

**TRUTH-IN-LENDING CHECKLIST
FOR CLOSED-END TRANSACTIONS ¹**
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Client: _____

Case No.: _____

Title and Date of Document Analyzed

1. Check for running of one year statute of limitations for affirmative actions:

a. Date of Violation _____

b. Statute of Limitations _____

2. Check APR and other mathematical computations:

a. APR (226.22): Disclosed _____% Actual _____%

b. Does Amount Financed plus Finance Charge equal Total Payments? _____

c. Does Payment times Number of Payments equal Total of payments? _____

d. Does Amount Financed equal sum of itemization of Amount Financed? _____

3. Compare the disclosed terms to Regulation Z:

a. Form[226.17(a)] _____

b. Timing [226.17(b)] _____

c. APR (including variable)
[226.18(e) and (f)] _____

d. Itemization of Amount Financed
[226.18(c)] _____

1. The disclosures listed in this checklist are not applicable to open-end credit card and revolving charge accounts.

Brief explanations of the questions in this checklist are included in an attached sheet.

e. Amount Financed [226.18(b)] _____

f. Finance Charge [226.18(d)] _____

Any omissions from the Finance Charge?

(1) Credit Insurance _____

(2) Property Insurance _____

(3) Taxes and Official Fees _____

(4) Non-official Fees _____

(5) If a refinancing, rebates properly credited? _____

g. Total of Payments [226.18(h)] _____

h. In a credit sale, Total Sale Price and Down Payment
[226.18(j)] _____

i. Payment Schedule [226.18(g)] _____

j. Security Interest [226.18(m)] _____

k. Demand Feature [226.18(i)] _____

l. Prepayment [226.18(k)] _____

m. Late Payment [226.18(l)] _____

n. Contract Reference [226.18(p)] _____

o. Assumption Policy [226.18(q)] _____

4. If applicable, analyze the client's right to rescind (226.23). Look for:

a. Within three (3) years of transaction _____
[226.23(a)(3)]

b. No Notice Form or Wrong Form [226.23(b)] _____

c. Blanks in Notice Form _____

d. Wrong Expiration Date _____
[226.23(a)(3) and 226.2(a)(6)]

e. Insufficient number of copies _____
[226.23(a)(1) and (b)]

f. Performance Not Delayed [226.23(c)] _____

g. Material Non-Disclosure _____
[226.23(a)(3) and f.n. 48]

5. If applicable, analyze for violations of the "high cost" home equity loan provisions, 15 U.S.C. 1639.

a. Pre-consummation disclosures (warning of loss of home; no obligation to consummate loan; APR; monthly payment)
(226.32(c)) _____

b. Prohibited terms (226.32(d)):

(1) prepayment penalty _____

(2) default interest rate _____

(3) balloon payment _____

(4) negative amortization _____

c. Prohibited practices (226.32(e)):

(1) extending credit without regard to payment ability of consumer _____

(2) payments solely to contractors _____

6. Compare the disclosure statement to other loan documents. _____

7. Violations of Companion State Statutes _____

(revised 7/9/98)

TRUTH-IN-LENDING CHECKLIST EXPLANATORY NOTES

1. Check for running of one year **statute of limitations** for affirmative actions. Note that there is no such time limitation for the use of disclosure violations as counterclaims or setoffs. 15 U.S.C. 1640(e). Also, the Third, Sixth and Ninth Circuits have held that the limitation period can be tolled for equitable reasons, such as concealment. For rescission suits, the one-year period runs from the end of the 20-day period that the creditor has to act following the debtor's written rescission. In extended rescission cases, this written rescission may be up to 3 years after the date of the transaction. See paragraph 4 below.

2. Check **APR and other mathematical computations**:

Use the computer program to check the APR

The other computations are simple addition and multiplication

3. Compare the disclosed terms to Regulation Z requirements:

Form [226.17(a)]--required disclosures segregated, usually in a "federal box."

Timing [226.17(b)]—Must be given prior to consummation. Watch for cases where the sale documents say the sale is financed, but full disclosures aren't given until later, usually when the seller finds a finance company assignee.

APR [226.19(e)]--The error tolerance for APR violations in most cases remains 1/8% (.125) above or below. However, in real estate secured transactions, if finance charge errors cause the APR error, the finance charge tolerance applies. (See note below for finance charge tolerances.) As a result, an APR error over .125% may not be actionable in some real estate secured transactions.

Finance Charge [226.18(d)]--IMPORTANT NOTE: The **error tolerances** for finance charges have gotten more complicated:

A. For real estate secured loans entered into after 9/30/95, the tolerance is \$100 for underdisclosed finance charge (no remedy for overdisclosure) for the damage remedy. For rescission purposes, unless a foreclosure is underway, the tolerance is 1/2% of the total credit extended, over or under (1% if a refinance and no new money lent).

B. For real estate secured loans entered into before 9/30/95 the tolerances are: rescission same as above, but other remedies tolerance is at least \$200 for underdisclosure and no remedy for overdisclosure.

C. If, however, a foreclosure is underway, the error tolerance is only \$35 for under-disclosure (with no remedy for overdisclosure), no matter when the loan was entered into.

D. There is no change in the error tolerance for finance charge mistakes in non-real estate secured loans (still \$10 over or under the correct finance charge if the amount financed is over \$1000; \$5 over or under if amount financed is under \$1000).

Any omissions from the Finance Charge? Unless bona fide and properly disclosed, fees for insurance, taxes, warranties, etc. are required to be considered finance charges and not part of the amount financed. See 226.4(c) Also borrower paid brokers fees are specifically included in the Finance Charge.

Payment Schedule [226.18(g)]--the number, amount and due dates or timing of the payments must be accurately disclosed in an understandable manner. Watch for payment schedules that disclose only the first payment date and do not specify if further payments are monthly or weekly.

Security Interest [226.18(m)]--the actual security taken must be disclosed at least by reference.

Prepayment--while not part of the disclosure requirements of Regulation Z, the Truth-in-Lending Act now outlaws the use of the "Rule of 78ths" to figure interest rebates when the loan term exceeds 61 months. 15 U.S.C. 1615.

Statutory Damages of twice the finance charge from \$100 up to \$1000 (\$200 to \$2000 in real estate secured transactions) are available for disclosure violations involving the amount financed, finance charge, APR, total of payments, payment schedule, security interest and rescission rights. Statutory damages are also available for failure to comply with a valid rescission by the consumer

4. If applicable, analyze the client's **right to rescind** (226.23). This right applies when a non-purchase money security interest will be taken in a consumer's residence by a written instrument (such as a mortgage) or may later be taken by operation of law (such as a mechanics lien).

If a violation of the right to rescind is discovered, or if there is any other violation of the required "material disclosures" (APR, finance charge, amount financed, total of payments, payment schedule and disclosures involving high-cost mortgage loans), then the consumer has three years to exercise his or her right to rescind.

5. If applicable, analyze for violations of the **"high cost" home equity loan** provisions, 15 U.S.C. 1639. This provision applies to closed end transactions secured by the borrower's residence (other than purchase money loans) when the APR will either exceed

by more than 10 percentage points the yield on Treasury securities having comparable periods of maturity to the loan maturity or if the total points and fees paid "up front" will exceed 8 percent of the loan total or \$400 (with the \$400 figure pegged to the CPI). Extra disclosures are required, and some practices and provisions are prohibited in these loans.

In addition to the traditional Truth-in-Lending remedies of rescission and limited statutory damages, damages are awarded in the sum of all finance charges and fees paid by the consumer with no cap. 15 U.S.C. 1640(a)(4).

Also assignees are stripped of "holder in due course" status to protect a consumer's right to recover and to encourage self-policing by the secondary loan market. 15 USC 1641(d).

6. Compare the disclosure statement to other loan documents. The payment schedule, security interests taken, etc. should be consistent in all loan documents. The other documents may also provide clues as to the whereabouts of the loan proceeds leading to discovery of errors in the itemization of the amount financed.

7. Violations of Companion State Statutes. Almost all states have disclosure statutes similar to Truth-in-Lending. Depending on state law, the recovery under these state statutes may be cumulative to the recovery under Truth-in-Lending.

(9/98)