

02-029

CHAPTER 108

Regulation #8

LOANS SECURED BY A FIRST MORTGAGE ON RESIDENTIAL REAL ESTATE
PAYABLE ON DEMAND

May 16, 1977

On December 23, 1976, the Superintendent proposed a new regulation pursuant to 9-B M.R.S.A. Section 241(1), Anti-competitive or Unfair Practices.

Notice of the proposed Bureau regulation was given by publication and by mail to interested parties affording them an opportunity to submit written comments or request a hearing by January 21, 1977. At the request of interested parties, a hearing was held on March 3, 1977. Written comments and testimony presented at the hearing were considered in promulgating the final regulation.

LOANS SECURED BY A FIRST MORTGAGE ON

RESIDENTIAL REAL ESTATE PAYABLE ON DEMAND

(A) The Superintendent has found substantial evidence that, in the contest of residential financing, the demand note mortgage is a potential source of considerable confusion to the general public. The term "on demand" is often misunderstood by those lacking expertise in financing procedures. Therefore, pursuant to the provisions of 9-B M.R.S.A. Section 241(1) it is hereby declared to be an unfair practice, injurious to the public interest, for any financial institution authorized to do business in this state to make loans to an individual(s) secured by a mortgage on an owner occupied, one-family to four-family dwelling evidenced by a note or other instrument that may require the debtor to pay the note on demand. No such loan shall be made on or after the effective date of this regulation.

(B) Nothing in paragraph A of this regulation shall be deemed to prohibit a financial institution authorized to do business in this state from making the following loans on a demand basis: construction loans for construction of a dwelling, and so-called "bridge" loans (normally used to facilitate purchase of a second home pending sale of the present home) or from using a dwelling as additional collateral on a commercial loan or a additional collateral on any non-amortizing loan permitted by law.

(C) Nothing in paragraph A of this regulation shall be deemed to prohibit a financial institution authorized to do business in this state from making a loan subject to paragraph A the payment of which may be accelerated for a designated default described or referred to in the note by the financial

institution of such note or other evidence of indebtedness clearly and conspicuously provides for such acceleration. In the case of those loans addressed in paragraph B above, all conditions under which the demand feature may be exercised must be clearly and conspicuously listed on the note or other evidence of indebtedness. Where the demand features is to be exercised solely for the purpose of increasing the interest rate, a maximum of sixty (60) days written notice to the borrower(s) must be provided before any upward adjustment of said interest rate.

(D) Nothing in paragraph A of this regulation shall be deemed to prohibit a financial institution authorized to do business in this state from making variable or flexible rate mortgage loans subject to the controls generally associated with such loans, and subject to the disclosure requirements of the Maine Truth-in-Lending Act.

(E) This regulation shall apply only to the loans made on or after the effective date hereof and shall have no effect whatsoever on the validity of any note or mortgage executed before the effective date of this regulation.

The new regulation is adopted, effective May 16, 1977.

John A. Durham
Superintendent
Augusta, Maine
April 5, 1977