NORTH CAROLINA
REAL ESTATE LICENSING BOARD

Real Estate Bulletin

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Broker Must Comply with Truth-in-Lending Disclosure

Failure to comply with disclosure provisions of the Federal Truth-in-Lending Act constitutes grounds for relief and damages. In the Arizona case of Eby v. Reb Realty, Inc., 9th Circuit U.S. Court of Appeals (1974), the court held that where realty sales on its own account were significant aspects of broker's business and it extended credit to buyers in nearly half its sales, broker was a "creditor," subject to the disclosure requirements in the Truth-in-Lending Act.

The plaintiff brought an action in two counts under the Act. Seeking (1) rescission of a secured real estate credit transaction and (2) twice the amount of the finance charge paid by her in the same transaction. The suit was based upon the admitted failure of the defendant to make certain disclosure of credit terms and rescission rights required by the Act.

The opinion of the appellate court states, in part:

"In October of 1969 Eby purchased a home from appellant for $16,700. The contract of sale provided that $600 would be paid as a down payment, that Eby would assume an existing Veterans' Administration mortgage for $11,900, and that a second mortgage would be executed in Reb Realty's favor for the balance of $4,200 payable in installments with 8% simple interest. Eby paid a total of $1,252 under the agreement; the down payment of $600, closing costs of $51, and $601 under the first mortgage, $239.41 of which represented interest. Nothing was paid towards the second mortgage. When this default occurred, Reb Realty instituted forcible detainer proceedings, successfully reentering possession in March, 1970. Eby then brought the present action.

In general, the Truth in Lending Act requires a "creditor" to disclose credit terms — for example, the annual interest rate — to a borrowing consumer. **See** 15 U.S.C. § 1638. Failure to make the requisite disclosures can subject the creditor to civil liability in an amount equal to double the finance charge paid in connection with the transaction, but in no event less than $100 or more than $1,000. 15 U.S.C. § 1640(a) (1). Additional duties are imposed on a creditor — and different borrower rights come into play — when a security interest is retained or acquired, as part of a credit transaction, in any real property "which is used or expected to be used as the residence" of the borrower. 15 U.S.C. § 1635(a). The debtor is given a right of rescission which must normally be exercised within three days of the consummation of the transaction. The lender must provide the borrower with written notice of this limited right to rescind in addition to making all the other usual disclosures required with any extension of credit. When the creditor fails to disclose any item of the requisite information, the right to rescind is not limited by the normal three day period but continues until all the disclosures are made. 15 U.S.C. § 1635(a).

Under the civil liability section, section 1640, the district court awarded Eby $478.82, twice the amount of interest she paid. In granting rescission of the sale agreement and the two mortgages under the second count, the court ordered the return of the $1,252 paid by Eby under the agreement, an amount which included the principal and interest paid under the first mortgage. By stipulation this was reduced by the rental value of the premises during appellee's possession, a sum of $830, resulting in a net rescission award of $422.

Propriety of Summary Judgment

The Act does not impose its disclosure duties on, nor accord a right of rescission against, every person extending credit, but applies only to those "who regularly extend or arrange for the extension of, credit . . . whether in connection with loans, sales of property or services, or otherwise." 15 U.S.C. § 1602 (f). Appellant raises two issues concerning the application of this definition to it: (1) that it was improper to decide its creditor status on summary judgment since that was a disputed issue of fact, **see** F.J.Civ.Q.R. 56(c). and (2) that in any event it is not a creditor within the statutory definition.

As far as the record revealed at summary judgment, appellant is primarily a real estate broker acting as an intermediary between purchasers and sellers. However, between the date of its incorporation in February, 1969 and the pendency of this case below in September, 1970 — a time span of nineteen months — Reb Realty sold seven parcels of property for its own account. In three instances, including the sale to appellee, credit was extended by Reb Realty. The credit sales were made in April,

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REAL ESTATE BULLETIN

Published quarterly as a service to real estate licensees to promote a better understanding of the Real Estate Licensing Law, Rules and Regulations, and proficiency in ethical real estate practice.

LICENSE STATISTICS

Licensees as of December 31, 1974

Brokers	18,314
Salesmen	3,721
Corporations	1,351

Examination — October 1974

	Passed	Failed
Brokers	106	268
Salesmen	34	45

Examination — November 1974

	Passed	Failed
Brokers	182	190
Salesmen	33	27

(No Exam in December)

NEW EXAMINATION

The Licensing Board has adopted a new examination procedure for real estate broker and salesman licenses effective with the March 1975 examination. The new examination replaces the Princeton Educational Testing Service examination which has been used by the Board since January of 1971.

The new examination which has been developed by the Board will continue to be of the multiple-choice type of questions. The broker's exam will consist of 100 questions to be completed in 3½ hours and the salesman exam will consist of 80 questions to be completed in 3 hours. A passing grade will require an overall score of 70% of the questions answered correctly. The exam will be machine graded and the results tabulated by computer.

Under the new examination procedure, applicants who do not pass the examination have the privilege to review and discuss their examination with a member of the Licensing Board or a representative of the Board.

The examinations will be held monthly at two new test centers located at the State Fairgrounds in Raleigh and the Convention Center in Winston-Salem. In implementing the new exam, it was necessary to revise the examination schedule for 1975. The new exam schedule and location of the test centers are listed below.

EXAMINATION SCHEDULE

FILING DATE	EXAM DATE
February 14	March 18
March 28	April 29
April 18	May 20
May 23	June 24
June 27	July 29
July 18	August 19
August 15	September 16
September 10	October 10
October 24	November 25

TEST CENTERS

Winston-Salem Convention Center
301 W. Fifth Street
Winston-Salem, North Carolina

Gov. W. Kerr Scott Building
State Fairgrounds
(Gate 11, Blue Ridge Road)
Raleigh, North Carolina

Brokers Must Comply

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1969, October, 1969, and August, 1970.

Summary judgment is, of course, appropriate only when there are no disputed issues of "fact," and only "legal" issues remain to be decided. And while the question of what is law or fact is one that has continually bedeviled courts, in this case it is neither analytically nor practically difficult to determine in which category the finding of creditor lies. The number of realty sales made by Reb Realty, the number that were on credit, etc., are facts. The application of the term "creditor" to those basic facts, a process requiring the court to look to statutory purpose and legislative intent, is a function of a court as law-finder, and, hence, a legal conclusion appropriate for summary decision. (Citing cases).

Nonetheless, even when the question is denominated one of law, it will not always be proper to enter summary judgment. In certain cases summary judgment may be inappropriate because the legal issue is so complex, difficult, or insufficiently highlighted that further factual elucidation is essential for its prudently considered resolution. This is not such a case. Appellant suggests only that a trial might bring out what percentage of its profits were derived from credit transactions and the circumstances in which it acquired the properties it sold, whether by chance or design. We fail to see how knowledge of these facts would materially assist a court in applying the term "creditor."

The issue is then presented whether, on the facts of record, Reb Realty "regularly extended credit" and was thus a creditor within the Act. The question is one of first impression upon which there is little guidance. The statutory definition only focuses inquiry on the word "regularly."

—From Narello News

(To Be Concluded)

(Continued From Last Issue)

Chapter 47A. Unit Ownership Act

§ 47A-15. Plans of building to be attached to declaration; recordation; certificate of architect or engineer. — There shall be attached to the declaration, at the time it is filed for record, a full and exact copy of the plans of the building, which copy of plans shall be entered of record along with the declaration. Said plans shall show graphically all particulars of the building, including, but not limited to, the layout, location, ceiling and floor elevations, unit numbers and dimensions of the units, stating the name of the building or that it has no name, area and location of the common areas and facilities affording access to each unit, and such plans shall bear the verified statement of a registered architect or licensed professional engineer certifying that it is an accurate copy of portions of the plans of the building as filed with and approved by the muicipal or other governmental subdivision having jurisdiction over the issuance of permits for the construction of buildings. If such plans do not include a verified statement by such architect or engineer that such plans fully and accurately depict the layout, location, ceiling and floor elevations, unit numbers and dimensions of the units, as built, there shall be recorded prior to the first conveyance of any unit an amendment to the declaration to which shall be attached a verified statement of a registered architect or licensed professional engineer certifying that the plans theretofore filed, or being filed simultaneously with such amendment, fully depict the layout, ceiling and floor elevations, unit numbers and dimensions of the units as built. Such plans shall be kept by the register of deeds in a separate file, indexed in the same manner as a conveyance entitled to record, numbered serially in the order of receipt, each designated "Unit Ownership," with the name of the building, if any, and each containing a reference to the book and page numbers and date of the recording of the declaration.

§ 47A-16. Termination of unit ownership; consent of lienholders; recordation of instruments. — (a) All of the unit owners may remove a property from the provisions of this chapter by an instrument to that effect, duly recorded, provided that the holders of all liens, affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the unit owner in the property as hereinafter provided.

(b) Upon removal of the property from the provisions of this chapter, the property shall be deemed to be owned as tenants in common by the unit owners. The undivided interest in the property owned as tenants in common which shall appertain to each unit owner shall be the percentage of the undivided interest previously owned by such unit owner in the common areas and facilities.

§ 47A-17. Termination of unit ownership; no bar to reestablishment. — The removal provided for in the preceding section [§ 47A-16] shall in no way bar the subsequent resubmission of the property to the provisions of this chapter.

§ 47A-18. Bylaws; annexed to declaration; amendments. — The administration of every property shall be governed by bylaws, a true copy of which shall be annexed to the declaration. No modification of or amendment to the bylaws shall be valid, unless set forth in an amendment to the declaration and such amendment is duly recorded.

§ 47A-19. Bylaws; contents. — The bylaws shall provide for the following:

(1) Form of administration, indicating whether this shall be in charge of an administrator, manager, or of a board of directors or board of administration, independent corporate body, or otherwise, and specifying the powers, manner of removal, and, where proper, the compensation thereof.

(2) Method of calling or summoning the unit owners to assemble; what percentage, if other than a majority of unit owners, shall constitute a quorum; who is to preside over the meeting and who will keep the minute book wherein the resolutions shall be recorded.

(3) Maintenance, repair and replacement of the common areas and facilities and payments therefor, including the method of approving payment vouchers.

(4) Manner of collecting from the unit owners their share of the common expenses.

(5) Designation and removal of personnel necessary for the maintenance, repair and replacement of the common areas and facilities.

(6) Method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities.

(7) Such restrictions on and requirements respecting the use and maintenance of the units and the use of the common areas and facilities, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective units and of the common areas and facilities by the several unit owners.

(8) The percentage of votes required to amend the bylaws, and a provision that such amendment shall not become operative unless set forth in an amended declaration and duly recorded.

(9) A provision that all unit owners shall be bound to abide by any amendment upon the same being passed and duly set forth in an amended declaration, duly recorded.

(10) Other provisions as may be deemed necessary for the administration of the property consistent with this chapter.

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§ 47A-20. Records of receipts and expenditures; availability for examination; annual audit. — The manager or board of directors, or other form of administration provided in the bylaws, as the case may be, shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the common areas and facilities, specifying and identifying the maintenance and repair expenses of the common areas and facilities and any other expense incurred. Both said book and the vouchers accrediting the entries thereupon shall be available for examination by all the unit owners, their duly authorized agents or attorneys, at convenient hours on working days that shall be set and announced for general knowledge. All books and records shall be kept in accordance with good and accepted accounting practices and an outside audit shall be made at least once a year.

§ 47A-21. Units taxed separately. — Each condominium unit and its percentage of undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be separately assessed and taxed by each assessing unit and special district for all types of taxes authorized by law including but not limited to special ad valorem levies and special assessments. Each unit holder shall be liable solely for the amount of taxes against his individual unit and shall not be affected by the consequences resulting from the tax delinquency of other unit holders. Neither the building, the property nor any of the common areas and facilities shall be deemed to be a parcel.

§ 47A-22. Liens for unpaid common expenses; recordation; priorities; foreclosure. — (a) Any sum assessed by the association of unit owners for the share of the common expenses chargeable to any unit, and remaining unpaid for a period of thirty (30) days or longer, shall constitute a lien on such unit when filed of record in the office of the clerk of superior court of the county in which the property is located in the manner provided therefor by article 8 of chapter 44 of the General Statutes. Upon the same being duly filed, such lien shall be prior to all other liens except the following:

(1) Assessments, liens and charges for real estate taxes due and unpaid on the unit;

(2) All sums unpaid on deeds of trust, mortgages and other encumbrances duly of record against the unit prior to the docketing of the aforesaid lien.

(3) Materialmen's and mechanics' liens.

(b) Provided the same is duly filed in accordance with the provisions contained in subsection (a) of this section, a lien created by nonpayment of a unit owner's pro rata share of the common expenses may be foreclosed by suit by the manager or board of directors, acting on behalf of the unit owners, in like manner as a deed of trust or mortgage of real property. In any such foreclosure the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the unit owners shall have power, unless prohibited by the declaration, to bid in the unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. A suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

(c) Where the mortgagee of a first mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of the first mortgage, such purchaser, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the association of unit owners chargeable to such unit which became due prior to the acquisition of title to such unit by such purchaser. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the unit owners including such purchaser, his successors and assigns.

(To Be Continued In Next Issue)

Is Your Address Correct?

The Rules and Regulations of the Licensing Board require licensees to notify the Board in writing of each change of address or business trade name within ten days of said change.

It is imperative that licensees comply with this rule. Please check the address on this bulletin and if not correct, notify the Board as soon as possible.

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REAL ESTATE LICENSING BOARD
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