

A Closer Look at

THE LAW



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E-Newsletter
Volume 4, Issue 3

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Disclaimer: This newsletter is for general information only and covers only broad legal concepts. In no way is this newsletter intended as formal legal advice. If you have further questions regarding a legal matter, please consult a licensed attorney.

Cunningham Dalman, P.C. is a full service law firm located in Holland, Michigan. Our attorneys possess skill and experience in a broad spectrum of areas of practice, and have proudly served the lakeshore community for over 100 years.

New Mortgage Foreclosure Protections Take Effect in July

By: [Ronald J. VanderVeen](#)*
Attorney at Law

You can see it in almost any neighborhood. You drive down the street and see a house sitting empty, a “for sale” sign out front, the grass is longer than normal, it’s starting to look rather shabby. Tell-tale signs of the severe downturn that plagues many local communities. A plague that causes many to lose their homes, a plague that causes lenders to suffer losses.

Michigan’s legislature recently modified the foreclosure process to slow it down and provide relief for many borrowers. Under the new statute, lenders must give additional notice before they foreclose on the borrower’s principle residence. That notice advises a borrower of new rights to discuss mortgage modification agreements before foreclosure.

Borrowers can now negotiate a loan modification directly with the bank or through a housing counselor. The new law requires that banks work with borrowers in attempts to lower their

housing related expenses to 38% of their income (or lower on some loans). There are several methods for doing this, such as reducing interest or late fees, extending the loan amortization, or other methods that may be agreed to between the parties to a loan.

Until a lender provides this new notice, the lender may not foreclose without approval of the Circuit Court.

Borrowers should contact the bank or a housing counselor as soon as possible if they receive notice of an upcoming foreclosure. The statute only provides a borrower with 14 days to contact the bank or a housing counselor to initiate the modification process.

Lenders need to adjust their procedures and notice forms to comply with the new law. Failure to comply may cause difficulties later when they try to re-sell the property after foreclosure or expose them to costly legal action by borrowers.

***Ronald J. VanderVeen** concentrates in the areas of commercial and credit transactions and litigation, including construction law, real property law, creditor’s and debtor’s rights. He has been a shareholder with Cunningham Dalman, PC since 1985. He is licensed to practice law in Michigan including all Michigan Courts and the United States 5th and 6th Circuit Courts of Appeal and United States Supreme Court.

FTC “Red Flag” Regulations Have Surprising Reach

By: [Jeffrey K. Helder](#)
Attorney at Law

New regulations intended to require financial institutions to create programs and policies to prevent or mitigate identity theft are actually broad enough to require the same from most ordinary businesses. Most such businesses are going to be caught by surprise that these regulations apply to them.

Consider some of the rules to see if your business is among those who are required to have a written policy on preventing identity theft by November 1, 2009.

All financial institutions are covered, but so is any business that fits the definition of a “creditor”. A creditor is a business which “regularly defers payment for goods or services or provides services or goods and bills the customer later”. This definition includes just about all service businesses. Note that taking a credit card as payment is not considered as a deferred payment.

Once you have determined that your business is a “creditor”, then you have to consider if you have “covered accounts”. Again the definition includes what you might expect, just about any type of financial account that would be

maintained at a financial institution. However, it also includes: any other account that a creditor maintains for which there is a “reasonably foreseeable risk to customers...or to the creditor” from identity theft.

So does your business have covered accounts? If so, then the regulations require your business to have a written policy and procedures in place to identify, prevent and mitigate. It is hard to imagine any company that has any accounts with customers, where payment for services or products has been deferred, that would not be harmed if it were discovered that the customer’s identity had been stolen, and that the business had provided services or products to the wrong party. Because this hypothetical situation is a risk that in theory virtually every business has, the regulations will require many small businesses to adopt very detailed and complicated policies and procedures.

You can find more information about these regulations go to <http://www.ftc.gov> and click on the “red flags rule” on the right side, or you may contact any of the business attorneys at Cunningham Dalman, P.C.