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To: Clients and Friends
From: David F. Dulock
Subject: Texas Finance Commission Relocates/ Amends Plain Language Rules and Forms

The Texas Finance Commission (“Commission”) published in the August 25, 2006 issue of the *Texas Register* (Vol. 31, No. 34) an extensive relocation and reorganization of administrative rules and model forms for secured and unsecured loans subject to Chapter 342 of the Texas Finance Code.

The material published by the Commission in the above issue of the *Texas Register* is too voluminous to restate in full in this memo, but you may access this information on line from the *Texas Register* website, at <http://www.sos.state.tx.us/texreg/archive/index.shtml>. **These reorganized and amended rules became effective August 31, 2006**, and may require licensees to amend their plain language documents consistent with the amended rules and forms. Those licensees utilizing the existing model contracts (i.e. – notes and security documents) are permitted to use the prior model language (without a non-standard contract submission) until September 15, 2007 to deplete supplies of existing forms during a transition period after August 31, 2006.

As stated in my previous memorandums on this subject, the plain language models forms and rules apply only to those lenders licensed under Chapter 342 of the Texas Finance Code. Lenders exempt from Chapter 342 licensing are also exempt from the requirements of the plain language rules and the requirement to use either the model forms or non-standard plain language forms submitted to the Office of Consumer Credit Commissioner prior to use of the non-standard forms.

Also published in the August 25, 2006 issue of the *Texas Register* is the Commission’s reorganization and relocation of the administrative rules and model forms for non-real property installment loans (7 TAC Chapter 90, Subchapter B, §§90.201 – 90.204), signature loans (7 TAC Chapter 90, Subchapter C, §§90.301 – 90.304), and secondary mortgage home improvement loans (7 TAC Chapter 90, Subchapter F, §§90.601 – 90.604) which are not addressed in this memorandum.

As part of the reorganization and relocation published in the above issue of the *Texas Register*, the Commission has taken the following actions in regard to secondary mortgage loans subject to Texas Finance Code, Chapter 342, Subchapter G:

1. Adopts new 7 TAC, Part 5, Chapter 90, Subchapter A, §§90.101 - 90.105, concerning plain language contract provisions for Texas Finance Code, Chapter 342 transactions. The new rules contained in 7 TAC §§90.101 - 90.105 outline general provisions. These new rules are substantially similar to the following repealed rules: 7 TAC, Part 1, Chapter 1, Subchapter Q, §§1.1202 - 1.1204, 1.1212, 1.1214, 1.1222, 1.1224, 1.1232, 1.1234, 1.1242, 1.1244; and 7 TAC, Part 1, Chapter 1, Subchapter J, §1.841 and §1.845. The Commission's repeal of the rules in Subchapters Q and J is also published in the August 25th issue of the *Texas Register*.

Rule Summary:

- §90.101 (former §1.1203) provides definitions.
- §90.102 (former §1.1212) explains the relationship of federal law to the state requirements. The section describes how any conflicts or inconsistencies shall be resolved. Please note that §§1.1202, 1.1212, 1.1222, 1.1232, and 1.1242 have all been consolidated into new §90.102.
- §90.103 (former §1.1204) details the required format, typeface, and font for model plain language Chapter 342 contracts. Please note that §§1.1204, 1.1214, 1.1224, 1.1234, and 1.1244 have all been consolidated into new §90.103.
- §90.104 (former §1.841) provides the procedures for lenders to submit non-standard contract submissions.
- §90.105 (former §1.845) outlines the complaints and inquiries notice that lenders must provide to consumers. (*See my September 29, 2006 memo on this subject.*)

2. Adopts new 7 TAC, Part 5, Chapter 90, Subchapter D, §§90.401 - 90.404, concerning plain language contract provisions for secondary mortgage home equity loans subject to Texas Finance Code, Chapter 342, Subchapter G. The new rules contained in 7 TAC §§90.401 - 90.404 include plain language contract provisions, disclosures, model clauses, permissible changes, and model contracts. The new rules are substantially similar to the following repealed rules: 7 TAC, Part 1, Chapter 1, Subchapter Q, §§1.1221, 1.1225 - 1.1227. The Commission's repeal of the rules in Subchapter Q is also published in the August 25th issue of the *Texas Register*.

Rule Summary:

- §90.401 (former §1.1221) outlines the purpose of new Subchapter D, which is to provide model plain language for secondary mortgage home equity loans subject to Texas Finance Code, Chapter 342, Subchapter G.
- §90.402 (former §1.1225) identifies the types of provisions that may be included in a secondary mortgage home equity contract (i.e. - promissory note and security document).

- §90.403 (former §1.1226) contains the model clauses that are a plain language version of typical contract provisions for secondary mortgage home equity transactions subject to Texas Finance Code, Chapter 342, Subchapter G.
 - The figures contained in §90.403(b)(8)(A) - (C) concerning the finance charge and refund method have been revised in order to correct an error with respect to refunding prepaid interest. The word "points" in the second paragraph, third sentence, has been removed and replaced with "prepaid interest." The corresponding model contract contained in §90.404(a)(7) has also been revised to reflect this change (see §90.404 below).
 - §90.403(b)(12) concerning credit insurance has been revised in order to clarify the optional language with respect to past due premiums. The use of "four times" in the optional language quoted has been removed and replaced with "(insert number)." The corresponding figures contained in §90.403(b)(12) and §90.404(a)(7) have also been revised to reflect this change (see §90.404 below).
 - §90.403(b)(17) concerning joint or non-recourse liability has been revised by deleting the second "against" occurring in the second sentence. The corresponding figures contained in §90.403(c)(28) and §90.404(a)(7) have also been revised to reflect this change (see §90.404 below).
 - §90.403(b)(20) has been revised concerning the prior agreements provision to correct an oversight and for consistency purposes. As required by Texas Business and Commerce Code, §26.02, the following language has been added to the rule: "For loan agreements exceeding \$50,000, this notice must be boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material to be conspicuous." This model clause concerning prior agreements has been boldfaced in the corresponding model promissory note contained in §90.404(a)(7) (see §90.404 below).
- §90.404 (former §1.1227) outlines permissible changes that can be made and still comply with the model provisions. This section provides flexibility in using a model contract and includes figures containing an entire plain language model note and model security document for Subchapter G secondary mortgage home equity loans. The model security document may be changed so that it is in compliance with Mortgage Electronic Registration Systems, Inc. ("MERS").
 - The model note contained in §90.404(a)(7) has been revised concerning credit insurance to reflect a clarification for the optional language with respect to past due premiums (see explanation under §90.403 above). This model note has also been revised concerning the finance charge and refund method in order to correct an error with respect to refunding prepaid interest (see explanation under §90.403 above). In addition, the model clause concerning prior agreements has been boldfaced in order to correct an oversight and been revised for consistency purposes (see explanation under §90.403 above).
 - Concerning the model documents in both §90.404(a)(7) and §90.404(a)(8), another revision has been made concerning the joint or non-recourse liability

provisions in order to more closely track the Texas Constitution (see explanation under §90.403 above).

- For those licensees utilizing the model contracts, the prior model language is acceptable and licensees are permitted to use the prior model language (without a non-standard contract submission) until September 15, 2007, to deplete supplies of existing forms during a transition period after August 31, 2006, the effective date of the rules.

3. Adopts new 7 TAC, Part 5, Chapter 90, Subchapter E, §§90.501 - 90.504, concerning plain language contract provisions for secondary mortgage purchase money loans subject to Texas Finance Code, Chapter 342, Subchapter G. The new rules contained in 7 TAC §§90.501 - 90.504 include plain language contract provisions, disclosures, model clauses, permissible changes, and model contracts. The new rules are substantially similar to the following repealed rules: 7 TAC, Part 1, Chapter 1, Subchapter Q, §§1.1231, 1.1235 - 1.1237. The Commission's repeal of the rules in Subchapter Q is also published in the August 25th issue of the *Texas Register*.

Rule Summary:

- §90.501 (former §1.1231) outlines the purpose of new Subchapter E, which is to provide model plain language for secondary mortgage purchase money loans subject to Texas Finance Code, Chapter 342, Subchapter G.
- §90.502 (former §1.1235) identifies the types of provisions that may be included in a secondary mortgage purchase money contract (i.e. - promissory note and security document) subject to Texas Finance Code, Chapter 342, Subchapter G.
- §90.503 (former §1.1236) contains the model clauses that are a plain language version of typical contract provisions for secondary mortgage purchase money transactions subject to Texas Finance Code, Chapter 342, Subchapter G.
 - Section 90.503(b)(12) concerning credit insurance has been revised in order to clarify the optional language with respect to past due premiums. The use of "four times" in the optional language quoted has been removed and replaced with "(insert number)." The corresponding figures contained in §90.503(b)(12) and §90.504(a)(7) have also been revised to reflect this change (see §90.504 below).
 - Section 90.503(b)(20) has been revised concerning the prior agreements provision to correct an oversight. As required by Texas Business and Commerce Code, §26.02, the following language has been added to the rule: "For loan agreements exceeding \$50,000, this notice must be boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material to be conspicuous." This model clause concerning prior agreements has been bolded in the corresponding model promissory note contained in §90.504(a)(7) (see §90.504 below).
 - Section 90.503(c)(31) concerning partial invalidity has been revised in order to clarify the model language in the model security document with respect to the refunding of excess interest. The corresponding figure contained in §90.504(a)(8)

has also been revised to reflect this change (see §90.504 below).

- §90.504 (former §1.1237) outlines permissible changes that can be made and still comply with the model provisions. This section provides flexibility in using a model contract and includes figures containing an entire plain language model note and model security document for Subchapter G purchase money loan contracts. The model security document may be changed so that it is in compliance with Mortgage Electronic Registration Systems, Inc. ("MERS").
 - The model note contained in §90.504(a)(7) has been revised concerning credit insurance to reflect a clarification for the optional language with respect to past due premiums (see explanation under §90.503 above). This model note has also been revised by bolding the model clause concerning prior agreements in order to correct an oversight (see explanation under §90.503 above).
 - The model security document contained in §90.504(a)(8) has been revised concerning partial invalidity to reflect a clarification for the refunding of excess interest (see §90.503 above).
- For those licensees utilizing the model contracts, the prior model language is acceptable and licensees are permitted to use the prior model language (without a non-standard contract submission) until September 15, 2007, to deplete supplies of existing forms during a transition period after August 31, 2006, the effective date of the rules.

4. Adopts new 7 TAC, Part 5, Chapter 90, Subchapter G, §§90.701 - 90.706, concerning Spanish language disclosures for secondary mortgage loans subject to Texas Finance Code, Chapter 342, Subchapter G, when certain credit terms of the loan are negotiated or provided in Spanish. The new rules contained in 7 TAC §§90.701 - 90.706 include Spanish plain language disclosure provisions, model clauses, permissible changes, and model disclosures. The new rules are substantially similar to the following repealed rules: 7 TAC, Part 1, Chapter 1, Subchapter Q, §§1.1251 - 1.1256. The Commission's repeal of the rules in Subchapter Q is also published in the August 25th issue of the *Texas Register*. The rules adopt model disclosure language designed to comply with the plain language requirements of Texas Finance Code, §341.502. However, a creditor may choose to use its own Spanish disclosures. A creditor is not required to submit Spanish disclosures for plain language review as contemplated in Texas Finance Code, §341.502(c).

Rule Summary:

- §90.701 (former §1.1251) clarifies that these disclosure rules only apply to closed-end transactions and does not apply to open-end transactions or retail installment transactions.
- §90.702 (former §1.1252) details which contract terms, that when a creditor provides information about credit items in Spanish in relation to a secondary mortgage credit transaction with a debtor, will constitute negotiation in Spanish, and hence require written disclosure in Spanish.
- §90.703 (former §1.1253) outlines disclosure options, including figures containing model forms that may be utilized.

- The model forms contained in §90.703 have been revised to correct minor errors in the Spanish translation.
- §90.704 (former §1.1254) provides a list of items that do not require translation, such as names, addresses, brand names, and others.
- §90.705 (former §1.1255) discusses transactions with multiple creditors and/or multiple debtors and the methods for providing disclosure.
- §90.706 (former §1.1256) states that the English language contract is the legal document.

5. Proposes new 7 TAC Chapter 83, Subchapter G, §§83.701 - 83.708, concerning interest and other charges on secondary mortgage loans, that outline the methods for calculating maximum interest and other charges, and additional interest for default and deferment for transactions under Texas Finance Code, Chapter 342, Subchapter G. Additionally, these proposed new rules prescribe procedures for these transactions. The proposed new rules §§83.701 - 83.708 are substantially similar to the existing rules found in 7 TAC Chapter 1, Subchapter G, §§1.701 - 1.708, which are proposed for repeal. The Commission's proposed repeal of Subchapter G is also published in the August 25th issue of the *Texas Register*.

6. Proposes new 7 TAC Chapter 83, Subchapter H, §§83.751 - 83.758, concerning refunds for precomputed loans, that outline the methods for computing refunds of unearned interest due to prepayment or acceleration of transactions under Texas Finance Code, Chapter 342, Subchapter G, that are precomputed. The proposed new rules §§83.751 - 83.758 are substantially similar to the existing rules found in 7 TAC Chapter 1, Subchapter H, §§1.751, 1.752, 1.754, 1.755 and 1.758 - 1.761, which are proposed for repeal. The Commission's proposed repeal of Subchapter H is also published in the August 25th issue of the *Texas Register*.

7. Proposes new 7 TAC Chapter 83, Subchapter I, §§83.801 - 83.812, concerning Insurance. These proposed new rules are substantially similar to the existing rules found in 7 TAC Chapter 1, Subchapter I, §§1.801 - 1.811 and §1.814, which are proposed for repeal. The Commission's proposed repeal of Subchapter I is also published in the August 25th issue of the *Texas Register*.

8. Proposes new 7 TAC Chapter 83, Subchapter J, §§83.826 - 83.837, concerning the duties and authority of authorized lenders. These proposed new rules are substantially similar to the existing rules found in 7 TAC Chapter 1, Subchapter J, §§1.826, 1.828, 1.830 - 1.832, 1.834 - 1.839 and 1.848, which are proposed for repeal. The Commission's proposed repeal of Subchapter J is also published in the August 25th issue of the *Texas Register*.

9. Proposes new 7 TAC Chapter 83, Subchapter K, §§83.851 - 83.862, concerning prohibitions on authorized lenders. These proposed new rules are substantially similar to the existing rules found in 7 TAC Chapter 1, Subchapter K, §§1.851 - 1.858 and §§1.860 - 1.863, which are proposed for repeal. The Commission's proposed repeal of Subchapter K is also published in the August 25th issue of the *Texas Register*.

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 official Commission rules discussed in this Memorandum to your specific case or circumstances.