


ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No.

629

, Approved and Ordered JUN 17 2004


Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective January 1, 2005, the attached Disclosure of the Cost of Consumer Credit Regulation is made.



Minister of Public Safety and Solicitor General



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Business Practices and Consumer Protection Act, S.B.C. 2004, c. 2, ss. 57, 58, 66, 72, 74, 100,
194 and 196

Other (specify):-

June 7, 2004

767 /2004/12

DISCLOSURE OF THE COST OF CONSUMER CREDIT REGULATION

Contents

PART 1 – INTERPRETATION

- 1 Definition
- 2 Realizable value
- 3 Calculation assumptions

PART 2 – CALCULATION OF APR

Division 1 – Interpretation

- 4 Tolerance

Division 2 – APR for Credit Agreements That Are Not Leases

- 5 Application
- 6 Calculation of APR for credit agreements other than leases
- 7 APR calculations for fixed credit agreements
- 8 APR calculations for open credit agreements
- 9 When the APR for a credit agreement equals the stated annual interest rate

Division 3 – APR Calculations for Leases

- 10 Calculation of lease APR
- 11 APR calculations for certain leases

PART 3 – LOAN BROKERS

- 12 Exemptions for loan brokers
- 13 Multiple loan brokers
- 14 Record retention by mortgage brokers

PART 4 – GENERAL

- 15 Conditions for waiver of 2 day notification period
- 16 Maximum fee for discharge of mortgage
- 17 Refund of non-interest finance charges following prepayment of non-mortgage fixed credit
- 18 Exemptions

PART 1 – INTERPRETATION

Definition

- 1 In this regulation, “**Act**” means the *Business Practices and Consumer Protection Act*.

Realizable value

- 2 (1) In this section:
“**diminished residual value**” in relation to leased goods means the estimated residual value of the goods less the amount that is 3 times the average monthly payment;

“net proceeds” in relation to leased goods means the net proceeds realized by the lessor on the disposition of the goods;

“percentage residual value” in relation to leased goods means 80% of the estimated residual value of the goods.

- (2) For the purposes of the definition of “realizable value” in section 100 (1) of the Act, the realizable value of leased goods at the end of the lease term is,
- (a) subject to paragraphs (b) and (c), the net proceeds,
 - (b) if the percentage residual value is greater than the net proceeds and the diminished residual value, the percentage residual value less the portion of the difference between that percentage residual value and the net proceeds that is attributable to unreasonable wear, excess use or damage for which the lessee is responsible under the terms of the lease, or
 - (c) if the diminished residual value is greater than the net proceeds and the percentage residual value, the diminished residual value less the portion of the difference between that diminished residual value and the net proceeds that is attributable to unreasonable wear, excess use or damage for which the lessee is responsible under the terms of the lease.

Calculation assumptions

- 3 For the purposes of any calculations made under Part 5 of the Act or this regulation,
- (a) unless a credit agreement provides otherwise, a reference in the credit agreement to a daily, weekly or monthly period is a reference to 1/365 of a year, 1/52 of a year or 1/12 of a year respectively, and
 - (b) if the annual interest rate is a floating rate, calculations that depend on the interest rate must be made on the assumption that the index rate in effect on the date of the calculation will remain in effect for the term.

PART 2 – CALCULATION OF APR

Division 1 – Interpretation

Tolerance

- 4 A disclosed APR is considered to be accurate if it is within 1/8 of 1% of the actual APR for the credit agreement as calculated in accordance with the Act and this regulation.

Division 2 – APR for Credit Agreements That Are Not Leases

Application

- 5 This Division applies only to credit agreements that are not leases.

Calculation of APR for credit agreements other than leases

- 6 (1) Subject to this Division, unless determined under section 9, the APR for a credit agreement is the amount determined by the following formula:

$$\text{APR} = \frac{(100 \times C)}{(T \times P)}$$

where

C = the total cost of credit;

T = the length of the term expressed in years;

P = the average outstanding principal over the term as calculated under subsection (2).

- (2) The value of P in the equation in subsection (1) must be calculated in accordance with the following:
- (a) the term of the credit agreement must be divided into calculation periods of equal length;
 - (b) there must be determined, for each calculation period, the outstanding principal amount, which outstanding principal amount is the outstanding principal amount at the beginning of the calculation period before any amount is applied against that principal amount under paragraph (c);
 - (c) each payment made by the borrower within a calculation period must, for the purposes of paragraph (b), be applied as follows:
 - (i) the payment must be applied firstly against the amount of interest that has accrued on the outstanding principal amount and on the non-interest finance charges to the date of the payment;
 - (ii) secondly, the balance of the payment remaining after application of the payment under subparagraph (i) must be applied proportionately to the outstanding principal amount and the outstanding balance of non-interest finance charges;
 - (d) P is the sum of each of the outstanding principal amounts determined under paragraph (b) for each of the calculation periods in the term divided by the number of calculation periods in the term.

APR calculations for fixed credit agreements

- 7 The APR for a fixed credit agreement that is not a scheduled-payments credit agreement must be calculated in accordance with the calculation set out in section 6 on the assumption that the outstanding principal will be repaid in a single payment one year after the effective date of the relevant disclosure statement.

APR calculations for open credit agreements

- 8 The APR for an open credit agreement under which the total amount that will be advanced is unknown must be calculated in accordance with the calculation set out in section 6 on the assumption that
- (a) P in that calculation is equal to the initial credit limit, and
 - (b) if there is no maturity date, T in that calculation is one year.

When the APR for a credit agreement equals the stated annual interest rate

- 9 The APR for a credit agreement is the annual interest rate stated in the credit agreement if
- there are no non-interest finance charges payable by the borrower under the credit agreement,
 - the same interest rate, under the terms of the credit agreement or under the assumptions allowed under Part 5 of the Act or this regulation, is to apply for the whole term,
 - the term of the credit agreement consists of interest compounding periods, of equal length, that are at least as long as the period between required interest payments, and
 - the stated annual interest rate is a multiple of the interest rate that applies to each interest compounding period.

Division 3 – APR Calculations for Leases

Calculation of lease APR

- 10 (1) Subject to section 11, the APR for a lease is the amount determined by the following formula:

$$\text{APR} = 100 \times M \times i$$

where

M = the number of payment periods in a year;

i = the periodic interest rate such that

$$\text{PMT} = \frac{\text{PV} - \text{FV}(1+i)^{-N}}{\left[\frac{1 - (1+i)^{-(N-A)}}{i} \right] + A}$$

where

PMT = the amount of each periodic payment;

PV = the capitalized amount;

FV = the amount of the assumed residual payment;

i = the periodic interest rate;

N = the number of payment periods in the lease;

A = the number of period lease payments that are paid at or before the beginning of the term.

- (2) For the purposes of calculating the APR and implicit finance charge applicable to a lease,
- an amount payable by the lessee in respect of a tax may be treated as a payment only if an amount in respect of the tax was treated as an advance in calculating the capitalized amount, and

- (b) a charge payable by a lessee may be treated as an advance only if an equivalent charge would be payable by a cash customer.
- (3) If the payments due under the lease vary in amount or are payable in relation to payment periods that vary in length, the equation referred to in subsection (1) must be modified as necessary to calculate the value of i in accordance with actuarial principles.

APR calculations for certain leases

- 11** If a lease is for an indefinite term or is renewed automatically until one party takes steps to terminate it, the APR must be calculated,
- (a) in the case of a lease that allows the lessee to automatically acquire title to the leased goods after a specified period of time, on the assumption that the term of the lease is that period of time, or
 - (b) in any other case, on the assumption that the term of the lease is one year.

PART 3 – LOAN BROKERS

Exemptions for loan brokers

- 12** (1) Subject to subsection (2), a loan broker referred to in section 79 [*non-business credit grantors*] of the Act is, after the credit agreement is entered into, exempt from the duties imposed under section 79 (a) of the Act if
- (a) the loan broker does not have an agreement with the credit grantor to provide for the ongoing administration or renewal of the credit agreement, and
 - (b) the loan broker has provided both the credit grantor and the borrower with a statement in the form set out in Schedule A to this regulation.
- (2) A loan broker referred to in subsection (1) must provide to the borrower the initial disclosure statement in relation to the credit agreement in the manner and time and with the contents required by Part 5 of the Act and this regulation.

Multiple loan brokers

- 13** (1) If more than one person receives or is to receive a brokerage fee or other similar fee in regard to a single consumer transaction, the loan broker for that transaction is, for the purposes of sections 79 [*non-business credit grantors*] and 80 [*business credit grantors*] of the Act,
- (a) if none of the persons who receive or who are to receive the fee are registered under the *Mortgage Brokers Act*, the one of them who is designated as the loan broker by a written agreement signed by each of them,
 - (b) if only one of the persons who receive or who are to receive the fee is registered under the *Mortgage Brokers Act*, that registered mortgage broker, or
 - (c) if more than one of the persons who receive or who are to receive the fee is registered under the *Mortgage Brokers Act*, the registered mortgage broker

who is designated as the loan broker by a written agreement signed by each of the registered mortgage brokers.

- (2) If a written agreement referred to in subsection (1) (a) or (c) does not exist, each loan broker that takes an application from the borrower is responsible for providing initial disclosure.

Record retention by mortgage brokers

- 14 (1) A mortgage broker, registered under the *Mortgage Brokers Act*, who is required under the *Business Practices and Consumer Protection Act* or this regulation to issue a disclosure statement must retain a paper copy of that disclosure statement for at least 6 years after the date of its issuance.
- (2) Records retained under subsection (1), or copies of those records, must be made available to the Registrar of Mortgage Brokers under section 6 (7) [*procedures and powers of registrar for inquiry*] of the *Mortgage Brokers Act*.

PART 4 – GENERAL

Conditions for waiver of 2 day notification period

- 15 (1) Subject to subsection (2), a borrower may waive the time period referred to in section 66 (3) [*disclosure statements must be given*] of the Act if
 - (a) the prepayment rights available to the borrower under the mortgage loan are as favourable to the borrower as the prepayment rights provided in section 74 [*prepayment of credit*] of the Act for credit agreements that are not mortgage loans,
 - (b) the borrower attaches to the notice of waiver a statement, signed by a professional who is independent from the credit grantor and whose profession lends credibility to the statement, that that professional has provided advice to the borrower regarding the legal effect of the waiver and has drawn the attention of the borrower to the APR and total cost of credit contained in the disclosure statement,
 - (c) any obligation to which section 66 (3) (a) of the Act applies will be extinguished and any payment to which section 66 (3) (b) applies will be refunded to the borrower by the credit grantor if, within 2 business days after receiving the disclosure statement, the borrower notifies the credit grantor that the borrower intends to withdraw from or does not intend to enter into the credit agreement,
 - (d) the loan of money is secured by an existing interest in real property, or
 - (e) the credit grantor is a savings institution and the borrower consents to being provided with the disclosure statement for the credit agreement in accordance with section 66 (2) of the Act.
- (2) A waiver under this section is effective only if
 - (a) it is in writing and signed by the borrower, and

- (b) in the case of a waiver under subsection (1) (c), the waiver notice prominently discloses the borrower's rights referred to in subsection (1) (c) in a clear and comprehensible manner.
- (3) If a borrower waives the time period referred to in section 66 (3) of the Act, the credit grantor must deliver the disclosure statement to the borrower no later than the earlier of the events described in section 66 (3) (a) and (b) of the Act.

Maximum fee for discharge of mortgage

- 16 The maximum amount prescribed for the purposes of section 72 (3) of the Act is \$75.

Refund of non-interest finance charges following prepayment of non-mortgage fixed credit

- 17 The portion of each non-interest finance charge that is to be refunded or credited to the borrower in accordance with section 74 (3) [*prepayment of credit*] of the Act is the amount determined by the following formula:

$$\text{portion} = \left(\frac{U}{T} \right) \times F$$

where

U = the length of the unexpired portion of the term at the time of full prepayment;

T = the length of the period between the time the non-interest finance charge was imposed and the end of the term;

F = the amount of the non-interest finance charge.

Exemptions

- 18 (1) In this section, “**local authority**” has the same meaning as in the *Community Charter*.
- (2) Part 5 of the Act does not apply to the following:
- (a) a sale of a service by a public utility as defined in the *Utilities Commission Act*;
 - (b) a loan made by a life insurance company under a life insurance policy to the insured or his or her assignee solely on the security of the cash surrender value of the policy;
 - (c) a loan made under the British Columbia Student Assistance Program or under the *Canada Student Financial Assistance Act* or the *Canada Student Loans Act*;
 - (d) the payment of taxes imposed under an enactment and collected in accordance with the *Community Charter*, the *Local Government Act*, the *Vancouver Charter* or the *Taxation (Rural Area) Act* by a local authority or the surveyor of taxes;
 - (e) the payment of fees or charges to a local authority that has the power under an enactment to impose fees or charges;
 - (f) overdraft protection on a deposit account;
 - (g) a loan made under the *Homeowner Protection Act*.

- (3) Section 91 (1) (h) [*initial disclosure statements for open credit*] of the Act does not apply to a credit grantor that is a savings institution.
- (4) Section 184 [*when documents considered to have been received*] of the Act does not apply in respect of the giving of a disclosure statement under section 66 [*disclosure statement must be given*] of the Act.

SCHEDULE A

The *Business Practices and Consumer Protection Act* imposes disclosure requirements on credit grantors who extend credit in the ordinary course of carrying on their businesses. However, the credit grantor under the proposed credit agreement is not extending credit in the ordinary course of carrying on business. Consequently, many of the disclosure requirements of the *Business Practices and Consumer Protection Act* will not apply to this credit agreement such that statements which would otherwise be provided to a borrower under that Act will not be made available to a borrower in respect of this agreement. I,, am the loan broker for this credit agreement and, as such, am required to, and will, provide the borrower with an initial disclosure statement before the borrower enters into the credit agreement.