

VIRGINIA ASSOCIATION OF MORTGAGE BROKERS

A SHORT REVIEW OF WHAT A MORTGAGE BROKER NEEDS TO KNOW TO COMPLY WITH CONSUMER PROTECTION LAWS

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This outline addresses certain requirements of Virginia and Federal laws. The reader should not rely upon the information in this paper as legal advice. If you have questions about the law, seek advice from your lawyer.

DEWEY B. MORRIS

Dewey B. Morris has represented creditors since 1967 in complying with federal and state consumer credit laws, including clients offering multi-state credit card, sales finance and mortgage lending programs. He currently represents two Virginia associations, and many of their members, consisting of consumer finance companies, sales finance entities, and brokers and lenders licensed under the Virginia Mortgage Lender and Broker Act. He regularly represents such clients before Virginia regulatory agencies, including the Virginia Bureau of Financial Institutions.

Mr. Morris is listed in *Best Lawyers in America* and *Virginia Business*' legal elite. He is also a Founding Fellow of The American College of Consumer Financial Services Lawyers. He is the only lawyer in private practice in Virginia that has been elected to membership in the College.

He is a permanent member of the Judicial Conference of the Fourth Circuit. He is also a member of the Consumer Financial Services Committee of the ABA Section on Business Law where he serves as a member of the Subcommittees on Truth in Lending, Equal Credit Opportunity, Interest Rate Regulation and Interstate Delivery of Consumer Financial Services.

THOMPSONMCMULLAN

ThompsonMcMullan was formed in 1973 to serve the legal needs of growing businesses and their owners. The Firm is located in the historic Shockoe Slip area of downtown Richmond, Virginia. Firm lawyers have been active and held leadership roles in legal, business and civic organization in the City and surrounding counties, as well as in local, Virginia, and American Bar Associations. The firm's clients expect and receive excellent, responsive and cost-effective service for virtually all of their legal needs. The Firm strives to create and maintain long term relationships which can only be built upon the trust that comes from the consistent delivery of timely and quality service.

FEDERAL LAWS

This outline contains a brief discussion of the Real Estate Settlement Procedures Act (“RESPA”), the Truth in Lending Act (“TILA”), the Equal Credit Opportunity Act (the “ECOA”), and the Fair Credit Reporting Act (the “FCRA”), with focus on how these laws affect mortgage brokers. Each of these laws has disclosure requirements which differ, depending upon the type of credit and the occurrence of particular events, thus creating complex requirements.

I. GENERAL

A. Prequalifications.

RESPA.

Certain disclosures are required if a written application for a federally related mortgage loan is received. However, no RESPA disclosures are required unless the application identifies specific property to secure the loan. RESPA does not require disclosures in the case of an application for a prequalification. Reg. X., § 3500.2(b).

TILA.

An application for a prequalification is not an application under TILA and does not trigger TILA disclosures.

ECOA.

A prequalification request may be an application under ECOA. The Commentary on Regulation B gives examples at ¶ 202.2(f) as to the distinction between an inquiry for general information and an application. If the creditor evaluates the credit, makes a credit decision and communicates decisions, it is an application for purposes of ECOA, and notification requirements are triggered. Reg. B, § 202.9. If the property is identified but the application is incomplete, the creditor may be required to make RESPA and TILA disclosures, even if the creditor cannot make a credit decision under ECOA.

Among other requirements, ECOA requires a creditor to take action within 30 days after receiving a completed application or taking adverse action on an incomplete application and within 90 days after notifying the applicant of a counteroffer if the applicant does not accept the offered credit.

B. Business Day.

RESPA defines a business day at § 3500.2(b) to mean a day in which the offices of the business entity are open to the public for carrying on substantially all of the entity's business functions.

TILA uses a similar definition at § 226.2(a)(6); however, for purposes of rescission and Section 32 loans, Regulation Z says the term "business day" means all calendar days except Sundays and the legal holidays specified in TILA: New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day.

For purposes of Section 32 loans, "business day" has the same meaning as the rescission rule. However, the right of rescission under Regulation Z normally extends to midnight of the third business day. The closing for a Section 32 loan could occur at any time on the third business day following receipt of the disclosures; it is not necessary to wait until midnight.

II. RESPA

General.

Regulation X requires disclosures (Mortgage Servicing Disclosure; Special Information Booklet; Good Faith Estimate) when an application is received.

An intermediary agent or broker is defined at Paragraph 19(b)-3 of the Regulation Z Commentary as a broker who customarily, within a brief time after receiving an application, inquires about the terms of several creditors with whom the broker does business and submits the application to one of them. This type of broker is responsible for only a small percentage of the applications received by that creditor.

If the application reaches the creditor through an intermediary agent or broker, the application is deemed to be received when it reaches the creditor rather than when it reaches the agent or broker. However, a creditor may not delay providing disclosures in transactions involving either its legal agent (as determined by state law) or any other third party that is not an intermediary agent or broker.

Mortgage Servicing Disclosure.

This disclosure, containing the information required by § 3500.21(b) of Regulation X, is required at the time of application if there is a face-to-face interview with one or more applicants. (Reg. X, § 3500.21(c)(1)). If there is no face-to-face contact (*i.e.*, the application is made by mail or telephone), the disclosure must be mailed within three business days after receiving or preparing the application. (Reg. X, § 3500.21(c)(2)).

In a table-funded loan where the investor advances funds to a broker to close a loan, the mortgage broker is responsible for delivering the servicing disclosure statement to each applicant. If the broker funds and closes the loan in its own name before selling it to an investor, the broker is responsible for providing the servicing disclosure statement.

(Reg. X, § 3500.21(c)). If there is a face-to-face interview with one or more applicants, the servicing disclosure statement must be delivered at the time of application by the broker in table-funded transactions or by the lender in situations where the lender is funding and closing the loan in its own name. An applicant present at the interview may acknowledge receipt of the statement at such time and also accept delivery of the statement on behalf of the other applicants. (Reg. X, § 3500.21(c)(1).)

If co-applicants have the same address on their application, one copy of the statement delivered to that address is sufficient; if they have different addresses, a copy must be delivered to each co-applicant. (Reg. X, § 3500.21(c)(2)).

The person delivering the mortgage servicing disclosure must obtain every co-applicant's written acknowledgment that they received the disclosure. (Reg. X, § 3500.21(c)). If you do not receive the acknowledgment at the time of application, you must receive the acknowledgment before settlement. *Id.*

Special Information Booklet.

This booklet, prepared by HUD, must be delivered or mailed to the applicant not later than three business days after the application is received or prepared unless the application for credit is denied within such period. (Reg. X, § 3500.6(a)(1)). **If a mortgage broker is involved, the broker must distribute the booklet and the lender need not do so.** *Id.*

If the federally related mortgage loan involves an open-end credit plan as defined in § 226.2(a)(20) of Regulation Z (a "HELOC") and the lender or mortgage broker provides the borrower with a copy of the brochure entitled *When Your Home Is on the Line: What You Should Know About Home Equity Lines of Credit*, such delivery is deemed to be in compliance with § 3500.6 of Regulation X and HUD's special information booklet need not be provided. (Reg. X, § 3500.6(a)(2)).

The special information booklet is not required on all loans subject to RESPA. Regulation X says at § 3500.6(a)(3) that the booklet need not be provided in refinancing transactions, subordinate closed-end loans, reverse mortgages or any other mortgage loan if the purpose of the loan is not the purchase of a one-to-four family residential property.

Good Faith Estimate.

The Good Faith Estimate (“GFE”) must be delivered or placed in the mail to the loan applicant not later than three business days after the application is received or prepared (Reg. X, § 3500.7(a)) unless the application is denied within such period. (Reg X, § 3500.7(a)(1)).

If the lender does business with a mortgage broker, it depends on the role of the broker as to whether the broker or the lender must deliver the GFE. **If the mortgage broker is the exclusive agent of the lender, either the lender or the broker must provide the GFE within three business days after the broker receives or prepares the application. (Reg. X, § 3500.7(a)(4)). If the mortgage broker is not an exclusive agent of the lender, the broker must provide a GFE within three business days of receiving a loan application based on the broker’s knowledge of the range of costs. (Reg. X, § 3500.7(b)).** See Appendix C to Regulation X for HUD’s suggested format for such disclosures. If the mortgage broker has provided the GFE, the lender is not required to provide an additional GFE but is responsible for ascertaining whether the GFE has been delivered. If the application has been denied before the end of the three-business-day-period, the broker need not provide a GFE. (Reg. X, § 3500.7(b)).

If the lender requires the use of a particular provider of a settlement service, other than the lender’s own employees, and also requires the borrower to pay any portion of the cost of such services, the GFE must state that use of the particular provider is required, and provide the name, address and telephone number of the provider, an estimate of the charges, and describe the nature of the relationship between the provider and the lender. (Reg. X, § 3500.7(e)).

Settlement Statements (HUD-1 and HUD-1A).

This disclosure must be available for inspection by the borrower during the business day immediately prior to closing. (Reg. X, § 3500.10(a)). If the lender conducts its own closing, it must provide the settlement statement on all closed-end loans secured by a one-to-four family residential dwelling. The disclosure is optional for open-end, home equity lines of credit subject to Regulation Z if appropriate TILA disclosures are given. Reg. X, § 3500.7(f). RESPA requires a settlement agent, including the lender if it acts as settlement agent, to use the HUD-1 statement in every settlement involving a federally related mortgage loan in which there is a borrower and a seller. If there is no seller (a refinancing or subordinate lien loan), either the HUD-1 or the HUD-1A form may be used. Reg. X, § 3500.8(a).

It makes no difference whether a mortgage broker is involved in the transaction; the settlement agent is responsible for providing the settlement statement.

Other Disclosures.

This memorandum does not discuss the escrow account disclosures required by § 3500.17 or the disclosure requirements of § 3500.15 dealing with affiliated business arrangements since these disclosures typically will be given by lenders or servicers rather than brokers.

III. TRUTH IN LENDING

TILA – Home Equity Lines of Credit.

In general, the TILA disclosures required by § 226.5b, including the home equity brochure published by the Board of Governors of the Federal Reserve System (the “Federal Reserve Board”), must be provided when a HELOC application is provided to the consumer. (Reg. Z, § 226.5b(b)). The disclosures and the brochure must be delivered or placed in the mail not later than three business days following receipt of an application in the case of applications contained in publications **or when the application is received by telephone or through an intermediary agent or broker.** *Id.*

If a person other than the creditor (i.e., a mortgage broker) provides an application to a consumer for a HELOC, such person must provide the brochure at the time an application is provided. If such person has the disclosures required by § 226.5b(d) of Regulation Z for the creditor’s HELOC, such person must also provide such disclosures at the time an application is provided. (Reg. Z, § 226.5b(c)).

TILA – Disclosures for Closed-End Credit.

The disclosures required by § 226.18 of Regulation Z must be provided prior to consummation of the loan. (Reg. Z, § 226.17(b)). However, in the case of a residential mortgage transaction (as defined) and in the case of a variable rate loan (where the APR may increase after consummation) secured by the consumer’s principal dwelling (an “ARM”), additional disclosures discussed below are required.

TILA – Early TILA Disclosures.

If the purpose of the loan is to purchase or initially construct the borrower’s principal dwelling and the loan is secured by such dwelling and is subject to RESPA, § 226.19(a)(1) of Regulation Z says the creditor must provide early good faith estimates of the TILA disclosures required by § 226.18 before consummation or within three business days after the creditor’s receipt of a written application, whichever is earlier. Note that the transaction must be both a residential mortgage transaction as defined in § 226.2(a) of Regulation Z and a federally related mortgage loan as defined in § 3500.5(b) of Regulation X. **If the application reaches the creditor through an intermediary agent or broker, the application is deemed to be received**

when it reaches the creditor rather than when it reaches the agent or broker. (Reg. Z Commentary, ¶ 19(a)(1)-3). The early TILA disclosure is an estimate and therefore the APR and all disclosures of amounts and payment dates should be labeled as estimates. These disclosures are the same as would appear in a normal federal box for a closed-end loan.

If the loan is to be closed in the name of a mortgage broker, the broker is the “creditor” under TILA and is responsible for providing the early TILA disclosure. If the loan is to be closed in the name of the ultimate lender, the lender is responsible for providing the early TILA disclosure.

TILA – Early ARM Disclosure.

The disclosures required in connection with an ARM loan (a closed-end variable rate transaction secured by the consumer’s principal dwelling and having a term greater than one year) are set forth in § 226.19(b) of Regulation Z and include (i) the booklet titled Consumer Handbook on Adjustable Rate Mortgages published by the Federal Reserve Board and (ii) a loan program disclosure for each variable rate program in which the consumer expresses an interest.

The ARM disclosures required by § 226.19(b) must be provided at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier. (Reg. Z, § 226.19(b)).

If the lender receives a written application for an ARM loan through an intermediary agent or broker, Footnote 45b to § 226.19(b) of Regulation Z provides that the lender may deliver the disclosures or place them in the mail no later than three business days after it receives the written application. The three-day rule also applies if the application is taken over the telephone unless the consumer merely requests an application over the telephone, in which event the early disclosures must be included with the application sent to the consumer. (Reg. Z Commentary, ¶ 19(b)-2). If the creditor solicits application through the mail, the creditor must also send the disclosures if an application form is included with the solicitation. Id.

TILA – Final TILA Disclosure.

If a lender makes early TILA disclosures in residential mortgage transactions subject to RESPA, § 226.19(a)(2) requires a disclosure of the changed terms prior to consummation or settlement if the APR differs from the estimate disclosed in the early disclosure by more than 1/8 of one percentage point in a regular transaction or ¼ of one percentage point in an irregular transaction (as defined in the footnote to § 226.22(a)(3)). A redisclosure is also required if a variable rate feature is added. If redisclosure is required, the creditor may provide a complete new set of disclosures or may redisclose only the terms that vary from those originally disclosed. New

disclosures are not required if the only inaccuracies involved estimates other than the annual percentage rate and no variable rate feature has been added. (Reg. Z Commentary, ¶ 19(a)(2)-2).

Note that settlement may occur later than consummation. If a creditor elects to redisclose at settlement, disclosures may be based on terms in effect at settlement rather than at consummation. “Consummation” is defined at § 226.2(a) of Regulation Z, and “date of settlement” is defined at § 3500.2(a) of Regulation X. (Reg. Z Commentary, ¶ 19(a)(2)-3).

Rescission Notices under TILA.

Section 226.23 requires that two copies of the rescission notice be provided to any natural person who has an ownership interest in the principal dwelling securing the loan. An ownership interest does not include leaseholds or inchoate rights such as dower. (Reg. Z, § 226.2(a)(11)), and a rescission notice is not required in a residential mortgage transaction (as defined) or a refinancing or consolidation by the same creditor except to the extent that new money is advanced. (Reg. Z, § 226.23(f)).

If there is more than one consumer who can rescind the transaction, each of them must receive two copies of the notice of the right to rescind and one copy of the TILA disclosures.

Regulation Z does not expressly state when the rescission notice must be provided, but in general it should be given when the transaction is consummated. The consumer has three business days within which to rescind from the last to occur of the following three events: consummation; delivery of all material disclosures; and delivery of the rescission notice. Accordingly, if the loan closes on Monday but the rescission notice is not delivered until Wednesday, the three-day rescission period does not begin to run until Wednesday.

As stated earlier, remember that the definition of “business day” for rescission purposes is different in that Saturday counts as a business day when rescission is involved even if the creditor’s office is not open on Saturday.

Section 32 Loans.

Section 226.32 disclosures do not apply to residential mortgage transactions, open-end credit plans or reverse mortgages. (Reg. Z, § 226.32(a)(2)). However, if the loan qualifies as a Section 32 loan, § 226.31(c) requires that the additional disclosures described in § 226.32(c) be provided to the borrower at least three business days before consummation.

Unlike other early disclosure requirements, disclosures are considered delivered when received by the borrower, not when mailed by the lender. (Reg. Z Commentary, ¶ 31(c)-1). If the disclosures become inaccurate because a disclosed term changes, § 226.31(c)(i) requires new disclosures be given at least three business days before consummation.

Reverse Mortgages.

Additional disclosures required by § 226.33 must be given in connection with reverse mortgages. Section 226.31(c)(2) says these disclosures must be provided at least three business days before consummation of a closed-end loan and before the first transaction under an open-end credit plan.

IV. EQUAL CREDIT OPPORTUNITY ACT

Notice of Action.

The lender must notify the applicant of the action taken within 30 days after receiving an application that has been sufficiently completed to make a credit decision. (Reg. B, § 202.9(a)(1)). In the case of an incomplete application, the applicant must be informed within 30 days of action taken or of the incompleteness in accordance with § 202.9(c)(2). If adverse action is taken as an existing amount, notice must be given within 30 days after taking adverse action. (Reg. B, § 202.9(a)(1)(iii)). The applicant must be notified within 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the offered credit. (Reg. B, § 202.9(a)(1)(iv)). The information included in the notice is set forth in § 202.9 of Regulation B.

Appraisal Reports.

Section 202.14 of Regulation B contains rules for providing appraisal reports if the credit is to be secured by a dwelling. If a creditor does not routinely provide the applicant with a copy of the appraisal report, then, if a creditor receives a written request from the applicant for an appraisal report, the creditor must either mail or deliver a copy of the appraisal report promptly (generally within 30 days) after receipt of the request, receipt of the report or receipt of reimbursement by the applicant for the report, whichever is last to occur. The copy of the appraisal does not have to be provided if the request is received more than 90 days after providing the notice of action taken on the application or more than 90 days after the application is withdrawn. Section 202.14(a)(2)(i) requires creditors who provide appraisal reports only on request to give notice to the applicant of the right to receive a copy of the appraisal report.

Restated Regulation B.

Regulation B was amended and restated effective April 15, 2003. Compliance with new Regulation B will be mandatory April 15, 2004.

V. FAIR CREDIT REPORTING ACT

General.

The Fair Credit Reporting Act, found at 15 U.S.C. § 1681, *et seq.* is intended to regulate the consumer reporting industry, to require users of consumer reports to give disclosures in the event of adverse action, and to cause fair and accurate reporting of credit information and to allow applicants to correct erroneous information. The definition of “applicant” includes co-makers, guarantors, and sureties. The FCRA regulates the use of consumer reports and in certain instances requires the deletion of obsolete information. Mortgage brokers are subject to the FCRA.

General Disclosure Requirements.

Disclosures by users are triggered by adverse action, which generally has the same meaning as in ECOA. In general, either a denial of credit or an increase in the cost of credit constitutes adverse action, as does approval for a lesser amount than requested. 15 U.S.C. § 1681(k).

The disclosures required by the FCRA and ECOA may be provided on the same sheet of paper, but such disclosures are distinct and cannot be interchanged.

It is unlikely that a mortgage broker would be a consumer reporting agency, as defined in the FCRA. However, if a mortgage broker is a user of a consumer report from a consumer reporting agency or obtains information from sources other than a consumer reporting agency, certain disclosures are required in the event of adverse action.

Most of the requirements in the FCRA apply to consumer reporting agencies, but § 615 (15 U.S.C. § 1681m) contains requirements applicable to users of consumer reports, and § 623 (15 U.S.C. § 1681s-2) sets forth the responsibilities of furnishers of information to consumer reporting agencies. In general, a furnisher of information is not liable under the FCRA unless a consumer complains to a consumer reporting agency and requests an investigation, and the furnisher, after being asked to do so by the consumer reporting agency, fails to investigate and report in a timely manner.

If a user denies or increases the cost of consumer credit in part or wholly because of information obtained from a consumer reporting agency, a written disclosure should be given to the consumer that information in the report caused or contributed to the denial or increase in the cost of credit, and the consumer must be told the name and address of the consumer reporting agency that provided such information. 15 U.S.C. § 1681m(a).

If a user denies or increases the cost of consumer credit based on information obtained from a source other than a consumer reporting agency, the user must inform the applicant of his right to

file a written request for the information. If the request is received within 60 days, the user must disclose the information to the consumer. The information must be sufficiently detailed to enable the consumer to question its accuracy, but the source of the information does not need to be disclosed. 15 U.S.C. § 1681m(b).

Section 604 of the Act (15 U.S.C. § 1681b) sets forth the circumstances under which a consumer report may be obtained. One of such purposes is where the user has a legitimate business need for the information in connection with a business transaction initiated by the consumer. A consumer report may also be obtained in accordance with the written instructions of the consumer to whom it relates, which explains why most applications contain above the applicant's signature line an authorization to obtain a consumer report.

Civil liability for failure to comply includes actual damages, court costs, and attorney's fees. 15 U.S.C. § 1681o. The court may award statutory damages of \$1,000 and punitive damages in the case of willful non-compliance. 15 U.S.C. § 1681n. Special penalties apply to consumer reporting agencies.

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses may be fined and imprisoned for not more than two years or both. 15 U.S.C. § 1681q.

If a mortgage broker pulls consumer reports or participates in credit decisions, it should be familiar with the requirements of both ECOA and the FCRA and make whatever disclosures are required under both laws.

VI. PRIVATE MORTGAGE INSURANCE

The Homeowners Protection Act of 1998 allows homeowners with good payment records to cancel their private mortgage insurance ("PMI") when their loan-to-value ratio reaches 80%. PMI must be automatically terminated when the ratio hits 78% unless the loan is a high risk loan. The requirements of this law apply to lenders and servicers, not to mortgage brokers, and thus its requirements are not discussed in this outline.

VII. PRIVACY -- TITLE V OF THE GRAMM-LEACH-BLILEY ACT

Introduction.

The privacy provisions of the Gramm-Leach-Bliley Financial Services Modernization Act (the "Act") are found in Title V. Subtitle A (§§ 501-510) deals with the treatment by "financial institutions" of "non-public personal information" relating to "consumers" (herein called "Private Information"). The Act was signed by the President on November 12, 1999; rules adopted by various regulatory agencies were effective on November 13, 2000; and compliance

was mandatory on July 1, 2001. The regulators include the FRB, FDIC, FTC, OTS, NCUA, OCC, SEC, the Treasury Department, and state insurance agencies. For the most part, the rules are separate but are supposed to be consistent. Most mortgage brokers are likely to be subject to the rules of the FTC, which may be found at www.ftc.gov. The FTC has also published its standards for safeguarding customer information, which may also be found on the FTC website. Sample clauses in the nature of model forms are attached as Appendix A to the rule.

Summary of Key Requirements.

The following is a summary of the key requirements imposed upon financial institutions by Subtitle A of Title V:

- You must respect the privacy of consumer customers and protect and safeguard Private Information. Act, § 501(a).
- You must adopt a privacy policy. Act, § 503.
- A consumer generally can control, with certain exceptions, any disclosure of Private Information about him by you.

Unless one of the exceptions listed in §§ 14 or 15 of the Rule applies, the following requirements are applicable:

- You must disclose your privacy policy to all consumer customers. Act, § 503.
- If you disclose Private Information to nonaffiliated third parties, you must provide an opt out notice to consumer customers. Act, § 502(b)(1)(B).
- You must provide a reasonable opportunity for consumers to opt out before disclosing Private Information to nonaffiliated third parties. Act, § 502(b)(1)(B).
- You must abide by the limits on the reuse of Private Information – both by you and by any nonaffiliated third party to whom you disclose Private Information. Act, § 502(c).
- You may not disclose, other than to a consumer reporting agency, a consumer's account number or similar form of access number or code for a consumer's credit card account, deposit account or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer. Act, § 502(d).

Subtitle A deals with information about individual consumers; it does not apply to information about businesses or corporations or to transactions for business, commercial or agricultural purposes.

The Act distinguishes “consumers” from “customers” for purposes of the notice requirements. You are required to give a “consumer” notices only if you intend to disclose non-public personal information about the consumer to a nonaffiliated third party for purposes other than as permitted by the exceptions in §§ 14 and 15 of the Rule. In contrast, you must give all “customers” a notice of your privacy policy at the time of establishing a customer relationship and annually thereafter during the continuation of the customer relationship.

The Act creates one set of protections for consumers who obtain a financial product or service (who receive your privacy policy and opt out notices only if you intend to disclose Private Information to nonaffiliated third parties) and an additional set of protections for anyone who establishes a relationship of a more lasting nature than an isolated transaction with you (one who gets a notice of your privacy policy at the time of establishing a customer relationship and annual notices as appropriate thereafter).

Who Is Covered by the Act? Act, § 509(3); Rule, § 3(k).

Financial Institutions.

(1) Definitions.

- “Financial institution” means any institution, the business of which is engaging in financial activities as described in § 4(k) of the Bank Holding Company Act of 1956. Act, § 509(3)(A); Rule, § 3(k).
- “Financial product or service” means any product or service that a Financial Holding Company can offer under § 4(k); Rule, § 3(1)(1).
- “Financial service” includes your evaluation, brokerage or distribution of information that you collect in connection with a request or an application from a consumer for a financial product or service. Rule, § 3(1)(2).

(2) Examples of financial institutions. Rule, § 3(k)(2):

- A company that provides banking, lending, securities, insurance or trust services;
- A company that provides services to a financial institution;
- A company owned by a bank;

- A company in the same line of business such as a loan or finance company - even if the company is not affiliated with a bank;
 - Mortgage lenders;
 - Mortgage brokers;
 - Personal property and real estate appraisers; and
 - Entities that provide real estate settlement services.
- (3) Initial Determination. Every company that provides any type of financial service to consumers must determine if it is covered by the Act – if so, it must consider how it treats Private Information concerning its consumer customers and begin adopting practices and procedures to comply with the Act.
- (4) Brokers. In some cases two financial institutions will each provide a financial service to the consumer as part of the same transaction. For example, if a consumer goes to a loan broker to find a loan, the consumer will have a customer relationship with both the loan broker and the lender. The FTC says that when a business procures credit on behalf of a consumer (i.e., financing relating to a mortgage loan or purchasing an automobile) and thereby provides significant services to the consumer such as providing information or advice about financing options, assisting the consumer in contacting potential financing sources, analyzing financial information, performing credit checks, negotiating with other financial institutions on the consumer’s behalf and assisting with paperwork and loan closings, the broker or dealer providing such service is a financial institution and establishes a customer relationship when it undertakes to arrange or broker credit for the consumer. Rule, § 3(i)(2)(i)(E). The lender providing the credit would also be a financial institution.
- (5) Exceptions. The term “Financial Institution” does not include (Act, § 6509(3); Rule, § 3(k)(2)):
- Persons subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act.
 - The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971.
 - Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions

related to customer transactions so long as such institutions do not sell or transfer Private Information to a nonaffiliated third party.

Definitions. Act, § 509; Rule § 3

Initial Privacy Notice. Act, § 503; Rule, § 4(a)

Annual Privacy Notices. Act, § 503; Rule, § 5

Contents of Initial and Annual Privacy Notices. Act, § 503; Rule, § 6

Form and Method of Providing Update Notice. Rule, § 7.

Revised Privacy Notes. Rule, § 8(a).

How to Provide Privacy and Opt-out Notices. Rule, § 9.

Limitation on Disclosure of Non-public Personal Information about Consumers to Non-Affiliated Third Parties. Act, § 502(a); Rule, § 10.

Limits on Re-Disclosure Re-Use of Information. Act, § 502(c); Rule, § 11.

Limits on Sharing of Account Number Information for Marketing Purposes. Act, § 502(d); Rule, § 12.

Exceptions to Notice and Opt-out Requirements. Act, § 502; Rule §§ 13, 14 and 15.

Fair Credit Reporting Act. Act, § 506; Rule, § 16.

Relation to State Law. Act, § 507; Rule, § 17.

Enforcement Provisions.

VIRGINIA LAWS

I. FIRST MORTGAGE LOANS

License Required for Both Mortgage Lenders and Mortgage Brokers. §§ 6.1-408 through 6.1-410.

Interest Rate – as agreed. § 6.1-330.69.

Other Charges – reasonable and necessary. § 330.70.

Prepayment Penalties. 2% if owner occupied -- §§ 6.1-330.81 through 6.1-330.83.

AMTPA

Section 32 Loans

Broker Fees.

No Limit but review § 6.1-422.B.1 of the Virginia Mortgage Lender and Broker Act (the “ML&B Act”).

Other than for a credit report and an appraisal, no compensation until a written commitment is given to the borrower. § 6.1-422.B.1.

No compensation without a signed agreement or if the broker is the lender or an affiliate of the lender.

II. SUBORDINATE MORTGAGE LOANS

Same license requirement.

Simple Interest -- as agreed. § 6.1-330.71.D.1.

Precomputed Interest -- Maximum 18% yield with term limit of five years and one month. § 6.1-330.71.A.1.

Applicability. § 6.1-330.73.

These sections do not apply to a bank, savings institution, industrial loan association, credit union, or to a seller.

Loan Fee. § 6.1-330.71.

5% limit on loan fee. § 6.1-330.71.D.2 (2% limit if add-on interest).

Other Charges. § 6.1-330.72.

No other charges permitted except as set forth in §§ 6.1-330.71 and 6.1-330.72.

Broker Fees.

Borrower may pay a broker's fee not to exceed 5% of the principal amount of the loan but the sum of the broker's fee and the loan fee may not exceed such limit. § 6.1-330.72; Administrative Ruling 0702. (Bureau says that yield-spread premiums are not included in the 5% cap).

Prohibited Charges.

Any fee not expressly allowed by these sections.

Rebate Obligation.

No rebate required of loan fee or other charges, but any unearned premiums for private mortgage insurance must be refunded. § 6.1-2.9:1. If precomputed interest, must refund unearned interest. § 6.1-330.85.

Prepayment Penalty.

2% subject to the conditions in § 6.1-330.85. The penalty must also comply with TILA requirements for Section 32 loans.

Limit on Charges if the Loan Does Not Close.

No charge other than actual cost documented to the applicant for a credit report and an appraisal, but such charges must not exceed the lesser of 1% of the amount of the loan applied for, \$50, or ½ of such cost and may be imposed only if the lender gives a written loan commitment. § 6.1-330.71.B.

III. VIRGINIA DISCLOSURE REQUIREMENTS

Application Disclosure for Mortgage Brokers. § 6.1-422.B.5.

Application Disclosure for First Mortgage Loans. § 6.1-2.9:5.

Appraisals. § 6.1-2.9.

Assumptions. § 6.1-2.9:3.

Commitment and Lock-in Agreements. Regulation 225-01-1601.

CRESPA.

Deed of Trust – Due on Sale Notice. § 6.1-330.88.

Insurance.

Payoffs. § 6.1-330.82.

Prizes and Gifts Act.

RESPA. § 6.1-2.13:2.

Refinance Mortgages. § 55-58.2.

Rule of 78 Notice. § 6.1-330.85:1.

TILA. § 6.1-330.79.

Transfer of Servicing Rights. Regulation 225-01-1601.

Virginia Residential Property Disclosure Act. §§ 55-517 through 55-525.

Wet Settlement Act. § 6.1-213.2.

IV. VIRGINIA MORTGAGE LENDER AND BROKER ACT

Compensation of Mortgage Brokers. § 6.1-422.

Except for credit reports and appraisals, no compensation until a written commitment to make a mortgage loan is given to the borrower by a mortgage lender.

No compensation from a mortgage lender of which the broker is a principal stockholder, partner, trustee, director, officer, or employee.

No compensation from a borrower in which the broker is the lender or a principal stockholder, partner, trustee, or director of the lender.

No compensation for the borrower other than as specified in a written agreement signed by the borrower.

No compensation for finding a mortgage loan where the broker or an affiliate has acted as a real estate broker in connection with the sale of the real estate unless the borrower receives a notice pursuant to § 6.1-422.B.5 and was acting as a mortgage broker as of February 25, 1989.

Escrow Accounts. § 6.1-423.

Prohibited Practices. § 6.1-422.

Lenders and brokers:

No blanks in document.

Limit on collateral

No exclusive agreements

No delays to increase charge

Limit on acceleration

Cannot recommend default

No flipping. § 6.1-422.1

Brokers:

Limit on compensation

Notice if affiliated with real estate broker

Record Retention.

Three years in a licensed office.

Lenders: § 6.1-417. Copies of Note; HUD-1; TILA; application disclosure; and notice of transfer of servicing rights

Brokers: § 6.1-417. Original contract for the broker's compensation; copy of HUD-1; and account of fees received

Refund of Commitment and Lock-in Fees. Regulation 225-01-1601.

Transfer of Servicing Rights. Regulation 225-01-1601.

V. MISCELLANEOUS REQUIREMENTS APPLICABLE TO MORTGAGE LOANS

Appraisals. § 6.1-2.9.

Assignment of a Deed of Trust. § 55-66.01.

Assumption. § 6.1-2.9:3.

Attorneys, Surveyors, and Insurers. § 6.1-330.70.

CRESPA.

Fair Housing. §§ 36-96.1 through 36-96.23.

Insurance.

No Prohibition on Encumbrances. § 6.1-2.5.

Payoffs. § 6.1-330.82.

Recording Requirements. §§ 17.1-223; 55-108; 55-48; 55-48; 55-58; 55-58.1(3); 17.1-252; 17.1-227.1; 17.1-279; Virginia State Library Board.

Release of Deed of Trust. §§ 55-66.3; 6.1-330.82.

Signature Requirements.

Trustees. § 55-58.1(2).

Virginia Consumer Protection Act. §§ 59.1-196 et seq.

Wet Settlement Act. § 6.1-210.

Yield-Spread Premiums.

Warning

This memorandum does not address the contents of required disclosures or the timing of disclosures required in connection with the following:

- Servicing of a mortgage loan, including escrow disclosures under RESPA and any notices that may be required in connection with the force-placement of flood insurance under the Flood Disaster Protection Act;
- Notices required under the Fair Debt Collection Practices Act;
- Notices to co-signers under any of the three federal Credit Practices Rules;
- Subsequent disclosures for both open-end and closed-end credit under TILA;
- Procedures for handling billing error resolutions for open-end credit; and
- Any other notices that may be required under federal or state law.