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**IDAPA 12
TITLE 01
CHAPTER 10**

12.01.10 - RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

000. LEGAL AUTHORITY (RULE 0).

This chapter is promulgated pursuant to Section 26-3105(5), Idaho Code. (11-1-98)

001. TITLE AND SCOPE (RULE 1).

The title of this chapter is "Rules Pursuant to the Idaho Residential Mortgage Practices Act" of the Idaho Department of Finance and may be cited as IDAPA 12.01.10. These rules implement the Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. (11-1-98)

002. WRITTEN INTERPRETATIONS-AGENCY ACCESS-FILINGS (RULE 2).

Written interpretations of these rules are available by mail from the Department of Finance, P.O. Box 83720, Boise, Idaho 83720-0031. The street address of the agency is Department of Finance, Joe R. Williams Building, 700 West State Street, Boise, Idaho, 83720-0031. The telephone numbers of the agency include (208) 332-8000 - Administration; and (208) 332-8004 - Residential Mortgage. The telephone number of the facsimile machine is (208) 332-8099. All filings with the agency in connection with rule-making or contested cases shall be made with the Director of the Department of Finance, and shall include an original and one (1) copy. (11-1-98)

003. ADMINISTRATIVE APPEALS (RULE 3).

Administrative appeals are not available within the agency. (11-1-98)

004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).

All rules contained in this chapter are public records. (11-1-98)

005. INCORPORATION BY REFERENCE (RULE 5).

IDAPA 12.01.10, "Rules Pursuant to the Idaho Residential Mortgage Practices Act," incorporates by reference the full text of the following federal laws and regulations: the Real Estate Settlement Procedures Act, as amended, 12 USCA 2601, et seq., 88 Stat. 1724, Pub. L. 93-533; Department of Housing and Urban Development's Regulation X, Real Estate Settlement Procedures Act, 24 CFR 3500, as amended; Regulation Z, Truth in Lending, 12 CFR 226, as amended; and, the Truth in Lending Act, as amended, 15 USCA 1601, et seq., 82 Stat. 146, Pub. L. 90-321.(11-1-98)

006. DEFINITIONS (RULE 6).

As used in these rules:

01. Closing. Means the process of executing legally binding documents regarding a lien on property that is subject to a residential mortgage loan. (11-1-98)

02. Real Estate Settlement Procedures Act. Means the Real Estate Settlement Procedure Act, as amended, 12 USCA 2601, et seq., 88 Stat. 1724, Pub. L. 93-533. (11-1-98)

03. Regulation X. Means the Department of Housing and Urban Development's Regulation X, Real Estate Settlement Procedure Act, 24 CFR 3500, as amended. (11-1-98)

04. Regulation Z. Means Regulation Z, Truth in Lending, 12 CFR 226, as amended. (11-1-98)

05. Truth In Lending Act. Means the Truth in Lending Act, as amended, 15 USCA 1601, et seq., 82 Stat. 146, Pub. L. 90-321. (11-1-98)

007. -- 009. (RESERVED).

010. TRUST ACCOUNT (RULE 10).

01. Establishment Of Trust Account. Each licensee shall, as trustee, hold all borrower funds received prior to closing in a trust account established at a financial institution located in this state. The funds may not be used

for the benefit of the licensee or any person not entitled to such benefit. Each licensee is responsible for depositing, holding, disbursing, accounting for, and otherwise dealing with the funds, in accordance with these rules. (11-1-98)

02. Designation Of Trust Account(s). Each account holding borrower funds must be designated as a trust account in the name of the licensee as it appears on its license. All checks must be prenumbered by the supplier (printer) and bear upon the front of the check the identifying words, "trust account". (11-1-98)

03. Required Trust Account Records And Procedures. Each licensee shall maintain as part of its books and records: (11-1-98)

a. A trust account deposit register that includes a copy of each check deposited into the trust account and the corresponding deposit slip for each deposit to the trust account; (11-1-98)

b. A ledger for the trust account. Licensees may maintain either one (1) ledger for the entire trust account or an individual subaccount ledger sheet for each borrower. A trust account ledger must identify each borrower from whom funds deposited to the trust account are received. Each receipt and disbursement pertaining to such funds must be posted to the ledger sheet at the time the receipt or disbursement occurs. Entries to the ledger sheet must show the date of deposit, identifying check or instrument number, amount and name of remitter. Offsetting entries to the ledger sheet must show the date of check, check number, amount of check, name of payee and invoice number if any; (11-1-98)

c. A trust account check register that includes either a copy of each check written on the trust account or the canceled checks provided by the licensee's financial institution; and (11-1-98)

d. Trust account bank statements. (11-1-98)

04. Trust Account Deposit Requirements. (11-1-98)

a. All funds received from borrowers or on behalf of borrowers prior to closing must be deposited in the trust account prior to the end of the third business day following receipt. Each check or money order shall be endorsed "for deposit only" with the licensee's trust account number. (11-1-98)

b. All deposits to the trust account(s) must be documented by a bank deposit slip which has been validated by bank imprint, or by an attached deposit receipt which bears the signature of an authorized representative of the licensee indicating that the funds were actually deposited into the proper account(s). (11-1-98)

c. Receipt of funds by wire transfer or any means other than cash, check or money order, must be posted in the same manner as other receipts. Any such transfer of funds must include a traceable identifying name or number supplied by the financial institution or transferring entity. The licensee must also retain a receipt for the deposit of the funds which must contain the traceable identifying name or number supplied by the financial institution or transferring entity. (11-1-98)

05. Trust Account Disbursement Requirements. (11-1-98)

a. Each licensee is responsible for the disbursement of all trust account funds, whether disbursed by personal signature, signature plate, or signature of another person authorized to act on the licensee's behalf. (11-1-98)

b. All disbursements of trust funds must be made by check, drawn on the trust account, and identified on the check as pertaining to a specific third-party provider transaction or borrower refund. The number of each check, amount, date, and payee must be shown in the trust account(s) check ledger as written on the check. (11-1-98)

c. Disbursements may be made from the trust account(s) for the payment of bona fide third-party providers' services rendered in the course of the borrower's loan origination, if the borrower has consented in writing to the payment. Such consent may be given at any time during the application process and in any written form, provided that it contains sufficient detail to verify the borrower's consent to the use of trust funds. (11-1-98)

d. There shall be no erasures or white-out corrections in any of the trust account records (checks, deposits, ledgers, subledgers, bank statements or reconcilements). All corrections shall be done by drawing a single line through the erroneous entry, leaving it legible, and making an entirely new entry to replace it. (11-1-98)

e. Borrower funds held by the licensee must be remitted to the borrower within thirty (30) business days of the determination that all payments to third-party providers owed by the borrower have been satisfied. (11-1-98)

f. Any trust funds held by the licensee for a borrower who cannot be located must be remitted in compliance with Section 14-506, Idaho Code. (11-1-98)

06. Computerized Accounting System Requirements. The following additional requirements apply to computerized accounting systems: (11-1-98)

a. The system must provide the capability to back-up data files; and (11-1-98)

b. All checks written must be included within the computer accounting system. (11-1-98)

011. -- 039. (RESERVED).

040. DECEPTIVE ADVERTISING (RULE 40).

01. Advertising. Advertising means making or permitting to be made any oral, written, graphic or pictorial statements, in any manner, in the course of the solicitation of business. Deceptive advertising is defined to include the following practices by a licensee: (11-1-98)

a. Making a representation or statement of fact in an advertisement if the representation or statement is false or misleading, or if the licensee does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based. (11-1-98)

b. Advertising without clearly and conspicuously disclosing the licensee's business name. (11-1-98)

c. Engaging in bait advertising or misrepresenting, directly or indirectly the terms, conditions or charges incident to the mortgage loan being advertised. Bait advertising, for these purposes, means an alluring, but insincere offer to procure, arrange, or otherwise assist a borrower in obtaining a mortgage loan on terms which the licensee cannot, does not intend, or want to provide, or which the licensee knows cannot be reasonably provided. Its purpose is to switch borrowers from buying the advertised mortgage loan product to buying a different mortgage loan product, usually at a higher rate or on a basis more advantageous to the licensee. (11-1-98)

d. Advertising an address at which the licensee conducts no mortgage brokering or banking activities. (11-1-98)

041. -- 049. (RESERVED).

050. WRITTEN DISCLOSURES (RULE 50).

01. Upon Receipt Of A Loan Application. Upon receipt of a loan application, and before receipt of any moneys from a borrower, a licensee shall disclose to each borrower, in a form acceptable to the Director, information about the licensee, the services that a licensee may provide and the services that the licensee will provide. (11-1-98)

02. Information Provided Within Three Days. Within three (3) business days after application, the following information shall be provided to the borrower: (11-1-98)

a. Disclosures in compliance with the requirements of the federal Truth-in-Lending Act and Regulation Z. These include the annual percentage rate, finance charge, amount to be financed, total of all payments,

number of payments, amount of each payment, amount of points or prepaid interest; and if a variable rate loan, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase on the monthly payment amount and total interest to be paid, and an example of the payment terms resulting from an increase for a loan in the approximate amount of the loan that is being requested. (11-1-98)

b. Disclosures through good faith estimates of settlement services in compliance with the requirements of the federal Real Estate Settlement Procedures Act and Regulation X. These disclosures include the itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, premium pricing, escrow fee, loan closing fee, property tax, insurance premium, structural or pest inspection and any mortgage broker or mortgage banker fees associated with the residential mortgage loan. (11-1-98)

03. Interest Rate Lock-In Agreement Not Entered. If, at the time of application, an interest rate lock-in agreement has not been entered, disclosure must be made to the borrower, in a form approved by the Director, that the disclosed interest rate and terms are subject to change. Such disclosure shall be provided to the borrower at the same time the Federal Truth-in-Lending disclosure is delivered. (11-1-98)

04. Licensee Enters Into A Lock-In Agreement. If a licensee enters into an interest rate lock-in agreement with a lender or represents to the borrower that the licensee has entered into a lock-in agreement, then within no more than three (3) business days thereafter, including Saturdays, the licensee shall deliver or send by first-class mail to the borrower, for the borrower's signature, a written confirmation of the term of the lock-in agreement. (11-1-98)

05. In Addition To Disclosures Required. In addition to the disclosures required under the federal Truth-in-Lending Act, if a prepayment penalty may be a condition of the residential mortgage loan offered to a borrower, that fact shall be separately disclosed in writing to the borrower and the borrower must agree in writing to accept that condition. The disclosure shall state that a prepayment penalty provision imposes a charge if the borrower refinances or pays off the mortgage loan before the date for repayment stated in the loan agreement. This written disclosure shall be in a form approved by the Director, and shall be delivered at the same time the borrower is given the federal Truth-in-Lending disclosure. (11-1-98)

051. -- 059. (RESERVED).

060. PROHIBITED PRACTICES (RULE 60).

01. Prohibited Practices. It shall be a prohibited practice for any licensee to: (11-1-98)

a. Make any representation or statement of fact, or omit to state a material fact, if the representation, statement or omission is false or misleading or has the tendency or capacity to be misleading, or if the licensee or lender does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based. Such claims or omissions include but are not limited to the availability of funds, terms, conditions, or changes incident to the mortgage transaction, prepayment penalties and the possibility of refinancing. (11-1-98)

b. Fail to disburse funds in a timely manner, in accordance with any commitment or agreement with the borrower, either directly or through a broker: (11-1-98)

i. Either immediately upon closing of the loan in the case of a purchase/sale transaction; or (11-1-98)

ii. Immediately upon expiration of the three (3) day rescission period in the case of a refinancing, or taking of a junior mortgage on the existing residence of the borrower. (11-1-98)

c. Fail to give the borrower, upon the borrower's request, a reasonable opportunity (at least one (1) day) to review every document to be signed by the borrower, and every document which is required pursuant to these regulations, and other applicable laws, rules or regulations, prior to closing. (11-1-98)

d. Require a borrower to obtain or maintain fire insurance in an amount that exceeds the replacement value of the improvements to the real estate. (11-1-98)

- e. Engage in any deceptive advertising as set forth in Section 040 (Rule 40). (11-1-98)

061. -- 069. (RESERVED).

070. FINANCIAL CONDITION (RULE 70).

Each licensee shall submit with the license application, and subsequent requests for renewals, a complete financial statement as of the most recent fiscal year end or fiscal quarter, that is prepared in accordance with Generally Accepted Accounting Principals (GAAP). The licensee shall submit a financial statement in one (1) of the following forms: (11-1-98)

- 01. CPA Statement.** Compiled, reviewed, or audited by a certified public accountant; (11-1-98)

02. IRS Schedule L. Internal Revenue Service Schedule L for the most recent tax year and either the accompanying tax return or a certification signed by the licensee that the Schedule L is a true and correct copy of the Schedule L submitted to the Internal Revenue Service; or (11-1-98)

- 03. Other Approved Form.** Any other form approved by the Director. (11-1-98)

071. -- 089. (RESERVED).

090. BORROWERS UNABLE TO OBTAIN LOANS (RULE 90).

If, for any reason, a licensee is unable to obtain a loan for a borrower, and the borrower has paid for an appraisal, the licensee shall give a copy of the appraisal to the borrower and transmit the originals, along with any other documents provided by the borrower, to any other licensee to whom the borrower directs that the documents be transmitted. The licensee must provide the copies or transmit the documents within three business days after the borrower makes the request in writing. (11-1-98)

091. -- 099. (RESERVED).

100. EXEMPT ENTITIES (RULE 100).

The terms "bank," "savings and loan association" and "credit union" shall include any first tier wholly owned subsidiary of such organization, industrial loan company or wholly owned subsidiary of an industrial loan company, provided that the subsidiary is regularly examined by the chartering state or federal agency for consumer compliance purposes. (11-1-98)

101. -- 999. (RESERVED).

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