

QUESTIONS AND ANSWERS CONCERNING THE 2002 CHANGES TO CHAPTER 58

Q What is the effective date of the changes to Chapter 58?

A The changes are effective January 1, 2003.

Q What is included in the 5 percent “cap” in lender fees that can be added to the loan principal amount?

A Lender fee includes all interest, points, finance charges, fees and other charges payable by the borrower to any mortgage originator or any assignee of any residential mortgage originator.

Q Is a yield spread premium payable by a lender to a residential mortgage originator included in the 5 percent cap?

A No, because it is not a fee paid directly by the borrower.

Q What other items are not subject to the 5 percent cap?

A Lender fees do not include recording fees, mortgage registration taxes, or other amounts paid to a government entity, filing office, or other third party that is not a residential mortgage originator or an assignee. Lender fees do not include amounts that are escrowed for taxes or insurance on the mortgaged property.

Q Would single premium credit insurance, if financed, be considered a lender fee subject to the cap?

A That portion of the credit insurance premium which is payable to or would be retained by the residential mortgage originator as a commission or compensation for the credit insurance sale would be a lender fee subject to the cap.

Q If a customer pays points or other fees in cash, are these amounts included in the 5 percent cap?

A No. The change does not limit the amount that can be charged to a customer, but it does limit the amounts that can be added to the loan amount.

Q How is the “loan amount” defined?

A For a line of credit, like a revolving home equity line of credit, the loan amount is the maximum principal amount of the line of credit. For other loans, the loan amount is the principal amount of the loan, excluding interest, points, fees, etc. For a closed end loan, this is the amount actually given to the customer.

Q What lenders does the 5 percent cap apply to?

A The 5 percent cap does not apply to a bank, savings bank, savings association or credit union or any subsidiary of them that is subject to supervision by either a federal agency or the Commissioner. The cap applies to all other mortgage originators and brokers, including those in Minnesota and outside Minnesota. Keep in mind that a subsidiary of a bank holding company is not the same as a subsidiary of a bank.

Q With respect to the written and spoken prepayment penalty disclosures, what is the specific language required by the statute?

A The specific language is set out in Minnesota Statutes, Section 58.137, subdivision 2. The specific language is also set out in the sample disclosure form.

Q The sample prepayment penalty disclosure form has a signature block for the customer to sign. Is this required by the law?

A No, it is not required, but the customer’s signature would be a good way to document that the customer received the disclosure.

Q When must the prepayment penalty disclosures be made?

A When the customer requests a residential mortgage loan and again within 3 days before the customers sign the note or other loan agreement. The initial written disclosure must be received by the prospective borrower within 5 days after the request for a loan is received by the mortgage originator.

Q How must the prepayment penalty disclosure be made?

A The disclosure must be both spoken and written.