

**CHAPTER 46. PROPER CONDUCT OF LENDING AND
BROKERING IN THE MORTGAGE LOAN BUSINESS**

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Authority

The provisions of this Chapter 46 issued under 7 Pa.C.S. § 6138(a)(4); and section 12 of the Consumer Discount Company Act (7 P. S. § 6212), unless otherwise noted. Section 46.2(b) is effective March 20, 2009.

Source

The provisions of this Chapter 46 adopted December 19, 2008, effective December 20, 2008, 38 Pa.B. 6902, unless otherwise noted.

§ 46.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Advertising—As defined in 12 CFR 226.2(a)(2) (relating to definitions and rules of construction).

Applicant—A person who submits an application for a loan.

Application—As defined in 24 CFR 3500.2(b) (relating to definitions).

Balloon payment—A scheduled loan payment that is more than twice as large as the average of earlier scheduled monthly payments.

CDCA—The Consumer Discount Company Act (7 P. S. §§ 6201—6219).

Consummation—As defined in 12 CFR 226.2(a)(13).

Covered loan—A covered loan as defined in section 503 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P. S. § 456.503).

Debt obligation—Any amount owed for funds borrowed including interest requirements.

Fixed expenses—Any debt obligations, revolving charge accounts, alimony payments, child support payments, payments under a separate maintenance agreement, housing association fees and property taxes and hazard insurance on the property to be mortgaged, whether or not the property taxes and hazard insurance are required to be escrowed.

Fully amortized payment schedule—An amortizing payment schedule based on the term of the loan.

Fully indexed rate—The index rate plus the margin for the offered loan.

Hazard insurance—Insurance that covers property damage caused by fire, wind, storms and other similar risks.

Income—Gross income as defined in 26 U.S.C. § 61 (relating to definitions).

Index rate—A published interest rate to which the interest rate on a variable rate loan is tied.

Licensee—A licensee broker or lender under the Mortgage Act or CDCA or a partially exempt entity under the Mortgage Act.

Loan—

(i) A mortgage loan or a loan involving a mortgage by a licensee under the CDCA, or both, as the context may require.

(ii) The term does not include a covered loan.

Material change—A change of fact or circumstance that the licensee knows or reasonably should know would substantially affect an applicant's ability to repay the offered loan, including an increase in the interest rate which would require a disclosure under 12 CFR 226.17(f)(2) (relating to general disclosure requirements).

Margin—The number of percentage points a lender adds to the index rate to calculate the interest rate at each adjustment period on variable rate loans.

Mortgage Act—7 Pa.C.S. §§ 6101—6153 (relating to mortgage loan industry licensing and consumer protection).

Mortgage loan—As defined in section 6102 of the Mortgage Act (relating to definitions).

Mortgage loan business—The mortgage loan business as defined in section 6102 of the Mortgage Act and any kind of mortgage lending or brokering activity conducted by a licensee under the CDCA.

Person—A person as defined in section 6102 of the Mortgage Act and section 2 of the CDCA (7 P. S. § 6202), as applicable.

Property taxes—The taxes assessed, or a reasonable estimate of the taxes to be assessed, on the property being mortgaged based upon the full value of the property and any improvements thereon.

Reverse mortgage—A loan that is a reverse mortgage transaction as defined in 12 CFR 226.33(a) (relating to requirements for reverse mortgages).

Variable rate loan—A loan where the interest rate varies over the term of the loan.

§ 46.2. Proper conduct of lending and brokering in the mortgage loan business.

- (a) *Advertising*. A licensee may not engage in false or misleading advertising.
- (b) *Disclosures to applicant*. On a form prescribed by the Department, a licensee who takes an application shall disclose the following to the applicant:
- (1) If the lender providing the loan will escrow the applicable property taxes and hazard insurance.
 - (2) If the licensee is a lender with the ability to directly lock-in a loan interest rate.
 - (3) Whether the loan contains a variable interest rate or balloon payment feature.

- (4) Whether the loan includes a prepayment penalty.
- (5) Whether the loan has a negative amortization feature.

(c) *Timing and issuance of disclosure form.* A licensee issuing the disclosure form required by subsection (b) shall sign and date the disclosure form and deliver or place in the mail the disclosure form within 3 business days after the application is received or prepared by the licensee.

(d) *Required redisclosures.* A licensee who has issued the disclosure form required by subsection (b) shall issue an updated disclosure form at the time the licensee knows or reasonably should know that the initial disclosure form is inaccurate.

(e) *Applicant acknowledgment and retention of disclosure form.* A licensee shall require an applicant to sign and date the disclosure form required by subsections (b) and (d) within 10 business days after delivery or mailing and retain the original executed disclosure form in the applicant's loan file.

(f) *Duplication.* A licensee broker taking an application is not required to provide the disclosure form required by subsections (b) and (d) if the lender making the loan elects to provide the required disclosure form in accordance with this section.

(g) *Evaluation of applicant ability to repay.*

(1) A licensee may not offer a loan without having reasonably determined, based on the documents and information provided under this subsection, that the applicant will have the ability to repay the loan in accordance with the loan terms and conditions by final maturity at the fully indexed rate, assuming a fully amortized repayment schedule.

(2) In performing an analysis to determine whether an applicant will have the ability to repay an offered loan, a licensee shall consider, verify and document:

- (i) The income of the applicant.
- (ii) The fixed expenses of the applicant.

(3) When performing the income verification required by paragraph (2), a licensee is only required to verify the income that the applicant chooses to rely upon to repay the offered loan.

(4) In performing an evaluation of an applicant's ability to repay, a licensee may consider and document supplemental information provided by the applicant in addition to income that demonstrates that the applicant has the ability to repay the offered loan, provided that the supplemental information is reasonably related to an applicant's ability to repay.

(5) A licensee may not primarily rely upon the sale or refinancing of an applicant's collateral in determining an applicant's ability to repay an offered loan.

(6) All records, worksheets and supporting documentation used in the licensee's ability to repay analysis shall be maintained in the applicant's loan file.

- (7) In determining an applicant's ability to repay an offered loan under this subsection, a licensee may not ignore facts or circumstances that it knows or reasonably should know which would indicate that an applicant does not have the ability to repay the offered loan.
- (8) An applicant may be presumed to have the ability to repay an offered loan if the offered loan has one of the following characteristics:
- (i) Is insured by the Federal Housing Administration.
 - (ii) Is guaranteed by the United States Department of Veterans Affairs.
 - (iii) Is originated or approved for purchase by the Pennsylvania Housing Finance Agency.
 - (iv) Is the subject of a written finding by a United States Department of Housing and Urban Development approved counseling agency that there is a reasonable expectation that the borrower will be able to repay the offered loan.
- (9) For an offered loan with a balloon payment, a licensee:
- (i) May consider the sale or refinance of the applicant's collateral when evaluating an applicant's ability to make the balloon payment.
 - (ii) Shall base the fully amortized payment schedule on the full term the borrower chooses when calculating the amortization period for a loan containing a borrower option for an extended amortization period.
 - (iii) Shall consider the due date of the balloon payment and if there is a reasonable expectation the applicant will have sufficient equity in the property to make the balloon payment through a sale or refinance of the residence.
- (h) *Reverse mortgages.* A licensee offering or making a reverse mortgage to an applicant is not required to comply with subsections (b), (g), (i) and (j)(3).
- (i) *Material changes and ability to repay.* If there is a material change after a licensee has performed the ability to repay calculation required by subsection (g), a licensee shall immediately:
- (1) Send a notice to the applicant disclosing the material change and that the material change may affect the applicant's ability to repay the offered loan, if the licensee is a broker.
 - (2) Perform another ability to repay analysis in accordance with subsection (g), if the licensee is a lender.
- (j) *Loan transaction prohibitions.* A licensee may not:
- (1) Advise or imply to an applicant that the applicant's income is not relevant to the loan transaction.
 - (2) Recommend or imply that an applicant default on any existing contract or financial obligation.
 - (3) Advise or induce an applicant to refinance an existing loan or otherwise enter into a new financial obligation without performing the ability to repay analysis required by subsection (g).

(4) Offer to the applicant a covered loan without advising the applicant that the applicant qualifies for a loan other than a covered loan, if an applicant qualifies for a loan offered by the licensee.

(5) Advise or imply that an applicant should ignore any required disclosures or suggest that a document or the execution of any document is unimportant or of no consequence.

(6) Direct, encourage, permit or otherwise be involved with the improper execution of any document, including:

(i) Requesting or allowing an applicant to sign documents that contain blank spaces where material information regarding the loan transaction is required.

(ii) Permitting the execution of documents where signatures are required to be witnessed without the witnesses being physically present.

(iii) Permitting someone other than the required signatory to execute a document unless otherwise authorized by law.

(7) Knowingly submit or permit or encourage an applicant or third party to submit, false or misleading information, or information that the licensee reasonably should know is false or misleading, to any party to a loan transaction.

(8) Improperly influence, or attempt to improperly influence:

(i) An appraiser by committing any act or omission that is intended to:

(A) Compromise the independent judgment of an appraiser.

(B) Ensure that an appraisal matches a requested or target value.

(ii) Any other entity related to the mortgage loan business, such as notaries, title companies, real estate agents, builders and sellers of properties.

(9) Obtain hazard insurance required for a loan for an applicant at loan consummation without providing the applicant with the opportunity to secure or provide evidence of the applicant's own hazard insurance.

(10) Pay compensation to or receive compensation from, contract with, or employ any person engaged in the mortgage loan business who is not licensed or otherwise exempt from licensure.

(k) *Loan funding.*

(1) A licensee lender may not refuse or fail to fund a consummated loan, other than when an applicant rescinds the loan in accordance with 12 CFR 226.15 or 226.23 (relating to the right of rescission), as applicable except as provided in paragraph (4).

(2) A licensee lender shall fund a consummated loan in a reasonable time period after consummation of the loan or in accordance with any commitment or agreement with the applicant; provided that, if an applicant has a right of rescission under 12 CFR 226.15 or 226.23, a licensee lender is not required to fund a consummated loan in accordance with this subsection until after the applicable rescission period has ended.

(3) A licensee shall disburse loan funds to third parties in accordance with any commitment or agreement with the applicant.

(4) Any postclosing underwriting or quality control review conducted by a licensee lender after the consummation of a loan may not delay the funding of a loan or result in a failure or refusal to fund the loan in accordance with this subsection unless the applicant has committed fraud against the licensee, which may be raised as an affirmative defense in any proceeding brought by the Department based upon a violation of this subsection.

(5) Nothing in this subsection relieves or limits the liability of a licensee against a claim of a borrower based upon a licensee's refusal or failure to fund a loan based upon an allegation of consumer fraud.

(l) *Licensee responsibility to provide documents.* Upon request, a licensee shall provide to an applicant or authorized representative of an applicant, unless prohibited by Federal or State law, copies or originals of the documents associated with a loan that an applicant has paid for or signed, such as loan applications, appraisals, surveys, loan documents, disclosures and any fee agreement executed by the applicant and the licensee, to the extent the documents are in the licensee's possession.

(m) *Payoff statement or statement of mortgage reinstatement.* A licensee lender that holds or services a loan shall provide a borrower with payoff statements or statements of mortgage reinstatement, as applicable, for the borrower's loan within 7 business days of receipt of a written request by a borrower or a person authorized by the borrower.

§ 46.3. Enforcement.

(a) *Violations.* Violations of this chapter shall be violations of the Mortgage Act and CDCA, as applicable.

(b) *Interpretation of chapter.* If a loan is made in good faith in conformity with an interpretation of this chapter by the Department or the courts of this Commonwealth, a penalty for a violation of this chapter will not apply, notwithstanding that after the loan is consummated, the interpretation, rule or regulation is amended, rescinded or determined by a judicial or other authority to be invalid for any reason.

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