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CHAPTER C-19

CONSUMER PROTECTION ACT

COST OF BORROWING DISCLOSURE REGULATIONS

Pursuant to section 28 of the *Consumer Protection Act* R.S.P.E.I. 1988, Cap. C-19, Council made the following regulations:

1. (1) In these regulations

Interpretation

(a) “annual percentage rate” means, subject to section 6 of the *Interest Act* R.S.C. 1985, Chap. I-15, in relation to a loan, the percentage rate for each period during the term of the loan that, when multiplied by the principal amount of the loan outstanding at the end of each such period will produce an amount or amounts, the total of which is equal to the cost of borrowing in relation to the loan, expressed as a rate *per annum*;

annual percentage rate

(a.1) “loan” means an extension of credit as defined in clause 1(e) of the *Consumer Protection Act*;

loan

(b) “prepayment” means in relation to a loan, a payment that is other than a payment made pursuant to the loan contract and that, unless it extinguishes the total debt owing, exceeds \$50;

prepayment

(c) “principal amount” means, in relation to a loan, the amount of money lent that remains unpaid or outstanding on any given day, but does not include any amount that is a component of the cost of borrowing in relation to the loan.

principal amount

(2) For the purposes of clause 2(a) of Schedule I “the amount of money to be paid to the borrower” includes, in the case of a conditional sale, the cash price of the goods less any trade-in or down payment. (EC16/87; 116/87; 271/87)

Conditional sales

COST OF BORROWING CHARGES

2. For the purposes of paragraph 1(d)(ii)(B) of the definition “cost of borrowing” in the Act, the following charges in connection with a loan that are payable by the borrower to the lender or to any person from whom a lender receives any charges directly or indirectly are hereby prescribed to be included in the cost of borrowing in relation to the loan

Charges included in cost of borrowing

(a) except in the case of an overdraft, costs of administration, including any service, transaction or activity charge; and

(b) loan fees, finder’s fees, brokerage fees and other similar fees,

excluding any portion thereof that is payable in respect of

- (c) fees or charges required by law to be paid to a public official in connection with the loan or for the purpose of making effective or securing the loan;
- (d) the maintenance of a tax account;
- (e) fees for a certificate of search or an examination or copies of registered documents or for similar purposes;
- (f) fees for surveying;
- (g) fees and disbursements of lawyers and notaries;
- (h) charges for an appraisal or inspection;
- (i) fees for insurance in respect of a loan or mortgage;
- (j) charges imposed by the lender for paying cheques that overdraw or increase an overdraft in an account;
- (k) charges for prepayment of a loan or any instalment thereon, before its due date; and
- (l) charges imposed by the lender for accepting cheques that are returned to the lender because of non-sufficient funds or any other reason. (EC16/87)

CALCULATION OF THE COST OF BORROWING

- | | |
|--|---|
| Accuracy | 3. (1) The annual percentage rate calculated and disclosed by a lender to a borrower shall be accurate to within one-eighth of one per cent. |
| Calculation | (2) Subject to section 6 of the <i>Interest Act</i> , for any loan, the cost of borrowing in respect of a period shall be calculated by multiplying the portion of the annual percentage rate that the period is of one year by the principal amount that is outstanding at the end of the period. |
| Prepayment,
calculation of cost
of borrowing | (3) Subject to subsection (5), where a prepayment is made, the cost of borrowing of the amount of principal prepaid shall be calculated by multiplying the amount prepaid by the number of days that have elapsed since the date of the last payment or the date of the loan, as the case may be, and the annual percentage rate and dividing the product obtained by three hundred and sixty-five. |
| Application of
payments | (4) Subject to subsection (6), any payment in respect of a loan shall be applied first to pay the accumulated cost of borrowing of the principal amount of the loan and thereafter to reduce the principal amount of the loan. |
| Application of
prepayments | (5) Where a prepayment is made, the prepayment may be applied first to pay the accumulated cost of borrowing of the principal amount of the loan and thereafter to reduce the principal amount of the loan. |

(6) Where an agreement for a loan includes provision for insurance of the life of the borrower, insurance premium payments may be added to the principal amount of the loan if so permitted by the agreement. (EC16/87)

Insurance premiums

LATE PAYMENT, DEFAULT AND SIMILAR CHARGES

4. No lender shall impose any charge or penalty other than
- (a) interest on payments or repayments that are not made when due;
 - (b) legal costs resulting from actions to collect a payment or repayment in respect of a loan; and
 - (c) reasonable costs, including legal fees incurred by or on behalf of the lender and paid to persons other than employees of the lender in order to protect or realize the security given in respect of a loan. (EC16/87)

Charges

EXCEPTED LOANS

5. The following classes of loans are not subject to these regulations:
- (a) a loan made under a credit that provides for loans, the principal amounts of which could exceed, in the aggregate, \$50,000, other than a loan secured by a mortgage on real property;
 - (b) a loan, the principal amount of which exceeds \$50,000, other than a loan secured by a mortgage on real property;
 - (c) a loan where the cost of borrowing consists only of a fixed maximum charge of not more than \$10 and the charge is disclosed to the borrower as an amount in dollars and cents;
 - (d) a loan, the principal amount of which exceeds \$150,000 and that is secured by a mortgage on real property; and
 - (e) a loan made under a credit that provides for loans, the principal amounts of which could exceed, in the aggregate, \$150,000 and that is secured by a mortgage on real property. (EC16/87)

EXCEPTED
LOANS

DISCLOSURE OF COST OF BORROWING

6. (1) Where a lender makes to a person a loan, the cost of borrowing in relation to that loan, expressed as an annual percentage rate, shall be disclosed to that person by the lender in a separate statement in the form specified in Schedule I.

Form of disclosure,
loans

(2) Notwithstanding subsection (1), the form specified in Schedule I is not applicable to a loan extended to a person by way of revolving or demand loan.

Revolving or
demand loan

(3) Where a loan and the cost of borrowing in relation thereto are repayable

Disclosure

- (a) on demand;
- (b) in amounts that are not fixed; or
- (c) on dates that are not fixed

the lender shall disclose to the borrower, in such written form as the lender may determine, the following information, namely,

- (d) the cost of borrowing, expressed as an annual percentage rate or the manner of determining the annual percentage rate;
- (e) the maximum aggregate amount of the loan; and
- (f) the manner of calculating the cost of borrowing.

Overdraft loans

(4) Where a loan referred to in subsection (3) is made by way of an overdraft, the lender may disclose the cost of borrowing, expressed as an annual percentage rate in writing within a reasonable time after making the loan. (EC16/87)

Form of disclosure,
mortgages

7. Where a loan referred to in subsection 6(1) is secured by a mortgage on real property, the cost of borrowing in relation thereto, expressed as an annual percentage rate, shall be disclosed to the person in a separate statement in the form specified in Schedule II. (EC16/87; 116/87 eff. July 1/87)

Variable credit,
mode of disclosure

8. A lender who extends variable credit by use of a payment, credit or charge card shall disclose or send to the borrower the information required by subsection 16(4) of the Act

- (a) as part of the contract or proposed contract between the lender and the individual;
- (b) in a separate statement;
- (c) in the statement of account of the individual; or
- (d) in any combination of the methods referred to in clauses (a) to (c). (EC16/87; 116/87 eff. July 1/87)

Additional
information

9. A lender may disclose additional information or any explanations, together with any information required to be disclosed, if such additional information or such explanations are not stated, utilized or placed so as to contradict, obscure or distract attention from the information required to be disclosed. (EC16/87)

GENERAL

Revocation

10. Sections 5, 6 and 7 of the Consumer Protection Act Regulations (EC515/68) are revoked. (EC16/87)

**SCHEDULE I
STATEMENT OF DISCLOSURE
LOANS OTHER THAN MORTGAGE LOANS**

Date:
(date on which the statement of disclosure is made)

.....
(name of lender)

Address:
(address of lender)

.....
(name of borrower(s))

1. Effective date of loan

2. Principal amount of loan

(a) amount of money to be paid to borrower or to be disbursed on the borrower's
direction is \$

(b) other charges to be financed (itemize) \$.....

(c) total of (a) and (b) \$.....

3. The annual percentage rate will be %* or, if the annual percentage rate is
subject to variations, the initial annual percentage rate will be %*

* Accurate to within 1/8th of 1%

4. The cost of borrowing for the whole term of the loan if the annual percentage rate is
fixed or the cost of borrowing for the whole term of the loan based on the annual
percentage rate disclosed in section 3 where the annual percentage rate is subject to
variations \$.....

5. Total obligation of the borrower or total obligation of the borrower based on the
annual percentage rate disclosed in section 3 where the annual percentage rate is subject
to variations. \$.....

6. Where the annual percentage rate is subject to variations, it shall vary in the following
manner, based on the following conditions:

.....
.....
.....

7. Term of loan Amortization period

8. Where the term of the loan is subject to variations, it shall vary in the following
manner:

.....
.....
.....

9. Based on the annual percentage rate disclosed in section 3, the total obligation is
repayable as follows:

.....
.....
.....

10. The terms and conditions of repayment before maturity of the loan contract are as
follows:

.....

 11. Where the loan is not repaid at maturity or a payment is not made when due, the following charges may be imposed.

.....
Signature on behalf of the lender

.....
Signature of borrower(s)

(EC16/87)

SCHEDULE II
STATEMENT OF DISCLOSURE
MORTGAGE LOANS

Date:
(date on which the statement of disclosure is made)
.....
(name of lender)

Address:
(address of lender)
.....
(name of borrower(s))

Property on which there will be a mortgage (address and description of buildings)

1. Principal amount of the , , ,
(1st, 2nd, 3rd)

2. Deduct charges, fees, etc. where applicable. (This amount must equal the total of the amounts under section 9.) \$

3. Amount of money to be paid to borrower or to be disbursed on the borrower's direction is..... , \$

4. The annual percentage rate of the mortgage of \$ will be %* or, if the annual percentage rate is subject to variations, the initial annual percentage rate will be %*

* Accurate to within 1/8th of 1%

5. The principal amount and the cost of borrowing based on the annual percentage rate disclosed in section 4 will be payable in payments of \$.....

6. Based on the annual percentage rate disclosed in section 4, the mortgage will become due and payable in years at which time the borrower, if all payments have been made on the due date, will owe \$

7. The term of mortgage: months. Amortization period of mortgage years.

8. Where the term of the loan is subject to variations, it shall vary in the following manner:
.....
.....
.....

9. The charge, fees, etc, under section 2 are made up as follows:

Mortgage insurance fees \$
Inspection and appraisal fees \$

Estimated legal fees and disbursements (as provided by the borrower) of not more than \$

Other charges \$.....

Total as shown in section 2 \$.....

10. Where the annual percentage rate is subject to variations, it shall vary in the following manner, based on the following conditions:

.....
.....
.....

11. The terms and conditions of repayment before maturity of the loan contract are as follows:

.....
.....
.....

12. Where the mortgage is not repaid at maturity or a payment is not made when due, the following charges may be imposed:

.....
.....
.....

13. The first payment is due on 20

.....
Signature on behalf of the lender

.....
Signature of borrower(s)

(EC16/87; 116/87)