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November 4, 2005

TO: Clients and Friends

FROM: David F. Dulock

SUBJECT: Spanish Language Disclosures for Secondary Mortgage Loans under Chapter 342, Texas Finance Code - Section 341.502(a-1), Texas Finance Code, and Texas Finance Commission Final Rules 7 TAC §§1.1251-1.1256

This memorandum is the final revisions to our previous memorandums on this issue dated August 18, and September 2, 2005. As discussed in those prior memorandums, House Bill 1547, 79th Regular Session of the Texas Legislature, 2005, amends the plain language provisions of Section 341.502 of the Texas Finance Code to provide for the following Spanish language disclosures:

“(a-1) If the terms of the agreement for a loan under [*Chapter 342 or a Chapter 342 home equity loan*] were negotiated in Spanish, a copy of a summary of those terms and other pertinent information shall be provided to the debtor in Spanish in a form identical to disclosures required for a closed-end transaction under 12 C.F.R. Section 226.18 [*Regulation Z*].”

The new disclosure requirements of Section 341.502(a-1) are effective September 1, 2005. The Finance Commission of Texas has published in the November 4, 2005 issue of the *Texas Register* (Vol. 30 TexReg No. 44) the final rules and model forms for the Spanish language disclosures that implement the requirements of Section 341.502(a-1). The full text of the final rules and the model Spanish language disclosure form for a secondary mortgage loan [*which is changed from the model form in the proposed rules*] are printed below with the Finance Commission’s preamble explaining these final rules. Please note that although these final rules cover all Chapter 342 loans, subchapter G of Chapter 342 governs secondary mortgage loans. Our comments appear at the end of this memorandum.

Preamble to Final Rules (Redacted):

The Finance Commission of Texas has adopted new rules contained 7 TAC §§1.1251-1.1256 concerning required documents when loans under Chapter 342 or home equity loans regulated by the Office of Consumer Credit Commissioner have certain terms negotiated in Spanish. The new

rules outline applicability, the contract terms that constitute negotiation in Spanish, model forms, items not requiring translation, contracts with multiple creditors/debtors, and the status of the English language contract as the legal document.

The purpose of these rules is to implement the amendments contained in subsection (a-1) to Texas Finance Code §341.502 as enacted by the 79th Texas Legislature in HB 1547. Section 341.502 requires contracts for consumer loans under Chapter 342 to be written in plain language. The amendments to the statute require that certain disclosures be provided in Spanish when the terms of an agreement for the specified loans are negotiated in Spanish. The rules propose model disclosure language that is designed to comply with the plain language requirements of §341.502. A creditor may receive certain legal benefits by using the prescribed model language; however, a creditor may choose to use its own Spanish disclosure. A creditor is not required to submit a Spanish disclosure for plain language review as contemplated in §341.502(c).

Section 1.1251 clarifies the types of transactions that are covered by the provisions of the adopted rules. These rules only apply to closed-end transactions as the provisions of §341.502(a-1) require that the Spanish disclosure which must be delivered be identical to disclosures for a closed-end transaction under 12 C.F.R. §226.18. Section 341.502(a-1) also requires that the disclosure be given “if the terms of the agreement for a *loan* under Subsection (a) were negotiated in Spanish.” Since the statutory language expressly limits the requirement to loans, retail installment transactions under Chapter 348, which are not loans, are not covered by §341.502(a-1) and the adopted rules. A creditor under Chapter 348 may choose to optionally comply with the adopted rules. Texas Finance Code, §§ 341.001(9) and 301.002, define a “loan” as an advance of cash as contrasted to Texas Finance Code, §348.007 that defines a retail installment transaction as a credit sale of a motor vehicle.

Section 1.1252 details which contract terms, that when a creditor provides information about credit items in Spanish in relation to a credit transaction with a debtor or a debtor’s representative, will constitute negotiation in Spanish, and hence require written disclosure in Spanish.

Section 1.1253 outlines disclosure options, including figures containing model forms that may be utilized. The issue of whether an Itemization of Amount Financed requested by the borrower must be in Spanish is not addressed by the adopted rules and creditors are advised to seek the advice of their own general counsels on this issue. Section 1.1253(a)(2) – (a)(5) provide the basic minimum disclosures, as contained in the model forms. A creditor may include more information at its option (for example, borrower name, account number, property address, loan type, lender name and address, disclosure date). In addition, the model forms do not address variable rate disclosures, which at this time creditors are on their own to determine. However, variable rate disclosures may be a subject for future rulemaking.

Section 1.1254 provides a list of items that do not require translation, such as names, addresses, brand names, and others. The open fields in the Spanish translation must be completed in Spanish except for the listed items that are excluded from the translation requirement.

Section 1.1255 discusses transactions with multiple creditors and/or multiple debtors and the methods for providing disclosure.

Section 1.1256 states that the English language contract is the legal document and provides creditors with an optional disclaimer that may be added to the contract.

The term “licensee” is used under §1.1251 to show specific applicability to licensees. The use of the term “creditor” under the remaining sections allows non-licensees to have voluntary access to these rules and does not require compliance beyond licensees.

The following questions are not addressed by the adopted rules and will likely be addressed in future rulemaking proposals. 1. Can the format be altered as long as the provisions remain the same? 2. Is there a minimum font size requirement? 3. The model form is 2 letter size pages; can it be on 1 legal size page? 4. Under the “My Payment Schedule will be” section, is it acceptable to add open fields to complete this information for the loan? If so, is there a limit to how many?

In the proposed rules, it was stated that compliance with the proposed rules would be deemed compliance with the statutory provisions of Section 341.502(a-1). Creditors or licensees who have complied by utilizing the forms in the proposed rules may continue to use their existing stock of these forms for up to 90 days from the effective date of the adopted rules. **November 10, 2005 is the effective date** of the adopted rules and the model forms amended thereby.

These rules affect Texas Finance Code Chapter 342, Subchapters E, F, and G.

Final Rules:

§1.1251. Applicability.

(a) If a contract for loan under Chapter 342, Subchapters E, F, or G is negotiated in Spanish, then a licensee must deliver a disclosure to the debtor in Spanish no later than consummation of the contract.

(b) If a retail installment transaction under Chapter 348 is negotiated in Spanish, then a creditor may but is not required to deliver a disclosure specified in §1.1253 of this title to the debtor in Spanish.

(c) The disclosure requirement does not apply to open-end transactions.

§1.1252. Negotiation in Spanish.

(a) The disclosure specified in §1.1253 of this title must be given if a creditor provides information in relation to a credit transaction with a debtor or the debtor’s representative regarding any of the following credit terms in Spanish: (1) amount financed; (2) finance charge; (3) annual percentage rate; (4) the amount of any payment or schedule of payments; (5) total of payments; or (6) security interest.

(b) Advertising exception. A creditor is not required to provide a disclosure specified in §1.1253 of this title if a creditor advertises credit terms in Spanish that are specified in this section.

§1.1253. Form of Disclosure.

(a) The creditor may at its option provide a debtor one of the following:

(1) a Spanish translation of the contract form that includes a Spanish translation of the disclosure form under 12 C.F.R. §226.18;

(2) for transactions subject to Chapter 342, Subchapter E, a copy of the “Notificacion de Credito Al Consumidor (Préstamo a Plazos)” as prescribed in Figure: 7 TAC §1.1253 (a)(2);

(3) for transactions subject to Chapter 342, Subchapter F:

(A) a copy of the “Notificacion de Credito Al Consumidor (Préstamo),” as prescribed in Figure: 7 TAC §1.1253(a)(3)(A), selecting the appropriate late charge payment option;

(i) Late Charge Option 1: “Late Charge: If I don’t pay an entire payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment.”

(ii) Late Charge Option 1 Spanish Translation: “Cargos por Retrasos: Si no doy un pago completo dentro de 10 días después de vencerse, me puedes cobrar un cargo por retraso. El cargo por retraso sera el 5% de la cantidad del pago.”

(iii) Late Charge Option 2: “Late Charge: For a loan that has an amount financed of less than \$100, the late charge for a payment that is unpaid for 10 days after it is due is 5% of the amount of the installment. For a loan that has an amount financed of \$100 or more, the late charge for a payment that is unpaid for 10 days after it is due is the greater of \$10 or 5% of the amount of the installment.”

(iv) Late Charge Option 2 Spanish Translation: “Cargos por Retrasos: Para un préstamo en el cual la cantidad financiada es menor de \$100, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es 5% de la cantidad del pago. Para un préstamo en el cual la cantidad financiada es de \$100 o mas, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es de \$10 o 5% de la cantidad del pago atrasado, lo que sea mayor.”

(B) a copy of the “Conceptos Financieros,” as prescribed in Figure: 7 TAC §1.1253(a)(3)(B);

(4) for transactions subject to Chapter 342, Subchapter G, a copy of the “Notificacion de Credito Al Consumidor (Préstamo de Segunda Hipoteca)” as prescribed in Figure: 7 TAC §1.1253(a)(4); {Emphasis added.}

(5) for transactions subject to Chapter 348, a copy of the “Notificacion de Credito Al Consumidor (Contrato de Menudeo a Plazos para Vehiculo Automotor)” as prescribed in Figure: 7 TAC §1.1253(a)(5), selecting the appropriate late charge payment option.

(b) **Creditors may delete inapplicable provisions of the disclosure. Creditors may also delete any of the English portions of Figure: 7 TAC §1.1253(a)(4) {emphasis added}** or the lower portion of the disclosure below the payment schedule box of Figure 7 TAC §1.1253(a)(3)(A).

§1.1254. Items Excluded from Translation Requirement.

The summary or translation required under Texas Finance Code, §341.502(a-1) may retain the following elements in English without translation to Spanish: (1) names and titles of individuals, companies and other persons; (2) addresses; (3) brand names, trade names, trademarks, registered service marks, or full or abbreviated designations of the make and model of goods or services; (4) alphanumeric codes, numerals, dollar amounts expressed in numerals, or dates; or (5) words or expressions not having a generally-accepted Spanish translation.

§1.1255. Multiple-Party Transactions.

If there are multiple creditors in the transaction, only one creditor needs to provide the information required by §1.1253 of this title. If there are multiple debtors in a transaction, the creditor may deliver the information required by this section to any one or more of the debtors. The information may, but need not be, signed by the borrower or creditor.

§1.1256. Legal Document.

(a) The agreement entered in the English language is the legal document and determines the rights and obligations of the parties. The disclosures required by federal law entered in the English language are the legal disclosures and determine the disclosure obligations of the creditor.

(b) The creditor may at its option add the following disclaimer:

- (1) “NOTICE REGARDING THE TRANSLATION INTO SPANISH: The English document is the legal document and reflects the parties’ rights and obligations. The translation into Spanish of the document is provided for the convenience of the Borrower.”
- (2) Spanish Translation: “AVISO CON RESPECTO A LA TRADUCCION AL ESPANOL: El documento en ingles es el documento legal y refleja los derechos y obligaciones de las partes. La traduccion al espanol del documento se ofrece para la conveniencia del Prestatario.”

Applicability of Texas Attorney General Opinion JC-0513

On June 11, 2002, the Texas Attorney General issued Opinion JC-0513 addressing the following question posed by the Texas Banking, Savings and Loan, and Consumer Credit Commissioners:

Whether the requirement of section 341.502(a) of the Finance Code applies to loan transactions other than those ‘regulated by the Office of Consumer Credit Commissioner’?

Section 341.502(a) lists three types of loan transactions subject to its plain language requirement: (1) “a contract for a loan under Chapter 342”, (2) “a retail installment transaction under Chapter 348”, and (3) “a home equity loan regulated by the Office of Consumer Credit Commissioner.” The question raised by the Commissioners is whether the phrase “regulated by the Office of Consumer Credit Commissioner” applies only to home equity loans or whether it applies to all three types of loan transactions listed in Section 341.502(a), i.e. – whether all loans made pursuant to Chapters 342 and 348, regardless of the official assigned to regulate them, are subject to the plain language requirement of Section 341.502(a). The Texas Attorney General Opinion JC-0513 concluded that the clause “regulated by the Office of Consumer Credit Commissioner” applies to each of the three types of loan transactions described by Section 341.502(a), i.e. - only those loan transactions described by Section 341.502(a) that are regulated by the Consumer Credit Commissioner are subject to the requirements of Section 341.502. The Opinion also stated that Section 341.502 has no application to loan transactions described by Section 341.502(a) that are subject to the regulatory authority of the Texas Banking Commissioner, Texas Savings and Mortgage Lending Commissioner, Texas Credit Union Commissioner, and the federal officials responsible for regulation in their respective spheres. According to the General Counsel for the Office of Consumer Credit Commissioner, this means that Section 341.502 and the plain language rules and model forms adopted thereunder apply only to those persons required to have a regulated loan license issued under Chapter 342. Persons exempt from Chapter 342 licensing are likewise exempt from these plain language requirements.

Based on the above, we are of the opinion that the Spanish language disclosure requirements required by subsection (a-1) of Section 341.502 also apply only to those persons required to have a regulated loan license issued under Chapter 342. Persons exempt from Chapter 342 licensing are likewise exempt from these plain language disclosure requirements.

Our Comments:

- (1) While Section 341.502(a-1) of the Texas Finance Code does not specify the time when the Spanish language disclosure must be given, §1.1251 of the final rules specifies the time as no later than consummation of the contract. We recommend that it be given at closing with the final Truth in Lending Statement required by Regulation Z.***
- (2) If a borrower requests an Itemization of Amount Financed, we recommend that both English and Spanish language versions be given.***
- (3) You may disregard the rules and forms that apply only to Subchapters E and F.***
- (4) The Spanish language disclosure form for secondary mortgage loans is attached to this memorandum as Figure: 7 TAC §1.1253(a)(4). Note: this form was scanned from PDF format to Word format and not all of the Spanish accent marks are reflected.***

<p>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 information in this Memorandum to your specific case or circumstances.</p>
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Figure: 7 TAC §1.1253(a)(4)

NOTIFICACION DE CREDITO AL CONSUMIDOR (Préstamo de Segunda Hipoteca)

<p>“ANNUAL PERCENTAGE RATE” — TASA PORCENTUAL ANUAL</p> <p>“The cost of my credit as a yearly rate” –El costo de mi crédito expresado como tasa anual</p> <p style="text-align: right;">%</p>	<p>“FINANCE CHARGE” – CARGO POR FINANCIAMIENTO</p> <p>“The dollar amount the credit will cost me”-- La cantidad en dólares que me costara el crédito</p> <p style="text-align: right;">\$</p>	<p>“Amount Financed” – Cantidad Financiada</p> <p>“The amount of credit provided to me or on my behalf” –La cantidad de crédito otorgada a mi o en mi nombre</p> <p style="text-align: right;">\$</p>	<p>“Total of Payments” – Total de Pagos</p> <p>“The amount I will have paid after I have made all payments as scheduled” –La cantidad que habré pagado después de haber efectuado todos los pagos de acuerdo al plan</p> <p style="text-align: right;">\$</p>
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ITEMIZATION OF THE AMOUNT FINANCED

I have the right to receive at this time an Itemization of the Amount Financed.

I want an itemization. I do not want an itemization.

DETALLE DEL CARGO POR FINANCIAMIENTO

Tengo el derecho a recibir el detalle del Cargo por Financiamiento ahora.

Deseo el detalle. No deseo el detalle.

My Payment Schedule will be –Mi Plan de Pagos sera		
Number of Payments –Número de Pagos:	Amount of Payments –Cantidad de Cada Pago:	When Payments are Due-- Cuando se Vence Cada Pago:

Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Seguro de vida para el Deudor y seguro de incapacidad para el Deudor no se requieren para obtener crédito, y no se proveerá a menos que firme y acuerde pagar el costo adicional

Type –Tipo	Premium –Prima	Signature –Firma
Credit Life –Seguro de Vida para el Deudor	\$ _____	I want Credit Life Insurance –Deseo Seguro de Vida para el Deudor
		Signature –Firma
Credit Disability –Seguro de Incapacidad para el Deudor	\$ _____	I want Credit Disability Insurance –Deseo Seguro de Incapacidad para el Deudor
		Signature –Firma

I may obtain property insurance from anyone I want that is acceptable to you. If I get the insurance from you, I will pay \$_____ for the term of _____.

Puedo obtener seguro de propiedad de quien yo desee si es aceptable para Usted. Si obtengo el seguro de Usted, pagaré \$_____ por un plazo de _____.

Security: You will have a security interest in my homestead.

Garantia: Como garantia Usted tendra parte (participación) en mi residencia.

Filing Fees \$_____

Coutas por Inscripcion \$_____

Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.

Cargos por Retrasos: Si cualquier parte de un pago queda sin pagar por 10 dias después da vencerse, a mi se me puede cobrar el 5% de la cantidad del pago.

Prepayment: If I payoff early, I

may will not have to pay a penalty.

may will not be entitled to a refund of part of the Finance Charge.

Pago por Adelantado: Si pago por adelantado,

tendria que no tendré que pagar una penalizacion.

tendria no tendré derecho a un reembolso de parte del Cargo por Financiamiento.

Assumption: Someone buying my house may, subject to conditions, be allowed to assume the remainder of the mortgage on the original terms.

Asuncion: Alguien que compre mi propiedad puede, sujeto a ciertas condiciones, asumir el saldo de la hipoteca bajo los términos originales.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Informacion Adicional: Vea los documentos del contrato para información adicional sobre no-pago, retraso, cualquier re-pago total requerido antes de la fecha de vencimiento, y reembolsos y penalizaciones por pagar por adelantado.