PRIVATE MORTGAGE INSURANCE DISCLOSURES AND DOCUMENTS

By

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PRIVATE MORTGAGE INSURANCE DISCLOSURES AND DOCUMENTS

The federal Homeowners Protection Act of 1998 [1] ("HPA") requires automatic termination of private mortgage insurance ("PMI") and borrower-initiated cancellations for certain mortgages closed on or after July 29, 1999. HPA also requires new notices from a lender to a borrower.

I. COVERAGE

HPA applies only to residential mortgage transactions where PMI is required and a security interest is taken on a single-family dwelling that is the *primary residence* of the borrower to finance the *acquisition, initial construction or refinancing* of that dwelling. A single family dwelling includes cooperatives and condominiums. However, the disclosure requirements of HPA do not apply to non-owner occupied properties, FHA/VA loans or multi-family properties (owner occupied or not). It also does not apply to second liens *unless* the loan to value ratio ("LTV") of the second lien exceeds 80%. No fee or charge may be imposed on the borrower for providing any notice or the amortization schedule.

II. BORROWER CANCELLATION (80%)

The borrower may request cancellation at 80% of the original value, in which case a lender may require the borrower to pay for a current appraisal to confirm that the original value has not decreased. The borrower must have a "good payment history". "Good payment history" is no 30-day late payments in last 12 months and no 60-day late payments in the 12 months before that.

III. AUTOMATIC TERMINATION (77/78%)

HPA requires lenders to cancel PMI when the LTV, based upon the "original value" (the lower of sales price or appraised value established at loan closing), reaches 78% (non-high risk) if the loan is current at that time. If the loan is not current, PMI may be continued until the loan is brought current. The threshold is 77% for "high-risk" loans. "High-risk" has yet to be defined by Fannie or Freddie. Requiring a current appraisal is <u>not allowed</u>.

IV. FINAL TERMINATION (MID-POINT)

If for any reason (other than for not being current), PMI has not been cancelled or terminated by the time the loan reaches the mid-point of its amortization period, it must be terminated. However, termination is conditioned on the borrower being current on the loan.

V. FEDERAL DISCLOSURES

A) **Private Mortgage Insurance Disclosure (Fixed-Rate, Non-High Risk Loan)**

This disclosure is given at closing on a fixed rate loan. An amortization schedule **must** be attached to the disclosure showing the LTV after each payment so borrowers can easily see when the principal balance reaches the cancellation date at 80% or the termination date at 78%.

B) **Private Mortgage Insurance Disclosure (Adjustable Rate, Non-High Risk Loan)**

This disclosure is given at closing on an adjustable rate loan. There is no requirement to attach an amortization schedule. To determine the dates for cancellation and termination, lenders must consider LTV ratios based upon actual balances.

C) **Lender Paid Private Mortgage Insurance Notice**

This document must be given at or before loan commitment when PMI will be paid by anyone other than the borrower. It is **not** a closing document.

VI. FANNIE/FREDDIE

The disclosures discussed above differ slightly from the Mortgage Bankers Association (MBA) and America's Community Banker (ACB) model forms, which were distributed prior to the release of related Fannie Mae and Freddie Mac Bulletins. Two differences: (1) there is no requirement of proof of no subordinate liens); and (2) added Fannie Mae language informing the borrower of a possible fee for a broker's price opinion, certification of value or a new appraisal. A high risk disclosure is not included. Fannie Mae and Freddie Mac have declined to define a "high risk" loan (when the automatic termination of PMI is 77%).

VII. TRUTH IN LENDING

To comply with Regulation Z, the payment schedule on the Truth in Lending disclosure must reflect the borrower's PMI payments until the date on which the PMI must automatically terminate (78% for non-high risk loan).[3]

VIII. PENALTIES

Violations of the HPA carry civil penalties. In an individual action, a borrower may be awarded (1) actual damages, plus interest, and (2) statutory damages not exceeding $2,000 plus costs of the action and reasonable attorneys fees. In a class action against a regulated institution, as defined in section 10 of HPA, the class may be awarded an amount not exceeding $500,000 or 1% of the liable party's net worth and costs and reasonable attorneys fees. If the institution is not regulated, then the court may assess actual damages plus interest, an amount not to exceed $1000 per class member up to $500,000 or 1% of the non-regulated institution's gross revenues and costs and reasonable attorneys fees. A borrower has two years from the date of discovery of the violation to bring an action under HPA.

IX. TEXAS DISCLOSURES

HPA provides for an annual federal disclosure, except if state law in existence when HPA was enacted already covered the matter and state law was not inconsistent with any provision of the Act. Texas had a law in place before the minimum 2 years before the effective date of HPA. HB 1755 [4] added Article 21.50 to the Insurance Code and requires annual mortgage insurance disclosures to borrowers. The Texas Attorney General has said that complying with the Texas disclosure law satisfies federal HPA, but a HPA only annual disclosure would not satisfy Texas requirements.[5]

X. MULTI-STATE MORTGAGE INSURANCE RIDER

This rider is required in Fannie borrower-purchased mortgage insurance transactions until the 1/01 versions of the Fannie/Freddie uniform instruments are used. The new uniform instruments incorporate provisions dealing with the issue. [5]

Attachments: **PMI Disclosure (Fixed-Rate, Non-High Risk Loan)**
PMI Disclosure (Adjustable Rate, Non-High Risk Loan)
Lender Paid Private Mortgage Insurance Notice
Multi-State Mortgage Insurance Rider

This article is only for general, limited informational purposes. It is intended for the benefit of our clients and friends in the industry. It is not intended to be considered legal advice for any particular transaction. It is not an opinion of the firm.

[1] The Homeowners Protection Act of 1998 (112 Stat 900, P.L. 105-216 105th Congress, July 29, 1998) is codifed at 12 U.S.C. §4901, *et seq.*]
http://www.ppdocs.com/10plustips/homeownersprotectionact.pdf

[2] Official Staff Commentary to Regulation Z (Truth in Lending), §226.18(g) published April 6,1999 (64 F.R. 16614). - http://www.ppdocs.com/10plustips/regzcommentary.pdf

[3] HB 1755 – http://www.capitol.state.tx.us/tlo/75r/billtext/HB01755H.HTM

[4] Opinion No. JC-0045 dated May 11, 1999
http://www.ppdocs.com/10plustips/attorneygeneralopinions.pdf

[5] Fannie Mae lender letter 05-00, dated 7/31/00
http://www.fanniemae.com/singlefamily/doingbusiness/lenderletters/db_lender_letters.html#5

PRIVATE MORTGAGE INSURANCE DISCLOSURE
(Fixed-Rate, Non-High Risk Loan)

You are obtaining a mortgage loan that requires private mortgage insurance ("PMI"). PMI protects lenders and others against financial loss when borrowers default. Charges for PMI are added to your loan payments.

Under certain circumstances, federal law gives you the right to cancel PMI or requires that PMI automatically terminate. This Disclosure describes when cancellation and termination may occur. Please note that PMI is not the same as property or casualty insurance, such as homeowner's or flood insurance, which protect you against damage to the property. Cancellation or termination of PMI does not affect any obligation you may have to maintain other types of insurance.

In this Disclosure, "loan" means the mortgage loan you are obtaining; "you" means the original borrower or his or her successors or assigns; and "property" means the property securing the mortgage loan.

"Original Value" means the lesser of the contract sales price of the property or the appraised value of the property at the time the loan was closed.

A "Good Payment History" means no payments sixty (60) or more days past due within two (2) years and no payments thirty (30) or more days past due within one (1) year of the cancellation date.

An initial amortization schedule showing the principal and interest due on your loan, along with the balance remaining after each scheduled payment, is attached.

BORROWER CANCELLATION OF PMI

You have the right to request in writing that PMI be cancelled on or after the following dates:

1. The date the principal balance of your loan is first **scheduled** to reach eighty percent (80%) of the Original Value of the property. This date is:
2. The date the principal balance **actually** reaches eighty percent (80%) of the Original Value of the property, based upon your actual payments.

Upon receipt of your written request, lender or your loan servicer will determine if your loan satisfies all the following conditions for cancellation of PMI:

1. You have a Good Payment History; and
2. Lender receives, if requested and at your expense, evidence satisfactory to the holder of your loan that the value of the property has not declined below its Original Value. You may have to pay a fee for a broker's price opinion, a certification of value, or a new appraisal.

AUTOMATIC TERMINATION OF PMI

If you are current on your loan payments, PMI will automatically terminate on the earlier of date the principal balance of your loan is first scheduled to reach seventy-eight percent (78%) of the Original Value of the property or mid point of the amortization schedule. This date is ________________. If you are not current on your loan payments as of that date, PMI will automatically terminate when you thereafter become current on your payments.

EXCEPTIONS TO CANCELLATION AND AUTOMATIC TERMINATION

The cancellation and automatic termination requirements described above do not apply to certain loans that may present a higher risk of default. Your loan does not fall into this high risk category. Accordingly, the cancellation and automatic termination provisions described above apply to your loan.

By signing below, I/we acknowledge receipt of a copy of this Disclosure and an initial amortization schedule and further acknowledge that I/we understand its provisions.

______________________________ (Borrower) (Date)	______________________________ (Borrower) (Date)
______________________________ (Borrower) (Date)	______________________________ (Borrower) (Date)

PRIVATE MORTGAGE INSURANCE DISCLOSURE
(Adjustable Rate, Non-High Risk Loan)

You are obtaining a mortgage loan that requires private mortgage insurance ("PMI"). PMI protects lenders and others against financial loss when borrowers default. Charges for PMI are added to your loan payments.

Under certain circumstances, federal law gives you the right to cancel PMI or requires that PMI automatically terminate. This Disclosure describes when cancellation and termination may occur. Please note that PMI is not the same as property or casualty insurance, such as homeowner's or flood insurance, which protect you against damage to the property. Cancellation or termination of PMI does not affect any obligation you may have to maintain other types of insurance.

In this Disclosure, "loan" means the mortgage loan you are obtaining; "you" means the original borrower or his or her successors or assigns; and "property" means the property securing the mortgage loan.

"Original Value" means the lesser of the contract sales price of the property or the appraised value of the property at the time the loan was closed.

A "Good Payment History" means no payments sixty (60) or more days past due within two (2) years and no payments thirty (30) or more days past due within one (1) year of the cancellation date.

An initial amortization schedule showing the principal and interest due on your loan, along with the balance remaining after each scheduled payment, is attached.

BORROWER CANCELLATION OF PMI

You have the right to request in writing that PMI be cancelled on or after the following dates:

1. The date the principal balance of your loan is first **scheduled** to reach eighty percent (80%) of the Original Value of the property.
   This date is:
2. The date the principal balance **actually** reaches eighty percent (80%) of the Original Value of the property, based upon your actual payments.

Upon receipt of your written request, lender or your loan servicer will determine if your loan satisfies all the following conditions for cancellation of PMI:

1. You have a Good Payment History; and
2. Lender receives, if requested and at your expense, evidence satisfactory to the holder of your loan that the value of the property has not declined below its Original Value. You may have to pay a fee for a broker's price opinion, a certification of value, or a new appraisal.

AUTOMATIC TERMINATION OF PMI

If you are current on your loan payments, PMI will automatically terminate on the earlier of date the principal balance of your loan is first scheduled to reach seventy-eight percent (78%) of the Original Value of the property or mid point of the amortization schedule. This date is called the Termination Date. If you are not current on your loan payments as of that date, PMI will automatically terminate when you thereafter become current on your payments. On or about the Termination Date, you will be notified that PMI has been terminated or will be terminated when you become current on your loan payments.

EXCEPTIONS TO CANCELLATION AND AUTOMATIC TERMINATION

The cancellation and automatic termination requirements described above do not apply to certain loans that may present a higher risk of default. Your loan does not fall into this high risk category**.** Accordingly, the cancellation and automatic termination provisions described above apply to your loan.

By signing below, I/we acknowledge receipt of a copy of this Disclosure and an initial amortization schedule and further acknowledge that I/we understand its provisions.

(Borrower) (Date)	(Borrower) (Date)
(Borrower) (Date)	(Borrower) (Date)

LENDER PAID PRIVATE MORTGAGE
INSURANCE NOTICE

Borrower: Property:

You have applied for a loan that requires private mortgage insurance. Private mortgage insurance protects the Lender and others against financial loss in the event you default on your loan. Lender paid mortgage insurance means private mortgage insurance that is required in connection with your loan and is paid by the Lender or someone other than you.

The Federal Homeowner's Protection Act of 1998 requires the Lender to disclose to you the following:

1. Lender paid mortgage insurance differs from borrower paid mortgage insurance, in that lender paid mortgage insurance may not be canceled by you, while borrower paid mortgage insurance could be either (1) canceled by you on the date the principal balance of the mortgage loan is first **scheduled** to reach eighty percent (80%) of the original value of the property, or (2) canceled by you on the date the principal balance **actually** reaches eighty percent (80%) of the original value of the Property. Borrower paid private mortgage insurance automatically terminates on the date the principal balance of the loan is first scheduled to reach seventy-eight percent (78%) of the original value of the Property.

2. Lender paid mortgage insurance usually results in a residential mortgage having a higher interest rate than it would in the case of borrower paid mortgage insurance. Lender paid mortgage insurance terminates only when the residential mortgage is refinanced, paid off, or otherwise terminated.

3. Lender paid mortgage insurance and borrower paid mortgage insurance both have benefits and disadvantages.

   The following is a generic analysis of the differing costs and benefits over a ten-year period, assuming prevailing interest and property appreciation rates. This analysis is based upon a $50,000 loan amount with a 30-year fixed-rate mortgage with a loan-to-value ratio of ninety-five percent (95%). (Note: Actual fees and charges may vary according to the private mortgage insurance plan, loan-to-value ratio, loan amount and loan type.)

	LENDER PAID PRIVATE MORTGAGE INSURANCE	BORROWER PAID PRIVATE MORTGAGE INSURANCE
Interest Rate	8.5%	8%
P&I Monthly Payment	$384.46	$366.88
PMI Monthly Payment	$ 0.00	$ 32.50
Total Paid over ten (10 years	$46,135.20	$47,925.60
Cancellation of PMI	Only by refinancing, selling or paying off liens	Yes, under certain circumstances
Refund of Premiums	No	Yes, under PMI plans

4. If you itemize expenses for federal income tax purposes, lender paid mortgage insurance may be tax deductible. Consult your tax advisor.

ACKNOWLEDGEMENT

I/We hereby acknowledge receipt of this Notice at or prior to loan commitment, if any, and further acknowledge that I/we understand its provisions.

(Borrower) (Date) (Borrower) (Date)

(Borrower) (Date) (Borrower) (Date)

MORTGAGE INSURANCE RIDER

This Mortgage Insurance Rider is made this ____________ day of ________________________, ______, and is incorporated into and shall be deemed to amend and supplement the mortgage, deed of trust, or security deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's ________ note (the "Note") to ____
____("Lender")
of the same date and covering the property described in the Security Instrument and located at: ________________________
____ [Property Address].

The Security Instrument is amended by adding the following at the end of Section 10 (if the Security Instrument has a form date at the lower right corner of 3/99 or later) or Section 8 (if the Security Instrument has a form date at the lower right corner that is earlier than 3/99):

> Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.
>
> Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).
>
> As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:
>
> **(A) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.**
>
> **(B) Any such agreements will not affect the rights Borrower has -if any- with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.**

By signing below, Borrower accepts this Mortgage Insurance Rider and agrees that it amends and supplements the Security Instrument.

______________________ (Seal) -Borrower	______________________ (Seal) -Borrower
______________________ (Seal) -Borrower	______________________ (Seal) -Borrower

[Notary acknowledgement as appropriate to jurisdiction must be added and executed]