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New Mexico

STATE HIGH COST/PREDATORY LENDING REGULATIONS

Last Updated: 02/27/18 By: RC

Coded: 3/5/2018 By: ZB

Reviewed: 3/5/18 By: RC

LAW: NM Home Loan Protection Act, 2004 (NM Statutes Section 58-21A.1)

LOAN AMOUNT COVERED: FNMA loan limits

BORROWERS COVERED:

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

TOTAL LOAN AMOUNT (TLA) IS DEFINED AS: NM Statutes Section 58-21A.1

<input type="checkbox"/> Loan Amount as defined in HOEPA 226.32	<input checked="" 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 checked="" type="checkbox"/> FHA
<input checked="" type="checkbox"/> VA	<input checked="" type="checkbox"/> RHS
<input type="checkbox"/> Other:	

LOAN PURPOSES COVERED:

<input checked="" type="checkbox"/> Purchase	<input checked="" 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 checked="" 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 checked="" type="checkbox"/> Borrower Interim	<input checked="" 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
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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://www.rld.state.nm.us/FID/PDFs/Home%20Loan%20Protection%20Act.pdf> and <http://nmlegis.gov/Sessions/09%20Regular/final/SB0342.pdf>

<input type="checkbox"/> APR	<input type="checkbox"/> Unteased APR	<input checked="" type="checkbox"/> Other: Note rate – For ARM loans, fully indexed
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rate will be used for comparison

First Lien: 7 %

Subordinate Lien: 9 %

APR COMPARED AGAINST: NM Statutes Section 58-21A.1

APOR APR Itself
 Treasury Yield Other:

DATE FOR APR TEST:

Application Closing
 Other: 15th day of the month immediately preceding the month *in which the loan is made (closed)*.

FEE TEST METHOD: NM Statutes Section 58-21A.1

Use HC Flag
 Use APR & Paid To (§1026.32)
 Use APR & Paid To, except: Subtract up to 2 points of bona fide discount points and conventional prepayment penalties

Discount points are not "bona fide discount points" if the annual percentage rate otherwise applicable to the home loan exceeds the conventional mortgage rate by more than:

- (1) one and one-half percentage points for a home loan secured by a first lien; or
- (2) three percentage points for a home loan secured by a junior lien;

"Conventional prepayment penalty" means a prepayment penalty or fee that may be collected in a home loan and that is authorized by federal law; provided that a prepayment penalty is not a "conventional prepayment penalty" if the home loan:

- (1) has an annual percentage rate that exceeds the conventional mortgage rate by more than two percent; or
- (2) permits prepayment fees or penalties that exceed two percent of the amount prepaid;

"conventional mortgage rate" means the most recently published annual yield on conventional mortgages published by the board of governors of the federal reserve system as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor;

These rates are no longer published by the Federal Reserve System as of 10/16 and are now available from FreddieMac.

M. "points and fees" means:

(1) all amounts payable by a borrower at or before the closing of a home loan, exclusive of any time-price differential due at closing on the loan proceeds, including:

- (a) loan discount points or other discounts;
- (b) loan fees, broker fees or similar charges; and

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(c) fees for preparation of loan-related documents; but

(d) does not include fees for the following purposes, if the amounts are bona fide and reasonable and paid to a person other than the creditor or an affiliate of the creditor: 1) service or carrying charges; 2) credit reports; 3) title exam, title insurance, title closing or similar purposes; 4) escrow charges for future payments of taxes and insurance; 5) fees for notarizing deeds and other documents; 6) appraisals, including fees related to any pest infestation or flood hazard inspections conducted prior to closing; 7) inspection performed prior to closing; 8) attorney fees, if the borrower has the right to select the attorney from an approved list or otherwise; 9) fire and hazard insurance and flood insurance premiums if the conditions in [12 C.F.R. s.226.4\(d\)\(2\)](#) are met; 10) tax payment services; 11) surveys; 12) flood certification; 13) pest infestation and flood determination; and 14) federal housing administration upfront mortgage insurance, veterans administration funding fee, guaranteed rural housing loan guarantee fee or upfront premium private mortgage insurance at a percentage rate, as set by the director biannually, equal to the highest up-front government mortgage insurance percentage rate or United States department of veterans affairs funding fee percentage rate;

(2) all compensation, including yield spread premiums, paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table-funded transaction;

(3) the cost of all premiums financed by the creditor, directly or indirectly, for any credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments financed by the creditor, directly or indirectly, for any debt cancellation or suspension agreement or contract, except that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the creditor; and

(4) for open-end loans, the points and fees included in Paragraphs (1) through (3) of this subsection that are known at or before closing plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line;

FEE TEST THRESHOLDS: NM Statutes Section 58-21A.1

5% \geq \$20,000 **Error! Bookmark not defined.**

Lesser of 8% or \$1,000 for TLA < \$20,000

ADJUSTMENTS:

No Yes | How:

SPECIAL NOTES: NM Statutes Section 58-21A.1

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"58-21A-5. LIMITATIONS AND PROHIBITED PRACTICES FOR HIGH-COST HOME LOANS.--

A. No creditor or mortgage loan originator making a high-cost home loan shall directly or indirectly finance any points or fees in excess of two percent of the principal loan amount.

B. No creditor shall make a high-cost home loan that contains a provision that increases the interest rate after default, provided that this provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents if the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

C. Without regard to whether a borrower is acting individually or on behalf of others similarly situated, a provision of a high-cost home loan agreement that allows a party to require a borrower to assert any claim or defense in a forum that is less convenient, more costly or more dilatory for the resolution of a dispute than a judicial forum where the borrower may otherwise properly bring a claim or defense or limits in any way any claim or defense the borrower may have is unconscionable and void.

D. No creditor or mortgage loan originator shall make a high-cost home loan without first receiving certification from a third-party, nonprofit counselor approved by the United States department of housing and urban development, the New Mexico mortgage finance authority or the director of the financial institutions division of the regulation and licensing department that the borrower has received counseling on the advisability of the loan transaction.

E. A creditor or mortgage loan originator shall not make a high-cost home loan unless the creditor has given the following notice, or a substantially similar notice, in writing, to the borrower, acknowledged in writing and signed by the borrower not later than the time the notice is required under the notice provision contained in 12 C.F.R. s.226.31(c):

NOTICE TO BORROWER

YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD SHOP AROUND AND COMPARE LOAN RATES AND FEES. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY BASED ON WHICH CREDITOR OR BROKER YOU SELECT.

IF YOU ACCEPT THE TERMS OF THIS LOAN, THE CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR HOME.

YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS UNDER THE LOAN.

YOU SHOULD CONSULT AN ATTORNEY-AT-LAW AND A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE, FEES AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. A LIST OF QUALIFIED COUNSELORS IS AVAILABLE BY CONTACTING THE NEW MEXICO REGULATION AND LICENSING DEPARTMENT.

YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION.

REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL CREDITORS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR CREDITOR ABOUT THESE SERVICES. ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS."

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