THE EQUAL CREDIT OPPORTUNITY ACT (ECOA) AND SPOUSES' AND OTHER FAMILY MEMBERS SIGNATURES ON CREDIT INSTRUMENTS

The ECOA 15 U.S.C. 1691 makes it unlawful for any creditor to discriminate in any credit transaction on the basis of marital status. A creditor cannot ask for information about the borrower's spouse or any other family member, except in instances where the spouse or family member is applying for credit with the borrower, if the spouse or any other family member will be allowed to use the credit account, if the borrower is relying on the spouse's or family member's income in the application process, or if the borrower lives in a community property state. ECOA specifically prohibits a creditor from requiring a spouse's signature on a note when the applicant individually qualifies for credit. Violation of the ECOA can invalidate personal guarantees on such loans.

In the case of Ford City Bank v. Shirlee Goldman, the Appellate Court of Illinois (1st Dist. 1981) 98 Ill.App.3d 522, 424 N.E.2d 761 ruled that ECOA 15 U.S.C. 1691 and its Regulation B, 12 C.F.R. 202.1 states that an applicant's spouse or other person, other than a joint applicant, cannot be required to sign any credit instrument if the applicant qualifies under the creditor's standards of credit-worthiness for the amount and terms of the credit requested. A creditor shall not deem the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit. 12 C.F.R. 202.7(d)(1) In the event the personal liability of an additional party is required to support the extension of credit, the applicant's spouse may, but cannot be required to, serve as the additional party. 12 C.F.R. 202.7(d)(5)

Regulation B, is not without exceptions. 12 C.F.R 202 7(d)(4) provides:

> If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the property being offered as security available to satisfy the debt in the event of default, for example, an instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

In the case of In re Russell H. Huston, Debtor 2010 WL 4607823 (Bankruptcy. E.D. Tenn,
2010) The issue was whether a mortgage granted in favor of the creditor that secured a limited guarantee executed by a spouse of the debtor is rendered invalid under the regulations implementing the Equal Credit Opportunity Act. In order to obtain credit, the debtor executed an unconditional guarantee secured by a deed in Clermont, Florida property. The lender also had the spouse sign a limited guarantee that was secured by a mortgage deed on the property in Clermont, Florida. The spouse's limited guarantee was secured by her interest in the same Clermont, Florida property, which she owned as a fellow tenant by entirety with her husband. The Court ruled that the limited guarantee along with the mortgage deed fell squarely within the exception. Since the Florida property was held as a tenancy by the entirety, Florida law required both spouses consent to make an encumbrance on the property effective.

The Court reasoned that the limited guarantee and mortgage deed were merely a way of making the Florida property available to the creditor in the event of default and as such no violation of ECOA occurred. This was further supported by the fact that the limited guarantee only extended as far as the spouse's interests in the Florida property and no further.

Raphael D. Strzelecki, Attorney at Law