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MEMORANDUM

TO: Clients and Friends of the Firm
FROM: Sam J. Brown
DATE: July 25, 2003
SUBJECT: Plain Language Requirements in Texas Secondary Mortgage Transactions

Section 341.502(a) of the Texas Finance Code provides that loans subject to Chapter 342 of the Texas Finance Code be written in plain language, whether in English or Spanish, designed to be easily understood by the average consumer. Section 341.502(b) of the Texas Finance Code further provides that the Texas Finance Commission shall adopt rules governing the form of contracts to which the section applies, including model contracts complying with such rules and Section 341.502 of the Texas Finance Code. Chapter 342 is applicable to “secondary mortgage loans” providing for interest in excess of 10% per annum. The term “secondary mortgage loans” is defined to include loan transactions (that are not to be repaid before the 91st day after the date of the loan) secured by a lien on real property that is improved by a dwelling designed for occupancy by four or fewer families and subject to one or more prior liens, deeds of trust or mortgages. Thus, secondary mortgage loans providing for interest in excess of 10% per annum are subject to the provisions of Chapter 342 and the plain language requirements of Chapter 341 of the Texas Finance Code. For purposes of determining if a loan has interest rate in excess of 10%, it is the position of this firm that the effective interest rate (annual percentage rate) as set forth on the truth-in-lending statement shall be the determinative factor in such decision.

Accordingly, the Finance Commission has adopted 7 TAC §§1.1231-1.1232, 1.1234-1.1237, concerning plain language model contracts for secondary mortgage purchase money loans providing for interest in excess of 10% per annum. These rules and the plain language model forms implement the provisions of Chapter 341.502 of the Texas Finance Code, discussed above. You may access and download such rules and forms from the website of the Office of the Consumer Credit Commissioner (“OCCC”) at www.occc.state.tx.us.

We have plain English versions of the model forms of second lien purchase money transactions subject to Chapter 342 of the Texas Finance Code on our loan documentation system, with the following variances:

Note:

1. The Itemization of Amount Financed was deleted;
2. The pre-computed interest provisions were deleted and simple interest provisions were added;

3. The prepayment provisions were revised to permit full or partial prepayment without penalty at any time;
4. The True Daily Earnings Method provisions were deleted;
5. In Paragraph 5 (Paragraph 6 of our form), the second optional paragraph entitled “For contracts using Scheduled Installment Earnings Method with prepayment option-Section 342.301 rate loans” was selected. The other optional paragraphs were deleted; and
6. The Credit Insurance Provisions were deleted (Paragraph 9).

Deed of Trust:

1. The Sections were numbered; and
2. Under the Section entitled “Definitions”, the number “5” was inserted after the word Section in the definition of “Escrow Items”.

Any lender not using the model forms who is required to have a regulated loan license issued under Chapter 342 of the Texas Finance Code must submit plain language non-standard forms to the OCC as provided in 7 TAC §1.841 prior to using the non-standard forms for secondary mortgage loans subject to Chapter 342 of the Texas Finance Code. Although compliance with the plain language requirements is effective as of May 1, 2003, a lender may continue to use its existing second lien purchase money note and deed of trust forms during the period from May 1, 2003 to August 1, 2003, if the non-standard forms are otherwise in compliance with the provisions of Chapter 342.

Also, please note that the Texas Attorney General in Opinion JC-0513 opined that the plain language requirements of Section 341.502 apply only to those loan transactions for which the consumer credit commissioner is the appointed regulatory official; therefore, persons exempt from the licensing requirements of Chapter 342 are also exempt from the plain language requirements of Section 341.502 of The Texas Finance Code.

Should you have any questions regarding this matter, or if your closing department is in need of assistance in closing secondary mortgage transactions subject to Chapter 342 and the requirements of Section 341.502 of the Texas Finance Code, please contact us.

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