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SUBJECT: Mortgage Lenders Required To Give New Disclosures to Applicants for Home Loans with an Interest Rate of 12%, or More, Effective September 1, 2001

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Effective September 1, 2001, mortgage lenders will be required to give a new, written disclosure to loan applicants for home loans with an interest rate of 12% or greater per year to comply with new Chapter 343, Texas Finance Code, enacted by S.B. 1581, Laws of 2001. On August 17, the Texas Finance Commission adopted 7 Tex. Admin. Code § 5.1 (the "Rule"), pertaining to required disclosures (the "Notice") in connection with certain home loans, to implement the provisions of Chapter 343. The Rule provides the means by which lenders may comply with the notice requirements of Section 343.102 of the Texas Finance Code, and describes the applicability of the notice requirements, the actual content requirements of the notice, the timing and delivery requirements of the notice, and related matters.

Applicability:

The Rule applies to any mortgage application received on or after September 1, 2001, for each home loan that is: (i) a fixed rate loan that has a *contract interest rate* (not a composite rate, or APR) of 12% or greater a year; or (ii) an adjustable rate loan that:

- Has a maximum fixed rate of interest pursuant to a schedule of steps or tiered rates that is 12% or greater a year; or
- Has a maximum variable rate of interest that when calculated upon the index's value at the time of application, plus maximum margin increases may result in an interest rate of 12% or greater a year.

The above amended language addresses adjustable rate mortgages in two ways:

- An adjustable rate mortgage that may not initially bear a rate of 12%, but through a series of rates or steps specifies a fixed rate of 12% later in a contract would require Notice; and
- A variable rate mortgage with a floating index that, when applying the maximum margin, increases to the fully indexed rate at the time of application of 12% or greater would also require the Notice.

[NOTE: The Office of the Consumer Credit Commissioner has confirmed that even if the ARM note rate is less than 12% but the actual index value at the time of application plus the margin stipulated in the note equals 12%, or more, the administrative rule and notice requirements apply.]

The Rule and Notice requirements do not apply to retail installment loans or reverse mortgages.

Notice Requirements:

Prescribed Content:

The form of Notice must be substantially similar to that provided by the Finance Commission, and it must appear on a full, separate page, with no other text than as provided in the Rule. The Final Rule and the Notice in both English and Spanish have been posted to the Website of the Office of the Consumer Credit Commissioner at <http://www.occc.state.tx.us/>. A copy of the English version of the form of Notice is attached to this Memorandum.

Seal and Record Retention:

The Finance Commission stated that the state seal conveys the importance of the official notice and that it must be included in the text box at the bottom of the required Notice.

The Notice need not be acknowledged; hence, there is no need for a subsection requiring retention of the authenticated acknowledgments. However, a lender may request that the applicant authenticate the Notice acknowledging applicant's timely receipt of the Notice.

Housing Counseling Agencies and Disclaimer:

Subsection (c)(4) of the Rule requires that a lender provide a borrower with a list of HUD-approved housing counseling agencies located in Texas (currently over 100). The statute requires that a lender distribute a list of the "nearest" housing counseling agencies. Therefore, the Finance Commission is permitting lenders flexibility in this area by allowing a lender to provide the applicant with either:

- A list of the Texas-located housing counseling agencies approved by HUD; or
- A list of at least five HUD-approved housing counseling agencies nearest the applicant's residence.

The required list must contain housing counseling agency information that is not more than 90 days old or if more than 90 days old, is the most recent information available from HUD.

[NOTE: A list of HUD-approved counselors can be found at:
<http://www.hud.gov/fha/sfh/hcc/hccprof14.html>. Select "Texas."]

The Finance Commission has no objection to a lender's adding a disclaimer to the list of counselors, such as: "The lender is not affiliated with any of the housing counseling agencies whose names are provided to you with this notice. The lender is not responsible for information or advice given by a housing counseling agency from which you may seek advice."

Language:

The Finance Commission believes that it is an appropriate policy decision to require the Notice to be given in Spanish when the borrower and lender are conducting the transaction primarily in Spanish. The Finance Commission has, therefore, promulgated the Notice in both Spanish and English. Since the Rule does not prohibit a lender from providing a Spanish Notice in every transaction, in addition to the English Notice, lenders may choose to implement a Notice with English on one side and Spanish on the other.

Delivery:

Subsection (d) of the Rule provides that the delivery procedure parallels those for other types of notices in mortgage loans, such as the delivery of the GFE under RESPA. If RESPA does not apply, or if the lender has not yet determined whether the home loan is a high-cost home loan, delivery must be made within three business days after application. The Notice must be delivered to an applicant at

least one business day prior to closing. In the event there are multiple applicants, it is necessary for the lender to deliver the Notice to only one of the applicants.

If the application is denied before the time for delivery of the Notice, the lender is not required to provide the denied applicant with Notice. The Rule sets out provisions for mail and electronic delivery of the Notice.

Sunset Provision:

By statute, the requirement to provide the Notice on covered loans expires September 1, 2003. The Finance Commission will reconsider the Rule and any arguments in June, 2003.

[NOTE: Section 343.103 of the Texas Finance Code (as added by Tex. S.B. 1581) provides that a person who knowingly and willfully violates the home loan disclosure requirements set out in Section 343.102 of the Texas Finance Code is liable to the aggrieved borrower for: the actual damages caused by the violation; punitive damages not to exceed \$10,000 in an action brought by the aggrieved borrower; and court costs.]

ATTACHMENT

This Memorandum is provided for the general information of the clients and friends of BROWN, FOWLER & ALSUP only and is not intended as specific legal advice. You should not place reliance on this general information alone but should consult counsel regarding the application of the laws and regulations discussed in this article to your specific case or circumstances.

IMPORTANT NOTICE TO HOME LOAN BORROWERS

READ THIS NOTICE TO GIVE YOU IMPORTANT INFORMATION THAT CAN HELP YOU, PROTECT YOU, AND MAYBE SAVE YOU MONEY.

◆ WHY AM I RECEIVING THIS NOTICE?

Texas law requires your lender to give you this Notice when you apply for a home loan with an interest rate of 12% or greater.

◆ CAN HOUSING COUNSELING REALLY HELP ME?

Yes. Contacting a housing counselor before closing might save you hundreds or thousands of dollars. Borrowing money with your home as collateral is a complicated process. Housing counselors understand this process and the documents used. Do not sign any documents until you have read and understand them. You are entitled to have your own attorney review any documents before closing the loan.

◆ ARE THERE HOUSING COUNSELING AGENCIES NEAR ME?

Yes. To find a housing counseling agency near you, look at the list of HUD-approved housing counseling agencies your lender gave you. For additional copies call HUD: 888-466-3487 or www.hud.gov, or the Texas Finance Commission: 866-303-4636 or www.fc.state.tx.us.

◆ ARE ALL HOME LOANS AND LENDERS THE SAME?

No. It is important to shop around. Be sure to obtain all cost information. Compare these costs to other lenders' costs. A nearby housing counseling agency can help you.

◆ WHERE CAN I GET MORE INFORMATION OR FILE A COMPLAINT?

If you have questions or complaints, call or email the Texas Finance Commission Home Loan Hotline: 866-303-4636 or homeloaninfo@fc.state.tx.us. Other resources include:

Texas Department of Banking: www.banking.state.tx.us
Texas Office of Consumer Credit Commissioner:
www.occc.state.tx.us
Texas Savings & Loan Department: www.tsls.state.tx.us
U.S. Consumer Gateway: www.consumer.gov
HUD: www.hud.gov

Fannie Mae: www.homepath.com
Federal Reserve: www.federalreserve.gov/consumers.htm



OFFICIAL STATE OF TEXAS NOTICE REGARDING HIGH COST HOME LOANS

The loan you have applied for may be a "high-cost home loan" as defined by state and federal law. Look at everything you earn and everything you owe and then ask yourself if you can afford to make the payments when due.

If you can't afford this loan, you may lose your home.