

BUREAU OF BANKING

Department of Professional and Financial Regulation

State of Maine

November 5, 1986

BULLETIN #40 RATE LOCK AGREEMENTS

To the Chief Executive Officer Addressed:

On June 9, 1986, the Bureau of Banking issued its Bulletin #39, Delayed Mortgage Closings. At that time, an inordinate amount of mortgage lending activity had placed strains on those procedures (i.e., appraisals, title searches, and credit verifications) which would normally be completed in a reasonable time frame. These delays made it increasingly difficult for financial institutions to close mortgage loans in a committed time frame, and the Bureau issued Bulletin #39 to alert financial institutions that the practice of holding consumers liable for additional costs in the form of points, fees, or increased interest rate may be deemed an unfair trade practice.

Over the past several months, mortgage lending has begun to slow to a more manageable pace and lenders have taken additional steps to ease the problems which hampered the flow of required documentation. Many lenders feel that they are now in a position to again offer rate lock agreements that guarantee points and/or interest rate on mortgage loan commitments for specific time frames. The Bureau cautions lenders that such agreements should be made with the clear understanding between the borrower and the lender of their respective responsibilities in the preparation of documentation and the procedures to be followed in order to close the loan within the time frame established in the rate lock agreement. It is recommended that the agreement to lock in points and/or interest rates be prefaced with a notice to the borrower that sets forth this information. The following sample language is being utilized by a Maine lender and the Bureau feels this provides adequate notice:

IMPORTANT NOTICE

"We expect that, barring a problem with your application (such as credit problems, title flaws, or incomplete information), the loan, if approved, will be able to close within the rate lock period you chose. You can help prevent delays by responding promptly to information requests and assuring that your employer, creditors, and depositories promptly answer our information requests as well. Any event which is caused by those sources, or by your or a third party retained by you (such as your title attorney or builder, if applicable), which delays closing beyond the rate lock period will result in a higher rate or more points being charged on your loan in interest rates are higher at that time."

This disclosure statement clearly indicates the customer's responsibilities; the bank continues to retain responsibility for performance by its staff, attorneys, and third party contractors it retains (such as title abstractors, surveyors, appraisers, etc.). It is recommended that similar disclosures be provided to all consumers who wish to enter into rate lock agreements.

/s/ H. Donald Dematteis
Superintendent