

MAINE BUREAU OF FINANCIAL INSTITUTIONS  
SUPERINTENDENT'S  
NOTICE TO INTERESTED PARTIES

**Recap of Bills Passed by the First Regular Session of the 123<sup>rd</sup>  
Legislature (2007)**

**Please find listed below a brief synopsis of some of the relevant enacted laws passed by the First Regular Session of the 123<sup>rd</sup> Legislature (2007). This synopsis includes only highlights of these enacted laws and should not be relied upon as a comprehensive iteration of their content. Please note that this synopsis may not include all enacted laws which may be relevant to you. A comprehensive listing of all enacted laws may be viewed at the Legislative Digest of Bill Summaries and Enacted Laws for the First Regular Session of the 123<sup>rd</sup> Legislature, found at <http://www.maine.gov/legis/opla/legdig123rd-1st.htm>.**

**1. Public Law, Chapter 79: An Act to Make Technical and Supervisory Amendments to the Banking Laws [Effective September 20, 2007]**

Title 9-B will now contain a number of technical and supervisory amendments by virtue of this Public Law. Highlights of this Public Law include:

- A requirement that state-chartered banks and credit unions seeking to convert to a federal-charter must now first provide notice to the Superintendent;
- A provision that, when a state-chartered financial institution seeks to merge or consolidate into a federally-chartered financial institution, approval by the Superintendent is no longer required but notice is required, thus allowing the Superintendent to be informed on a timely basis and to comment, if necessary;
- A provision that the Superintendent need now only approve changes in (1) ownership control of Maine-chartered financial institutions and (2) acquisitions by Maine-chartered financial institutions and their holding companies. The Act thus eliminates the requirement for the Superintendent to approve acquisitions of or made by holding companies that only control federally-chartered institutions; and
- A provision permitting the Superintendent to designate a Deputy Superintendent to serve on the Maine Municipal Bond Bank Board in place of the Superintendent.

This Public Law represents the Bureau's continuing effort to keep the Banking

Code clear and up-to-date.

## **2. Public Law, Chapter 108: An Act to Facilitate Reporting by Maine Financial Institutions of Elder Financial Exploitation [Effective September 20, 2007]**

By virtue of this Public Law, financial institutions and credit unions are now permitted to disclose financial records to the Department of Health and Human Services when they have reasonable cause to suspect that an incapacitated or dependent adult has been or is at substantial risk of abuse, neglect or exploitation. Importantly, this Public Law provides immunity for the good faith disclosure of financial records for this purpose.

## **3. Public Law, Chapter 273: An Act to Protect Maine Homeowners from Predatory Lending [Effective January 1, 2008]**

This Public Law makes significant changes to current Maine law relating to residential mortgage loans and permissible high-rate, high-fee mortgages. It updates and amends current law to address predatory and abusive lending practices and to provide additional protections for Maine consumers.

With regard to the making of residential mortgage loans, it includes, among other provisions, the following:

- The lowering of the threshold at which a residential mortgage loan will be treated as a high rate, high fee loan from points and fees totaling 8% of the total loan amount to 5% or 6% (depending upon whether the loan is \$40,000 or more) of the total loan amount;
- A provision prohibiting creditors from “flipping” loans, which means the refinancing of a loan with no tangible net benefit to the borrower;
- A provision prohibiting lenders from making subprime mortgage loans unless they reasonably believe that borrowers will have the ability to repay them.

With regard to the making of high-rate, high-fee mortgages, it includes, among other provisions, the following:

- A requirement that, before making a loan, creditors receive certification that a borrower has received counseling on the advisability of such a loan from a 3rd-party, nonprofit organization approved by the federal housing agency, a state housing financing agency or the state regulatory agency with jurisdiction over the creditor;
- A prohibition against the inclusion of prepayment penalties or fees;
- A requirement that certain disclosures are made related to the purchase or assignment of high-rate, high-fee mortgages and the effect on claims and defenses available to the borrower. It makes purchasers or assignees of

high-rate, high-fee mortgages subject to all affirmative claims and any defenses that a borrower can assert against the creditor that originated the loan, except claims that the creditor did not have a reasonable belief at closing that the borrower had the financial ability to make scheduled payments, unless certain requirements are satisfied by the purchaser or assignee of the mortgage;

- A requirement that a consumer be specifically notified if a prepayment penalty provision is added to the consumer's mortgage note just before closing; and
- The application of consumer protections to so-called "piggy-back" loans, which are second-lien mortgages used in conjunction with first-lien loans to purchase real estate. Lenders and loan brokers are prohibited from facilitating submission of false credit application information by a consumer.

***The Bureau of Financial Institutions and the Office of Consumer Credit Regulation will propose rule-making in October 2007 to: (a) clarify what "reasonable, tangible net benefit" means in the context of the prohibition against flipping of residential mortgage loans and; (b) clarify how a creditor may have a reasonable belief that a borrower has the ability to repay a subprime mortgage loan.***

#### **4. Public Law, Chapter 185: An Act to Protect a Borrower's Right to Use the Borrower's Chosen Accounting Service [Effective September 20, 2007]**

Pursuant to this Public Law, lenders, including financial institutions and credit unions, may not interfere with a purchaser's or borrower's free choice of an accounting, tax or attest services provider in connection with the extension of credit. This Public Law also designates specific types of accounting and tax providers from which a consumer may choose and provides that lenders may require evidence of adequate liability insurance and other written policy requirements deemed necessary by the lender.

#### **5. Public Law, Chapter 88: An Act to Clarify that a Financial Institution Must Recognize a Writ of Execution to Satisfy a Creditor's Claims to Business Accounts Held by that Financial Institution [Effective September 20, 2007]**

This Public Law clarifies that a financial institution must recognize a writ of execution to satisfy a creditor's claims to business accounts held by that financial institution.

#### **6. Public Law, Chapter 69: An Act to Amend the Banking Laws Regarding the Establishment of Branches by Financial Institutions with Affiliates That Engage in Commercial Activity [Effective September 20, 2007]**

This Public Law adds “commercial activity” to the definitions included in the Maine banking laws and clarifies that out-of-state financial institutions and their affiliates, like Maine financial institutions and their affiliates, are prohibited from conducting any commercial activity at in-state branches and cannot establish a branch within 1.5 miles of the location of an affiliate where the affiliate engages in any commercial activity.

/s/ Lloyd P. LaFountain III  
Superintendent  
Gardiner, Maine  
August 29, 2007