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**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** Regulation Z Early Disclosure Rules (Section 226.19(a)) Do Not Apply To Non-borrower Co-owner in a Rescindable Transaction

This memorandum addresses the following question: “When must a non-borrower co-owner (*i.e.*, spouse or separate co-owner who occupies the dwelling) receive a copy of the TILA disclosures for a loan rescindable under Section 226.23 of Regulation Z?”

Section 226.23 provides that a closed-end consumer transaction secured by a principal dwelling is subject to a right of rescission by the consumer. Section 226.23 also requires that the consumer must receive one copy of the TILA disclosures and two copies of the right to rescind and has until midnight of the third business day thereafter to rescind the transaction. For rescission purposes, Section 226.2(a)(11) expands the definition of consumer to include a non-borrower owner of the property who occupies it as a primary residence (herein referred to as the “non-borrower consumer”). In Texas, “non-borrower consumer” also includes a non-titled spouse. Thus, if either the consumer-borrower or the non-borrower consumer does not receive a copy of the TILA disclosures or two copies of the right to rescind, each have up to three years to rescind the transaction.

Prior to the new early disclosure rules of Section 226.19(a) on July 30, 2009, Regulation Z permitted the consumer-borrower and the non-borrower consumer to receive one copy of the TILA disclosures and two copies of the right to rescind at closing. With the advent of these new early disclosure rules, the question arises when the non-borrower consumer must receive the TILA disclosures required by Section 226.23. I recently discussed this with a senior staff attorney in the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, and was informed that their position is the early disclosure rules required by Section 226.19(a) do not apply to a non-borrower consumer in a rescindable transaction because the purpose of these early disclosures is for loan shopping, and the non-borrower consumer is not loan shopping. This means the TILA disclosures required by Section 226.23 to be given to the non-borrower consumer may still be given to the non-borrower consumer at closing, notwithstanding the early disclosure requirements of Section 226.19(a).

Therefore, this is to advise you that in a rescindable transaction, if you are relying on: (i) the “initial” TILA disclosure given within 3-business days of loan application or (ii) the “corrected” TILA disclosure received by the consumer 3-business days prior to closing, and you have not provided a copy of the disclosure to the non-borrower consumer at that time, you must provide the disclosure to the non-borrower consumer at closing.

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