



DEPARTMENT OF BUSINESS, OCCUPATIONAL AND PROFESSIONAL REGULATION
BUREAU OF CONSUMER CREDIT PROTECTION
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ADVISORY RULING #77
SEPTEMBER 26, 1984

September 26, 1984

Re: Extent of exclusion of certain mortgage loan documents from the requirements of Maine's "Plain Language" law

The Bureau has received several inquiries from lenders concerning the scope of the exemption certain mortgage loan documents have from the requirements of Maine's so-called "plain language" law, 10 M.R.S.A., c. 202. Specifically, lenders have asked whether the exemption applies only to the documentation of mortgages that are assigned directly to government instrumentalities, or whether the exemption applies to the documentation of mortgages that could be or may be assigned to such entities but which are not so assigned initially.

As a matter of background, the Plain Language law requires that any "agreement" signed in connection with consumer loans be written in "a clear and coherent manner using words with common and everyday meanings," and be "appropriately divided and captioned by its various sections." An "agreement" includes "any writing" which is substantially prepared in advance of the loan by the lender which the consumer signs. Thus, in the case of a typical mortgage transaction, the mortgage note, mortgage deed, deed of trust, or their equivalents, must be in "plain English." A lender which does not have its forms in conformity runs the risk of injunctive action by the Bureau, stopping it from using its forms.

There are two exemptions from the law's requirements. Section 1123(2) excludes:

- (1) loans in excess of \$100,000; and
- (2) loans in which the language or arrangement of the forms is specifically required by state or federal law, as well as "agreements, the form or any part of which is required by any governmental instrumentality as a condition of the assignability of the agreement."

Because of this exemption, loans assigned to the Federal National Mortgage Association (FNMA-Fannie Mae), the Federal Home Loan Mortgage Corporation (FHLMC-Freddie Mac) or the Government National Mortgage Association (GNMA-Ginnie Mae), all governmental instrumentalities, are exempt from the Plain Language requirement. Despite the exemption, Fannie Mae and Freddie Mac have nevertheless developed a nationally accepted "plain language" mortgage note which is in widespread use throughout even the private secondary market. Neither organization has of yet developed a nationally-accepted plain language mortgage deed. The absence of such an instrument does not affect lenders who use the "FNMA/FHLMC Mortgage Deed" and

who assign directly to those entities, because of the exemption in §1123(2). The absence of a plain language mortgage deed does affect other lenders who use the FNMA/FHLMC plain language note and the FNMA/FHLMC Mortgage Deed, but who do not assign directly to those organizations, for they run the risk of the mortgage deed being challenged for its failure to be in "plain English."

In determining the meaning of a statute, one must first look to the statutory language itself for its plain meaning. In this case, however, the critical language in the exemption provision is, unfortunately, ambiguous. It speaks only of "assignability" generally, without identifying when the assignment must occur in order for the exemption to apply. If the plain meaning of a statute is not readily apparent, it is appropriate to look to legislative intent. The obvious source of such intent is §1121 of the law which sets forth the legislative purpose. That section states that the purpose of the law is to "enable the average consumer, who makes a reasonable effort under ordinary circumstances, to read and understand the terms of loan documents without having to obtain the assistance of a professional." There is nothing in the legislative history to circumscribe the implicit breadth of this legislative purpose, nor is there any indication of the extent of the assignability exemption.

If the exemption provision of the statute is given any-thing but a narrow reading, i.e., a reading that restricts its scope to mortgages assigned directly to the governmental secondary market, the legislative purpose would clearly be frustrated. If loan documents are exempt from plain language requirements simply because they may eventually be sold to a government instrumentality, then virtually no mortgage documents will be in plain language. There must be some certain, definite, direct connection between the lender and the governmental secondary market for the exemption to apply; otherwise, the exemption swallows the rule.

In recognition of the ambiguity inherent in the statute and the fact that this Bureau interpretation will potentially disrupt some lenders' mortgage lending programs, the Bureau will delay the effect date of this interpretation until 1/1/85 which will allow adequate time for those lenders to submit their current mortgage documents for plain language review and certification.

/s/ Robert A. Burgess
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Superintendent

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