

New Brunswick's New Cost of Credit Disclosure Act

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Canada's consumer finance laws have always been disjointed, with different provinces having different rules as to what information must be disclosed to a consumer, as well as how to calculate the applicable interest rate for certain agreements. This inconsistency among the provinces has raised the cost of lending to consumers and acts as a barrier of entry to foreign and small finance companies. In 1998, the federal, provincial, and territorial governments agreed upon certain principles geared toward harmonizing cost-of-credit disclosure under a harmonization template.

On Sept. 15, 2010, the Province of New Brunswick brought into force a new Cost of Credit Disclosure Act, c.28.3 (the "Act") and New Brunswick Regulation 2010-104 under the Cost of Credit Disclosure Act (the "Regulation"). The Act substantially addresses New Brunswick's commitment to harmonize its cost-of-credit disclosure requirements with the laws of other Canadian jurisdictions in accordance with the harmonization template. The provisions of the Act and the

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Regulation change significantly the disclosure requirements applicable in New Brunswick. The Act was originally passed in 2002, but was not brought into force until new regulations were passed.

REGISTRATION REQUIREMENT FOR LENDERS, LESSORS AND CREDIT BROKERS

One of the consequences of the Act is that lessors who provide financing for personal, family, or household purposes must now register under the Act in order to conduct business in New Brunswick. Similarly, credit brokers who arrange, facilitate, or attempt to arrange consumer credit must be registered to carry on this

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activity in New Brunswick. Lenders were previously required to be registered in New Brunswick under the former legislation, and the requirement continues under the Act, now referring to lenders as "credit grantors."

The registration requirements and the duties imposed in respect of credit agreements and leases now apply to all lessors, credit brokers, and credit grantors that carry on business in New Brunswick regardless of whether or not that lessor, credit broker, or credit grantor is a New Brunswick entity. In other words, if a U.S. finance company advances financing to New Brunswick consumers, then that company must comply with the registration and disclosure requirements. In addition, the Act now requires all lessors, credit brokers, and credit grantors to have an address for service in New Brunswick.

OVERVIEW

The Act requires lessors, credit brokers, and credit grantors acting in the ordinary course of business to register under the Act unless they come within one of several exemptions

specified in the Regulation. The Act only applies to lessors, credit brokers, or credit grantors insofar as their respective credit agreements or lease agreements are entered into primarily for personal, family, or household purposes. Lenders should note that registrations made under the previous version of the Act will remain in effect until such registrations expire.

The Act defines a "credit grantor" as a person who: 1) has entered into, or who is negotiating to enter into, a credit agreement under which the person extends or is to extend credit to a borrower if the credit is not in respect of the sale of goods intended for resale, and the credit is for \$100 or more, or 2) is an assignee of the original credit grantor's rights under a credit agreement. The Act defines a "lessor" as a person who: 1) negotiates to enter into or who enters into a lease under which the person leases goods to a lessee, or 2) is an assignee of the original lessor's rights under the lease. The Act defines a "credit broker" as anyone who, for compensation, arranges, negotiates or facilitates (or attempts to do any of the foregoing) an extension of credit from a credit grantor to a borrower.

A "credit agreement" is an agreement under which credit is extended and includes: a) an agreement in relation to 1) a loan of money, 2) a credit sale, 3) a line of credit, or 4) a credit card; b) a renewal of or an amendment to an agreement referred to in (a); and c) a lease.

MORTGAGE BROKERS AND MORTGAGE LENDERS

Parties who arrange the financings of mortgages must ensure they review the requirements of the Act and understand their responsibilities because the scope of the definition of "credit agreement" is broad enough to include mortgage loans

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(which the Regulation defines as a loan of money secured by a charge against real property). Accordingly, mortgage brokers and mortgage lenders will typically be caught within the definition of credit bro-

ker or credit grantor, as the case may be, and must, therefore, register under the Act. This is a significant change in the legislative framework since, previously, mortgage lenders typically were not required to issue disclosure documents to borrowers in connection with New Brunswick mortgage loans.

Given that it is now an offense under the Act to fail to provide the required disclosure information, lessors, credit brokers, and credit grantors will want to ensure that they understand and comply with the provisions of the Act and should review the Act and the Regulation in detail.

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