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Illinois

STATE HIGH COST/PREDATORY LENDING REGULATIONS

Last Updated: 2/22/2018 By: BH
Coded: 2/27/2018 By: ZB
Reviewed: 2/27/2018 By: BH

LAW: Illinois High Risk Home Loan Act (815 ILCS 137)

LOAN AMOUNT COVERED: No limitations

BORROWERS COVERED:

Individuals Trusts
 Organizations Other:

TOTAL LOAN AMOUNT (TLA) IS DEFINED AS: 815 ILCS 137

Loan Amount as defined in HOEPA 226.32 Note Amount
 Loan Amount as defined in HCML 1026.32 Other:

LOAN TYPES COVERED:

Conventional FHA
 VA RHS
 Other:

LOAN PURPOSES COVERED:

Purchase Construction to Perm
 Builder Refinance
 Equity Out Home Equity Closed End
 One Time Closing Modification
 Purchase Plus Improvements Refinance Plus Improvements
 Lot Loan Home Improvement
 Borrower Interim One Time Closing with Modification
 HELOC Assumption

BRIDGE LOANS COVERED

Yes No

PROPERTY OCCUPANCY COVERED:

Primary Residence Second Home
 Investment Raw Land

APR THRESHOLDS: <http://www.ilga.gov/legislation/97/SB/09700SB1692enr.htm>

APR Unteased APR Other:

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First Lien: >6 %

Subordinate Lien: >8 %

APR COMPARED AGAINST: 815 ILCS 137

APOR
 Treasury Yield

APR Itself
 Other:

DATE FOR APR TEST:

Application
 Other: Date interest rate is set

Closing

FEE TEST METHOD: 815 ILCS 137

Use HC Flag
 Use APR & Paid To (§1026.32)
 Use APR & Paid To, except:

FEE TEST THRESHOLDS: 815 ILCS 137

All Liens: > or = 5 % of TLA \geq \$21,032

Lesser of 8% or \$1,052 for TLA < \$21,032

PREPAYMENT PENALTY LIMITATIONS:

Max prepayment penalty 2% of the amount prepaid, and can only be charged during first 36 months. Otherwise loan is state high-cost.

ADJUSTMENTS:

No Yes | How: Adjusts annually per CPI

FEES INCLUDED IN TEST: 815 ILCS 137

Points and fees under 12 CFR 226.32 compensation paid directly or indirectly by a consumer or creditor to a mortgage broker from any source, including a broker that originates a loan in its own name in a table-funded transaction, not otherwise included in 12 CFR 226.4; the maximum prepayment fees and penalties that may be charged or collected under the terms of the credit transaction; all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and premiums or other charges payable at or before closing or financed directly or indirectly into the loan for any credit life, credit disability, credit unemployment, credit property, other accident, loss of income, life, or health insurance or 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 in full on a monthly basis shall not be considered financed by the creditor. "Points and fees" does not include any insurance premium provided by an agency of the federal government or an agency of a state; any insurance premium paid by the consumer after closing; and any amount of a premium, charge, or fee that is not in excess of the amount payable under policies in effect at the time of origination under Section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium, charge, or fee is required to be refundable on a pro-rated basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan.

SPECIAL NOTES: 815 ILCS 137

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(815 ILCS 137/30)

Sec. 30. No prepayment penalty. A high risk home loan may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal before the date on which the principal is due. For purposes of this Section, any method of computing a refund of unearned scheduled interest is a prepayment penalty if it is less favorable to the consumer than the actuarial method as that term is defined by Section 933(d) of the federal Housing and Community Development Act of 1992, 15 U.S.C. 1615(d).

(Source: P.A. 97-849, eff. 1-10-14 (see Section 10 of P.A. 97-1159, 78 Fed. Reg. 6855, 6857, 78 Fed. Reg. 10695, 10696, and 78 Fed. Reg. 44685, 44686).)

Sec. 35.5. No balloon Payments. No high risk home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This section does not apply when the payment schedule is adjusted to the seasonal or irregular income of the consumer.

(815 ILCS 137/55)

Sec. 55. Financing of points and fees. No lender shall transfer, deal in, offer, or make a high risk home loan that finances, directly or indirectly, any points and fees. No lender shall transfer, deal in, offer, or make a high risk home loan that finances any prepayment fee or penalty payable by the consumer in a refinancing transaction if the creditor or an affiliate of the creditor is the noteholder of the note being refinanced.

(Source: P.A. 93-561, eff. 1-1-04.)

(815 ILCS 137/80)

Sec. 80. Late payment fee. A lender shall not transfer, deal in, offer, or make a high risk home loan that provides for a late payment fee, except under the following conditions:

(1) the late payment fee shall not be in excess of 4% of the amount of the payment past due;

(2) the late payment fee shall only be assessed for a payment past due for 15 days or more;

(3) the late payment fee shall not be imposed more than once with respect to a single late payment;

(4) a late payment fee that the lender has collected shall be reimbursed if the borrower presents proof of having made a timely payment; and

(5) a lender shall treat each payment as posted on the same business day as it was received by the lender,

servicer, or lender's agent or at the address provided to the borrower by the lender, servicer, or lender's agent for making payments.

(Source: P.A. 93-561, eff. 1-1-04.)

815 ILCS 137/80.5 new)

Sec. 80.5. Coordination with subsequent late fees. If a payment is otherwise a full payment for the applicable period, is paid on its due date or within an applicable grace period, and the only delinquency or insufficiency of payment is attributable to any late fee or delinquency charge assessed on any earlier payment, no late fee or delinquency charge may be imposed on the payment.

(815 ILCS 137/80.6 new)

Sec. 80.6. Failure to make installment payment. If, in the case of a loan agreement the terms of which provide that any payment shall first be applied to any past principal balance, the consumer fails to make an installment payment and the consumer subsequently resumes making

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installment payments but has not paid all past due installments, the creditor may impose a separate late payment charge or fee for any principal due (without deduction due to late fees or related fees) until the default is cured.

(815 ILCS 137/90.5 new)

Sec. 90.5. Modification and deferral fees prohibited. A lender, successor in interest, assignee, or any agent of any of the foregoing may not charge a consumer any fee to modify, renew, extend, or amend a high risk home loan or to defer any payment due under the terms of the loan.

(815 ILCS 137/145)

Sec. 145. Subterfuge prohibited. No lender, with the intent to avoid the application or provisions of this Act, shall (i) divide a loan transaction into separate parts, ~~or~~ (ii) structure a loan transaction as an open-end credit plan or another form of loan, or (iii) perform any other subterfuge. (Source: P.A. 93-561, eff. 1-1-04.)

NOTICE: CHICAGO AND COOK COUNTY PROPERTIES

There are special rules for these two areas which are same as above but include all open and closed loans on all 1-4 family property up to \$250,000. Cook County has even more rules and we advise the lender to check the county website section 2-407 at: https://library.municode.com/il/cook_county/codes/code_of_ordinances?nodeId=PTIGEOR_CH2AD_ARTVDESIAG_DIV3BUFI_SDIINGE#PTIGEOR_CH2AD_ARTVDESIAG_DIV3BUFI_SDIINGE_S2-407PRLEOR