accurate appraisal, by a state certified of licensed real estate appraiser, of the market value of the property is performed at the time of modification.

Mortgage Regulation

The Bernie Madoff scandal has thrust the role of the Securities and Exchange Commission in financial oversight into the spotlight. Coming on the heels of TARP and the credit crisis, we expect serious discussions about the proper makeup and functions of federal financial institutions regulatory agencies. For many years, the banking industry has argued in favor of consolidation of the bank regulatory functions. Recent problems with many thrift institutions have raised questions about the viability of the Office of Thrift Supervision. With all of this, should there be one "prudential" financial regulatory overseeing all financial institutions? Would that entity also carry with it the day-to-day responsibilities of bank examinations of institutions? These and other questions are already being asked by the House and Senate banking committees, and Treasury Secretary Timothy Geithner.

Troubled Asset Relief Program

As Congress reviews the Treasury's program to unfreeze credit in the primary and secondary markets, particular emphasis is being paid to industries that have strong economic impacts, such as the auto and financial sectors. Much concern has been expressed about the health of the commercial real estate market in recent months, given credit availability concerns and the structure of many commercial real estate loans. But now, commercial real estate is competing with virtually every industry on the block for TARP consideration, including the student loan and retail industries. Will $700 billion be enough, or is it just a "down payment" to an even bigger bailout?

continued on page 2

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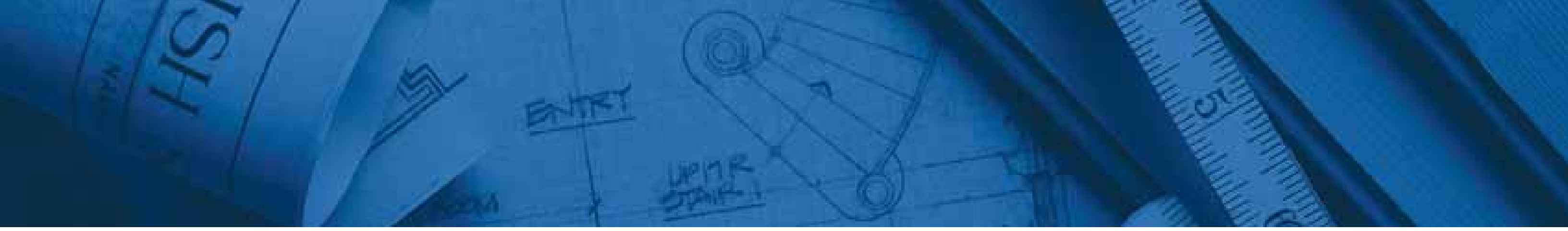

What's Ahead for 2009?

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Mortgage Fraud/Predatory Lending

H.R.3915, a major anti-predatory lending bill, passed the House in 2007, only to stall in the Senate as the market meltdown occurred. That legislation included tangible reforms to Title XI of the FIRREA. As Congress looks at mortgage industry regulation, virtually every industry will receive some inspection, including the appraisal profession. The good news here is that much work has been done on this issue already, and we expect Congress to use the legislation found in H.R. 3915 as a starting point of their inspection of the appraisal process. The result, we hope, is a modernization of the appraisal regulatory structure, giving federal and state regulators the tools and resources they need to conduct more aggressive and effective enforcement. Interestingly, President Obama has included provisions from his previously introduced STOP FRAUD Act as part of his economic stimulus plan. That legislation, which has been introduced in past sessions of Congress but not seen action, would define mortgage fraud as a federal crime and provide financial resources to state and federal enforcement agencies, including money for state appraisal boards. With this proposal being part of the stimulus package, resources for state appraiser boards are squarely on the table. Other issues that were prevalent in 2008, such as appraisal independence, the Home Valuation Code of Conduct, and the role of appraisal exemptions are also likely to see some review during the upcoming session of Congress, and the Appraisal Institute will be active on all of these fronts.

Overall, many are concerned about the health of real estate markets and the overall economy. The upcoming year will undoubtedly be a wild ride given the current economic circumstances, change of administration and new expanded majorities in Congress. The good news is that much attention is being paid by policymakers on real estate-related issues. The bad news, of course, is the same. The appraisal profession has many challenges and opportunities ahead this year, and the Appraisal Institute intends to help policy makers make sound public policy decisions as they impact real estate generally and the real estate appraisal profession in particular.

State Appraiser Independence Legislation

Appraiser independence legislation has been a hot topic across the country. As of early February, bills featuring appraiser independence provisions had been introduced in 13 states. They joined the 18 states that had previously enacted appraiser independence laws, bringing to 31 the number of states that could have appraiser independence laws on their books by year's end. In addition, more states are likely to introduce similar appraiser independence legislation later in the year, according to Scott Dibiasio, manager of State and Industry Affairs for the Appraisal Institute.

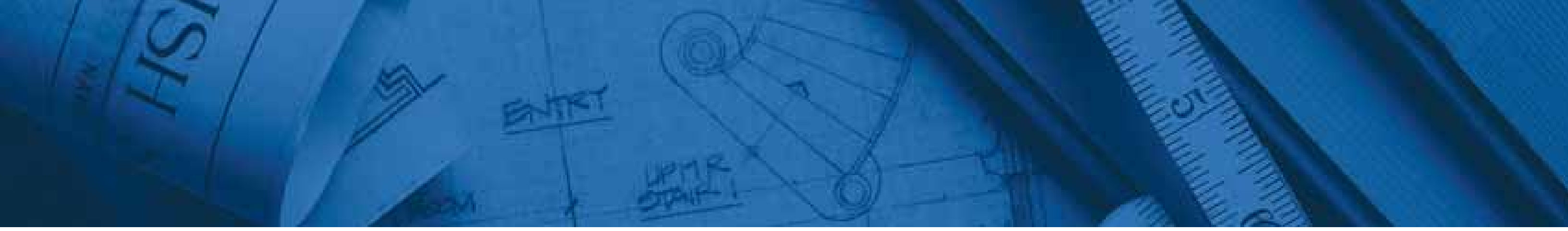
The 13 states with pending legislation include: Arizona, Hawaii, Indiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Oklahoma, South Dakota and Massachusetts, which has legislation pending from 2008.

The language of each of these bills more or less mirrors what is included in the Conference of State Bank Supervisors Model Secure and Fair Enforcement for Mortgage Licensing Act, which states that it is improper/illegal for a mortgage banker or broker to:

> (11) Make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

Since an appraiser is the only independent party in a mortgage transaction who is not compensated on the basis of whether or not the mortgage loan makes it to the closing table, the Appraisal Institute supports state legislation that would make it illegal for anyone involved in the mortgage lending process to inappropriately influence or coerce a real estate appraiser for the purposes of obtaining a specific value with respect to the property.

For more information on existing state appraiser independence laws, visit the Appraisal Institute's new State Regulatory Clearinghouse, a listing of all of the state regulatory proposals that have been made affecting the appraisal profession, available at www.appraisalinstitute.org. Specifically, the appraiser independence laws can be found at: www.appraisalinstitute.org/newsadvocacy/downloads/appraiserindependencelaws.pdf



New York Lien Law

Marc J. Lifset[1] & Jeffrey Barringer[2]

1. Overview

In New York, the establishment, perfection, priority and enforcement of mechanics' liens are governed by statute.[3] While New York's Lien Law allows for liens for both public[4] and private improvements, the discussion will focus on mechanics' liens for private improvements. Since New York's Lien Law has several nuances, the discussion that follows provides only a broad overview.

2. Non-Waivable Right To File & Enforce

The right to file or enforce a mechanics' lien is not waivable.[5] Any contract provision, agreement, or other understanding purporting to waive the right to file or enforce a lien is against public policy and void; however, the written waiver of the right to file a mechanic's lien when delivered and executed simultaneous to or after payment for work performed or materials delivered is permitted.[6] In addition, a written agreement to subordinate, release or satisfy a lien is enforceable.[7]

3. Who May File And To What Extent Does The Lien Apply

In New York, a mechanic's lien is available to a large number of actors including contractors[8] subcontractors,[9] real estate brokers, architects, engineers, surveyors, laborers,[10] materialmen,[11] landscape gardeners, nurserymen or the seller of fruit, ornamental trees, roses, shrubbery, and vines.[12] To the extent that any of these parties perform labor or furnish material for the improvement[13] of real property[14] and the improvement was consented to or requested by the owner, the parties may acquire a lien on the real property. Once a notice of lien has been filed, the lien is for the principal and interest, of the value, or the agreed price of the labor and materials. This includes the value of material "manufactured for but not delivered to the real property."[15] Mechanics' liens are derivative and are effective only to the extent that moneys are earned and unpaid under the contract. For example, to the extent the owner pays the contractor, the contractor's subcontractors are deemed paid.[16]

continued on page 4

[1] Marc J. Lifset, Esq., is a member of McGlinchey Stafford, PLLC. Marc is a graduate of Hamilton College (B.A., cum laude, 1974) and Cornell University (J.D. 1978). Marc is author of: "Truth in Lending Disclosures for Construction and Home Improvement Loans," Construction Lending Reporter, Vol. 3 (June 2002). Marc is co-author of: "Mobile Homes Legally Defined: Issues for the Mobile Home Lender to Consider," 45 Consumer Finance Law Quarterly Report Vol. 312, (Spring, 1991); "The Law of DIDA Section 501," 54 Consumer Finance Law Quarterly Report Vol. 122 (Spring, 2000), "The New York Part 41 Predatory Lending Rules and Remedies," 56 Consumer Finance Law Quarterly Report 87 (Fall and Winter 2002) and the author of "Truth in Lending Disclosures for Construction and Home Improvement Loans," Author, 57 Consumer Finance Law Quarterly Report 4 (Winter 2003) and "Truth in Lending Rescission Issues – Homes Under Construction", Consumer Finance Law Quarterly Report, Vol. 61 No. 1, Spring 2007, pp. 67-72. Marc was the New York State Editor of Houselaw and New York State Editor of CarLaw from 1995-2002, and is a contributing editor, Truth in Lending (American Bar Association 2000 -).

Marc has been a member of the American Bar Association Consumer Financial Services Committee from 1982 to date, and Vice-Chairperson (1989-1992) and Chairperson (1992-1997) of the Subcommittee on the Relation to State Laws. Marc also is a fellow of the American College of Consumer Financial Services Lawyers; listed in The Best Lawyers in America, a member of the Conference on Consumer Finance Law (Governing Committee), the National Association of Residential Construction Lenders (2002 -) the New York Manufactured Housing Association, Finance Division, the Manufactured Housing Institute ("MHI") Finance Lawyers Committee (Vice-Chair, 2004 – 2006, Chair, 2007), the New York State Bar Association Consumer Financial Services Committee, and the National Mortgage Bankers Association ("MBA").

Marc concentrates his practice in the areas of banking law and consumer financial services law. He advises banks and other financial institutions regarding consumer financial services issues, licensing, regulatory compliance, legislative matters and documentation. Marc also has particular expertise in the areas of manufactured housing lending, residential construction and home improvement lending, state and federal lending laws, including interest rate regulation, licensing, and perfection of security interests.

[2] Jeffrey P. Barringer, Esq., is an associate in the Albany, NY office of McGlinchey Stafford, PLLC. Jeffrey is a graduate of Hartwick College (B.A., magna cum laude, 2002) and Albany Law School (J.D., summa cum laude, 2007). Jeffrey concentrates his practice in the area of consumer financial services.

[3] N.Y. LIEN LAW § 1, et seq.

[4] N.Y. LIEN LAW § 5.

[5] N.Y. LIEN LAW § 34.

[6] *Id.*

[7] *Id.*

[8] Contractor "means a person who enters into a contract with the owner of real property for the improvement thereof." N.Y. LIEN LAW § 2 (9).

[9] Subcontractor "means a person who enters into a contract with a contractor and/or with a subcontractor for the improvement of real property . . . or with a person who has contracted with or through such contractor for the performance of his contract or any part thereof." N.Y. LIEN LAW § 2 (10).

[10] Laborer "means any person who performs labor or services upon such improvement." N.Y. LIEN LAW § 2 (11).

[11] Materialman "means any person who furnishes material or the use of machinery, tools, or equipment, or compressed gases furnished for welding or cutting, or fuel or lubricants for the operation of machinery or motor vehicles, either to an owner, contractor or subcontractor, for, or in the prosecution of such improvement." N.Y. LIEN LAW § 2 (12).

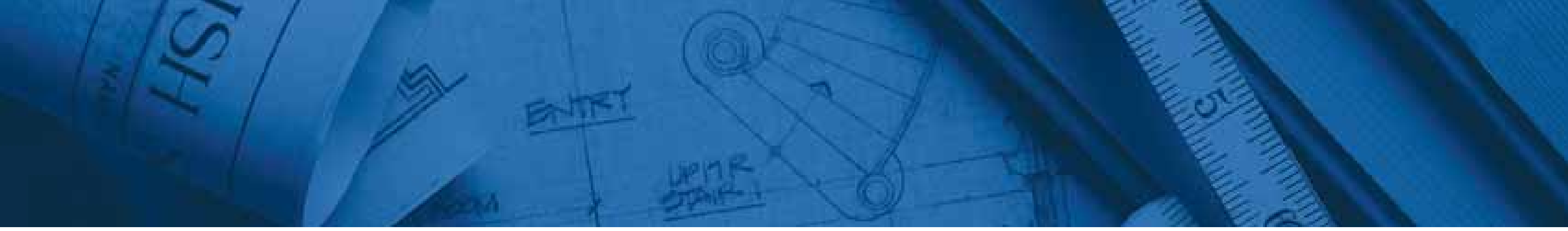
[12] N.Y. LIEN LAW §§ 2 (4); 3.

[13] Improvement is defined broadly under New York's Lien Law. See N.Y. LIEN LAW §§ 2 (4).

[14] Real Property is defined broadly and "includes real estate, lands, tenements, and hereditaments, corporeal and incorporeal, fixtures, and all bridges and trestle work, and structures connected therewith . . . ." N.Y. LIEN LAW § 2 (2).

[15] N.Y. LIEN LAW § 3.

[16] See N.Y. LIEN LAW § 4 (1).



New York Lien Law

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The lien extends to the owner's interest in the real property and improvements existing at the time a notice of lien is filed, as well as any after acquired interest.[17] The lien also extends to insurance proceeds payable to the owner of real property if the improvement is destroyed or removed.[18]

4. Perfection & Duration

4.1. Perfection

To obtain an enforceable lien, New York does not require that the owner be given notice of the lien or that the party file prior to commencing work; however, a lien is not acquired until the party files a notice of lien.[19] Generally, a notice of lien can be filed any time during the progress of the work and the furnishing of the materials, or within eight months from completion of the contract or the time when work is last performed or when materials were last furnished.[20] When the lien relates to real property improved by a single family dwelling, the time to file following completion of the contract, final performance, or final furnishing of materials is shortened to four months.[21] The notice of lien must contain the required information prescribed by statute[22] and be filed in the county clerk's office in the county where the real property is situated. The county clerk must input appropriate information from the notice of lien in the lien docket.[23]

To remain valid, a copy of the notice of lien must be served upon the owner of the real property and the contractor or subcontractor by whom the lienor was employed or supplied materials to. In addition, if the lienor contracted with a subcontractor or sub-subcontractor, the contractor must also be served with a copy of the notice of lien.[24] Service must be made using the methods prescribed by statute no earlier than five days prior to filing and no later than thirty days after filing the notice of lien.[25] The lien is terminated if proof of service is not filed with the county clerk within thirty-five days of filing.[26] Within sixty days of filing a notice of lien, a lienor is permitted to amend his or her lien if the purpose of the amendment is to reduce the lien amount and the lienor provides twenty days notice to the owner, mortgagees, and existing lienors.[27]

4.2. Duration

Once filed and perfected, a lien remains in effect for a period of one year from filing unless during that period an action is commenced to foreclose the lien and a notice of pendency is filed with the county clerk, or an extension is filed within the one year period.[28] A lien cannot be extended pursuant to an extension for more than one year.[29] A lien cannot be extended, other than by court order, with respect to a lien on real property improved by a single family dwelling.[30] If a court orders an extension of a lien, the extension cannot be for more than one year; however, a lien can be extended by court order in two consecutive years.[31] In addition, if another lienor or a mortgagee commences a foreclosure action and the lienor is a party defendant his or her lien will automatically be extended.[32]

5. Priority

5.1. Generally

Generally a lien has priority over all mortgages, conveyances, judgments, and claims that are not recorded, docketed or filed at the time the notice of lien is filed and over all advances made on a

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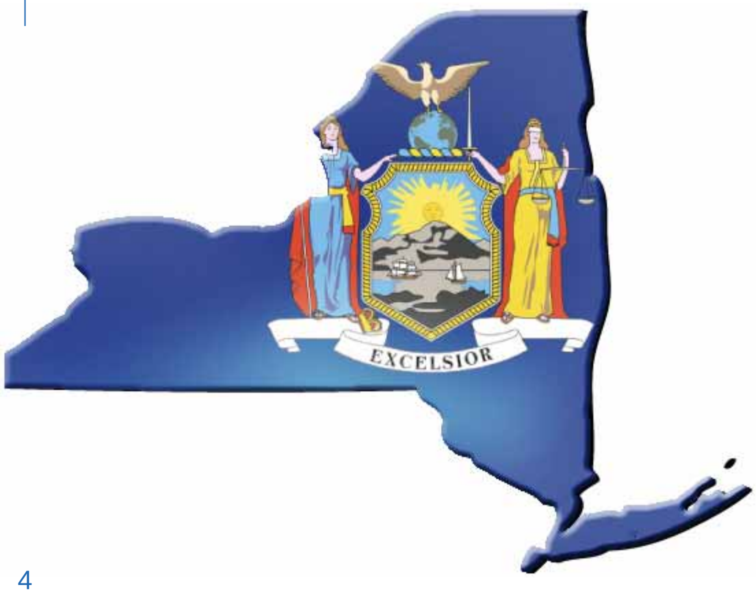


[17] N.Y. LIEN LAW § 4 (1).
[18] N.Y. LIEN LAW § 4-a.
[19] N.Y. LIEN LAW § 3.
[20] N.Y. LIEN LAW § 10 (1).
[21] *Id.*
[22] N.Y. LIEN LAW § 9.
[23] N.Y. LIEN LAW § 10 (1).
[24] N.Y. LIEN LAW §§ 11 & 11-b.
[25] N.Y. LIEN LAW §§ 11 & 11-b.
[26] N.Y. LIEN LAW §§ 11 & 11-b.
[27] N.Y. LIEN LAW § 12-a (1).
[28] N.Y. LIEN LAW § 17.
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*

previously recorded mortgage after the notice of lien is filed.[33] Lienors generally are in parity with one another and have no priority based on the time they file their notice of lien; however, a laborer, subcontractor or materialman has preference in the proceeds of a sale over the person for whom he performed services or furnished material.[34] For example, a subcontractor would be paid from the sale proceeds prior to the contractor and a sub-subcontractor prior to his or her subcontractor. Note, however, that the weekly wages of laborers have priority over all liens.[35] It may also be advantageous for a lienor to quickly reduce a claim to judgment as a means of obtaining priority against subsequent mechanic's lienors, thereby upsetting the general rule that mechanic's liens are in parity.[36]

5.2. Building Loan Mortgages & Mortgages

A lien has priority over advances of a recorded building loan mortgage after the filing of a notice of lien.[37] A building loan mortgage will have priority over a lien with respect to advances made prior to filing of a notice of lien regardless of when the building loan mortgage is recorded, provided that the building loan contract contains a covenant providing that the right to receive advances will be held in trust for the payment of the cost of improvement before advances are used for any other purpose and the building loan contract is filed in accordance with section twenty-two of New York's Lien Law.[38] Similarly, a mortgage recorded subsequent to the commencement of improvements and prior to the conclusion of the time required to file a notice of lien will have priority over a subsequently filed lien if the mortgage contains the same covenant.[39] A statement that the mortgage or building loan contract is "subject to the trust fund provisions of section thirteen of the lien law," satisfies the covenant requirements.[40] It should be noted, however, if a mortgagee brings a foreclosure action, only those lienors that have filed a notice of lien prior to the filing of the notice of pendency in the foreclosure action are necessary parties to the mortgagee's foreclosure action.[41]

A purchase money mortgage granted by an owner who made improvements and other instruments of conveyance have priority over all subsequently filed liens, provided the instrument of conveyance contains a similar covenant.[42]

6. Enforcement

In order to enforce a lien, the lienor must bring an action against the real property and file a notice of pendency in the supreme court or county court having appropriate jurisdiction over the action prior to the expiration of the lien or bring an action sounding in contract in a court with appropriate jurisdiction.[43] The failure to file a notice of pendency prior to the expiration of a lien does not preclude a lienor from bringing an action for the underlying debt.[44] In addition, a lienor named a party defendant, prior to the expiration of his or her lien, in an action brought by another lienor does not need to file a notice of pendency to enforce his or her lien and the action will be deemed an action to enforce his or her lien.[45]

In an action to enforce a lien in which a lis pendens is required, all record owners of the real property, all lienors that have filed a notice of lien prior

continued on page 6

[33] N.Y. LIEN LAW § 13 (1).

[34] N.Y. LIEN LAW §§ 13 (1); 56.

[35] N.Y. LIEN LAW § 13 (1).

[36] *See, e.g., City & County Savs. Bank v. Oakwood Holding Corp.*, 387 N.Y.S.2d 512, 514–15 (N.Y. Sup. Ct. 1976).

[37] A "building loan mortgage" is a mortgage made pursuant to a building loan contract, including an agreement where a building loan mortgage is consolidated with existing mortgages and constitutes a single lien. N.Y. LIEN LAW § 2 (14). A "building loan contract" is a contract pursuant to which a lender "in consideration of the express promise of an owner to make an improvement upon real property, agrees to make advances to or for the account of such owner to be secured by a mortgage on such real property." N.Y. LIEN LAW § 2 (13).

[38] N.Y. LIEN LAW § 13 (2) & (3).

[39] Id.

[40] N.Y. LIEN LAW § 13 (3).

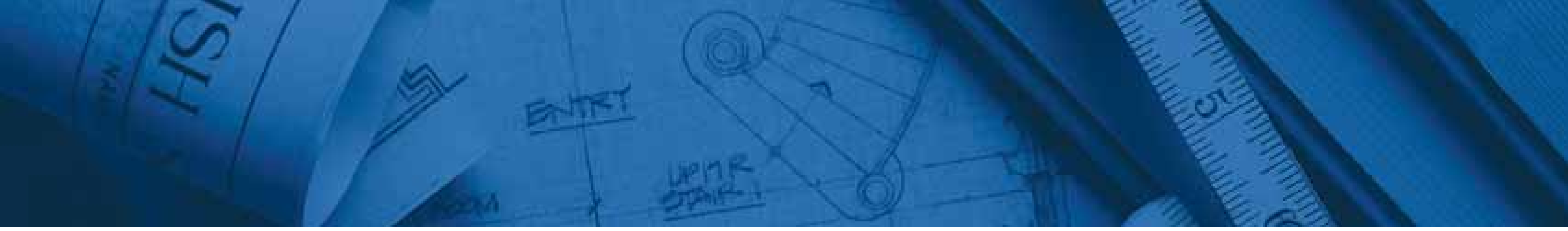
[41] *See* N.Y. LIEN LAW § 44-a.

[42] N.Y. LIEN LAW § 13 (4) & (5). *See, e.g., A&V 425 LLC Contracting Co. v. RFD 55th St. LLC*, 15 Misc. 3d 196, 830 N.Y.S.2d 637 (N.Y. Gen. Term 2007).

[43] N.Y. LIEN LAW §§ 17; 24; 41.

[44] N.Y. LIEN LAW §§ 17; 24.

[45] N.Y. LIEN LAW § 17..



New York Lien Law

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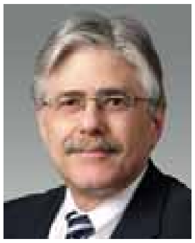
to the filing of the lis pendens, and all persons having subsequent liens or claims against the real property that have been filed, docketed or recorded prior to the filing of the lis pendens are necessary parties.[46] In an action to enforce a lien in which a lis pendens is not required by law, all record owners of the real property, all lienors having filed a notice of lien, and all persons having a subsequent lien or claim are necessary parties.[47]

In an action to enforce a lien, if the sale of the real property is insufficient to satisfy the plaintiff's claim, the plaintiff may seek a deficiency judgment for those liable to pay the debt.[48]

New York also has a procedure whereby an owner or other claimant may seek a court order to vacate a lien if the lienor fails to prosecute his or her lien after notice has been served on the lienor directing the lienor to commence an action to enforce his or her lien or show cause why the lien should not be vacated.[49]

7. Discharge

New York's Lien Law statutorily prescribes several methods for which a lien can be discharged including: the payment of money into court; the filing of a certificate that the lien is satisfied or released; by the failure of the lienor to enforce the lien within the time provided; by order of the court vacating the lien for neglect to prosecute; the posting of a bond or undertaking by the owner, contractor, or subcontractor; judgment in favor of the owner of the property; or by court order because the lien claimed is not valid or the lienor failed to comply with the provisions of the lien law relating to content and filing of a notice of lien.[50]



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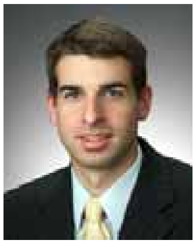

Jeff Barringer

[46] N.Y. LIEN LAW § 44 (1)–(3).
[47] N.Y. LIEN LAW § 44 (3), (4).
[48] N.Y. LIEN LAW § 58.
[49] N.Y. LIEN LAW § 59.
[50] N.Y. LIEN LAW §§ 19 & 20.

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2009 Call Schedule:

- Wednesday, June 24, 2009 (2:00 EST, 12:00 MST)

For more information on NARCL contact:

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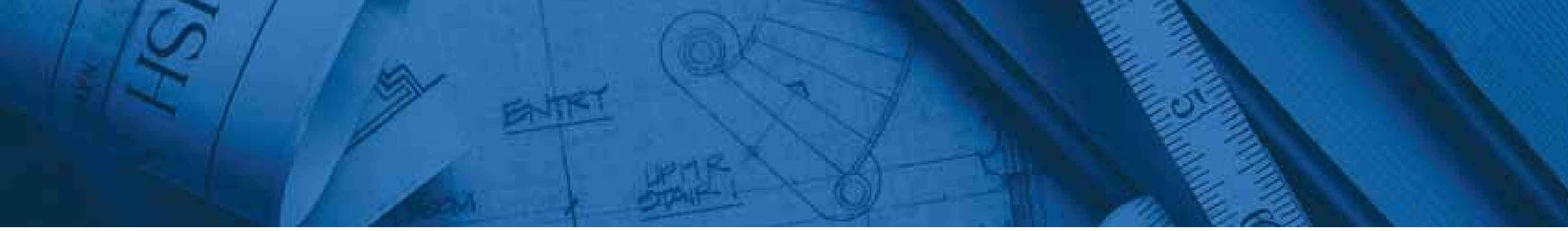

Big Mortgages Are Available, For A Price

By Kathleen Doler[1]

Big loan, big headache?

The housing and financial crises have made the path to finding a jumbo mortgage trickier to navigate. But loans of $1 million, $3 million or even $10 million can still be found with a little work and the right contacts.

Sure a borrower needs great credit, verifiable income and a big down payment. But money is available, now mostly from community banks and credit unions. And interest rates, though higher than those for conforming or jumbo conforming loans (currently capped at $625,500 in most places), aren't staggering.

The lending meltdown among big national banks is proving to be a boon to community banks and credit unions. Loan volume for lenders with less than $1 billion in assets rose 6.8% in the third quarter of 2008, says Pacific Coast Bankers' Bank in San Francisco, one voice for community banking and a holding company for 156 banks.

"You have faucets getting turned off" among national lenders, said Steve Brown, PCBB's chief executive. "But you have community banks continuing to lend."

The Nonconformists

Jumbo nonconforming adjustable-rate mortgages can be obtained for under 6% all the way up to 8% and above, and fixed-rate loans are also available. Nonconforming means a loan doesn't meet the requirements for purchase by government-sponsored Fannie Mae (FNM) and Freddie Mac (FRE), typically because of size.

On nonconforming loans, borrowers should expect to put 20% to 25% down, says Ephraim Schwartz, a mortgage broker with O'Dette Mortgage Group in Truckee, Calif.

Paying points is usually part of the equation. To get the best interest rates, borrowers will probably have to pay one point, Schwartz says. However, breaking even on the cost of the point can take less than two years, he says.

"What we've really seen in many ways is the demise of the national lenders," said Guy Cecala, publisher of Inside Mortgage Finance, based in Bethesda, Md. Cecala says jumbo nonconforming loans are available mostly from banks and credit unions that keep the loans instead of selling them, called portfolio lenders.

Conforming loans and conforming jumbo loans are considered more of a commodity, thus not as lucrative as nonconforming loans, according to Cecala.

"The volume of conforming jumbo products has steadily declined," he said.

Jumbo conforming limits went down in January 2009, but now there's talk among housing regulators and legislators of the 2008 cap of nearly $730,000 being restored. Loan limits vary area to area. Keeping abreast of Fannie and Freddie rules, as well as extra rules imposed by some banks, can be daunting.

Where Large Loans Go

Some portfolio lenders opt instead to take the risk, and seek the reward, of making jumbo nonconforming loans, even though they can't sell them to Fannie and Freddie.

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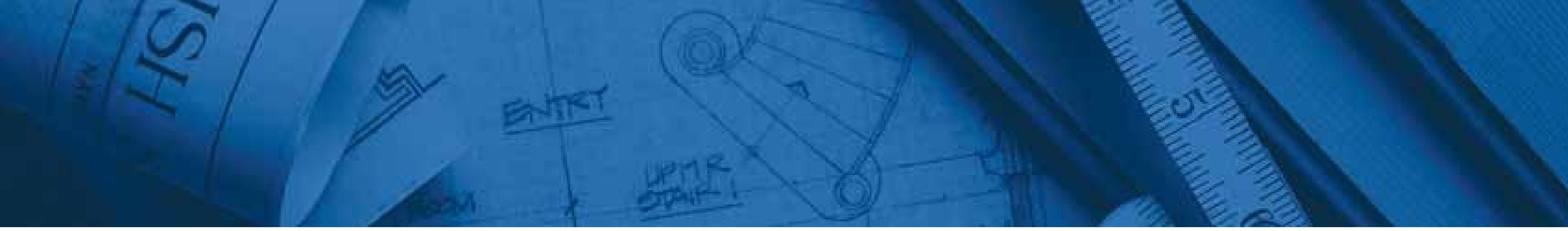

Big Mortgages

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Lofty interest rates for nonconforming mortgages abound, though borrowers can often find more modest rates when they shop around.

"They're charging high rates because they can," Cecala said.

Some lenders are also asking for two points on some jumbo loans, he says. Plus he's seen the return of "junk fees," extra charges for loan processing.

But it's hard to make general statements in today's lending climate. Schwartz says U.S. Bank, which operates in 24 states and is part of U.S. Bancorp (USB), has been offering a one-year jumbo nonconforming ARM at under 4% for amounts up to $900,000. And he says even U.S. Bank's three- and seven-year ARMs have lately been under 6%.

Some Investors Like Them

Though most lenders that do jumbo nonconforming loans hold them in their portfolios, some investors are buying loans. Salvatore Buscemi, a partner at Dandrew Capital Partners in New York, says his real estate investment fund "buys jumbo nonconforming loans in the secondary market from local banks and credit unions." But he says they are riskier and "do have a higher likelihood of going into default."

Credit unions have been pursuing the jumbo-nonconforming market.

"They're very active in the lending space today — they see this turmoil as an opportunity to fulfill their mission and serve the community," said Scott Happ, chief executive of Mortgagebot, which makes online-lending software for institutions.

Mortgagebot also operates mortgagemarvel.com, where borrowers can get quotes and apply online to multiple lenders for loans. Two credit unions that provide quotes for jumbo nonconforming loans there are California Coast Credit Union, serving the populace around San Diego, and Alliant Credit Union in Chicago, open to employees and family of more than 140 firms and organizations nationwide.

How Big Loans Perform

Jerrold Anderson, Alliant's director of lending, says the credit union's loan portfolio grew nearly 20% in 2008. And he says performance on its jumbo nonconforming loans — that is, borrower repayment — "is excellent, and the same as conventional-size loans."

CCCU does ARM and fixed-rate nonconforming jumbos and will loan up to $1 million, with 20% down. Rates vary depending on the loan application, but it offers a 30-year, fixed-rate jumbo nonconforming loan starting at 6.25%, says Francisco Reynoso, CCCU's manager of real estate lending.

"We offer a base rate at no points, but applicants have the option of paying up to one point to buy the rate down," he said.

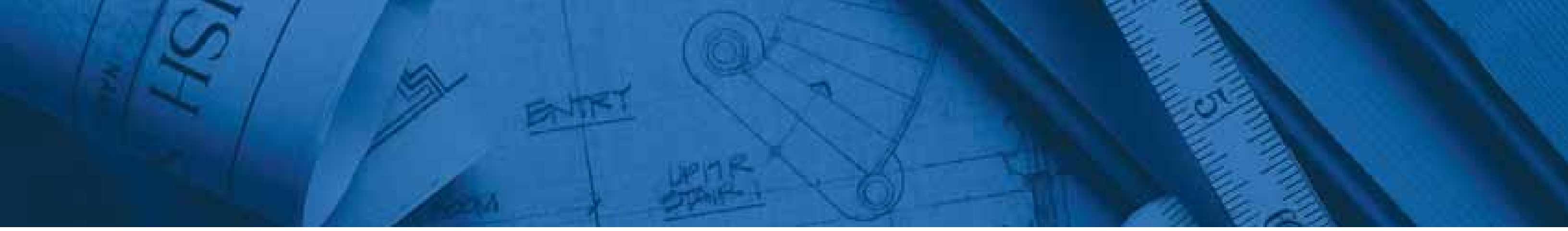
Though these jumbo nonconforming loans are riskier, Reynoso says, CCCU can balance that risk with higher interest rates, careful loan reviews and a healthy lending mix.

Construction-at-a-Glance

	Dec. 07	Dec. 08
Total Monthly Housing Starts*	1,000	650
One Unit	779	398
Multifamily	221	152
YTD Permits-Single Family*	714	363
YTD Permits-Multifamily*	397	186
Monthly New Home Sales*	600	331
Unemployment Rate	4.9%	7.2%

**Thousands of Units*

Source: U.S. Bureau of the Census, Construction Reports, Series C-20, Housing Starts. U.S. Bureau of Labor Statistics.



HUD Waives Three-Year Rule for Refinancings

By Michael Murray[1]

SAN DIEGO—Developers with construction loans will not need to wait three years to refinance them using FHA insurance, based on the agency's six-month waiver of the rule.

Normally under the HUD 223(f) refinance program, a borrower cannot refinance a loan until the property ages three years from the date of the certificate of occupancy, said Joyce Allen, director in the office of multifamily development at HUD, here at the Mortgage Bankers Association's Commercial Real Estate Finance/Multifamily Housing Convention & Expo.

Without the rule, developers could build a multifamily property through conventional lending and avoid "prevailing wage rates" by refinancing through HUD. However, current events create a dilemma for developers searching to refinance loans who never intended to use FHA insurance and were not currently in the HUD requirement.

Now, stabilized deals coming off construction loans that developers cannot refinance, can go through HUD if they meet a number of criteria included in the HUD mortgagee letter, including receipt of a certificate of occupancy prior to August 1, 2008.

"That's very important. I've been in this business since 1981, and that's never been waived," said Holly Bray, first vice president and senior loan officer at Love Funding's Washington, D.C. office. "It's a nice thing for HUD to come in and offer that 35-year self-amortization."

Following the six-month waiver, HUD will review the ruling. Allen also addressed a nagging issue for lenders—lender reviews. She said HUD is working toward less reviews but adding more value from them.

"We are going to have fewer reviews but the reviews that we do have are going to have some type of ranking and scoring system that will actually review the loans with the highest risk," Allen said. "We can do more by saving [lenders] money, and it will go a lot further by protecting FHA's interest as well because things will be targeted and focused."

FHA endorsements totaled 647 last year—598 basic FHA and 49 risk-sharing. Although many lenders reported increases in their pipelines, Allen said endorsements are down 65 percent from this time last year. She said many lenders reported fewer endorsements because of increased spreads and difficulty obtaining financing at rates acceptable to sponsors.

"Even though our loan numbers are down, it seems that the dollar amounts and the number of units are pretty comparable," Allen said. "The loan numbers may be down 65 percent from where they were last year but the loan [dollar] volumes are more like 88 [percent] to 90 percent [from 2008] and the units are somewhere around there as well."

[1] Michael Murray is editorial manager of online communications at the Mortgage Bankers Association. Printed with permission by MBA Commercial/Multifamily NewsLink.

Upcoming Events

Please Visit Us at These Upcoming Events:

Mortgage Bankers Association's (MBA) National Secondary Market Conference & Expo 2009
April 19-22, 2009
Hilton Chicago
Chicago, Illinois

2009 National Association of Development Companies (NADCO) Annual Meeting
April 29-May 2, 2009
Sheraton San Diego Hotel & Marina
San Diego, California

Texas Mortgage Bankers Association
May 3-5, 2009
Hyatt Lost Pines
Lost Pines, Texas

NAGGL - National Association of Government Guaranteed Lenders - SBA Lending Technical Conference
May 5-7, 2009
Boston Park Plaza Hotel
Boston, Massachusetts

2009 Five State Bankers Convention
June 28-30, 2009
Grand Hyatt
Denver, Colorado