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A Financial Institutions Legal Update

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New Washington Rule Finalizes the Mortgage Loan Disclosure Requirement

The Washington Department of Financial Institutions ("DFI") has issued a final rule regarding the new one-page mortgage disclosure form. The new rule completes implementation of one of the principal recommendations of Governor Gregoire's Homeownership Security Task Force and is designed to provide Washington's mortgage applicants with clearer information about key loan terms. The final rule takes effect on *December 5, 2008*, and contains the final requirements for the disclosure. (The statutory requirement took effect in June but the DFI will now examine based on the final rule.) ***Lenders and brokers should review their disclosures very carefully to ensure that they are in compliance with the final rule.*** Also, since the new rule does not amend any existing requirements, lenders and brokers must continue to provide all other mandated federal and state disclosures.

The rule provides the final requirements for the disclosure that must be given to applicants for most residential mortgage loans. The disclosure must be provided on loans secured by one-to-four family properties if the properties are used as principal residences or second homes, and the disclosure must be given on both purchase money and non-purchase money loans. However, the disclosure does not have to be provided on reverse mortgages, open-end loans (*i.e.*, HELOCs) and bridge loans. The disclosure must be provided within three business days after the lender or broker receives the loan application. In addition, it must be reissued at the *earlier* of: 1) three days following a "significant change" in loan terms, or 2) three days prior to closing.

The disclosure must be on one page, must be separate from other disclosures and forms, must be in plain language and must contain the following loan terms:

- The loan amount;
- The interest rate. If the borrower has applied for an adjustable rate mortgage ("ARM"), the disclosure must include the initial rate, the fully indexed rate and the lifetime interest rate cap, as well as the date on which the first interest rate increase may occur;
- The monthly principal and interest payment or, in the case of an ARM, the initial monthly payment, the fully indexed monthly payment and the maximum monthly payment;
- The lender's loan origination fees and any discount points;

- Whether the borrower's monthly payment will include escrows for taxes and insurance;
- Any fees charged directly by a broker to a borrower;
- If the borrower is charged a yield spread premium ("YSP"), the portion of the YSP that is not applied to other loan fees (the YSP must be disclosed as a dollar amount);
- Whether the borrower might be charged a pre-payment penalty or fee;
- Whether the payment schedule includes a balloon payment;
- Whether the interest rate or fees are higher because the borrower has chosen a reduced documentation loan; and
- Whether the interest rate has been locked.

The Washington DFI has issued two model disclosure forms. The first is designed to be used for fixed rate mortgages and the second is designed for ARMs. The model forms are available from the DFI's website.

We are available to assist you with interpreting and implementing the final disclosure requirements. For more information, please contact Michaela Albon at 206-223-7085 or at albonm@lanepowell.com. Michaela served on Governor Gregoire's Homeownership Security Task Force and has extensive expertise in state and federal mortgage and consumer credit law.

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