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Arkansas

STATE HIGH COST/PREDATORY LENDING REGULATIONS

Last Updated: 2/21/18 By: RC

Coded: 2/22/18 By: ZB

Reviewed: 2/26/18 By: RC

LAW: Arkansas Home Loan Protection Act (AR Code Section 23-53-103(5)(A))

LOAN AMOUNT COVERED: Up to and including \$150,000.00

BORROWERS COVERED:

- | | |
|-------------------------------------------------|---------------------------------|
| <input checked="" type="checkbox"/> Individuals | <input type="checkbox"/> Trusts |
| <input type="checkbox"/> Organizations | <input type="checkbox"/> Other: |

TOTAL LOAN AMOUNT (TLA) IS DEFINED AS:

- | | |
|----------------------------------------------------------------------------|--------------------------------------|
| <input checked="" type="checkbox"/> Loan Amount as defined in HOEPA 226.32 | <input type="checkbox"/> Note Amount |
| <input type="checkbox"/> Loan Amount as defined in HCML 1026.32 | <input type="checkbox"/> Other: |

LOAN TYPES COVERED:

- | | |
|--------------------------------------------------|------------------------------|
| <input checked="" type="checkbox"/> Conventional | <input type="checkbox"/> FHA |
| <input type="checkbox"/> VA | <input type="checkbox"/> RHS |
| <input type="checkbox"/> Other: | |

LOAN PURPOSES COVERED:

- | | |
|--------------------------------------------------------------------------|-----------------------------------------------------------------|
| <input checked="" type="checkbox"/> Purchase (2 nd Lien Only) | <input type="checkbox"/> Construction to Perm |
| <input type="checkbox"/> Builder | <input checked="" type="checkbox"/> Refinance |
| <input checked="" type="checkbox"/> Equity Out | <input checked="" type="checkbox"/> Home Equity Closed End |
| <input type="checkbox"/> One Time Closing | <input type="checkbox"/> Modification |
| <input checked="" type="checkbox"/> Purchase Plus Improvements | <input checked="" type="checkbox"/> Refinance Plus Improvements |
| <input type="checkbox"/> Lot Loan | <input checked="" type="checkbox"/> Home Improvement |
| <input type="checkbox"/> Borrower Interim | <input type="checkbox"/> One Time Closing with Modification |
| <input checked="" type="checkbox"/> HELOC | <input checked="" type="checkbox"/> Assumption |

BRIDGE LOANS COVERED

- | | |
|------------------------------|----------------------------------------|
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
|------------------------------|----------------------------------------|

PROPERTY OCCUPANCY COVERED:

- | | |
|-------------------------------------------------------|--------------------------------------|
| <input checked="" type="checkbox"/> Primary Residence | <input type="checkbox"/> Second Home |
| <input type="checkbox"/> Investment | <input type="checkbox"/> Raw Land |

APR THRESHOLDS: http://antipredatorylending.com/Sate_Law/Arkansas.htm

- | | | |
|-----------------------------------------|---------------------------------------|---------------------------------|
| <input checked="" type="checkbox"/> APR | <input type="checkbox"/> Unteased APR | <input type="checkbox"/> Other: |
|-----------------------------------------|---------------------------------------|---------------------------------|

First Lien: >8 %

Subordinate Lien: >10 %

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APR COMPARED AGAINST: US § 226.32

APOR APR Itself
 Treasury Yield comparable maturity as of the Other:
fifteenth day of the month immediately
preceding the month in which the application for the
extension of credit is received by the creditor

DATE FOR APR TEST:

Application Closing
 Other:

FEE TEST METHOD: AR Code Section 23-53-103(6)(A)

Use HC Flag
 Use APR & Paid To (§1026.32)
 Other: §226.32

The following discount points and prepayment fees and penalties shall be excluded from the calculation of the total points and fees payable by the borrower:

- (i) Up to and including two (2) bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than one (1) percentage point the required net yield for a ninety day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater; and
- (ii) Up to and including one (1) bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than two (2) percentage points the required net yield for a ninety day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;

PREPAYMENT PENALTY TEST:

Include the prepayment penalty charged at closing in Points and Fees

Total penalty Excess Other: _____

If [X] penalty exceeds 3% in Year 1
[X] penalty exceeds 2% in Year 2
[X] penalty exceeds 1% in Year 3

FEE TEST THRESHOLDS: AR Code Section 23-53-103(5)(A)

All liens:

- >5% of TLA for loans equal to \$75,000 up to and including \$150,000
- >6% for loans greater than \$20,000 but less than \$75,000
- >8% for loans \$20,000 or less

ADJUSTMENTS:

No Yes | How:

FEES INCLUDED IN TEST: AR Code Section 23-53-103(6)(A)

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Same as Section 32 as it exists on March 1, 2003, does not adjust

The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents, but only if the prepayment fees or penalties exceed:

- a) Three percent (3%) of the principal loan amount remaining on the date of the prepayment if the prepayment is made within the first twelve-month period immediately following the date the loan was made;
- b) Two percent (2%) of the principal loan amount remaining on the date of the prepayment, if the prepayment is made within the second twelve-month period immediately following the date the loan was made; or
- c) One percent (1%) of the principal loan amount remaining on the date of the prepayment, if the prepayment is made within the third twelve-month period following the date the loan was made.

SPECIAL NOTES: AR Code Section 23-53-104

23-53-104. Prohibited acts and practices regarding high-cost home loans.

(a) Insurance and Debt Cancellation Agreements. No creditor making a high-cost home loan shall finance, directly or indirectly, any credit life, credit disability, credit unemployment, or credit property insurance or any other life or health insurance or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis shall not be considered financed by the creditor.

(b) Flipping.

(1) No creditor may engage in the unfair act or practice of "flipping" a home loan.

(2) "Flipping" a loan is the making of a high-cost home loan to a borrower that refinances an existing home loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances. In addition, home loan refinancings shall be presumed to be flippings if:

(A) The primary tangible benefit to the borrower is an interest rate lower than the interest rate or rates on debts satisfied or refinanced in connection with the home loan, and it will take more than four (4) years for the borrower to recoup the costs of the points and fees and other closing costs through savings resulting from the lower interest rate; or

(B) The new loan refinances an existing home loan that is a special mortgage originated, subsidized, or guaranteed by or through a state, tribal, or local government or nonprofit organization, that either bears a below-market interest rate at the time the loan was originated or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or when no payments are required under specified conditions, and when, as a result of the refinancing, the borrower will lose one (1) or more of the benefits of the special mortgage.

(c) Recommendation of Default. No creditor shall recommend or encourage default of an existing loan or other debt before and in connection with the closing or planned closing of a high-cost home loan that refinances all or any portion of the existing loan or debt.

(d) Call Provision Prohibition.

(1) No high-cost home loan may contain a provision that permits the creditor in its sole discretion to accelerate the indebtedness.

(2) This subsection does not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.

(e) Fee For Balance.

(1) No creditor nor any assignee may charge a fee in excess of twenty dollars (\$20.00) for transmitting to any person the balance due to pay off a high-cost home loan or to provide a release upon prepayment.

(2) Payoff balances shall be provided within a reasonable time, but in any event, no more than seven (7) business days after the request.

(f) No Balloon Payment.

(1) A high-cost home loan having a term of less than ten (10) years may not include terms under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal balance.

(2) This prohibition does not apply when the payment schedule is adjusted to account for the seasonal or irregular income of the obligor or if the purpose of the loan is a bridge loan connected with or related to the acquisition or construction of a dwelling intended to become the obligor's principal dwelling.

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(g) No Negative Amortization. No high-cost home loan may include payment terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.

(h) No Increased Interest Rate.

(1) No high-cost home loan may contain a provision that increases the interest rate after default.

(2) (A) This subsection does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents.

(B) The change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

(i) No Advance Payments. No high-cost home loan may include terms under which more than two (2) periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

(j) No Mandatory Arbitration Clause. No high-cost home loan may be subject to a mandatory arbitration clause that limits in any way the right of the borrower to seek relief through the judicial process for any or all claims and defenses the borrower may have against the creditor, broker, or other party involved in the loan transaction.

(k) No Lending Without Homeownership Counseling. A creditor may not make a high-cost home loan without first receiving certification from a third-party counselor approved by the Department of Housing and Urban Development, a state housing financing agency, or the regulatory agency that has jurisdiction over the creditor, that the borrower has received counseling on the advisability of the loan transaction.

(l) No Lending Without Due Regard to Repayment Ability. A creditor shall not make a high-cost home loan unless the creditor reasonably believes at the time the loan is consummated that one (1) or more of the obligors, when considered individually or collectively, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources other than the borrower's equity in the dwelling that secures repayment of the loan.

(m) No Financing Prepayment Fees or Penalties. In making a high-cost home loan, a lender may not directly or indirectly finance any prepayment fees or penalties payable by the borrower in a refinancing transaction if the lender or an affiliate of the lender is the noteholder of the note being refinanced.

(n) Home-Improvement Contracts. A creditor may not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan unless:

(1) The creditor is presented with a signed and dated completion certificate showing that the home improvements have been completed; and

(2) The instrument is payable to the borrower or jointly to the borrower and the contractor, or, at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the creditor, and the contractor before the disbursement.

(o) No Modification or Deferral Fees. A creditor may not charge a borrower any fees or other charges to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan.

(p) Subsections (f), (g), and (i) of this section do not apply to reverse mortgage transactions.

History. Acts 2003, No. 1340, § 3[4]; 2005, No. 2166, § 4.