

CHAPTER 7. RESIDENTIAL REAL ESTATE TRANSACTIONS

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Authority

The provisions of this Chapter 7 issued under act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. §§ 101—605), unless otherwise noted.

Source

The provisions of this Chapter 7 adopted March 22, 1974, effective March 23, 1974, 4 Pa.B. 509, unless otherwise noted.

§ 7.1. Scope.

This chapter implements the act one purpose of which is to assure that every citizen of the Commonwealth who has need for residential mortgage credit is given meaningful information with respect to the cost of that credit at a rate of interest reasonably related to market conditions. Relevant credit information shall be disclosed so that the borrower may readily compare the various credit terms available to him from various sources and avoid the uninformed use of credit. Other purposes of the act which this chapter touches include the provisions of the act as to foreclosure and the establishment of lawful interest rates for various types of transactions.

Source

The provisions of this § 7.1 adopted March 22, 1974, effective March 23, 1974, 4 Pa.B. 509; amended January 10, 1975, effective January 11, 1975, 5 Pa.B. 72.

§ 7.2. Definitions and rules of construction.

Unless the context indicates otherwise, the following definitions and rules of construction apply:

Act—The act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. §§ 101—605).

Actual settlement costs—The term includes the following:

(i) For the purposes of the act “actual settlement costs,” is deemed to include the following:

(A) The attorney’s fees of the residential mortgage debtor if the attorney either:

(I) Is representing the residential mortgage lender.

(II) Is, directly or indirectly, recommended to the residential mortgage debtor by the residential mortgage lender.

(B) Charges and fees related to the transfer of property paid by the residential mortgage debtor to a real estate broker, mortgage broker or other person receiving directly or indirectly from the residential mortgage debtor a finder's fee, commission, placement fee, service charge or other similar compensation touching the transaction.

(C) Except for the "single service charge" as defined in this section, only those charges that are cost justified regarding the specific residential mortgage for which they are charged.

(ii) For the purposes of the act "actual settlement costs" is deemed not to include the charges and fees excluded from the definition of "finance charge" as set forth in this section.

Any insurance premium—The term, for purposes of the act, includes, but not be limited to, premiums for title insurance, fire and extended coverage insurance, flood insurance, F.H.A. mortgage insurance, private mortgage insurance and a deposit into an escrow account for payment of premiums on such insurance.

Business loans—The term, for the purposes of the act, means extensions of credit where the funds are to be utilized in a business enterprise and where the following conditions exist:

(i) The borrower exercises actual control over the managerial decisions of the enterprise in which the funds are to be utilized.

(ii) The borrower signs an affidavit under penalty of perjury setting forth the intended use of proceeds.

Charges and fees necessary for or related to the transfer of property or the closing of the residential mortgage loan—The term, for purposes of the act, includes, but not be limited to, the following, if paid by the residential mortgage debtor: property certification fees, realty transfer tax, fees for credit reports and attorney's fees included under the definition of "actual settlement costs" which is set forth in this section; provided that the charges and fees are reasonable and *bona fide*, and not for the purpose of evading compliance with the act.

Discount points—The term, for purposes of the act, is deemed not to include a fee paid to a residential mortgage lender by a person in the business of residential building or development in connection with a commitment by the lender to make mortgage loans to credit-worthy purchasers of real property, which has not previously been occupied as a residence; provided the fee is bona fide and not for the purpose of evading compliance with the act. This exclusion from the definition of "discount points" pertains, by way of example and not limitation, to fees charged by a residential mortgage lender to a person in the business of residential building or development under the Government National Mortgage Association Conventional Home Mortgage Program autho-

rized by the Emergency Home Purchase Assistance Act of 1974 (P. L. 93-449) or under similar programs. Additionally, “discount points,” for purposes of the act, is deemed not to include fees paid under the Conventional Home Mortgage Program or a similar program to a residential mortgage lender by the seller of a residential unit which has previously been occupied as a residence in connection with a commitment by the lender to make a mortgage loan to a credit-worthy purchaser of a residential unit.

Finance charge—The term, for purposes of the act, is deemed not to include the following:

(i) Fees, discounts or other sums realized by the Government National Mortgage Association, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or other governmentally sponsored or private secondary mortgage market purchaser, in connection with the purchase of or commitment to purchase residential mortgages, provided the purchase or commitment to purchase is *bona fide* and not for the purpose of evading compliance with the act. The preceding sentence means, by way of example and not limitation, that fees, discounts and other sums realized by the Government National Mortgage Association under its Conventional Home Mortgage Program as provided in the definition of “discount points” set forth in this section or under similar programs are not included in the “finance charge” under the act. Department comment: this subsection is a clarification of, not an exemption from, the definition of finance charge. “Finance charge” is not intended to cover fees, discounts or charges between principals in secondary mortgage market transactions, but to cover nonactual settlement costs and charges related to the closing of the residential mortgage between the residential mortgage debtor and the original residential mortgage lender. Therefore, the levying of cost, charges and fees, or other sums by the residential mortgage lender against the residential mortgage debtor is a finance charge unless it is an actual settlement cost as defined in the act and this section.

(ii) A satisfaction fee, if the fee is not charged for prior to the last scheduled payment, or to receipt of payment in full on the residential mortgage.

Loan yield—The annual rate of return determined in accordance with the provisions set forth in § 7.3 (relating to determination of loan yield).

One hour prior to commencement of bidding—The term, for purposes of section 404 of the act (41 P. S. § 404), is deemed to mean one hour prior to the scheduled start of the general proceeding at which the real property in question was originally listed for sale.

Performance—The term, for purposes of sections 403 and 404 of the act (41 P. S. §§ 403 and 404), includes, but is not limited to, a conspicuous designation as to where cure shall be tendered, provided that the designated location is one of the following:

(i) A regular place of business of the residential mortgage lender in the county where the real property is located or in a county contiguous thereto which is open during normal business hours.

(ii) For a period of time that the required notice provides the residential mortgage debtor with knowledge of a specific sum of money, payment of which during the period will constitute satisfactory tender of cure, an address at which tender of cure may be made by mail.

(iii) If the residential mortgage lender has no place of business as set forth in subparagraph (i), any designated location in the county where the real property is located, or in a county contiguous thereto, which is open during normal business hours. The designated location may be the office of an attorney. The residential mortgage lender may require that on the day of a scheduled sheriff's sale, tender of cure be limited to the place of the sale, provided that the residential mortgage debtor is given the name of the agent of the lender authorized to accept tender of cure and the agent is present at the place of sale at least 1 1/2 hours prior to commencement of the sale.

Residential mortgage—The term means the following:

(i) *Residential mortgage*—The term, for purposes of the permissible interest rate under the act but not the disclosure requirements under the act, is deemed not to include a transaction which is entered into under an act within the scope of section 604 of the act (41 P. S. § 604).

(ii) *Residential mortgage*—The term, for purposes of sections 403 and 404 of the act (41 P. S. §§ 403 and 404), includes an obligation to pay a sum of money in an original *bona fide* principal amount of \$50,000 or less, evidenced by a security document as defined in the act and this chapter, and secured by a lien upon real property located within this Commonwealth containing two or fewer residential units or on which two or fewer residential units are to be constructed and shall include an obligation on a residential condominium unit.

(iii) *Residential mortgage*—The term, for purposes of the act, is deemed not to include:

(A) A transaction with a person in the business of residential building or development to finance the construction of two or fewer residential units, provided the transaction is *bona fide* construction financing to a builder or developer, and not for the purpose of evading compliance with the act.

(B) A single mortgage document executed by a residential mortgage debtor and creating a lien upon real property containing three or more residential units or on which three or more residential units are to be constructed.

(iv) *Residential mortgage*—A loan evidenced by a single note and mortgage shall be considered to be two separate residential mortgage loans when the following factor exist:

(A) Two separate residential mortgage lenders have issued separate commitments to lend to the same residential mortgage debtor.

(B) The residential mortgage debtor will be indebted under said note and mortgage to only one residential mortgage lender at any time.

(C) The residential mortgage lenders have agreed to purchase and sell the loan documents to one another upon completion of construction or rehabilitation of the mortgaged premises by the residential mortgage debtor. With respect to the residential mortgage loans, each lender may impose the single service charge allowable under the act, and each may commit for and impose a rate of interest allowable under the act without regard to the rate of interest imposed by the other; provided that the foregoing arrangement is *bona fide* and not for the purpose of evading compliance with the act.

Residential real property—The term, for purposes of the act, does not include vacant real property unless the construction of two or fewer residential units is included either in the agreement of sale for such property or in a separate agreement approximately contemporaneous with such agreement of sale.

Residential unit—The term includes a type of residence, regardless of whether the unit is conceived of as a principal residence, a secondary residence, a summer residence, a vacation residence or a residence of some other denomination; and regardless of whether the unit is constructed or is to be constructed by conventional, precut, modular, sectional or other means.

Security document—The term, for the purposes of the act is deemed to include the following:

(i) An installment land contract, land contract or lease purchase agreement. It shall also include any similar document if it is a lease of real property where the lessee pays or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the real property involved and it is agreed that the lessee will become, or for no other (or a nominal) consideration has the option to become, the owner of the real property upon full compliance with the terms of the agreement.

(ii) A document containing a confession of judgment which, when confessed, effects a lien upon real estate.

Single service charge—The term, for purposes of the act, means a charge, in addition to other charges or fees included within the definitions of other “actual settlement costs” which is set forth in this section or in the act, paid directly or indirectly, by the residential mortgage debtor and received and retained, directly or indirectly, or on behalf of the residential mortgage lender for services or facilities furnished by the lender in connection with a residential mortgage, and not otherwise provided for as an “actual settlement cost” as set forth in this section or in the act. The charge is deemed to be “reasonable,” for purposes of this chapter and the act, if not in excess of the applicable limitations expressed in section 101(e) of the act (41 P. S. § 101(e)), and except as

hereinafter provided, no part of such service charge shall be collected from the residential mortgage debtor prior to loan settlement. At the residential mortgage lender's option, a portion of the service charge, not exceeding \$75, may be collected from the residential mortgage debtor when a mortgage application is received from or when a mortgage commitment is issued to the debtor, and a remainder of the service charge may be collected at settlement. Settlement fees and like charges are included within the definition of single service charge.

Take possession of any security—The term, for purposes of section 403 of the act (41 P. S. § 403), is deemed to mean take possession of a residential real property security.

Term of a residential mortgage—The term, for purposes of the act when used in connection with renegotiable rate or rollover mortgage loans, the interval of time between the making of the loan and the first renegotiation of the loan; and a subsequent renewal of a loan shall be deemed to be for a separate term.

Source

The provisions of this § 7.2 adopted March 22, 1974, effective March 23, 1974, 4 Pa.B. 509; amended January 10, 1975, effective January 11, 1975, 5 Pa.B. 72; amended March 31, 1975, effective February 1, 1975, 5 Pa.B. 185; amended January 6, 1978, effective January 7, 1978, 8 Pa.B. 9; amended December 5, 1980, effective December 6, 1980, 10 Pa.B. 4591; corrected October 9, 1998, effective August 6, 1998, 28 Pa.B. 5094; corrected October 23, 1998, effective August 6, 1998, 28 Pa.B. 5094. Immediately preceding text appears at serial pages (125603) to (125609).

Notes of Decisions

A loan made to a corporation exclusively for the benefit of the corporation does not constitute a residential mortgage; 41 P. S. § 405 is not applicable. *First Mortgage Company of Pennsylvania v. Carbone*, 3 Pa. D. & C. 3d 517, 523 (1977).

The Department of Banking regulations support an expansive construction of the term "lien"; an installment land contract in which the vendees assume possession and all the burdens and incidents of ownership, but the vendor retains title pending full payment and has the power to confess judgment in the event of default, will be treated as a residential mortgage for purposes of curing default. *Anderson Contracting Co. v. Daugherty*, 417 A.2d 1227 (Pa. Super. 1979); appeal dismissed 425 A.2d 329 (Pa. 1980).

§ 7.3. Determination of loan yield.

- (a) The finance charge is amortized over the contract term of the loan.
- (b) The loan yield is computed as the annual percentage rate is computed in accordance with section 226.5(b),(c) and (d) of Regulation Z, 12 CFR 226, but using the definition of finance charge provided for in the act.

Source

The provisions of this § 7.3 adopted March 22, 1974, effective March 23, 1974, 4 Pa.B. 509; amended January 10, 1975, effective January 11, 1975, 5 Pa.B. 72.

Cross References

This section cited in 10 Pa. Code § 7.1 (relating to definitions).

§ 7.4. Notice of intention to foreclose mortgage.

Before a residential mortgage lender, as defined by the act, may accelerate the maturity of a residential mortgage obligation, as defined by the act; commence a legal action including mortgage foreclosure to recover under the obligation; or take possession of a security of the residential debtor, as defined by the act, for the residential mortgage obligation—the person shall give a residential mortgage debtor notice of the intention which may be in the following form:

NOTICE OF INTENTION TO FORECLOSE MORTGAGE

The MORTGAGE held by _____ (hereinafter we, us or ours) on your property located at _____, IS IN SERIOUS DEFAULT [because you have not made the monthly payments of _____ for the months of _____, _____, and _____, and/or because _____].

Late charges and other charges have also accrued to this date in the amount of _____. The total amount now required to cure this default, or in other words, get caught up in your payments, as of the date of this letter, is _____.

You may cure this default within THIRTY (30) DAYS of the date of this letter, by paying to us the above amount of _____, plus any additional monthly payments and late charge which may fall due during this period. Such payment must be made either by cash, cashier's check, certified check or money order, and made at _____.

If you do not cure the default within THIRTY (30) DAYS, *we intend to exercise our right to accelerate the mortgage payments.* This means that whatever is owing on the original amount borrowed will be considered due immediately and you may lose the chance to pay off the original mortgage in monthly installments. If full payment of the amount of default is not made within THIRTY (30) DAYS, *we also intend to instruct our attorneys to start a lawsuit to foreclose your mortgaged property. If the mortgage is foreclosed your mortgaged property will be sold by the Sheriff to pay off the mortgage debt.* If we refer your case to our attorneys, but you cure the default before they begin legal proceedings against you, you will still have to pay the reasonable attorney's fees, actually incurred, up to \$50.00. However, if legal proceedings are started against you, you will have to pay the reasonable attorney's fees even if they are over \$50.00. Any attorney's fees will be added to whatever you owe us, which may also include our reasonable costs. *If you cure the default within the thirty day period, you will not be required to pay attorney's fees.*

We may also sue you personally for the unpaid principal balance and all other sums due under the mortgage.

If you have not cured the default within the thirty day period and foreclosure proceedings have begun, *you still have the right to cure the default and prevent the sale at any time up to one hour before the Sheriff's foreclosure sale. You may do so by paying the total amount of the unpaid monthly payments plus any late or other charges then due, as well as the reasonable attorney's fees and costs connected with the foreclosure sale [and perform any other requirements under the mortgage].* It is estimated that the earliest date that such a Sheriff's sale could be held would be approximately _____. A notice of the date of the Sheriff sale will be sent to you before the sale. Of course, the amount needed to cure the default will increase the longer you wait. You may find out at any time exactly what the required payment will be by calling us at the following number: _____. This payment must be in cash, cashier's check, certified check or money order and made payable to us at the address stated above.

You should realize that a Sheriff's sale will end your ownership of the mortgaged property and your right to remain in it. If you continue to live in the property after the Sheriff's sale, a lawsuit could be started to evict you.

You have additional rights to help protect your interest in the property. YOU HAVE THE RIGHT TO SELL THE PROPERTY TO OBTAIN MONEY TO PAY OFF THE MORTGAGE DEBT, OR TO BORROW MONEY FROM ANOTHER LENDING INSTITUTION TO PAY OFF THIS DEBT. [YOU MAY HAVE THE RIGHT TO SELL OR TRANSFER THE PROPERTY SUBJECT TO THE MORTGAGE TO A BUYER OR TRANSFEREE WHO WILL ASSUME THE MORTGAGE DEBT, PROVIDED THAT ALL THE OUTSTANDING PAYMENTS, CHARGES AND ATTORNEY'S FEES AND COSTS ARE PAID PRIOR TO OR AT THE SALE, [AND THAT THE OTHER REQUIREMENTS UNDER THE MORTGAGE ARE SATISFIED]. CONTACT US TO DETERMINE UNDER WHAT CIRCUMSTANCES THIS RIGHT MIGHT EXIST]. YOU HAVE THE RIGHT TO HAVE THIS DEFAULT CURED BY ANY THIRD PARTY ACTING ON YOUR BEHALF.

If you cure the default, the mortgage will be restored to the same position as if no default had occurred. However, you are not entitled to this right to cure your default more than three times in any calendar year.

Authority

The provisions of this § 7.4 issued under section 14 of the Savings Association Code of 1967 (7 P. S. § 6020-166).

Source

The provisions of this § 7.4 adopted March 22, 1974, effective March 23, 1974, 4 Pa.B. 509; amended March 29, 1974, effective March 30, 1974, 4 Pa.B. 577; amended January 10, 1975, effective January 11, 1975, 5 Pa.B. 72; reserved March 3, 1978, effective March 4, 1978, 8 Pa.B. 483; amended April 23, 1982, effective April 24, 1982, 12 Pa.B. 1314. Immediately preceding text appears at serial page (53064).

Notes of Decisions

The model lender's foreclosure notice form promulgated by the Secretary of Banking does not violate the legislature's intent of providing full disclosure, as the model provided proper notice of default. A residential mortgage relying on the model notice of foreclosure provided proper notice under 41 P. S. § 403. *Bankers Trust Co. v. Foust*, 621 A.2d 1054 (Pa. Super. 1993).

§ 7.5. Commitments to enter into residential mortgages.

Except for F.H.A. and V.A. loans, a mortgage commitment when agreed to by the residential mortgage debtor shall constitute a legally binding obligation on the part of the residential mortgage lender to make a residential mortgage loan within a specified time period in the future at a rate of interest not exceeding the maximum lawful rate of interest effective as of the date of commitment offer; provided, however, that the obligation may be conditioned upon such contingencies as are customary and necessary under the particular circumstances to protect the security of the residential mortgage lender. The commitment may not include any condition for increase of the interest rate at the time of loan settlement, even though the maximum lawful rate is then higher.

Source

The provisions of this § 7.5 adopted March 22, 1974, effective March 23, 1974, 4 Pa.B. 509; amended January 10, 1975, effective January 11, 1975, 5 Pa.B. 72.

§ 7.6. [Reserved].**Source**

The provisions of this § 7.6 adopted March 22, 1974, effective March 23, 1974, 4 Pa.B. 509; reserved January 10, 1975, effective January 11, 1975, 5 Pa.B. 72.

§ 7.7. [Reserved].**Source**

The provisions of this § 7.7 adopted March 22, 1974, effective March 23, 1974, 4 Pa.B. 509; reserved January 10, 1975, effective January 11, 1975, 5 Pa.B. 72.

§ 7.8. Prepayment penalty prohibited.

(a) Residential mortgage obligations contracted for on or after January 30, 1974 may be prepaid in full without a penalty or other charge before the maturity of the loan obligation.

(b) A residential mortgage lender is entitled to receive a finance charge which includes interest and other charges permissible under the act, up to and including the date of receipt of prepayment from the residential mortgage debtor but not beyond the date of the receipt.

(c) Examples of this section are as follows:

(1) If a mortgage obligation requiring payment on the tenth day of each month is prepaid in full by the residential mortgage debtor and received by the residential mortgage lender on the fifth day of the month, the residential mortgage lender is entitled to the finance charge to the fifth day of the month, when the prepayment was received.

(2) If a residential mortgage obligation requiring payment on the first day of each month is prepaid in full by the residential mortgage debtor to the residential mortgage lender on the fourth day of the month, the residential mortgage lender is entitled to the finance charge to the fourth day of the month, when the prepayment was received.

(3) If a residential mortgage obligation requiring payment on the first of each month is prepaid in full and mailed on or before the first of the month by the residential mortgage debtor to the residential mortgage lender who does not receive such prepayment until the fourth day of the month, the residential mortgage lender is entitled to the finance charge to the fourth day of the month, when the prepayment was received.

(d) Immediately upon receipt of a prepayment, the residential mortgage lender shall stamp or otherwise duly record the date of receipt in its records. Prepayments made by a residential mortgage debtor after office or banking hours or on a nonbanking day on which a residential mortgage lender may provide certain limited services for the convenience of the public or its customers but is not otherwise open for business shall be processed by the residential mortgage lender on the next full business or banking day.

(e) A residential mortgage lender may collect any charge otherwise permitted by the act, this chapter or other law to the extent not inconsistent with section 405 of the act (41 P. S. § 405) and of this section.

Source

The provisions of this § 7.8 adopted November 17, 1978, effective November 18, 1978, 8 Pa.B. 3200.

§ 7.9. Disclosure requirements—statement of policy.

(a) Disclosures required under section 401 of the act (41 P. S. § 401) are those disclosures required by the Truth in Lending Act (15 U.S.C.A. §§ 1601—1667e) and the Real Estate Settlement Procedures Act of 1974 (12 U.S.C.A. §§ 2601—2617). Residential mortgage lenders are not required to provide disclosures to residential mortgage debtors under section 401 when no disclosures are required to be provided by the Truth in Lending Act, the Real Estate Settlement Procedures Act of 1974 or regulations promulgated thereunder.

(b) By way of illustration, no disclosure is required under section 401 for an extension of credit for business or commercial purposes, even though the loan is secured by a lien on residential real estate, because those transactions are exempt under the Truth in Lending Act, the Real Estate Settlement Procedures Act of 1974 and regulations promulgated thereunder.

(c) This statement of policy reflects the Department's past and continuing interpretation of section 401 of the act since the act was amended in 1977 by section 1 of the act of December 16, 1977 (P. L. 328, No. 97).

Authority

The provisions of this § 7.9 issued under section 601 of the act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. § 601).

Source

The provisions of this § 7.9 adopted February 19, 1988, effective February 20, 1988, 18 Pa.B. 778.

[Next page is 9-1.]