

Tennessee

STATE HIGH COST/PREDATORY LENDING REGULATIONS

Last Updated: 2/28/18 By: BH

Coded: 3/5/2018 By: ZB

Reviewed: _____ By: _____

LAW: Tennessee Home Loan Protection Act of 2006 (TN Code Ann. Title 45, Chapter 20)

LOAN AMOUNT COVERED: Lesser of \$350,000 or FNMA loan limit

BORROWERS COVERED:

Individuals Trusts
 Organizations Other:

TOTAL LOAN AMOUNT (TLA) IS DEFINED AS: TN Code Ann. Title 45, Chapter 20

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

LOAN TYPES COVERED: Banks, CU, Savings & Loan are excluded

Conventional FHA
 VA RHS
 Other: Loans made by Mortgage Companies,
Mortgage Bankers, and Brokers

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://tennessee.gov/sos/acts/104/pub/pc0801.pdf>

APR Unteased APR Other:

First Lien: > 6.5 %

Subordinate Lien: > 8.5 %

APR COMPARED AGAINST: TN Code Ann. Title 45, Chapter 20

APOR APR Itself
 Treasury Yield Other:

DATE FOR APR TEST:

Application Closing
 Other: Date interest rate is set

FEE TEST METHOD: TN Code Ann. Title 45, Chapter 20

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

FEE TEST THRESHOLDS: TN Code Ann. Title 45, Chapter 20

All liens: Greater of 5 % of TLA or \$2400 if TLA > \$30,000
8% for TLA ≤ \$30,000

ADJUSTMENTS:

No Yes | How: Annually

FEES INCLUDED IN TEST: TN Code Ann. Title 45, Chapter 20

(a) "Points and fees" means as defined in 12 CFR §226.32 and as used in the official staff commentary of the board of governors of the federal reserve system as amended from time to time.
(b) "Points and fees" shall exclude up to and including two (2) Bona Fide Loan Discount Points.
(c) "Points and fees" shall not include charges for all items listed in section 226.4(c)(7) of Title 12 of the Code of Federal Regulations as provided in Section 226.32(b)(1)(iii) where such charges are paid to an affiliate of the lender and the amount is reasonably consistent with amounts charged for comparable services by a party not affiliated with the lender at the time the loan is made. Provided, however, only the amount of the charge that exceeds the charge for comparable items shall be included within the term "points and fees".

SPECIAL NOTES: TN Code Ann. Title 45, Chapter 20

SECTION 3. The following acts and practices are prohibited in the making of a high-cost home loan:
(1) No lender shall recommend or encourage default or skipping a payment on an existing loan or other debt prior to 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.
(2)(A) A lender or servicer of a high-cost home loan shall provide a borrower or his designated agent, upon request, two (2) pay-off statements within any twelve (12) month period, free of charge. Such statement shall be valid for a minimum of fifteen (15) days.
(B) The lender may require that any request for a pay-off statement be sent in writing, by facsimile, or other electronic means, to a designated address or location and contain sufficient information to identify the loan, including the name of the borrower as listed on the loan documents and the loan number.
(C) A request for a pay-off statement sent to the location designated by the lender or servicer shall be provided within five (5) business days after an authorized request, plus any required fee, is received by the lender.
(D) A lender or servicer may charge a reasonable fee for any additional requests for a pay-off statement during the twelve (12) month period.
(3) No lender or servicer shall charge a fee to provide a release upon prepayment of a high-cost home loan except for the actual cost paid to record the release.
(4)(A) No lender shall knowingly or intentionally make a high-cost home loan that refinances within thirty (30) months an existing home loan or high-cost home loan of the borrower when the new loan does not have a reasonable benefit to the borrower, considering all the circumstances, including the terms of both the new and refinanced loans, the economic and non-economic circumstances, the cost of the new loan, and the borrower's circumstances.
(5) No lender shall make a high-cost home loan that finances, directly or indirectly, any single premium

credit life insurance, as defined in §56-7-904(4), credit accident, credit disability, credit unemployment, credit property or health insurance, any other credit insurance product, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, unless

(A) the total benefits payable under all such policies or contracts issued in connection with such loan do not exceed \$50,000,

(B) the principal amount of financed premiums for such policy or contract shall be repayable during the term of such policy or contract, and

(C) the amount payable under such credit life insurance policy shall not at any time during the term of such loan be more than one hundred three percent (103%) of the then unamortized principal balance of such loan. Nothing in this subdivision prohibits the payment or receipt of insurance premiums or debt cancellation or suspension fees calculated on the unpaid balance of a home loan and paid on a monthly basis or prohibits bona fide credit property insurance required by the federal housing administration or the United States department of agriculture to be paid in a single premium to the respective federal agency. As used in this subsection, "credit property insurance" means property insurance written in connection with credit transactions under which the lender is the primary beneficiary.

(6)(A) A lender may not make a high-cost home loan unless the lender reasonably believes at the time the loan is made that one or more of the borrowers, when considered individually or collectively, will be able to make scheduled payments to repay the obligation based upon consideration of their current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan).

(B) A borrower shall be deemed to be able to make the scheduled payments to repay the high-cost home loan if, at the time the loan is consummated, the borrower's total monthly debts as identified on the borrower's credit report and as computed by the lender's underwriting guidelines and methodology, including amounts owed under the loan, do not exceed fifty percent (50%) of the borrower's monthly gross income:

(i) As verified by the credit application, the borrower's financial statements, tax returns, payroll receipts or third party income verification; and,

(ii) As underwritten in accordance with the lender's underwriting guidelines and methodology.

(C) No presumption of inability to make the scheduled payments to repay the high-cost home loan shall arise solely from the fact that, at the time the loan is consummated, the borrower's total monthly debts (including amounts owed under the loan) exceed fifty percent (50%) of the obligor's monthly gross income.

(7) No lender may directly or indirectly finance, in connection with any high-cost home loan, any points and fees in excess of an amount the greater of three percent (3%) of the total loan amount or \$1,500 if the total loan amount is more than thirty thousand dollars (\$30,000) or, an amount equal to five percent (5%) of the total loan amount if the

total loan amount is thirty thousand dollars (\$30,000) or less. Provided, however, that registrants under Tennessee Code Annotated Title 45, Chapter 5, may finance as points and fees an amount not to exceed the charges allowed pursuant to § 45-5-403(a)(1)(A) on loans made under the provisions of Title 45, Chapter 5.

(8) A lender may not 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 with the same lender or affiliate of the lender; provided, however, this provision shall not prohibit a lender from charging points and fees in connection with any additional proceeds received by the borrower in connection with the refinancing. For purposes of this subsection, additional proceeds shall be defined as the amount over and above the amount required to pay off the existing high-cost home loan.

(9)(A) No prepayment fees or penalties shall be provided in the loan documents for a high-cost home loan or charged a borrower which exceed in aggregate two percent (2%) of the loan amount prepaid in the first twenty-fourth (24) months following the loan closing.

(B) No prepayment fees or penalties shall be provided in the loan documents or charged a borrower in a refinancing of a high-cost home loan if the lender or an affiliate of the lender is the note holder of the note being refinanced.

(C) Any refund method not permitted under 12 CFR 226.32(d)(6) and (d)(7) shall be prohibited.

(10) No lender shall make a high-cost home loan that contains a scheduled payment that is more than twice as large as the average of the earlier scheduled payments. This provision does not apply when the payment

schedule is adjusted to the seasonal or irregular income of a borrower.

(11) No lender shall make a high-cost home loan that contains a payment schedule with regular periodic payments that cause the principal balance to increase.

(12) No lender shall make a high-cost home loan that contains a provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This provision does not apply when repayment of the loan has been accelerated by default in the terms of the note or deed of trust.

(13) No lender shall make a high-cost home loan that includes 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.

(14) No lender shall make a high-cost home loan that contains 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, provided the change in the interest rate is not triggered by the event of default or acceleration of the indebtedness.

(15) No lender shall make a high-cost home loan that provides for a late payment fee except as follows:

(A) The late payment fee shall not be in excess of five percent (5%) of the amount of the payment past due or fifteen dollars (\$15), whichever is greater;

(B) The late payment fee shall only be assessed for a payment past due for ten (10) days or more;

(C) The late payment fee shall not be imposed more than once with respect to a single late payment and no late payment fee shall be charged with respect to a subsequent payment that would have been a full payment but for the previous default or the imposition of the previous late payment fee.

(16) A lender shall not make a high-cost home loan unless the lender has given the following written notice, in at least twelve (12) point bold type, to the borrower, acknowledged in writing and signed by the borrower, not later than the time the notice provided by 12 CFR § 226.31(c) is required:

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 LENDER OR BROKER YOU SELECT.

IF YOU ACCEPT THE TERMS OF THIS LOAN, THE LENDER 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 A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE, FEES AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. THE UNITED STATES DEPARTMENT OF HOUSING AND

URBAN DEVELOPMENT (HUD) MAINTAINS A LIST OF CREDIT COUNSELORS IN YOUR AREA. YOU MAY OBTAIN HUD'S LIST OF CREDIT COUNSELORS BY CONTACTING HUD DIRECTLY OR BY CONTACTING THE TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS.

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 LENDERS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR LENDER 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 LENDERS.

(17) (A) A lender may not present a borrower with a high-cost home loan at closing with a materially different interest rate, term, type of loan, or settlement charges from the settlement charges disclosed on the last disclosures required by the Real Estate Settlement Procedures Act (12 U.S.C. §§2601-2617), without re-

disclosure not less than one (1) day before closing. For purposes herein “materially different settlement charges” means the total settlement charges disclosed on the final settlement statement would exceed such previously last disclosed settlement charges by an amount equal to more than fifteen percent (15%) in the aggregate.

(B) A high-cost home loan may not be closed in a location other than an office of the lender, at the office of any attorney at law licensed to practice in Tennessee, or at the office of a title insurance company or title insurance agency licensed to do business in Tennessee, or the office of a settlement or closing agent, or the commercial office of a mortgage broker.

(18) A lender or its servicer shall report at least quarterly both the favorable and unfavorable payment history information of the borrower on payments due to the lender on a high-cost home loan to a nationally recognized consumer credit reporting agency.

(19)(A) Each mortgage or deed of trust securing a high-cost home loan shall state on the face of the instrument the following legend prominently displayed: “This instrument secures a high-cost home loan as defined in Tennessee Code Annotated, Title 45.”

(B) Each note which meets the definition of a high-cost loan as defined in this chapter shall state on the face of the instrument the following legend prominently displayed: “This instrument is a high-cost home loan as defined in Tennessee Code Annotated, Title 45.”

(20)(A) No lender, in connection with a high-cost home loan, shall encourage or solicit any person to execute any loan agreement, mortgage, deed, deed of trust, loan application, settlement statement, or other loan or closing document

for a high-cost home loan if any material terms of the loan or transaction, including but not limited to, the duration, interest rate, or fees, are omitted or incomplete.

(B) No person, in connection with a high-cost home loan, shall modify (including, but not limited to, any alteration or change) any loan agreement, mortgage, deed, deed of trust, loan application, settlement statement, or other

loan or closing document, after the execution of such document, unless such modification is 1) with the consent of the person or persons affected by the change and such consent is in writing, or 2) the modification is authorized by a valid power of attorney authorizing such modification. A power of attorney is valid for this purpose if it specifically includes the type or nature of the modification.

(C) No person, in connection with a high-cost home loan, shall encourage, solicit, or conspire with any other person to violate this section.

(21) A lender may not make a high-cost home loan without first providing to the borrower, in a separate document clearly identified, notice of availability of counselors from third-party nonprofit organizations approved by the United States Department of Housing and Urban Development, a housing financing agency of this state, or the regulatory agency which has jurisdiction over the lender. Such document shall provide either:

1) a list of counselors who are located in the county of the borrower or the nearest available county where such counselors are available; or 2) a resource list for the Department of Housing and Urban Development, Tennessee Housing & Development Agency or the Tennessee Department of Financial Institutions, including toll free numbers and website information if available to identify such counselors. The borrower shall be afforded the opportunity to seek such counseling without penalty. For purposes of this section, this document shall be provided to the borrower not later than the time that the good faith estimate of closing costs required by the Real Estate Settlement and

Procedures Act must be provided to the borrower.