

2007 DRAFTING REQUEST

Bill

Received: **08/24/2007**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Robert Wirch (608) 267-8979**

By/Representing: **Michael Tierney**

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - int. rates/loans**

Extra Copies: **MDK**

Submit via email: **YES**

Requester's email: **Sen.Wirch@legis.wisconsin.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Residential mortgage loan disclosures

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 09/26/2007			_____			
/P1	agary 10/08/2007	bkraft 10/08/2007	pgreensl 10/08/2007	_____	lparisi 10/08/2007		State
/P2	agary 11/02/2007	bkraft 11/05/2007	jfrantze 11/05/2007	_____	sbasford 11/05/2007		State
/1	agary	bkraft	rschluet	_____	sbasford	sbasford	

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	11/13/2007	11/13/2007	11/13/2007 _____		11/13/2007	11/13/2007	

FE Sent For:

<END>

At
Intro.

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1 bjk 11/13

(Handwritten initials and date)
11/13

(Handwritten note in a circle)
PA's:
Please
Jacket
"11"
Thank
AGB

FE Sent For:

<END>

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FE Sent For:

Handwritten notes:
/P2 bjk 11/5
11/5
11/5
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1/?	mkunkel 09/26/2007 agary	1/1 bjk 10/8	10/8 pg	10/8 pgmw			

FE Sent For:

<END>

Gary, Aaron

From: Tierney, Michael
Sent: Tuesday, October 02, 2007 12:42 PM
To: Gary, Aaron
Cc: 'John Keckhaver'
Subject: RE: LRB-3098: predatory mortgage lending

Hi Gary –

Senator Wirch called and asked about the drafting. Would you have time to sit down with John Keckhaver and me in the next day or so to go through some ideas?

One thing I noticed about DFI is that the sample forms they had that lenders would use tended to be one-size fits all where the lender would make a check mark if the loan did ___ or did not ___ contain a certain provision or term. Given the technology available to the lenders that would be impacted by this legislation, it seems that there should be a requirement that borrowers be provided with information pertaining to their loan and that it not have superfluous information regarding loan terms and conditions that do not apply. It should be a statement of what the proposed loan terms and conditions are not what the loan terms and conditions are or are not.

I think John may also have some suggestions to share with you.

This legislation is a priority for Senator Wirch, so if we could meet soon – that would be great.

Thank you.

Mike Tierney
Office of Senator Wirch

10/04/2007

Gary, Aaron

From: Tierney, Michael
Sent: Wednesday, October 03, 2007 1:32 PM
To: Gary, Aaron
Subject: RE: LRB-3098: predatory mortgage lending

Hi Aaron –

John and I spoke about this and I thought it might be helpful to provide you with an idea of how we envision things working.

I go to a lender after making an accepted offer on a home to sign loan papers. At that time, the lender prepares a document in plain English that states what type of loan I am going to receive, the percentage rate, the length of the loan, total amount to be paid, prepayment penalty (if any), mandatory arbitration terms (if any), and statement if monthly amount paid will include amount to be placed in escrow for property tax payment. (This document would not have any does___ does not___ or is___ is not___ type statements). It would just be a document that would relay information about the terms and conditions of the specific loan.

We sign the form.

The information on that form would then be carried over into the closing papers. On one page of the closing papers this information would appear on a 2 column sheet. The agreed to loan terms would appear in the left column. If the closing papers change or modify the loan terms and conditions previously provided – then that would have to be noted in the right hand column so that the borrower has an opportunity to either agree to the changes or not agree.

See you Friday at 9:30.

Mike

10/5/07

Meeting w/ Mike Tierney & John Kechaver

- no check boxes →
- mortgage lenders → OK w/ it
- plain english
 - disclosure document prepared by the lender
 - at closing, lender would provide an updated document that shows any changes
- simple form : 4 or 5 lines
- one page
- assurance that what you thought you were getting is in fact what you are getting
 - 2nd column : identify if it is same or any change
- 224.73 (4) →

written disclosure →



- broker prepares or lender prepares →
- ~~starts~~ days before closing

- when person is signing all the paperwork
- loan application

- presented & signed by closing agent →

- format of ARM disclosure → on this form

- more specific

- how much it can go up? on what basis

- specific one page doc →

- nontraditional loan term →

- informational handout → informational pamphlet

- ARM

- interest only payment

- prepayment penalties

- points & fees are 5%

- simultaneous 100% 2nd lien loan 2.2.?

- Illinois database → off the table

- residential mortgage transactions

→ 5000

in 10/8

cbjk

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION ✓

→ D-Note

SA ✓
X-ref ✓

gen. cat.

and providing a penalty

*

①

AN ACT ...; relating to: residential mortgage loans.

Analysis by the Legislative Reference Bureau

This bill imposes certain disclosure requirements on lenders, loan originators, and closing agents with respect to residential mortgage loans. The bill applies only to loans secured by a first lien real estate mortgage on, or an equivalent security interest in, a one-family to four-family dwelling which the borrower uses as his or her principal place of residence. When a lender has made a loan commitment to a borrower, the loan originator for the loan must, not later than the time that the loan commitment is delivered to the borrower, provide to the borrower a written disclosure, on a single page and in clear plain language, that contains all of the following information relating to the loan: ✓

- ✓ 1. Identification of the type of loan, loan amount, and loan term. ✓
- ✓ 2. If the loan is a fixed rate loan, the annual percentage rate of interest to be paid on the loan. ✓
- ✓ 3. If the loan is a variable rate loan, the annual percentage rate of interest initially to be paid on the loan; the applicable index for the loan; the maximum frequency with which the loan can be adjusted and the maximum amount of the increase with each adjustment; and, if the loan is adjusted at the maximum frequency and maximum amount for the first five years of the loan, the initial monthly payment of principal and interest on the loan and the new monthly payment of principal and interest on the loan, after each adjustment, for this five-year period. ✓
- ✓ 4. Whether the borrower's monthly payments will include amounts for the escrow of property taxes or property insurance or both. ✓
- ✓ 5. Whether there is any prepayment penalty applicable to the loan and, if so, under what circumstances the prepayment penalty would apply. ✓

✓ 6. Whether the loan terms include mandatory arbitration of disputes between the lender and borrower. ✓

These disclosures must be tailored specifically to the borrower's circumstances and must be separately generated for each borrower. The disclosure document may not contain extraneous information unrelated to the loan and may not rely on the marking of boxes or spaces to identify whether provisions are or are not applicable to the borrower. Before the loan closing, the lender or loan originator must provide to the borrower an update of this disclosure document, stating whether any changes have been made to the original disclosure information and, if so, identifying in clear plain language all such changes. At the time of the loan closing, the closing agent must provide the updated disclosure document to the borrower and the borrower must sign and date the document to acknowledge receipt of it. ✓

Any lender, loan originator, or closing agent that violates these requirements may be required to forfeit up to \$100 for each violation except that the forfeiture is from \$100 to \$1,000 if the lender, loan originator, or closing agent willfully or knowingly committed the violation. In addition, any person aggrieved by a violation may bring a civil action to recover three times the amount of actual damages caused by the violation or \$500, whichever is greater, along with attorney fees and costs. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 138.059 of the statutes is created to read: ✓

2 ✓ 138.059 Residential mortgage lending disclosure. (1) DEFINITIONS. In
3 this section: ✓

4 (a) "Borrower" means a person who has applied for a loan. ✓

5 (b) "Business day" means a business day, as defined in s. 421.301 (6), that is not
6 a legal holiday under s. 995.20 or a federal legal holiday. ✓

7 (c) "Closing agent" means a person who provides services to the lender and
8 borrower related to the closing and settlement of a real estate sale or refinancing and
9 its associated loan to ensure the execution of necessary documents and the
10 disbursement of funds in connection with the transaction. ✓

11 (d) "Lender" means the mortgagee or other security interest holder under a
12 loan for which the borrower has applied. ✓

1 (e) "Loan" has the meaning given in s. 138.052 (1) (b). ✓

2 (f) "Loan closing" means the execution by the borrower of a promissory note,
3 mortgage or other security agreement, and any other documents that are required
4 by the lender to be signed as a condition to the granting of a loan to the borrower and
5 to the delivery of the loan proceeds on behalf of the borrower. ✓

6 (g) "Loan originator" means a person who finds or negotiates a loan or loan
7 commitment from a lender for a borrower, regardless of whether the person acts on
8 behalf of a mortgage broker or as an exclusive agent or employee of the lender. ✓

9 (h) "Variable rate loan" has the meaning given in s. 138.056 (1) (d). ✓

10 (2) REQUIRED DISCLOSURES AT TIME OF LOAN COMMITMENT. (a) When a lender has
11 made a loan commitment to a borrower, the loan originator for the loan shall, not
12 later than the time that the loan commitment is delivered to the borrower, provide
13 to the borrower a written disclosure, on a single page and in clear plain language,
14 that contains all of the following information relating to the loan: ✓

15 1. Identification of the type of loan, loan amount, and loan term. ✓

16 2. If the loan is a fixed rate loan, the annual percentage rate of interest to be
17 paid on the loan. ✓

18 3. If the loan is a variable rate loan, all of the following: ✓

19 a. The annual percentage rate of interest initially to be paid on the loan. ✓

20 b. The applicable index for the loan. ✓

21 c. The maximum frequency with which the loan can be adjusted and the
22 maximum amount of the increase with each adjustment. ✓

23 d. If the loan is adjusted at the maximum frequency and maximum amount for
24 the first 5 years of the loan, the initial monthly payment of principal and interest on

1 the loan and the new monthly payment of principal and interest on the loan, after
2 each adjustment, for this 5-year period.

3 4. Whether the borrower's monthly payments will include amounts for the
4 escrow of property taxes or property insurance or both.

5 5. Whether there is any prepayment penalty applicable to the loan and, if so,
6 under what circumstances the prepayment penalty would apply.

7 6. Whether the loan terms include mandatory arbitration of disputes between
8 the lender and borrower.

9 (b) The disclosure document required under par. (a) shall be tailored
10 specifically to the borrower's circumstances and shall be separately generated for
11 each borrower. This disclosure document may not contain extraneous information
12 unrelated to the loan and may not rely on the marking of boxes or spaces to identify
13 whether provisions are or are not applicable to the borrower. This disclosure
14 document shall contain a right-hand margin sufficient for the purposes specified in
15 sub. (3) (a) 2.

16 (c) At the time of providing the disclosure document required under par. (a) to
17 a borrower, the loan originator shall sign and date the document.

18 **(3) REQUIRED DISCLOSURES AT TIME OF LOAN CLOSING.** (a) Not less than one nor
19 more than 5 business days prior to the loan closing, the lender or loan originator shall
20 provide to the borrower an update of the disclosure document required under sub.
21 (2) (a). This updated disclosure document shall include all of the following:

22 1. All of the information specified in the disclosure document required under
23 sub. (2) (a), stated in a manner identical to that contained in the disclosure document
24 required under sub. (2) (a).

1 ✓ 2. In a column toward the right-hand margin of the document, a statement of
2 whether there have been any changes to the information specified in subd. 1. and,
3 if so, identification in clear plain language and an easily understandable format of
4 all such changes. ✓

5 ✓ (b) The updated disclosure document required under par. (a) shall be signed
6 and dated by an authorized representative of the lender or loan originator, ✓ and a copy
7 or duplicate original shall be provided to the closing agent responsible for the loan
8 closing. ✓

9 ✓ (c) At the time of the loan closing, ✓ the closing agent shall provide a copy or
10 duplicate original of the updated disclosure document required under par. (a) to the
11 borrower. The borrower shall sign and date the document to acknowledge receipt of
12 the document. ✓

13 ✓ (4) PENALTY AND RIGHT OF ACTION. (a) Any lender, ✓ loan originator, ✓ or closing
14 agent that violates this section may be required to forfeit not more than \$100 for each
15 violation or, if the lender, ✓ loan originator, ✓ or closing agent willfully or knowingly
16 violates this section, not less than \$100 nor more than \$1,000 for each violation. ✓

17 ✓ (b) In addition to any other remedies, any person aggrieved by a violation of this
18 section by a lender, ✓ loan originator, ✓ or closing agent may bring a civil action for
19 damages. In such an action, a lender, ✓ loan originator, ✓ or closing agent that violates
20 this section shall be liable for three ³ times the amount of actual damages caused by
21 the violation or \$500, ✓ whichever is greater, ✓ and, notwithstanding s. 814.04 (1), the
22 costs of the action, including reasonable attorney fees. In such an action, the court
23 may also award any equitable relief that the court determines is appropriate. ✓

24 **SECTION 2. Initial applicability.**

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3098/P1dn

ARG:.....

Lbjk

Date

ATTN: Michael Tierney

Please review the attached draft carefully to ensure that it is consistent with your ✓
intent.

For certain definitions, including the definition of "lender," I have looked for guidance
to Regulation X, 24 CFR 3500.2, promulgated under the federal Real Estate
Settlement Procedures Act and to s. 708.10, stats. ✓

As discussed, this draft does not attempt to carve out federally-chartered financial
institutions from its scope. If enacted, this bill might draw a court challenge on the
basis of federal law preemption under the National Bank Act (national banks) or the ✓
Home Owners' Loan Act (federal savings associations). If such a court challenge were
successful, the provisions of the bill would still be enforceable against lenders for which
federal preemption does not apply.

I recommend conferring with DFI to assess whether the format of this draft fits well ✓
with the loan process and whether there may be any significant enforcement issues
related to the draft.

Please let me know if you would like any changes made to the attached draft or if you ✓
have any questions. If the attached draft meets with your approval, let me know and
I will convert it to an introducible "1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

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FROM THE
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LRB-3098/P1dn
ARG:bjk:pg

October 8, 2007

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Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

Gary, Aaron

From: Tierney, Michael
Sent: Monday, October 29, 2007 4:03 PM
To: Gary, Aaron

Attachments: CSBSModelDisclosurev6.doc

Hi Aaron –

Thank you for doing the previous mortgage disclosure draft.

I was provided a copy of the attached model disclosure form. I understand that there are some paragraphs on page 2 that really aren't necessary owing to current Wisconsin law, but I think the first page comes close to what we are trying to achieve.

Given how the preliminary draft was written and given the way this model form is laid out – what changes would the draft need in order to allow for the use of this type of disclosure form?



CSBSModelDisclosur
ev6.doc (67 ...

While I had hoped to receive more feedback regarding possible changes, Senator Wirch would like to move ahead with introduction. Could we make amendments to the preliminary draft with the idea that a form similar the one attached is what we would like to have provided to borrowers?

Thanks

Mike Tierney
Office of Senator Wirch

CSBS/AARMR MODEL RESIDENTIAL MORTGAGE DISCLOSURE v.6
 READ THIS FORM CAREFULLY IN ITS ENTIRETY – THERE ARE TWO PAGES TO THIS FORM

Borrower name(s): _____ Property address: _____

Originating Company: _____ Date of application: _____ Date disclosure prepared: _____

This disclosure is provided in addition to specific disclosures that may be required under federal and state law. The intent of this disclosure is to provide you with a simple, clear explanation of your proposed loan terms and costs. Additionally, by following the steps outlined on page two of this document, you may compare the proposed terms to the final terms at closing.

PROPOSED TERMS OF YOUR MORTGAGE LOAN

Loan Amount	Loan Type	Note Rate	Initial Payment	Highest Potential Payment	APR
<u>\$100,000.00</u>	<u>30 yr Adjustable</u>	<u>7%</u> Subject to change	<u>\$925.30</u> See notice below	<u>\$1,339.71 *</u> May be reached by <u>June 1, 2013</u>	<u>9.28%</u>

The payment above includes the note amount payment of \$665.30 and \$ 260.00 of Taxes Property insurance Mortgage insurance Other. These amounts, known as monthly reserves, are subject to change on a periodic basis. Your loan payment plus the monthly reserves equals the amount you are responsible to pay. * The highest potential payment includes today's reserve amount – you should expect this to increase over time. The initial payment amount is based on a term of 30 years and has a final payment of at least \$665.30 in principal and interest due on June 1, 2037.

THE FOLLOWING COSTS OR FEES ARE PROPOSED ON THIS LOAN

Origination Company (if any)	Lender/Funder	Other Service Provider	Yield Spread Premium (YSP) to Origination Co.	Total Transaction Dollars	\$ Due from you at closing
<u>\$2,500.00</u>	<u>\$1,300.00</u>	<u>\$1,800.00</u>	<u>\$2,000.00</u>	<u>\$7,600.00</u> See important note below	<u>\$600.00</u>

These costs and fees are more fully detailed on the good faith estimate and settlement statement disclosures, the totals of which should closely match the above. Yield Spread Premium (YSP) refers to a fee paid by the lender to the origination company because this loan carries a higher interest rate. In some cases, the YSP may offset other costs. You should inquire about this offset.

Total transaction dollars will be paid as follows:	The following costs have an effect on your loan rate:										
<table> <tr> <td><u>\$ 600.00</u></td> <td>paid out of pocket by you at closing</td> </tr> <tr> <td><u>\$5,000.00</u></td> <td>financed and included as part of your loan</td> </tr> <tr> <td><u>\$ 0.00</u></td> <td>paid by others on your behalf</td> </tr> <tr> <td><u>\$2,000.00</u></td> <td>YSP to origination company</td> </tr> <tr> <td>Total</td> <td><u>\$7,600.00</u></td> </tr> </table>	<u>\$ 600.00</u>	paid out of pocket by you at closing	<u>\$5,000.00</u>	financed and included as part of your loan	<u>\$ 0.00</u>	paid by others on your behalf	<u>\$2,000.00</u>	YSP to origination company	Total	<u>\$7,600.00</u>	<ul style="list-style-type: none"> The Lender/Funder costs include <u>\$1,000.00</u> in discount points that have lowered your rate by <u>0.25%</u>. The YSP costs of <u>\$2,000.00</u> have increased your rate by <u>0.50%</u>. Without these costs your rate would be <u>6.75%</u>
<u>\$ 600.00</u>	paid out of pocket by you at closing										
<u>\$5,000.00</u>	financed and included as part of your loan										
<u>\$ 0.00</u>	paid by others on your behalf										
<u>\$2,000.00</u>	YSP to origination company										
Total	<u>\$7,600.00</u>										

ADDITIONAL TERMS AND INFORMATION

Prepayment Penalty	Payments #/Frequency	Maximum Rate Possible by <u>June 1, 2013</u>	Rate Adjustments	Worst Case Rate Change Schedule												
<u>YES</u> (See pg 2)	<u>360/Monthly</u>	<u>13.00%</u>	<u>1%</u> every <u>12</u> months	<table> <tr> <td>June 1, 2008</td> <td>8.00%</td> </tr> <tr> <td>June 1, 2009</td> <td>9.00%</td> </tr> <tr> <td>June 1, 2010</td> <td>10.00%</td> </tr> <tr> <td>June 1, 2011</td> <td>11.00%</td> </tr> <tr> <td>June 1, 2012</td> <td>12.00%</td> </tr> <tr> <td>June 1, 2013</td> <td>13.00%</td> </tr> </table>	June 1, 2008	8.00%	June 1, 2009	9.00%	June 1, 2010	10.00%	June 1, 2011	11.00%	June 1, 2012	12.00%	June 1, 2013	13.00%
June 1, 2008	8.00%															
June 1, 2009	9.00%															
June 1, 2010	10.00%															
June 1, 2011	11.00%															
June 1, 2012	12.00%															
June 1, 2013	13.00%															

Your home is at risk. If you do not make the required payments on your home loan, or fail to pay any property tax obligation you could lose your home and possibly any equity in your home.

This disclosure was provided by _____ (Representative) of _____ (Company), on _____ (Date).

Loan originator signature: _____ Loan originator license number _____ Company license number _____

STOP! THERE ARE TWO PAGES TO THIS FORM. YOU SHOULD RECEIVE THIS FORM WITHIN 3 DAYS OF THE DATE OF YOUR APPLICATION FOR A MORTGAGE LOAN. HOWEVER, FOR YOUR OWN PROTECTION DO NOT DATE THIS FORM ANY OTHER DATE THAN THE DATE ACTUALLY RECEIVED BY YOU. DO NOT LEAVE THE DATE SECTION BLANK. DO NOT SIGN UNLESS YOU HAVE READ AND UNDERSTAND BOTH SIDES OF FORM.

Borrower

Date

Borrower

Date

IMPORTANT ADDITIONAL INFORMATION ABOUT YOUR LOAN
READ CAREFULLY

How to compare loan terms: The Loan Amount, Loan Type, Rate, Rate Adjustment, and Note Payment should be compared to the Note you sign at closing. The costs identified on page 1 of this form are derived from a disclosure known as a Good Faith Estimate. You should compare the costs on this form to the Good Faith Estimate before signing either disclosure. You should compare the costs on this disclosure, or a revised version of this disclosure, to the HUD Settlement Statement you will receive at closing. **You are not obligated to take this loan. Consider your options carefully.**

Comparing Monthly Payments for Refinances: If you are refinancing your existing loan your monthly payments will change as follows:

Current loan type: <input checked="" type="checkbox"/> 30 yr fixed <input type="checkbox"/> ARM	Proposed loan type: <input type="checkbox"/> fixed <input checked="" type="checkbox"/> 1 yr ARM
Current principal and interest: \$ 705.93	Proposed principal and interest: \$ 665.30
Current monthly reserves: <u>260.00</u>	Proposed monthly reserves: <u>260.00</u>
Current total: \$ 965.93	Proposed total: \$ 925.30

Qualifying Monthly Income: The loan being offered to you is based on your gross monthly income of \$ 6,250.00. The starting payment on this loan, including taxes, insurance and other items will be 14.80 % of your monthly income.

Monthly Payments and Amortization (loan balance reduction): Your loan does does not contain payment features or options that may result in no reduction in your principal balance owed over time or possibly an increase in the amount you must repay over time. In certain cases, the payment choice you make early in the life of the loan may result in an effect known as "payment shock." Payment shock results when you choose to make a payment that is insufficient to retire or "amortize" the loan balance over the life of the loan. In such situations, the loan will "reprice" or "recast" to a new payment amount, which may be substantially higher than you are accustomed to paying. Your loan representative should explain these features to you carefully, including realistic examples of how the choices you make can affect the amount of money you owe.

Prepayment Penalty: Applicable to your loan Not applicable to your loan
 A prepayment penalty means that if you attempt to pay off or refinance the loan early, you will pay a penalty in **ADDITION** to the interest and principal due under the loan.

If you refinance or pay this loan off early, you will pay these additional fees (penalties):

\$3,483.91 if you pay more than \$20,000 above the amount of principal owed in the first year after you get this loan
 \$3,943.05 if you pay more than \$20,000 above the amount of principal owed in the second year after you get this loan
 \$, ___ if you pay more than \$ ___ above the amount of principal owed in the third year after you get this loan
 \$, ___ if you pay more than \$ ___ above the amount of principal owed in the fourth year after you get this loan
 \$, ___ if you pay more than \$ ___ above the amount of principal owed in the fifth year after you get this loan

Balloon Payment: Applicable to your loan Not applicable to your loan
 A balloon payment is a final lump sum payment due at the end of your loan. If you do not have the funds to pay off the balloon payment when due, you may have to obtain a new loan to make the balloon payment. If you do not have the money to make the balloon payment, you may lose your property and all of your equity in your home through foreclosure. Before deciding to take this loan, consider your ability to pay the balloon payment. The balloon payment on this loan is due X years from the date your loan begins. The final balloon payment due is \$ 0.00.

Demand Payment Applicable to your loan Not applicable to your loan
 A demand payment provision means that the holder of your loan can demand payment in full if certain conditions are met. Before deciding on this loan, ask your broker or lender what circumstances allow the holder of the loan to demand payment in full.

Reduced Documentation Applicable to your loan Not applicable to your loan
 Your loan is being underwritten and approved without full documentation of your employment, income, or financial situation. Regardless, all statements made by you or your loan representative must be accurate and true. Inaccurate or untruthful statements are a serious violation of law and may result in criminal penalties. Your loan representative should explain to you any additional cost associated with a reduced documentation loan.

Gary, Aaron

From: Gary, Aaron
Sent: Wednesday, October 31, 2007 9:23 AM
To: Tierney, Michael
Subject: RE:

Hi Mike,

I'll start making these changes and get a /P2 draft out to you.

I believe the lender (and I don't know who at the lender, but I think somebody from loan processing in the home office) typically sends the completed loan paperwork to the loan originator and directly to the closing (or escrow) agent. Generally I think the loan originator is supposed to review the document for accuracy but does not meet with the borrower again - that is left to the closing agent. The closing agent acts on behalf of all parties, including the lender, to bring the deal together; the closing agent's job is to secure the necessary signatures from the borrower. I think that typically nobody directly representing the lender actually appears at the closing. (The closing agent's job is to represent the lender, as well as the other parties, in the very limited capacity of completing the paperwork and collecting/disbursing funds.) The /P1 was drafted to recognize this paperflow - the lender has to send the "no changes" document to the closing agent and the closing agent must provide it to the borrower at closing. To my knowledge, this is how the system typically works now.

Yes, often home equity loans are a form of revolving (open-end) credit. It will simplify the draft if it does not include open-end credit.

Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Tierney, Michael
Sent: Tuesday, October 30, 2007 4:33 PM
To: Gary, Aaron
Subject: RE:

Aaron –

Thanks for the responses.

I think we'll have to accept the fact this will be an additional disclosure, but if there could be language directly DFI to make efforts to minimize the number of forms needed that would be helpful.

What is the most appropriate term to use for the person at the bank/lender who also attends the closing? I run into people using different terms. I would think the person who represents the lender would sign the document initially and then, at closing, provide another copy signifying that no changes are contained within the closing documents.

We would want DFI to create and provide forms to lenders – in electronic versions at least – that describe in greater detail the risks and benefits of the particular loan type being offered.

A first or subsequent mortgage should be included. The home equity loan would have, as an option, a revolving credit option – right? If that's the case we could forget about the home equity provision for this draft.

Thanks

Mike

From: Gary, Aaron
Sent: Tuesday, October 30, 2007 3:21 PM

To: Tierney, Michael
Subject: RE:

Mike,
Please see responses below, in red.

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Tierney, Michael
Sent: Tuesday, October 30, 2007 9:38 AM
To: Gary, Aaron
Subject: RE:

Hi Aaron –

That would work. We would also want the form applied to all home loans (first mortgage, home equity, 2nd or 3rd mortgages, etc.) [ARG: This is a significant expansion of the /P1 draft - I'll have to think about how adding revolving credit loans might affect the draft. This will also probably require more different forms, which sometimes leads to confusion as to what forms should be used. I will make this change and get back to you if I have additional questions.] Also, can we specify that the loan originator must provide the form – both when the initial loan approval has been made and then, again, at the closing to confirm that no changes were made? [ARG: Typically the loan originator is not present at closing. Do you want to require the loan originator to be present at closing?]

Under the bill, DFI could also be required to create brochures for specific loan types that a loan originator would provide the borrower, right? [ARG: Yes, this could be done. Would this be an additional document, on top of the disclosure document, that has to be given to the borrower? Let me know if you want this added to the bill.]

Lastly, in some of the feedback we have received on the draft – people have voiced concerns about having yet another piece of disclosure information to provide borrowers. Would there be a way of articulating in the draft that DFI would be required to produce this form with the intent that it replace to the greatest extent possible loan disclosure forms provided to borrowers under current law? [ARG: Most of the disclosures are required under federal law and certainly the draft does not eliminate any other disclosures required under state law. As a practical matter, I don't think there is a way to avoid having this be one more notice on top of the rest. However, I could add some language directing DFI, in creating the form, to attempt to create it in a way, if possible, that minimizes the number of different disclosure documents that will need to be provided to the borrowers.]

Thanks,

Mike

From: Gary, Aaron
Sent: Tuesday, October 30, 2007 9:22 AM
To: Tierney, Michael
Subject: RE:

Hi Mike,

The attached disclosure form reflects a very different approach from what is in the draft, and it wouldn't be practical to try to put all of the details of the attached form into the bill. I would recommend changing the bill so that DFI must create a form and lenders would be required to use that form. The statute would specify certain things that must be included in the form (for example, p. 3 line 17 to p. 4 line 10), but DFI would have to come up with the details - you could work with DFI and offer the attached form as a template.

Would this approach work for you? I could draft a "/P2" to give you a better idea what it would look like.

Aaron R. Gary

Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Tierney, Michael
Sent: Monday, October 29, 2007 4:03 PM
To: Gary, Aaron
Subject:

Hi Aaron –

Thank you for doing the previous mortgage disclosure draft.

I was provided a copy of the attached model disclosure form. I understand that there are some paragraphs on page 2 that really aren't necessary owing to current Wisconsin law, but I think the first page comes close to what we are trying to achieve.

Given how the preliminary draft was written and given the way this model form is laid out – what changes would the draft need in order to allow for the use of this type of disclosure form?

<< File: CSBSModelDisclosurev6.doc >>

While I had hoped to receive more feedback regarding possible changes, Senator Wirch would like to move ahead with introduction. Could we make amendments to the preliminary draft with the idea that a form similar the one attached is what we would like to have provided to borrowers?

Thanks

Mike Tierney
Office of Senator Wirch



State of Wisconsin
2007 - 2008 LEGISLATURE

Soon ←

LRB-3098/01

ARG:bjk:pg

Inserts

in 11/2

RMR

stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION ✓

SA ✓

form prescribed by the division ✓

insert 1-2 ✓

regen. cat.

- 1 AN ACT to create 138.059 of the statutes; relating to: residential mortgage loans
- 2 and providing a penalty. ✓

Analysis by the Legislative Reference Bureau

This bill imposes certain disclosure requirements on lenders, loan originators, and closing agents with respect to residential mortgage loans. The bill applies only to loans secured by a ~~first lien~~ real estate mortgage on, or an equivalent security interest in, a one-family to four-family dwelling which the borrower uses as his or her principal place of residence. When a lender has made a loan commitment to a borrower, the loan originator for the loan must, not later than the time that the loan commitment is delivered to the borrower, provide to the borrower a written disclosure, on a ~~single page and in clear plain language~~, that contains all of the following information relating to the loan:

insert ANAL-A ✓

*→

*→

- 1. Identification of the type of loan, loan amount, and loan term.
- 2. If the loan is a fixed rate loan, the annual percentage rate of interest to be paid on the loan.
- 3. If the loan is a variable rate loan, the annual percentage rate of interest initially to be paid on the loan; the applicable index for the loan; the maximum frequency with which the loan can be adjusted and the maximum amount of the increase with each adjustment; and, if the loan is adjusted at the maximum frequency and maximum amount for the first five years of the loan, the initial monthly payment of principal and interest on the loan and the new monthly payment of principal and interest on the loan, after each adjustment, for this five-year period.
- 4. Whether the borrower's monthly payments will include amounts for the escrow of property taxes or property insurance or both.

and conspicuous manner, any

5. Whether there is any prepayment penalty applicable to the loan and, if so, under what circumstances the prepayment penalty would apply.

6. Whether the loan terms include mandatory arbitration of disputes between the lender and borrower.

* These disclosures must be tailored specifically to the borrower's circumstances and must be separately generated for each borrower. The disclosure document may not contain extraneous information unrelated to the loan and may not rely on the marking of boxes or spaces to identify whether provisions are or are not applicable to the borrower. Before the loan closing, the lender or loan originator must provide to the borrower an update of this disclosure document, stating whether any changes have been made to the original disclosure information and, if so, identifying in clear plain language all such changes. At the time of the loan closing, the closing agent must provide the updated disclosure document to the borrower and the borrower must sign and date the document to acknowledge receipt of it.

Any lender, loan originator, or closing agent that violates these requirements may be required to forfeit up to \$100 for each violation except that the forfeiture is from \$100 to \$1,000 if the lender, loan originator, or closing agent willfully or knowingly committed the violation. In addition, any person aggrieved by a violation may bring a civil action to recover three times the amount of actual damages caused by the violation or \$500, whichever is greater, along with attorney fees and costs.

Insert ANAL-B
Insert FE-S

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 138.059 of the statutes is created to read:

2 138.059 Residential mortgage lending disclosure. (1) DEFINITIONS. In
3 this section:

4 (a) "Borrower" means a person who has applied for a loan.

5 (b) "Business day" means a business day, as defined in s. 421.301 (6), that is not
6 a legal holiday under s. 995.20 or a federal legal holiday.

7 (c) "Closing agent" means a person who provides services to the lender and
8 borrower related to the closing and settlement of a real estate sale or refinancing and
9 its associated loan to ensure the execution of necessary documents and the
10 disbursement of funds in connection with the transaction.

loan closing

insert 3-1 ✓

insert 3-3 ✓

insert 3-11 ✓

insert 3-12 ✓

1 (d) "Lender" means the mortgagee or other security interest holder under a
2 loan for, which the borrower has applied.

3 (e) "Loan" ~~has the meaning given in s. 138.052 (1) (b).~~

4 (f) "Loan closing" means the execution by the borrower of a promissory note,
5 mortgage or other security agreement, and any other documents that are required
6 by the lender to be signed as a condition to the granting of a loan to the borrower and
7 to the delivery of the loan proceeds on behalf of the borrower.

8 (g) "Loan originator" means a person who finds or negotiates a loan or loan
9 commitment from a lender for a borrower, regardless of whether the person acts on
10 behalf of a mortgage broker or as an exclusive agent or employee of the lender.

11 (h) "Variable rate loan" ~~has the meaning given in s. 138.056 (1) (d).~~

12 (2) REQUIRED DISCLOSURES AT TIME OF LOAN COMMITMENT. (a) When a lender has
13 made a loan commitment to a borrower, the loan originator for the loan shall, not
14 later than the time that the loan commitment is delivered to the borrower, provide
15 to the borrower a written disclosure, on a ~~single page and in clear plain language,~~
16 that contains all of the following information relating to the loan:

- 17 1. Identification of the type of loan, loan amount, and loan term.
- 18 2. If the loan is a fixed rate loan, the annual percentage rate of interest to be
- 19 paid on the loan.
- 20 3. If the loan is a variable rate loan, all of the following:
- 21 a. The annual percentage rate of interest initially to be paid on the loan.
- 22 b. The applicable index for the loan.
- 23 c. The maximum frequency with which the loan can be adjusted and the
- 24 maximum amount of the increase with each adjustment.

form prescribed by the division under sub 5(a)

1 d. If the loan is adjusted at the maximum frequency and maximum amount for
2 the first 5 years of the loan, the initial monthly payment of principal and interest on
3 the loan and the new monthly payment of principal and interest on the loan, after
4 each adjustment, for this 5-year period.

5 4. Whether the borrower's monthly payments will include amounts for the
6 escrow of property taxes or property insurance or both.

7 5. Whether there is any prepayment penalty applicable to the loan and, if so,
8 under what circumstances the prepayment penalty would apply.

9 6. Whether the loan terms include mandatory arbitration of disputes between
10 the lender and borrower.

11 (b) The disclosure document required under par. (a) shall be tailored
12 specifically to the borrower's circumstances and shall be separately generated for
13 each borrower. This disclosure document may not contain extraneous information
14 unrelated to the loan and may not rely on the marking of boxes or spaces to identify
15 whether provisions are or are not applicable to the borrower. This disclosure
16 document shall contain a right-hand margin sufficient for the purposes specified in
17 sub. (3) (a) 2.

18 (b) (4) At the time of providing the disclosure document required under par. (a) to
19 a borrower, the loan originator shall sign and date the document.

20 (4) (3) REQUIRED DISCLOSURES AT TIME OF LOAN CLOSING. (a) Not less than one nor
21 more than 5 business days prior to the loan closing, the lender or loan originator shall
22 provide to the borrower an update of the disclosure document required under sub.

23 (2) (a). This updated disclosure document shall include all of the following:

identify in a clear and conspicuous manner

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1. All of the information specified in the disclosure document required under sub. (2) (a), stated in a manner identical to that contained in the disclosure document required under sub. (2) (a).

2. In a column toward the right-hand margin of the document, a statement of whether there have been any changes to the information specified in subd. 1. and, if so, identification in clear plain language and an easily understandable format of all such changes.

the disclosure document required under subg(3)(a)

(b) The updated disclosure document required under par. (a) shall be signed and dated by an authorized representative of the lender or loan originator, and a copy or duplicate original shall be provided to the closing agent responsible for the loan closing.

(c) At the time of the loan closing, the closing agent shall provide a copy or duplicate original of the updated disclosure document required under par. (a) to the borrower. The borrower shall sign and date the document to acknowledge receipt of the document.

Insert 5-15

~~(b)~~ PENALTY AND RIGHT OF ACTION. (a) Any lender, loan originator, or closing agent that violates this section may be required to forfeit not more than \$100 for each violation or, if the lender, loan originator, or closing agent willfully or knowingly violates this section, not less than \$100 nor more than \$1,000 for each violation.

(b) In addition to any other remedies, any person aggrieved by a violation of this section by a lender, loan originator, or closing agent may bring a civil action for damages. In such an action, a lender, loan originator, or closing agent that violates this section shall be liable for 3 times the amount of actual damages caused by the violation or \$500, whichever is greater, and, notwithstanding s. 814.04 (1), the costs

1 of the action, including reasonable attorney fees. In such an action, the court may
2 also award any equitable relief that the court determines is appropriate.

3 **SECTION 2. Initial applicability.**

4 (1) This act first applies to loans originated on the effective date of this
5 subsection.

6 **SECTION 3. Effective date.**

7 (1) This act takes effect on the first day of the 4th month beginning after
8 publication.

9 (END)

Insert
6-2

Insert
6-8



2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3098/P2ins
ARG:.....

INSERT 1-2:

(no P) providing an exemption from emergency rule procedures, granting rule-making authority,

INSERT ANAL-A:

(no P) When a borrower applies for a loan, the loan originator for the loan must, prior to the time that the borrower submits the completed loan application, provide to the borrower a copy of written informational materials developed by the Division of Banking in the Department of Financial Institutions (division). These informational materials must contain information about various types of loans and their respective risks and benefits and must be designed to educate individuals regarding loan options and terminology.

INSERT ANAL-B:

The division must promulgate rules necessary to implement, administer, and enforce the provisions of the bill. The division must also make available to lenders and the public, including through the Internet, the disclosure forms and informational materials required under the bill.

INSERT 3-1:

(d) "Division" means the division of banking in the department of financial institutions.

INSERT 3-3:

(no P) means a loan secured by a real estate mortgage on, or an equivalent security interest in, a one-family to 4-family dwelling which the borrower uses as his or her principal place of residence, but does not include a manufactured home transaction

as defined in s. 138.056 (1) (bg) or any credit transaction pursuant to an open-end credit plan.

INSERT 3-11:

(no P) means a loan the terms of which permit the interest rate to be increased or decreased.

INSERT 3-12:

(2) REQUIRED INFORMATIONAL MATERIALS AT TIME OF LOAN APPLICATION. When a borrower applies for a loan, the loan originator for the loan shall, prior to the time that the borrower submits the completed loan application, provide to the borrower a copy of the written informational materials specified in sub. (5) (b).

INSERT 5-15:

(5) DISCLOSURE FORMS AND INFORMATIONAL MATERIALS. (a) The division shall develop disclosure forms to be used by lenders for the purposes described in subs. (3) and (4). The division shall develop a different form for each different type of loan. Each form shall include, in clear plain language, all of the information specified in sub. (a) 1. to 6. to the extent applicable to the type of loan for which the form is designed for use. In developing the forms under this paragraph, the division shall consider other disclosure requirements under federal and state law and shall, to the extent possible, attempt to minimize the number of different disclosure documents that lenders are required to provide to borrowers.

(b) The division shall develop written informational materials to be used by lenders for the purpose described in sub. (2). These informational materials shall contain information about various types of loans and their respective risks and

benefits and shall be designed to educate individuals regarding loan options and terminology.

(c) The division shall make copies of the disclosure forms under par. (a) and informational materials under par. (b) available, upon request, to lenders and to the public, including making these disclosure forms and informational materials available on the Internet Web site of the department of financial institutions. The division may charge lenders and the public a reasonable fee for printed copies of disclosure forms and informational materials supplied under this paragraph.

INSERT 6-2:

(7) RULES. The division shall promulgate rules necessary to implement, administer, and enforce this section, including prescribing the forms under sub. (5) (a) and the informational materials under sub. (5) (b).

(8) CONSUMER PROTECTION LAW UNAFFECTED. Nothing in this section shall displace any provision of chs. 421 to 428 applicable to a loan.

auto ref. B

SECTION 1. Nonstatutory provisions.

(1) In this SECTION, "division" means the division of banking in the department of financial institutions.

auto ref. A

(2) The division shall submit in proposed form the rules required under section 138.059 (7) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 6th month beginning after the effective date of this subsection.

(3) Using the emergency rules procedure under section 227.24 of the statutes, the division shall promulgate the rules required under section 138.059 (7) of the statutes, as created by this act, for purposes of implementing this act, for the period before the effective date of the rules submitted under subsection (2). The division

auto-ref. A

auto ref. A

shall promulgate these emergency rules no later than the first day of the 6th month beginning after the effective date of this subsection. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, these emergency rules may remain in effect until July 1, 2010, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the division is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

INSERT 6-6:

*

~~SECTION 2~~. **Effective dates.** This act takes effect on the first day of the 6th month beginning after publication, except as follows:

(1) SECTION 2 of this act takes effect on the day after publication.

* Auto B
ref.
on p. 3

end of inserts

Gary, Aaron

From: Tierney, Michael

Sent: Monday, November 12, 2007 5:07 PM

To: Gary, Aaron

Subject: Draft: LRB 07-3098/P2 Topic: Residential mortgage loan disclosures

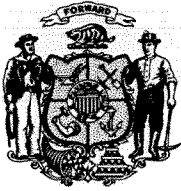
Hi Aaron –

Please jacket this draft for introduction.

Thank you.

Mike Tierney
Office of Senator Wirch

11/13/2007



State of Wisconsin
2007 - 2008 LEGISLATURE

TODAY
LRB-3098/P2
ARG:bjk:ff
stays
AMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2007 Bill

SAV

No changes

regen. cat.

- 1 AN ACT to create 138.059 of the statutes; relating to: residential mortgage
- 2 loans, providing an exemption from emergency rule procedures, granting
- 3 rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill imposes certain disclosure requirements on lenders, loan originators, and closing agents with respect to residential mortgage loans. The bill applies only to loans secured by a real estate mortgage on, or an equivalent security interest in, a one-family to four-family dwelling which the borrower uses as his or her principal place of residence. When a borrower applies for a loan, the loan originator for the loan must, prior to the time that the borrower submits the completed loan application, provide to the borrower a copy of written informational materials developed by the Division of Banking in the Department of Financial Institutions (division). These informational materials must contain information about various types of loans and their respective risks and benefits and must be designed to educate individuals regarding loan options and terminology. When a lender has made a loan commitment to a borrower, the loan originator for the loan must, not later than the time that the loan commitment is delivered to the borrower, provide to the borrower a written disclosure, on a form prescribed by the division, that contains all of the following information relating to the loan:

- 1. Identification of the type of loan, loan amount, and loan term.
- 2. If the loan is a fixed rate loan, the annual percentage rate of interest to be paid on the loan.
- 3. If the loan is a variable rate loan, the annual percentage rate of interest initially to be paid on the loan; the applicable index for the loan; the maximum

frequency with which the loan can be adjusted and the maximum amount of the increase with each adjustment; and, if the loan is adjusted at the maximum frequency and maximum amount for the first five years of the loan, the initial monthly payment of principal and interest on the loan and the new monthly payment of principal and interest on the loan, after each adjustment, for this five-year period.

4. Whether the borrower's monthly payments will include amounts for the escrow of property taxes or property insurance or both.

5. Whether there is any prepayment penalty applicable to the loan and, if so, under what circumstances the prepayment penalty would apply.

6. Whether the loan terms include mandatory arbitration of disputes between the lender and borrower.

Before the loan closing, the lender or loan originator must provide to the borrower an update of this disclosure document identifying, in a clear and conspicuous manner, any changes. At the time of the loan closing, the closing agent must provide the updated disclosure document to the borrower and the borrower must sign and date the document to acknowledge receipt of it.

Any lender, loan originator, or closing agent that violates these requirements may be required to forfeit up to \$100 for each violation except that the forfeiture is from \$100 to \$1,000 if the lender, loan originator, or closing agent willfully or knowingly committed the violation. In addition, any person aggrieved by a violation may bring a civil action to recover three times the amount of actual damages caused by the violation or \$500, whichever is greater, along with attorney fees and costs.

The division must promulgate rules necessary to implement, administer, and enforce the provisions of the bill. The division must also make available to lenders and the public, including through the Internet, the disclosure forms and informational materials required under the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 138.059 of the statutes is created to read:

2 **138.059 Residential mortgage lending disclosure.** (1) DEFINITIONS. In
3 this section:

4 (a) "Borrower" means a person who has applied for a loan.

5 (b) "Business day" means a business day, as defined in s. 421.301 (6), that is not
6 a legal holiday under s. 995.20 or a federal legal holiday.

1 (c) "Closing agent" means a person who provides loan closing services to the
2 lender and borrower to ensure the execution of necessary documents and the
3 disbursement of funds in connection with the transaction.

4 (d) "Division" means the division of banking in the department of financial
5 institutions.

6 (e) "Lender" means the mortgagee or other security interest holder under a loan
7 for which the borrower has applied.

8 (f) "Loan" means a loan secured by a real estate mortgage on, or an equivalent
9 security interest in, a one-family to 4-family dwelling which the borrower uses as
10 his or her principal place of residence, but does not include a manufactured home
11 transaction as defined in s. 138.056 (1) (bg) or any credit transaction pursuant to an
12 open-end credit plan.

13 (g) "Loan closing" means the execution by the borrower of a promissory note,
14 mortgage or other security agreement, and any other documents that are required
15 by the lender to be signed as a condition to the granting of a loan to the borrower and
16 to the delivery of the loan proceeds on behalf of the borrower.

17 (h) "Loan originator" means a person who finds or negotiates a loan or loan
18 commitment from a lender for a borrower, regardless of whether the person acts on
19 behalf of a mortgage broker or as an exclusive agent or employee of the lender.

20 (i) "Variable rate loan" means a loan the terms of which permit the interest rate
21 to be increased or decreased.

22 **(2) REQUIRED INFORMATIONAL MATERIALS AT TIME OF LOAN APPLICATION.** When a
23 borrower applies for a loan, the loan originator for the loan shall, prior to the time
24 that the borrower submits the completed loan application, provide to the borrower
25 a copy of the written informational materials specified in sub. (5) (b).

1 **(3) REQUIRED DISCLOSURES AT TIME OF LOAN COMMITMENT.** (a) When a lender has
2 made a loan commitment to a borrower, the loan originator for the loan shall, not
3 later than the time that the loan commitment is delivered to the borrower, provide
4 to the borrower a written disclosure, on a form prescribed by the division under sub.
5 (5) (a), that contains all of the following information relating to the loan:

- 6 1. Identification of the type of loan, loan amount, and loan term.
- 7 2. If the loan is a fixed rate loan, the annual percentage rate of interest to be
8 paid on the loan.
- 9 3. If the loan is a variable rate loan, all of the following:
 - 10 a. The annual percentage rate of interest initially to be paid on the loan.
 - 11 b. The applicable index for the loan.
 - 12 c. The maximum frequency with which the loan can be adjusted and the
13 maximum amount of the increase with each adjustment.
 - 14 d. If the loan is adjusted at the maximum frequency and maximum amount for
15 the first 5 years of the loan, the initial monthly payment of principal and interest on
16 the loan and the new monthly payment of principal and interest on the loan, after
17 each adjustment, for this 5-year period.
- 18 4. Whether the borrower's monthly payments will include amounts for the
19 escrow of property taxes or property insurance or both.
- 20 5. Whether there is any prepayment penalty applicable to the loan and, if so,
21 under what circumstances the prepayment penalty would apply.
- 22 6. Whether the loan terms include mandatory arbitration of disputes between
23 the lender and borrower.
- 24 (b) At the time of providing the disclosure document required under par. (a) to
25 a borrower, the loan originator shall sign and date the document.

1 **(4) REQUIRED DISCLOSURES AT TIME OF LOAN CLOSING.** (a) Not less than one nor
2 more than 5 business days prior to the loan closing, the lender or loan originator shall
3 provide to the borrower an update of the disclosure document required under sub.
4 (3) (a). This updated disclosure document shall identify, in a clear and conspicuous
5 manner, any changes to the information specified in the disclosure document
6 required under sub. (3) (a).

7 (b) The updated disclosure document required under par. (a) shall be signed
8 and dated by an authorized representative of the lender or loan originator, and a copy
9 or duplicate original shall be provided to the closing agent responsible for the loan
10 closing.

11 (c) At the time of the loan closing, the closing agent shall provide a copy or
12 duplicate original of the updated disclosure document required under par. (a) to the
13 borrower. The borrower shall sign and date the document to acknowledge receipt of
14 the document.

15 **(5) DISCLOSURE FORMS AND INFORMATIONAL MATERIALS.** (a) The division shall
16 develop disclosure forms to be used by lenders for the purposes described in subs. (3)
17 and (4). The division shall develop a different form for each different type of loan.
18 Each form shall include, in clear plain language, all of the information specified in
19 sub. (3) (a) 1. to 6. to the extent applicable to the type of loan for which the form is
20 designed for use. In developing the forms under this paragraph, the division shall
21 consider other disclosure requirements under federal and state law and shall, to the
22 extent possible, attempt to minimize the number of different disclosure documents
23 that lenders are required to provide to borrowers.

24 (b) The division shall develop written informational materials to be used by
25 lenders for the purpose described in sub. (2). These informational materials shall

1 contain information about various types of loans and their respective risks and
2 benefits and shall be designed to educate individuals regarding loan options and
3 terminology.

4 (c) The division shall make copies of the disclosure forms under par. (a) and
5 informational materials under par. (b) available, upon request, to lenders and to the
6 public, including making these disclosure forms and informational materials
7 available on the Internet Web site of the department of financial institutions. The
8 division may charge lenders and the public a reasonable fee for printed copies of
9 disclosure forms and informational materials supplied under this paragraph.

10 (6) PENALTY AND RIGHT OF ACTION. (a) Any lender, loan originator, or closing
11 agent that violates this section may be required to forfeit not more than \$100 for each
12 violation or, if the lender, loan originator, or closing agent willfully or knowingly
13 violates this section, not less than \$100 nor more than \$1,000 for each violation.

14 (b) In addition to any other remedies, any person aggrieved by a violation of this
15 section by a lender, loan originator, or closing agent may bring a civil action for
16 damages. In such an action, a lender, loan originator, or closing agent that violates
17 this section shall be liable for 3 times the amount of actual damages caused by the
18 violation or \$500, whichever is greater, and, notwithstanding s. 814.04 (1), the costs
19 of the action, including reasonable attorney fees. In such an action, the court may
20 also award any equitable relief that the court determines is appropriate.

21 (7) RULES. The division shall promulgate rules necessary to implement,
22 administer, and enforce this section, including prescribing the forms under sub. (5)
23 (a) and the informational materials under sub. (5) (b).

24 (8) CONSUMER PROTECTION LAW UNAFFECTED. Nothing in this section shall
25 displace any provision of chs. 421 to 428 applicable to a loan.

1 **SECTION 2. Nonstatutory provisions.**

2 (1) In this section, "division" means the division of banking in the department
3 of financial institutions.

4 (2) The division shall submit in proposed form the rules required under section
5 138.059 (7) of the statutes, as created by this act, to the legislative council staff under
6 section 227.15 (1) of the statutes no later than the first day of the 6th month
7 beginning after the effective date of this subsection.

8 (3) Using the emergency rules procedure under section 227.24 of the statutes,
9 the division shall promulgate the rules required under section 138.059 (7) of the
10 statutes, as created by this act, for purposes of implementing this act, for the period
11 before the effective date of the rules submitted under subsection (2). The division
12 shall promulgate these emergency rules no later than the first day of the 6th month
13 beginning after the effective date of this subsection. Notwithstanding section 227.24

14 (1) (c) and (2) of the statutes, these emergency rules may remain in effect until July
15 1, 2010, or the date on which permanent rules take effect, whichever is sooner.
16 Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the division is not
17 required to provide evidence that promulgating a rule under this subsection as an
18 emergency rule is necessary for the preservation of the public peace, health, safety,
19 or welfare and is not required to provide a finding of emergency for a rule
20 promulgated under this subsection.

21 (a) In addition to any other remedies, any person aggrieved by a violation of this
22 section by a lender, loan originator, or closing agent may bring a civil action for
23 damages. In such an action, a lender, loan originator, or closing agent that violates
24 this section shall be liable for 3 times the amount of actual damages caused by the
25 violation or \$500, whichever is greater, and, notwithstanding s. 814.04 (1), the costs

1 of the action, including reasonable attorney fees. In such an action, the court may
2 also award any equitable relief that the court determines is appropriate.

3 **SECTION 3. Initial applicability.**

4 (1) This act first applies to loans originated on the effective date of this
5 subsection.

6 **SECTION 4. Effective dates.** This act takes effect on the first day of the 6th
7 month beginning after publication, except as follows:

8 (1) SECTION 2 of this act takes effect on the day after publication.

9 (END)