

Plain English in Michigan Bankers Association Forms

By Rodney D. Martin

Not too many years ago, consumer credit contracts were a prime example of what is bad about legal writing. An average consumer who actually tried to read the contract hoping to learn his or her legal rights would have found it pretty tough going. But in Michigan, at least, times have changed. Through the efforts of the Michigan Bankers Association, Michigan banks have taken a giant step toward improving the readability of consumer credit forms.

In 1982, the MBA introduced its Consumer Lending Package, a set of 31 consumer credit forms for use by banks in Michigan. In this article, I will recount the story of how the MBA forms were developed. It is a story worth telling, for it is a good example of how one industry recognized the importance of readable forms and then did something about it.

Both the federal and state governments heavily regulate consumer credit. The federal Truth in Lending Act requires a creditor to disclose the major terms of the credit agreement to the consumer "clearly and conspicuously." Michigan imposes additional

disclosure requirements in its statutes governing the installment sale of motor vehicles, home improvements and other commodities, and regulating sales solicited at a consumer's home. Unlike the Truth in Lending Act, those statutes also limit the substantive terms of the credit agreement, including the rate of interest or finance charge, the method of calculating interest, and the consequences of early

Everyone knows that legal writing is different from regular writing. People can understand regular writing.

D. Robert White, *The Official Lawyer's Handbook*, 175 (1983)

and late payments. By the time a creditor attempts to make the required disclosures, consumer credit contracts often end up like "twenty-inch-long 'bedsheets' filled with dense small type."¹

This maze of laws and regulations poses a frightening prospect for bankers. Even the slightest mistake could result in the bank having to forego all interest on a loan or credit sale or could subject the bank to a civil penalty of twice the amount of the interest, up to \$1,000.

The MBA saw in this maze of laws and regulations a need for a comprehensive consumer lending program that would help Michigan banks comply with the law. In 1981, it set out to fill that need. The timing was right for a new forms program. Just the year before, Congress had enacted the Re-

vised Truth in Lending Act. That Act required creditors to adopt entirely new disclosure forms by October 1, 1982.

The MBA established a Consumer Lending Committee made up of experienced bankers from both large and small banks. These bankers had the practical know-how and day-to-day experience necessary to select and develop the MBA consumer lending forms. Also on the committee were lawyers who specialized in consumer credit matters and a representative from Doubleday Bros. & Co., an experienced forms printer who could offer technical advice. The committee offered direction and guidance to our law firm as we drafted the forms in the MBA Consumer Lending Package.

The committee established as its goal "to prepare forms using a format and language that will be readily understandable by most consumers, without compromising the essential legal rights and protections of the lender."² The committee recognized that a bank does not have to forego legal rights or protections when it uses a contract a consumer can easily understand. Those rights and protections can be expressed clearly and understandably. If they are, the contract will only enhance the protection for the bank. The committee recognized that "[i]n a legal environment that emphasizes consumer protection, one of a bank's best assurances of legality, enforceability, and effectiveness of the forms it uses is found in the ability of the consumer to read and understand them."³

To achieve that ability, we drafted the MBA forms with the basics of plain English in mind. The simple interest

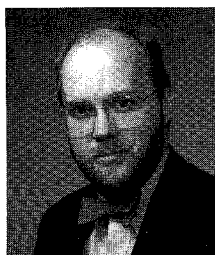
"Plain Language" is a regular feature of the **Michigan Bar Journal**, edited by Joseph Kimble for the State Bar Plain English Committee. Assistant editor is George H. Hathaway. Through this column the Committee hopes to promote the use of plain English in the law. Want to contribute a plain English article? Contact Prof. Kimble at Cooley Law School, P.O. Box 13038, Lansing, MI 48901.

MBA Installment Loan Agreement illustrates how following those basics led to a readable contract. The contract adopts a familiar tone by referring to the borrower as "you" and the bank as "we." It generally uses short sentences, keeping one idea to a sentence. It uses the active voice and positive form to state the obligations of the consumer and the bank. Even the longer sentences are crafted to ensure that the reader does not stumble over awkward constructions or faulty parallelism.

The section on property insurance shows how following these principles makes for a clear, understandable style:

Property Insurance

You agree that the collateral will be kept fully insured against damage, destruction and theft. The insurance policy must provide that its proceeds will be payable to us to the extent of our interest and that the policy may not be canceled without prior notice to us. You agree to provide us with satisfactory proof of this insurance promptly whenever we request it. If you fail to do so, or if the policy you obtain expires or is canceled, we may select and purchase this insurance for you (even if you already have the insurance), and our cost of doing so will be an additional loan to you under this agreement. You authorize us to make, adjust and settle claims, to alter, increase or cancel coverage, and to endorse drafts and collect proceeds under this insurance.



Rodney D. Martin is a partner in the firm of Warner, Norcross & Judd in Grand Rapids. His practice focuses on banking and consumer credit law. Mr. Martin is co-author of the Consumer Lending Pro-

cedures and Forms Manual, which is published by the Michigan Bankers Association, and he has contributed to the Michigan Business Formbook, published by the Institute of Continuing Legal Education.

Another important task in preparing the MBA contracts was to develop a design that fostered readability. When you look at the contract, the first thing you notice is that the information is grouped in sections. Each section is labeled with a heading in bold print. The contract also uses white space to its advantage. A page with generous amounts of white space dividing the paragraphs is easier to read than one with the paragraphs densely compacted together. To increase the amount of white space on the back of the contract, where the standard terms appear, the MBA contracts use two columns rather than one. The shorter lines and the white border around each paragraph reduce the stress on the reader in what was traditionally "fine print." There is no fine print in MBA forms. Each of the contracts is printed in at least 8-point type, the typesize generally accepted as appropriate for consumer contracts.

The simple interest MBA Installment Loan Agreement was the first MBA contract. It has served as the model for all the other forms in the MBA Consumer Loan Package. That package now includes six different installment loan agreements and two versions of a single-payment loan

agreement. In addition, the package has retail installment contracts for use in the credit sale of goods and services, with special contracts for the financing of motor vehicles, mobile homes, and home improvements. The package also includes a contract that can be used by a seller who solicits the contract at the consumer's dwelling.

The MBA deserves to be congratulated for its effort in producing its Consumer Loan Package. Its effort is an example of an industry association taking the lead and providing modern, readable forms to its membership. In doing so, it has benefited not only its member banks but also the citizens of Michigan who want to understand their obligations.

The MBA forms are available through two printing firms: Double-day Bros. & Company, 1919 East Kilgore Road, Kalamazoo, Michigan 49002; and DeLano Press, 1300 Lincoln Road, Allegan, Michigan 49010.

Footnotes

1. R. Flesch, *How to Write Plain English: A Book For Lawyers & Consumers*, 6 (1979).
2. Michigan Bankers Association, *Consumer Lending Manual*, Chapter One, 3 (1982).
3. Michigan Bankers Association, *Consumer Lending Manual*, Chapter One, 3 (1982).

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