



WRITER'S DIRECT DIAL NO.: 717.909.1652

WRITER'S EMAIL: evans@shumakerwilliams.com

Admitted to Pennsylvania and New York Bars

MEMORANDUM

August 3, 2007

TO: Frank Pinto
Dave Transue
PENNSYLVANIA ASSOCIATION OF COMMUNITY BANKERS

FROM: Reginald S. Evans, Esquire
SHUMAKER WILLIAMS, P.C.

RE: Our File No. 07-510

SUBJ: FannieMae and FreddieMac Approve PACB Request for Pennsylvania
Mechanics Lien Law Language to be Added to their Federal Mortgage Loan
Forms Used by PACB Community Banks

CC: Keith A. Clark
Paul A. Adams
Anthony J. Foschi
SHUMAKER WILLIAMS, P.C.

The Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") have completed their considerations and agreed to the Pennsylvania Association of Community Bankers ("PACB") request made in May 2007 regarding amendments to the Pennsylvania mechanics' lien law. Specifically, the request was for Fannie Mae and Freddie Mac to approve that Pennsylvania banking institutions may mark the top of the front page or elsewhere in the Fannie Mae and Freddie Mac standardized mortgage notes with language to protect the banks from contractor and subcontractor mechanics' liens. The request to Fannie Mae and Freddie Mac was made based on Pennsylvania Act 52 of 2006 which became effective on January 1, 2007. Act 52 provides that any mechanics' lien obtained by a contractor or subcontractor on a project property shall be subordinate to the following: (1) a purchase money mortgage; and (2) an open-end mortgage securing loan proceeds used to complete erection, construction, alteration, or repair of the mortgaged premises. This is because such lender-issued mortgage loans have what amounts to "super-priority" over mechanics' liens, as provided by Act 52.

CORRESPONDENCE:
P.O. BOX 88
HARRISBURG, PA 17108

PHONE: 717.763.1121
FAX: 717.763.7419

STATE COLLEGE, PA 814-234-3211
TOWSON, MD 410.825.5223
YORK, PA 717.848.5134

mail@shumakerwilliams.com

The language that Fannie Mae and Freddie Mac respectively agree may be added by banks to Fannie Mae and Freddie Mac's respective Pennsylvania mortgage note forms is or may be substantially similar to the following:

- Regarding a purchase money mortgage, "**This is a purchase money mortgage, as defined in 42 Pa.C.S.A. § 8141(1).**"
- Regarding an open-end mortgage securing advances for construction, "**This is an open-end mortgage, that secures future advances and/or the proceeds of which are used to complete erection, construction, alteration, or repair of the mortgaged premises, as defined in 42 Pa.C.S.A. § 8143(f).**"

The actual language that Fannie Mae and Freddie Mac may place on their standardized mortgage note documents may be simplified versions of the above language, such as "**This is a purchase money mortgage**" or "**This is an open end mortgage to secure future advances, the proceeds of which are being used to construct or rehabilitate the referenced property**". Such language or substantially similar language should be adequate to protect lenders from contractor and subcontractor mechanics' liens under Act 52.

These changes to the Fannie Mae and Freddie Mac mortgage notes are advisable in order to protect the lien positions of Pennsylvania banking institutions from mechanics' liens. Prior to actual changes being made by Fannie Mae and Freddie Mac to the Pennsylvania mortgage note forms, Fannie Mae and Freddie Mac indicated that they approve of Pennsylvania banks typing such language onto the top front page or elsewhere in their mortgage form documents language specifying the "purchase money mortgage" or "open-end mortgage" designation in order to protect the respective bank's mortgage lien from being made subordinate to a mechanics' lien. Fannie Mae and Freddie Mac indicated that they will be adding the referenced language onto their Pennsylvania mortgage note form documents to be available from their respective websites in mid to late August 2007.