

Truth In Lending Changes

A) Section 226.19 – Early Disclosures

- a. **Coverage (07-30-09)** – Early TIL disclosures will be required for all CONSUMER credit secured by a dwelling (if also subject to RESPA)
 - 1. Exemptions
 - a. Secured by >25 acres, Temporary Financing unless transfer of title

- b. **Timing of Early Disclosures**
 - i. Currently, must be provided w/in 3 business days after receiving written application or before consummation, whichever is earlier.

 - ii. Effective 07-30-09, creditors must mail or deliver not later than 3 business days after receipt of a written application **AND** at least 7 business days before consummation.
 - 1. Gone are the days of a 1- or 2-day closing.
 - a. *Example – Customer applies today and early disclosures are provided today. Cannot close until 7 business days later.*
 - 2. **Business day** = ALL calendar days except Sundays and specified federal legal public holidays. This definition to be used for:
 - a. Purposes of determining when mailed disclosures are received
 - b. Right of Rescission
 - c. For determining when the 7-day waiting period has expired
 - 3. Date your documents the day they are mailed and make sure the mail will go out that day – otherwise date the following day.
 - 4. If disclosures are mailed, the consumer is considered to have received the disclosures 3 *business days* after mailing.

 - iii. **Redisclosure (07-30-09)** - If APR exceeds defined tolerance, new disclosure provided 3 days prior to consummation.
 - 1. Application Received June 1 (Monday)
 - 2. Early disclosures mailed June 4 (Thursday)
 - 3. Customer assumed to have received disclosure June 8 (Monday)
 - 4. APR changes beyond tolerance June 9 (Tuesday) and new disclosures are mailed
 - 5. Customer assumed to have received disclosures June 12 (Friday)
 - 6. Consummation can occur on June 16 (Tuesday)

c. Waiver of Waiting Period

- i.** Consumer can waive waiting period ONLY if:
 - 1. accurate TIL disclosures have been provided,
 - 2. a signed statement from the borrower was provided (not preprinted), **and**
 - 3. only in the case of a bona fide personal financial emergency.

d. Early Disclosure Notice (07-30-09)

- i.** Disclosures must contain the following statement:

“You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.”

- e. No Fee (07-30-09)** – Early disclosures must be received BEFORE consumer is required to pay any fee in connection with the application

- 1. **Exception** – credit report fee

B) Section 226.32 - Homeownership and Equity Protection Act

- a. Coverage Reminder** - The requirements of this section apply to a consumer loan secured by the consumer’s principal dwelling (except purchase or HELOC), in which either:

- i.** The APR exceeds by > 8 points for 1st lien loans or 10 pts for 2nd lien loans, the yield on Treasury securities with comparable periods of maturity to the loan maturity as of the 15th day of the month preceding the loan; OR
- ii.** The total points and fees exceeds the greater of 8% of the total loan amount or \$583 (adjusted annually)

- b. Disclosures** - must be provided 3 days PRIOR to consummation and must include the following:

- i.** This statement *“You are not required to complete this agreement merely because you have received these disclosures or b/c you have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you put into it if you do not meet your obligations under the loan”*
- ii.** APR
- iii.** Amount of regular payment and any balloon payment.

- iv. If variable, must state interest rate and payment may increase and the amount of the single maximum monthly payment based on the max rate required to be disclosed
- v. Amount Borrowed

c. Current Limitations

- i. For a loan <5 years, a balloon payment is prohibited
 - 1. Exception – terms <1 year (i.e., bridge loan, construction)
- ii. Negative Amortization
- iii. Advance Payments (payments in advance of the proceeds)
- iv. Increased interest rate after default
- v. Prepayment penalties, unless:
 - 1. Penalty applies only in first 2 years following consummation (*KS Law does not allow a prepayment penalty on a fixed rate loan that is refinanced after the first 6 months*)
 - 2. The source of prepayment funds is a refinancing by the creditor or an affiliate
 - 3. The consumer's total monthly debt does not exceed 50% of the consumer's monthly gross income, and
 - 4. The amount of the periodic payment of principal or interest or both may not change during the 4-year period following consummation
- ii. A demand feature except when consumer
 - 1. Commits fraud
 - 2. Doesn't Pay
 - 3. Adversely affects security

d. New Prohibitions. As of October 1, 2009, bank may not:

- i. Pay a contractor under a home improvement contract from proceeds of a mortgage covered by 226.32, other than:
 - (i) By instrument payable to the consumer or jointly to the consumer and the contractor; or
 - (ii) At the election of the consumer, through a 3rd escrow agent in accordance with terms established in a written agreement signed by the consumer, creditor, and contractor prior to disbursement.
- ii. Sell or otherwise assign a mortgage subject to 226.32 without furnishing the following statement to the purchaser or assignee:

"Notice: This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable

for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor.”

- iii. Within 1 year of having extended credit subject to 226.32, refinance any loan subject to 226.32 to the same borrower into another loan subject to 226.32, unless the refinancing is in the borrower's best interest.

- iv. Extend credit subject to 226.32 based on the value of the consumer's collateral without regard to the consumer's repayment ability as of consummation, including the consumer's current and reasonably expected income, employment, assets other than the collateral, current obligations, and mortgage-related obligations.
 - 1. *Mortgage-related obligations* are expected property taxes, premiums for mortgage-related insurance required by the creditor, and similar expenses.

 - 2. *Verification of repayment ability.* A creditor must verify the consumer's repayment ability by:
 - a. Internal Revenue Service Form W—2
 - b. Tax returns
 - c. Payroll receipts
 - d. Financial institution records, or
 - e. Other third-party documents
 - f. A creditor must verify the consumer's current obligations.

 - 3. *Presumption of compliance.* A creditor is presumed to be in compliance if:
 - a. Verifies the consumer's repayment ability,
 - b. Determines the consumer's repayment ability using the largest payment of principal and interest scheduled in the first seven years following consummation and taking into account current obligations and mortgage-related obligations, *and*
 - c. Assesses the consumer's repayment ability taking into account at least one of the following: The ratio of total debt obligations to income, or the income the consumer will have after paying debt obligations.

 - 4. *Exclusions from presumption of compliance.* No presumption of compliance if:

- a. The regular periodic payments for the first 7 years would cause the principal balance to increase; or
- b. The term of the loan is less than 7 years and the regular periodic payments when aggregated do not fully amortize the outstanding principal balance.
- c. DOES NOT apply to temporary or "bridge" loans with terms of twelve months or less

KBA Legal Update & concern over balloon loans with terms < 5 years

C) 226.35 – Higher-priced Mortgage Loans (Effective Date 10-01-09)

a. Definition - consumer loan secured by the consumer's principal dwelling with an APR that exceeds the "average prime offer rate" for a comparable transaction as of the date the interest rate is set by:

- i. 1.5 or more percentage points for loans secured by a first lien, or
- ii. 3.5 or more percentage points for loans secured by a subordinate lien
- iii. *"Average prime offer rate"* = APR derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The Board publishes average prime offer rates in a table updated, as well as the methodology used to derive these rates. (<http://www.ffiec.gov/hmda>)

- 1. On April 27, 2009, the average prime offer rate for a 15-yr fixed rate mortgage was 4.59 so if a 15-yr first lien mortgage loan is priced at 6.10%, it is considered a higher-priced mortgage loan!!
But, effective date 10-01-09

b. Exemptions

- i. Loan to finance the initial construction of a dwelling
- ii. Temporary or "bridge" loan with a term of 12 months or less
- iii. Reverse-mortgage transaction
- iv. Home equity line of credit

c. Rules for higher-priced mortgage loans

- i. Bank cannot extend credit based on the value of the consumer's collateral without regard to the consumer's repayment ability
- ii. No prepayment penalty unless:
 - 1. The penalty will not apply after the 2-year period following consummation (**KS Law);

2. The penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or an affiliate of the creditor; and
3. The amount of the periodic payment of principal or interest or both may not change during the 4-year period following consummation.

iii. *Escrow Requirement Effective 4-10-2010 (10-01-2010 for manufactured homes)* - Higher-priced mortgage loan secured by a first lien must have an escrow account established before consummation for payment of taxes, and mortgage-related insurance.

1. Exemptions
 - a. Loan secured by shares in a cooperative and for certain condominium units
 - b. Insurance premiums need not be included in escrow accounts for loans secured by condominium units, where the condominium association has an obligation to the condominium unit owners to maintain a master policy.
2. Cancellation. Escrow can be cancelled after 1 year with customer's dated written request.

D) Prohibited acts or practices Section 226.36

- a. Coercion of appraiser
- b. Loan Servicers cannot
 - i. Fail to credit payments as of date of receipts
 - ii. Pyramid late fees
 - iii. Provide untimely loan payoff statements

E) HMDA

- a. Rate Spread Reporting
 - i. For home purchase, refinancing, or dwelling-secured home improvement loan, bank must report spread between APR and "average prime offer rate" for a comparable transaction if the spread is equal to or greater than
 1. 1.5 percentage points for 1st lien loans, or
 2. 3.5 percentage points for 2nd lien loans

- ii.** Use rate in effect for the type of transaction as of the date the interest rate was set
- iii.** Average Prime Offer Rate set forth in tables published on FFIEC's Web site (<http://www.ffiec.gov/hmda>)
 - 1. Must use most recently available – the average prime offer rate set forth in the applicable table with the most recent effective date as of the date the interest rate was set
 - 2. Enter spread to 2 decimal places and use leading zero (03.29)
 - 3. Enter "NA" in field if does not exceed spread by 1.5 or 3.5
- iv.** Effective 10/01/2009 with mandatory compliance for loan applications taken on and after that date and for loans that close on and after 01/01/2010 (regardless of application date)