

South Carolina

STATE HIGH COST/PREDATORY LENDING REGULATIONS

Last Updated: 02/28/18 By: RC
Coded: 3/5/2016 By: ZB
Reviewed: _____ By: _____

LAW: SC High Cost and Consumer Home Loans Act (SC Code of Laws Title 37, Chapter 23)

LOAN AMOUNT COVERED: FNMA loan limits

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: SC Code of Laws Title 37, Chapter 23

- | | | | |
|-------------------------------------|--|--------------------------|-------------|
| <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 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 type="checkbox"/> | HELOC | <input checked="" type="checkbox"/> | Assumption |

BRIDGE LOANS COVERED

- | | | | |
|-------------------------------------|-----|--------------------------|----|
| <input checked="" type="checkbox"/> | Yes | <input 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://www.scstatehouse.gov/code/t37c023.php>

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

First Lien: 6.5 %

Subordinate Lien: 8.5 %

APR COMPARED AGAINST: SC Code of Laws Title 37, Chapter 23

- | | | | |
|-------------------------------------|----------------|--------------------------|------------|
| <input checked="" type="checkbox"/> | APOR | <input type="checkbox"/> | APR Itself |
| <input type="checkbox"/> | Treasury Yield | <input type="checkbox"/> | Other: |

DATE FOR APR TEST:

Application Closing
 Other: Date interest rate is set

FEE TEST METHOD: SC Code of Laws Title 37, Chapter 23

Use HC Flag
 Use APR & Paid To (§1026.32)
 Use APR & Paid To, except: Exclude all FHA/VA, fees payable to FNMA/FHLMC, and/or FNMA/FHLMC LLPAs, Exclude credit insurance

Discount points and prepayment fees and penalties are excluded from the calculation of the total points and fees payable by the borrower:

(i) up to and including two conventional conforming 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 is discounted does not exceed by more than one 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; or

(ii) up to and including one conventional conforming 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 is discounted does not exceed by more than two 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;

(iii) a conventional prepayment penalty.

"Conventional conforming discount points" means loan discount points knowingly paid by the borrower for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate applicable to the loan, so long as the home loan has an annual percentage rate that does not exceed the conventional mortgage rate by more than one percentage point.

"Conventional prepayment penalty" means a prepayment penalty or fee that may be collected or charged in a home loan and that is authorized by law other than by this chapter, provided the home loan (a) does not have an annual percentage rate that exceeds the conventional mortgage rate by more than two percentage points; and (b) does not permit prepayment fees or penalties that exceed two percent of the amount prepaid."Conventional mortgage rate" means 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.

"Conventional mortgage rate" means 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.

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

FEE TEST THRESHOLDS: SC Code of Laws Title 37, Chapter 23

All liens: > or = 5 % of TLA ≥\$20,000
Lesser of 8% or \$1,000 for TLA < \$20,000

ADJUSTMENTS:

No Yes | How: Adjusted every January 1 with CPI

FEES INCLUDED IN TEST: SC Code of Laws Title 37, Chapter 23

(13) "Points and fees" means:
(a) items required to be disclosed pursuant to Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended, except interest or the time-price differential;
(b) charges for items listed in Section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase "points and fees";

(c) compensation paid directly by the borrower to a mortgage broker not otherwise included in subitem (a) or (b);

(d) the maximum prepayment fees and penalties that may be charged or collected pursuant to the terms of the loan documents. Interest that may accrue in advance of payment in full of a loan made under a local, state, or federal government-sponsored mortgage insurance or guaranty program, including a Federal Housing Administration program, is not considered a prepayment fee or penalty;

(e) premiums or other charges paid at or before closing for credit life, accident, health, or loss-of-income insurance or debt-cancellation coverage that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident. This subsection does not apply after January 1, 2005

OTHER ITEMS TO BE TESTED/CONSIDERED:

SPECIAL NOTES: SC Code of Laws Title 37, Chapter 23

SECTION 37-23-30. High-cost home loan agreements.

A high-cost home loan agreement may not contain:

(1) a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This item does not apply when repayment of the loan is accelerated by default, or pursuant to a due-on-sale provision, or some other provision of the loan documents unrelated to the payment schedule;

(2) a balloon payment provision that contains a scheduled payment more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower;

(3) a negative amortization provision with a periodic payment schedule that causes the principal balance to increase;

(4) a provision that increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, so long as the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness;

(5) terms under which more than two periodic payments required pursuant to the loan are consolidated and paid in advance from the loan proceeds provided to the borrower;

(6) charges to a borrower for fees to modify, renew, extend, or amend a high-cost home loan or to defer a payment due pursuant to the terms of a high-cost home loan; or

(7) contain as a part of the loan agreement a choice of law provision identifying a state other than South Carolina, unless otherwise allowed under federal law.

HISTORY: 2003 Act No. 42, Section 1, eff January 1, 2004, and applying to loans for which the loan applications were taken on or after that date.

SECTION 37-23-40. Lender limitations.

The lender of a high-cost home loan may not:

(1) make a high-cost home loan without first receiving a written certification from a counselor approved by the State Housing Finance and Development Authority that the borrower has received counseling on the advisability of the loan transaction and the appropriate loan for the borrower. The Department of Consumer

Affairs shall specify the information that must be provided by the lender and reviewed by the consumer credit counselor;

(2) make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, is 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. If the loan is an adjustable rate mortgage (ARM), the analysis of the obligor must include an evaluation of the ability to repay by final maturity at the fully indexed rate assuming a fully amortizing repayment schedule. An obligor is presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the obligor's total monthly debts, including amounts owed pursuant to the loan including, but not limited to, principal, interest, current property taxes, and current insurance, do not exceed fifty percent of the obligor's monthly gross income as verified by the credit application, a credit report, and information provided to a lender by a third party, including the Internal Revenue Service (IRS). A presumption of inability to make the scheduled payments to repay the obligation does not arise solely from the fact that, at the time the loan is consummated, the obligor's total monthly debts, including amounts owed under the loan, exceed fifty percent of the obligor's monthly gross income;

(3) directly or indirectly finance:

(a) 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;

(b) points and fees exceeding two and one-half percent of the total loan amount;

(4) charge a borrower points and fees in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same lender as noteholder;
or

(5) pay a contractor pursuant to a home improvement contract from the proceeds of a high-cost home loan other than:

(a) by an instrument payable jointly to the borrower and the contractor; or

(b) 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 lender, and the contractor before the disbursement.

For purposes of this article, a home improvement contract does not include money for a new home construction loan or a purchase money loan for a home.

HISTORY: 2003 Act No. 42, Section 1, eff January 1, 2004, and applying to loans for which the loan applications were taken on or after that date; 2009 Act No. 67, Section 4.F, eff January 1, 2010.