

**DEPARTMENT OF BUSINESS, OCCUPATIONAL AND
PROFESSIONAL REGULATION**

State of Maine

ADVISORY RULING #79
AUGUST 26, 1985

August 26, 1985

BUREAU OF BANKING
BULLETIN #37

BUREAU OF CONSUMER
CREDIT PROTECTION
ADVISORY RULING #79

To All Financial Institutions and Supervised Lenders:

In 1983, the 111th Legislature enacted a new provision to both the Banking Code and the Maine Consumer Credit Code (9-B §439, 9-A §3-311, respectively) that required every creditor (financial institution or supervised lender) accepting an application for a residential mortgage loan and requiring a title search of the subject real estate, to first permit the prospective mortgagor to select a qualified attorney of his own choice to search the title and certify it to the creditor. This issue was again addressed this past legislative session and on June 13, 1985, the Governor signed Chapter 311 of the Public Laws, "An Act to Promote Free Enterprise in the Banking and Insurance Industries" L.D. 783. This law further amended both the Banking Code and the Consumer Credit Code to make it unlawful for any creditor: (1) to specify what attorney must be retained to conduct a title search; and (2) to assess any charge or fee to a mortgagor for a review of the title search or any other relevant title documents by the creditor, its title company or attorney. The amendment further requires that a prospective mortgagor be provided with written notice of his rights under this law.

Both the Bureaus of Banking and Consumer Credit Protection have received numerous complaints of abuses of the current "bring your own lawyer law." In light of these continued complaints and the fact the new law imposes more formal requirements on lenders than the current law and is soon scheduled to go into effect, a joint communication by the Bureaus of Banking and Consumer Credit Protection on these issues appeared in order.

Requirements

Commencing with any application for a residential mortgage loan for one to four residential units that is accepted on or after September 19, 1985, the prospective mortgagor must be provided with a written notice that:

- 1) he has the right to select a qualified attorney of his own choice for the performance of title work; and
- 2) if the attorney chosen by the mortgagor meets the creditor's requirements, no additional fees may be charged to the mortgagor for review of the title work.

If the prospective mortgagor indicates on the written notice that he does not wish to exercise his rights to select an attorney, then the creditor may recommend an attorney.

A copy of the required notice with appropriate acknowledgement by the mortgagor must be retained by the creditor as proof of compliance with applicable statutes.

Enforcement

The Bureaus of Banking and Consumer Credit Protection intended to pay particular attention to the enforcement of the law, as recently amended. Under the Banking Code, the original section §439 has been repealed and relocated as subsection 4 of §241, the section dealing with anticompetitive and unfair practices. Placement under this section permits the Superintendent of Banking to seek injunctive and restitutionary relief for consumers harmed by any violations of the law. Under §5-201(3) and (4) of the Consumer Credit Code, consumers may recover amounts paid in violation of the law. Further, the Superintendent of Consumer Credit Protection may seek injunctive, restitutionary and other relief, including civil penalties, for violations of the law.

A copy of Public Law Chapter 311 is attached. Any questions regarding compliance with this statutory requirement may be addressed to Colette L. Mooney, Deputy Superintendent, Bureau of Banking, (207)289-2321 or Robert Burgess, Superintendent, Bureau of Consumer Credit Protection, (207)289-3731.

/s/ H. Donald DeMatteis
H. Donald DeMatteis
Superintendent
Bureau of Banking

/s/ Robert A. Burgess
Robert A. Burgess
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