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Texas

STATE HIGH COST/PREDATORY LENDING REGULATIONS

Last Updated:	Date:	Initials:
By:	12/21/21	BH
Reviewed:	4/18/19	RFL
Coded:		
By:	1/12/22	SA
Reviewed:		

LAW: Texas High Cost Home Loan Law (Chapter 343.201 Texas Finance Code)

<https://statutes.capitol.texas.gov/Docs/FI/htm/FI.343.htm#343.201>

LOAN AMOUNT COVERED: Must be between \$20,000 and \$323,600 (1/2 of 2022 FNMA conventional amount of \$647,200)

BORROWERS COVERED:

☒ Individuals
☐ Organizations

☒ Trusts
☐ Other:

TOTAL LOAN AMOUNT (TLA) IS DEFINED AS:

☐ Loan Amount as defined in HOEPA §226.32
☒ Loan Amount as defined in HCML §1026.32

☐ Note Amount
☐ Other:

LOAN TYPES COVERED:

☒ Conventional
☒ VA
☐ Other:

☒ FHA
☒ RHS

LOAN PURPOSES COVERED:

☒ Purchase
☐ Builder Interim
☒ Equity Out
☒ One Time Closing
☒ Purchase Plus Improvements
☐ Lot Loan
☒ Borrower Interim
☐ HELOC

☒ Construction to Perm
☒ Refinance
☒ Home Equity Closed End
☒ Modification (if subject to TILA)
☒ Refinance Plus Improvements
☒ Home Improvement
☒ One Time Closing with Modification
☒ Assumption

BRIDGE LOANS COVERED

☒ Yes

☐ No

PROPERTY OCCUPANCY COVERED:

☒ Primary Residence 1-4 Units
☐ Investment

☐ Second Home
☐ Raw Land

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APR THRESHOLDS : <http://www.statutes.legis.state.tx.us/Docs/FI/htm/FI.343.htm#343.201>

☐ APR ☒ Unteased APR ☐ Other:

First Lien: > 6.5%

Subordinate Lien: > 8.5%

APR COMPARED AGAINST: Regulation Z TILA §1026.32

☒ APOR ☐ APR Itself
☐ Treasury Yield ☐ Other:

DATE FOR APR TEST:

☐ Application ☐ Closing
☒ Other: Date interest rate is set

FEE TEST METHOD: Regulation Z TILA §1026.32

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

FEE TEST THRESHOLDS:

All liens: > or = 5 % of TLA ≥ \$22,969
Lesser of 8% or \$1,148 for TLA < \$22,969

ADJUSTMENTS:

☐ No ☒ Yes | How: Adjusts annually per CPI

IF LOAN IS STATE HIGH-COST, THEN MUST MEET FOLLOWING REQUIREMENTS:

- Single Premium Credit Insurance prohibited, unless an Insurance Notice is given 3 bus days after application.
- No Balloon Payment before 5 years, unless on a bridge loan in connection with the acquisition or construction of a dwelling intended to be the borrower's principal dwelling.
- No Negative Amortization.
- No Prepayment Penalties.

Home Loans

The Texas Anti-Predatory Lending Law, Tex. Fin. Code Ann. [§343.001 et seq.](#), imposes lending restrictions on loans that meet the definition of a "high-cost home loan." Additionally, Texas imposes certain restrictions on all "home loans."

Definitions

"Home loan" means a loan that is:

- (1) Made to one or more individuals for personal, family, or household purposes; and
- (2) secured in whole or part by:
 - (A) a manufactured home used or to be used as the borrower's principal residence; or
 - (B) real property improved by a dwelling designed for occupancy by 4 or fewer families and used or to be used as the borrower's principal residence.

Tex. Fin. Code Ann. [§343.001\(2\)](#).

A home loan does not include a reverse mortgage or an open-end account. Tex. Fin. Code Ann. [§343.002](#).

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"High-cost home loan" means a home loan that:

- (A) is made to 1 or more individuals for personal, family, or household purposes;
- (B) is secured in whole or part by:
 - (i) a manufactured home, as defined by Tex. Fin. Code Ann. [§347.002](#), used or to be used as the borrower's principal residence; or
 - (ii) real property improved by a dwelling designed for occupancy by 4 or fewer families and used or to be used as the borrower's principal residence;
- (C) has a principal amount equal to or less than one-half of the maximum conventional loan amount for first mortgages;
- (D) is not:
 - (i) a reverse mortgage; or
 - (ii) an open-end account, as defined by Tex. Fin. Code Ann. [§301.002](#); and
- (E) is a credit transaction described by [12 C.F.R. §1026.32](#), as amended, except that the term includes a residential mortgage transaction, as defined by [12 C.F.R. §1026.2](#), as amended, if the total loan amount is \$20,000 or more and:
 - (i) the annual percentage rate exceeds the rate indicated in [12 C.F.R. §1026.32\(a\)\(1\)\(i\)](#), as amended; or
 - (ii) the total points and fees payable by the consumer at or before loan closing will exceed the amount indicated in [12 C.F.R. §1026.32\(a\)\(1\)\(ii\)](#), as amended.

Tex. Fin. Code Ann. [§343.201\(1\)](#); [Supplement I, §1026.32\(a\)](#)

Restrictions on Home Loans

Consolidation of Government or Nonprofit Low-Rate Loans

A lender is prohibited from replacing or consolidating a low-rate home loan directly made by a government or nonprofit lender before the 7th anniversary of the loan unless the new or consolidated loan has a lower interest rate and requires payment of a lesser amount of points and fees than the original loan or is a restructure to avoid foreclosure.

A low-rate home loan is a home loan that carries an interest rate 2 percentage points or more below the yield on treasury securities having comparable periods of maturity to the loan maturity, except that if the loan's interest rate is a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped-up rate, as appropriate, must be used instead of the rate at the loan's inception to determine whether the loan is a low-rate loan.

Tex. Fin. Code Ann. [§343.101\(b\)](#).

Single Premium Credit Insurance

A lender may not offer any individual or group credit life, disability, or unemployment insurance on a prepaid single premium basis in conjunction with a home loan unless the following notice is provided to each applicant for the loan by hand delivery or mail no later than 3 business days after the date the application is received:

INSURANCE NOTICE TO APPLICANT

You may elect to purchase credit life, disability, or involuntary unemployment insurance in conjunction with this mortgage loan. If you elect to purchase this insurance coverage, you may pay for it either on a monthly premium basis or with a single premium payment at the time the lender closes this loan. If you choose the single premium payment, the cost of the premium will be financed at the interest rate provided for in the mortgage loan.

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This insurance is NOT required as a condition of closing the mortgage loan and will be included with the loan only at your request.

You have the right to cancel this credit insurance once purchased. If you cancel it within 30 days of the date of your loan, you will receive either a full refund or a credit against your loan account.

If you cancel this insurance at any other time, you will receive either a refund or credit against your loan account of any unearned premium. YOU MUST CANCEL WITHIN 30 DAYS OF THE DATE OF THE LOAN TO RECEIVE A FULL REFUND OR CREDIT. To assist you in making an informed choice, the following estimates of premiums are being provided along with an example of the cost of financing. The examples assume that the term of the insurance product is ____ years and that the interest rate is ____ percent (a rate that has recently been available for the type of loan you are seeking). PLEASE NOTE THAT THE ACTUAL LOAN TERMS YOU QUALIFY FOR MAY VARY FROM THIS EXAMPLE. "Total amount paid" is the amount that would be paid if you financed only the total insurance premium for a ____ year period and is equal to the amount you would have paid if you made all scheduled payments. This is NOT the total of payments on your loan.

CREDIT LIFE INSURANCE: Estimated premium of \$____ DISABILITY INSURANCE: Estimated premium of \$____ INVOLUNTARY UNEMPLOYMENT INSURANCE: Estimated premium of \$____ TOTAL INSURANCE PREMIUMS: \$____ TOTAL AMOUNT PAID: \$____

Tex. Fin. Code Ann. [§343.104\(a\)](#).

Additional Restrictions on High-Cost Home Loans

Balloon Payments

A high-cost home loan may not contain a provision for a scheduled payment that is more than twice as large as the average of earlier scheduled monthly payments, unless the balloon payment becomes due not less than 60 months after the date of the loan. This prohibition does not apply if the payment schedule is adjusted to account for the seasonal or otherwise irregular income of the borrower or if the loan is a bridge loan in connection with the acquisition or construction of a dwelling intended to become the borrower's principal dwelling. Tex. Fin. Code Ann. [§343.202](#).

Negative Amortization

A high-cost home loan may not provide for a payment schedule with regular periodic payments that cause the principal balance to increase, except that negative amortization is permitted as a consequence of a temporary forbearance, bridge loan, or restructure sought by the borrower. Tex. Fin. Code Ann. [§343.203](#).

Borrower's Ability to Repay

A lender may not engage in a pattern or practice of extending high-cost home loans based on a borrower's collateral without regard to the borrower's and/or cosigner's repayment ability, including the obligor's current and expected income, current obligations, employment status, and other financial resources, other than the obligor's equity in the dwelling that secures repayment of the loan. Tex. Fin. Code Ann. [§343.204\(b\)](#).

Prepayment Penalties

A lender may not make a high-cost home loan containing a provision for a prepayment penalty. Tex. Fin. Code Ann. [§343.205](#).

Disclosures

A lender must provide to each applicant for a home loan a written notice at closing. The notice must be provided on a separate document, in at least 14-point type, and must have the following or substantially similar language:

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Warning: Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a mortgage loan, is a violation of [Section 32.32](#), Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed \$10,000.

I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan.

I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our identity, employment, annual income, and intent to occupy the residential real property secured by the home loan, are true and correct as of the date of loan closing.

On receipt of the notice, the loan applicant must verify the information and execute the notice.

The failure of a lender to properly provide the notice to each applicant for a home loan does not affect the validity or enforceability of the home loan by any holder of the loan.

Tex. Fin. Code Ann. [§343.105](#).