

**BLACK, MANN & GRAHAM, I.I.P.**  
**ATTORNEYS AT LAW**

Thomas E. Black, Jr., P. C.\*  
Calvin C. Mann, Jr., P. C.  
Gregory S. Graham, P. C.  
David F. Dulock  
Diane Gleason  
Benjamin R. Idziak \*  
Shawn P. Black \*  
Suzanne C. Collie  
Lamar Hervey  
Thomas L. Kapioltas  
Margaret A. Noles  
Lydia H. Williams  
*\*Also licensed in New York*

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**TO:** Clients and Friends

**FROM:** David F. Dulock

**SUBJECT:** Fair Credit – Credit Score Disclosure Requirements

The Fair and Accurate Credit Transactions Act of 2003 (FACTA) amended the Fair Credit Reporting Act to require certain notices to consumers and customers, prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes. Section 212 of the FACTA amended, in pertinent part, Section 609 of the Fair Credit Reporting Act by adding as Section 609(g) a credit score disclosure requirement for lenders. The deadline for mandatory compliance with this credit score disclosure requirement is December 1, 2004.

The following is a summary and redaction of Section 609 of the Fair Credit Reporting Act, as amended by Section 212 of the FACTA, applicable to mortgage brokers and lenders:

1. Disclosure Requirements: Any person who makes or arranges loans and who uses a consumer credit score, as defined below, in connection with an application initiated or sought by a consumer for a closed end loan or the establishment of an open end loan for a consumer purpose that is secured by 1 to 4 units of residential real property (hereafter referred to as the “lender”) shall provide the following to the consumer as soon as reasonably practicable:

(1) In General: A copy of the following information that was obtained from a consumer reporting agency or was developed and used by the user of the information:

(A) the current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the credit reporting agency for a purpose related to the extension of credit;

(B) the range of possible credit scores under the model used;

- (C) all of the key factors (defined below) that adversely affected the credit score of the consumer in the model used, the total number of which shall not exceed 4, subject to (1)(F) below;
- (D) the date on which the credit score was created;
- (E) the name of the person or entity that provided the credit score or credit file upon which the credit score was created; and
- (F) if a key factor that adversely affects the credit score of a consumer consists of the number of enquiries made with respect to a consumer report, that factor shall be included in the disclosure pursuant to (1)(C) above without regard to the numerical limitation in (1)(C).

The term "credit score"--(i) means a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default (and the numerical value or the categorization derived from such analysis may also be referred to as a 'risk predictor' or 'risk score'); and (ii) does not include (I) any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan to value ratio, the amount of down payment, or the financial assets of a consumer; or (II) any other elements of the underwriting process or underwriting decision.

The term "key factors" means all relevant elements or reasons adversely affecting the credit score for the particular individual, listed in the order of their importance based on their effect on the credit score.

(2) Disclosures In Case Of Automated Underwriting System:

(i) If a lender uses an automated underwriting system to underwrite a loan, that lender may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

(ii) However, if a numerical credit score is generated by an automated underwriting system used by the Federal National Mortgage Association (or any affiliate thereof) or the Federal Home Loan Mortgage Corporation (or any affiliate thereof), and that score is disclosed to the lender, the score shall be disclosed to the consumer consistent with paragraph (3) below.

(3) Disclosures Of Credit Scores Not Obtained From A Consumer Reporting Agency: A lender that uses a credit score, other than a credit score provided by a consumer reporting agency, may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

(4) Notice To Home Loan Applicants: A copy of the following notice, which shall include the name, address, and telephone number of each consumer reporting agency providing a credit score that was used:

*NOTICE TO THE HOME LOAN APPLICANT*

*In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.*

*The credit score is a computer generated summary calculated at the time of the request and based on information that a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.*

*Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.*

*If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.*

*If you have questions concerning the terms of the loan, contact the lender.*

- (5) Actions Not Required: The lender shall not be required to:
- (i) explain the information provided pursuant to (1)(A) – (F) above;
  - (ii) disclose any information other than a credit score or key factors;
  - (iii) disclose any credit score or related information obtained by the user after a loan has closed;
  - (iv) provide more than 1 disclosure per loan transaction; or
  - (v) provide the disclosure required when another person has made the disclosure to the consumer for that loan transaction.

(6) No Obligation For Content: The obligation of the lender pursuant to Section 609(g) of the Fair Credit Reporting Act is limited solely to providing a copy of the information that was received from the consumer reporting agency. The lender has no liability under Section 609(g) for the content of that information or for the omission of any information within the report provided by the consumer reporting agency.

2. Prohibition On Disclosure Clauses Null And Void:

- (1) Any provision in a contract that prohibits the disclosure of a credit score by a person who makes or arranges loans is void.
- (2) A lender shall not have liability under any contractual provision for disclosure of a credit score pursuant to 609(g) of the Fair Credit Reporting Act.

This memo is not a complete explanation or summary of all the requirements of the FACTA. Many of the FACTA's provisions must be implemented through regulations issued by various federal agencies. Some of these regulations have not been issued. We understand that the

agencies have informally indicated that the FACTA provisions for which regulations have not been issued by the FACTA deadline will not be enforced until final regulations are issued.

The sole purpose of this memo is to inform you of your requirement, effective December 1, 2004, to provide the credit score disclosure information discussed in this memo.

**This Memorandum is provided for the general information of the clients and friends of our firm 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 Memorandum to your specific case or circumstances.**