



# The State of South Carolina

## Department of Consumer Affairs

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August 23, 1983

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Administrative Interpretation No. 10.102(c)-8301

THE ASSUMPTION NOTICE REQUIRED BY SECTION 37-10-102(c) MAY BE CONSPICUOUSLY SET FORTH IN ANY PORTION OF THE FEDERAL TRUTH IN LENDING DISCLOSURES REQUIRED BY REGULATION Z SECTION 226.18. THE ASSUMPTION NOTICE REQUIRED BY SECTION 37-10-102(c) NEED NOT BE PLACED WITHIN THE DISCLOSURES REQUIRED BY REGULATION Z SECTION 226.17 TO BE SEGREGATED FROM OTHER MATERIAL.

Section 10.102(c) of the Consumer Protection Code [S.C. Code Ann. §37-10-102(c) (1976 as amended)] provides that:

Where the note, mortgage, deed of trust, bond for title or other instrument evidencing such loan contains a provision that the holder of the instrument may accelerate payment of or renegotiate the terms of the loan upon and [sic] transfer of the real estate securing the transaction, the creditor shall include in all disclosure statements required by the Federal Truth in Lending Act to be provided to the debtor the following statement, which shall be in either in capital letters or underlined: "Assumption Notice" - The debt secured hereby is subject to call in full or the terms thereof being modified in the event the real estate securing the debt is sold, conveyed or otherwise transferred.  
(Emphasis added)

Section 10.102(c) applies to certain consumer credit sales and consumer loans as well as certain non-consumer loans secured by liens on real estate. See S.C. Code Ann. §§37-2-306, 37-3-306 and 37-10-101 (1976 as amended).

Regulation Z the implementing regulation of the Truth in Lending Act, at Section 226.18(q) [12 C.F.R. §226.18(q) (1981)] provides that in a closed-end residential mortgage transaction a creditor must disclose whether or not a subsequent purchaser of the dwelling from the consumer may be permitted to assume the remaining obligation on its original terms.

Pursuant to Section 105(b) of the Truth in Lending Act, [15 U.S.C. §1604(b) (1980)] the Federal Reserve Board has published model disclosure forms to facilitate compliance with the that Act. Model forms published by the Federal Reserve Board provide statements such as "Assumption: Someone buying your home cannot assume the remainder of the mortgage on the original terms." or "Assumption: Someone buying your house may, subject to conditions, be allowed to assume the remainder of the mortgage on the original terms." 12 C.F.R. §226 Appendices H-6, H-13, H-14 and H-15. Regulation Z Section 226.17(a) requires that "[t]he disclosures [required by Subpart C]

TELEPHONES (AREA CODE 803)

ADMINISTRATION  
758-3017

CONSUMER COMPLAINTS  
758-2040  
WATS 1-800-922-1594

PUBLIC INFORMATION  
758-7546

NOTIFICATION  
758-8587

CONSUMER ADVOCACY  
758-8996

shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures required under Section 226.18." (Notes omitted)

Questions have arisen with regard to the assumption notice disclosure required by Consumer Protection Code Section 10.102(c). Primarily, creditors wish to know if Consumer Protection Code Section 10.102(c) requires the assumption notice to be made within the segregated disclosures required by Regulation Z Section 226.18 and, if so, whether the Consumer Protection Code Section 10.102(c) disclosure be in conflict with the Federal Truth in Lending Act. The Federal Reserve Board is authorized, in Section 171(a) of the Truth in Lending Act [15 U.S.C. §1666j(a) (1980)] to determine whether a state law is inconsistent with the Federal Truth in Lending Act and is therefore preempted by the Federal Truth in Lending Act.

Without determining whether incorporation of the Consumer Protection Code Section 10.102(c) assumption notice into the segregated disclosures required by Regulation Z Section 226.17 (the so called "federal box") would conflict with the Federal Truth in Lending Act, it is the opinion of this Department that the Consumer Protection Code's §10.102(c) notice may be disclosed separately from the segregated disclosures required by Regulation Z Section 226.17.

The purpose of both the federal and state assumption disclosures are to inform the consumer and give meaningful disclosure of assumption rights. Compare 15 U.S.C. §1601 with S.C. Code Ann. §37-1-102(2) (a) and (c) (1976 as amended). Particularly, the requirements of both statutes are designed to give the consumer some meaningful disclosure of the effect of due on sale clauses which could prevent a subsequent buyer of the consumer's home from assuming the obligation, unless the buyer consented to a higher interest rate or an assumption fee.

While Section 10.102(c) requires that the assumption notice be included "in all disclosure statements required by the Federal Truth in Lending Act" it does not specify where this disclosure must be made within the disclosures required by the Truth in Lending Act.

Certain disclosures are permitted or required to be made apart from the disclosures required by Section 226.17 to be segregated from everything else. For example, footnote 38 of Regulation Z Section 226.17(a) (1) indicates: "The following disclosures may be made together or separately from other required disclosures: the creditor's identity under Section 226.18(a), the variable rate example under Section 226.18(f) (4), insurance under Section 226.18(n), and certain security interest charges under Section 226.18(o)." In addition, the itemization of the amount financed under Section 226.18(c) (1) is required to be separate from other disclosures in the federal box.

It is not unusual for a creditor to incorporate Truth in Lending disclosures on the same document that contains contractual terms not directly related to the disclosures. In many instances, contractual terms are situated on the same side of the same document as the required Truth in Lending disclosures.

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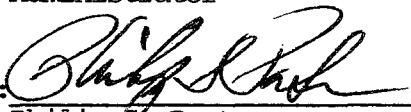
We are aware of no legislative history nor any principle of statutory construction requiring the interpretation that the assumption notice be placed within the segregated disclosure. Because Regulation Z requires or permits certain other disclosures to be set apart from the segregated disclosures, it follows that the assumption notice required by Section 10.102(c) may likewise be set apart from the segregated disclosures, and yet still be within the disclosure statement required by the Federal Truth in Lending Act.

Neither Regulation Z nor the Consumer Protection Code, however, give any guidance as to where the various disclosures must be placed in a particular document.

To eliminate confusion as to where the assumption notice must be placed in relation to the segregated disclosures, other federally required disclosures and other contract terms, this Department will consider any Section 10.102(c) assumption notice to be in compliance if it is placed conspicuously anywhere on the same side of the same page as the document containing the segregated disclosures, so long as the correct terminology is used and the creditor otherwise complies with Section 10.102.

In conclusion, a creditor may comply with requirements of Section 10.102(c) by incorporating the Section 10.102(c) assumption notice into the same document used for the Truth in Lending disclosures required by Regulation Z Sections 226.17 and 226.18, even if the Section 10.102(c) assumption notice is not incorporated directly into the segregated disclosures required by Regulation Z Section 226.17.

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