

Subtitle 03 COMMISSIONER OF FINANCIAL REGULATION

09.03.10 Credit and Other Regulation

Authority: Business Regulation Article, §2-105; Financial Institutions Article, §§2-105.1, 5-909(1), 11-203, 11-503, 11-602, 12-104, 12-403(1), and 12-903(1); Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) Balloon Payment.

(a) “Balloon payment” means any scheduled payment on a mortgage loan that is more than two times the average of all other payments scheduled to repay the mortgage loan.

(b) “Balloon payment” does not include a down payment.

(2) “Commissioner” means the Commissioner of Financial Regulation in the Department of Labor, Licensing, and Regulation.

(3) “Fraud” means any act that:

(a) Constitutes a criminal violation of any article of the Annotated Code of Maryland and is part of an attempt or scheme to defraud any person; or

(b) Whether or not a criminal offense, is an intentional misrepresentation of any material fact or is conduct that is intended to prevent the discovery of a material fact, and is part of an attempt or scheme to defraud any person.

(4) “Initial application” has the meaning stated in COMAR 09.03.06.02B(10).

(5) “Mortgage loan” has the meaning stated in Financial Institutions Article, §11-501, Annotated Code of Maryland.

(6) “Regulated person” means an individual, corporation, business trust, financial institution, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity that is subject to the regulatory authority of the Commissioner pursuant to Financial Institutions Article, or Commercial Law Article, Annotated Code of Maryland.

(7) “Residential real property” has the meaning stated in Financial Institutions Article, §11-501, Annotated Code of Maryland.

(8) “Settlement” means the disbursement of the proceeds of a mortgage loan by the person conducting the settlement to the borrower or to third parties as required by the lender's instructions.

.02 Reporting Fraud, Other Violations of Law, and Convictions.

A. Duty to Report.

(1) Except as provided in §E of this regulation, a regulated person shall submit a report to the Commissioner within 30 business days after the person discovers that an act, or has reason to believe that an act, of fraud, theft, or forgery has been committed by a regulated person, including the person, or any owner, director, officer, member, partner, employee, or agent of a regulated person.

(2) Except as provided in §E of this regulation, a regulated person that is, or that has an owner, director, officer, member, partner, employee, or agent that is, convicted of any felony, or of a misdemeanor involving fraud, theft, or forgery, shall submit a report to the Commissioner informing the Commissioner of the conviction within 5 business days from the date on which the regulated person receives knowledge of the conviction.

B. Contents of Report.

(1) A regulated person submitting a report pursuant to this regulation shall utilize the reporting form prescribed by the Commissioner.

(2) If it is determined after the submission of a report that information contained in the report is false or otherwise inaccurate, the regulated person that submitted the report shall be considered to be in compliance with the reporting requirements of this regulation if the regulated person reasonably believed that the information was true and accurate at the time the report was submitted and the regulated person took reasonable steps to verify its truth and accuracy.

C. Nondisclosure of Report. *A regulated person submitting a report to the Commissioner pursuant to this regulation may not disclose to any person that is a subject of the report the existence of the report or that the report has been submitted to the Commissioner.*

D. Reports to Law Enforcement Authorities. *Except as provided in §E of this regulation, a regulated person that discovers that an act, or suspected act, of fraud, theft, or forgery required to be reported pursuant to this regulation has been committed, the regulated person shall report the details of the incident to the appropriate law enforcement authorities.*

E. Exceptions. *The provisions of this regulation do not apply to a bank, savings bank, trust company, or credit union having a branch that accepts deposits in this State.*

.03 Disclosures for Certain Mortgage Loans.

A. Mortgage Loan Provisions Requiring Disclosure. *A regulated person that offers to make or procure a mortgage loan secured by residential real property shall provide to the borrower the disclosures set forth in §B of this regulation if the terms of the mortgage loan:*

(1) Include a balloon payment;

(2) Do not provide for the establishment of an escrow account for the payment of taxes and insurance; or

(3) Include mandatory binding arbitration.

B. Content and Form of Disclosures.

(1) If the terms of a mortgage loan of the type described in §A of this regulation contain a balloon payment feature, a disclosure containing the following information, as applicable, and in substantially similar form, shall be provided to the borrower:

BALLOON PAYMENT: This mortgage loan contains a balloon payment provision. A balloon payment is a scheduled lump sum usually due at the end of the mortgage loan term that is significantly larger than the other regularly scheduled periodic payments. If you cannot pay the balloon payment when due, you may have to obtain a new loan to make the balloon payment or you may lose your property through foreclosure. Before deciding to take this loan, consider your ability to pay the balloon payment when it comes due. The balloon payment on the mortgage loan you have applied for is due (insert number of months) from the date your mortgage loan begins.

(2) If the terms of a mortgage loan of the type described in §A of this regulation, which is secured by a first-position lien on residential real property, do not provide for the establishment of an escrow account from which property tax and homeowner's insurance payments are made, a disclosure containing the following information, as applicable, and in substantially similar form shall be provided to the borrower:

YOU ARE RESPONSIBLE FOR PROPERTY TAX AND HOMEOWNER'S INSURANCE PAYMENTS IN ADDITION TO YOUR REGULARLY SCHEDULED PERIODIC MORTGAGE LOAN PAYMENT: The terms of your mortgage loan do not provide for the establishment of an escrow account from which your property taxes and homeowner's insurance will be paid. This means that your regularly scheduled periodic mortgage loan payment does not cover these sums and you are responsible for paying property taxes and home insurance premiums when the bills arrive. You will need to consider your ability to pay these tax and insurance amounts in addition to paying your regularly scheduled periodic mortgage loan payment.

(3) If the terms of a mortgage loan of the type described in §A of this regulation contain a provision requiring the borrower to engage in binding arbitration to resolve disputes, a disclosure containing the following information, as applicable, and in substantially similar form shall be provided to the borrower:

MANDATORY BINDING ARBITRATION: The mortgage loan you have applied for contains a mandatory binding arbitration provision. This means that, as to the matters covered by the arbitration provision, you are giving up your right to a jury or court trial if you have a dispute with the lender. Read your mortgage loan documents carefully to understand how mandatory binding arbitration will impact your rights to resolve disputes.

(4) The disclosures required by this regulation shall be written clearly and conspicuously and shall appear in at least a 10-point type font. The applicable disclosures shall appear together on a sheet or sheets of paper that contain no information other than the disclosures. All of the disclosures may be printed on a sheet or sheets of paper that include check boxes that may be marked to indicate which disclosures apply.

C. Timing.

(1) A regulated person shall deliver to a borrower the disclosures required by this regulation within 10 business days after the application for the mortgage loan is completed, and not less than 72 hours before the time of settlement agreed to by the parties.

(2) An application for a mortgage loan is completed at the time of initial application.

(3) If any change to the terms of a mortgage loan requires additional or modified disclosures pursuant to this regulation, the regulated person shall deliver to the borrower a final set of disclosures at least 72 hours before the time of settlement agreed to by the parties.

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