

ATTORNEY-INSURANCE PREFERENCE REQUIREMENT

Pursuant to section **37-10-102** and **Administrative Interpretation 10.102(a)-8302**, whenever the primary purpose of a loan that is secured in whole or in part by a lien on real estate is for personal, family or household purposes, the creditor must ascertain prior to closing the preference of borrowers as to legal counsel that is employed to represent the debtor in all matters of the transaction related to the closing of the transaction as well as hazard insurance agent representation. The South Carolina Supreme Court analyzed the requirement and concluded the purpose of the statute was to provide consumers with “clear and prominent disclosure of the information necessary to ascertain the borrower’s preference” with regard to an attorney and insurance agent. See: *Davis v. NationsCredit Financial Services Corp*, 484 S.S.2d 471, 472 (SC, 1997).

The statute has three components that must be met:

1. **Providing the notice** to consumers of the right to select an attorney and insurance agent within three days of an application;
2. **Ascertaining such preferences** prior to loan closings; and
3. **Assurance that borrower chosen providers execute** the loan closing.

The purpose of the statute is to ascertain the selection directly from borrowers so as to ensure their choices and no one else’s. There is a safe harbor if the form provided to borrowers is substantially similar to the sample included in A.I. 10.102(a)-8302 and is fully completed, signed and dated by the borrowers. Regardless of the method used, the form or the information to be included in the form must be definitively communicated to creditors prior to loan closings.

Creditors are considered complaint with the statute when the form is complete with requested selection information, consumer signatures and date signed. In the event creditors deliver a form to consumers and the selection information is not present on the form during state examinations, creditors must provide documented proof to substantiate that their consumers affirmatively selected their own legal and insurance service providers. Such selections are not to be communicated to creditors via third-parties (i.e. realtors, and MLOs). Notes in companies’ systems do not verify that consumers chose the legal and insurance agents, absent any influence from outside sources. Information should only be obtained directly from the borrower.

Provider information from borrowers is acceptable in the following situations in lieu of the form mentioned in A.I. 10.102(a)-8302 being fully completed by the borrower as long as:

- The e-mailed information from the borrower displays a clear e-mail address associated with the borrower;
- The e-mail is received after the date the borrower received and signed the notice;
- The e-mail clearly indicates the borrower’s wish to employ the attorney/insurance agent;
- The attorney/insurance agent is specifically identified in the email; and
- The attorney/insurance agent indicated in the e-mail is actually utilized.