

Georgia

STATE HIGH COST/PREDATORY LENDING REGULATIONS

Last Updated: May 2016

LAW: Georgia Fair Lending Act (Title 7, Chapter 6a-1 et seq)

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: Title 7, Chapter 6a-1 et seq

- | | | | |
|-------------------------------------|--|--------------------------|-------------|
| <input type="checkbox"/> | Loan Amount as defined in HOEPA 226.32 | <input type="checkbox"/> | Note Amount |
| <input checked="" 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 type="checkbox"/> | Borrower Interim | <input 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 |
|--------------------------|-----|-------------------------------------|----|

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://dbf.georgia.gov/00/article/0,2086,43414745_46387757_69095972,00.html

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

First Lien: 6.5 %

Subordinate Lien: 8.5 %

APR COMPARED AGAINST: Title 7, Chapter 6a-1 et seq

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

DATE FOR APR TEST:

Application
 Other: Date interest rate is set at

Closing

FEE TEST METHOD: Title 7, Chapter 6a-1 et seq

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

FEE TEST THRESHOLDS: Title 7, Chapter 6a-1 et seq

All liens: > or = 5 % of TLA >\$20,350
Lesser of 8% or \$1,017 for TLA < \$20,350

ADJUSTMENTS:

No Yes | How: Updated annually per CPI

FEES INCLUDED IN TEST: Title 7, Chapter 6a-1 et seq

(12) "Points and fees" means:

(A) All items included in the definition of finance charge in 12 C.F.R. 226.4(a) and 12 C.F.R. 226.4(b) except interest or the time price differential. All items excluded under 12 C.F.R. 226.4(c) are excluded from points and fees, provided that for items under 12 C.F.R. 226.4(c)(7) the creditor does not receive direct or indirect compensation in connection with the charge and the charge is not paid to an affiliate of the creditor;

(B) All compensation paid directly or indirectly to a mortgage broker from any source, including a broker that originates a loan in its own name in a table funded transaction, including but not limited to yield spread premiums, yield differentials, and service release fees, provided that the portion of any yield spread premium that is both disclosed to the borrower in writing and used to pay bona fide and reasonable fees to a person other than the creditor or an affiliate of the creditor for the following purposes is exempt from inclusion in points and fees: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determination; appraisal fees; fees for inspection performed prior to closing; credit reports; surveys; attorneys' fees, if the borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow charges, so long as not otherwise included under subparagraph (A) of this paragraph; title insurance premiums; and fire and hazard insurance and flood insurance premiums, provided that the conditions set forth in 12 C.F.R. 226.4(d)(2) are met;

(C) Premiums or other charges for credit life, credit accident, credit health, credit personal property, or credit loss-of-income insurance, debt suspension coverage or debt cancellation coverage, whether or not such coverage is insurance under applicable law, that provides for cancellation of all or part of a borrower's liability in the event of loss of life, health, personal property, or income or in the case of accident written in connection with a home loan and premiums or other charges for life, accident, health, or loss-of-income insurance without regard to the identity of the ultimate beneficiary of such insurance. In determining points and fees for the purposes of this paragraph, premiums or other charges shall only include those payable at or before loan closing and are included whether they are paid in cash or financed and whether the amount represents the entire premium for the coverage or an initial payment;

(D) The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents. Mortgage 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, shall not be considered to be a prepayment fee or penalty;

(E) All prepayment fees or penalties that are charged to the borrower if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor;

(F) For open-end loans, points and fees are calculated in the same manner as for loans other than open-end loans, based on the minimum points and fees that a borrower would be required to pay in order to draw on the open-end loan an amount equal to the total credit line

OTHER ITEMS TO BE TESTED/CONSIDERED: Title 7, Chapter 6a-1 et seq

Prepayment penalties are limited to 2% of the loan amount, if prepaid in the first 12 months and 1% of the loan amount, if prepaid in the second 12 months. Prepayment penalties are prohibited after 24 months following the loan closing. Balloon payments; negative amortization; increases in the interest rate after default; two or more consolidated payments from the loan proceeds; loan flipping; and mandatory arbitration clauses are prohibited.

Certification of counseling from a third party non-profit organization approved by HUD or the Georgia Housing and Finance Authority is required.

SPECIAL NOTES: Title 7, Chapter 6a-1 et seq

High-cost home loans shall be subject to the following limitations and prohibited practices:

- (1) No prepayment fees or penalties shall be provided for in the loan documents for a high-cost home loan or charged the borrower after the last day of the twenty-fourth month following the loan closing or which exceed in the aggregate:
 - (A) In the first 12 months after the loan closing, more than 2 percent of the loan amount prepaid; or
 - (B) In the second 12 months after the loan closing, more than 1 percent of the amount prepaid;
- (2) A high-cost home loan shall not contain a scheduled payment that is 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 high-cost home loan shall not include payment terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due;
- (4) A high-cost home loan shall not contain 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 that the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness;
- (5) A high-cost home loan shall not include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower;
- (6) Without regard to whether a borrower is acting individually or on behalf of others similarly situated, any 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 established in this state where the borrower may otherwise properly bring the claim or defense or limits in any way any claim or defense the borrower may have is unconscionable and void;
- (7) A creditor shall not make a high-cost home loan without first receiving certification from a counselor with a third-party nonprofit organization approved by the United States Department of Housing and Urban Development or the Georgia Housing and Finance Authority that the borrower has received counseling on the advisability of the loan transaction. No creditor, servicer, or its institution shall be required to contribute to the funding of any nonprofit organization that provides counseling required pursuant to this paragraph;
- (8) A creditor shall not make a high-cost home loan unless a reasonable creditor would believe at the time the loan is consummated that the borrower residing in the home will be able to make the scheduled payments associated with the loan based upon a consideration of his or her current and expected income, current obligations, employment status, and other financial resources, other than the borrower's equity in the collateral that secures repayment of the loan. There is a rebuttable presumption that the borrower residing in the home is able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, said borrower's total monthly debts, including amounts under the loan, do not exceed 50 percent of said borrower's monthly gross income as verified by tax returns, payroll receipts, and other third-party income verification;
- (9) A creditor or servicer shall not pay a contractor under a home improvement contract from the proceeds of a high-cost home loan unless:
 - (A) The creditor or servicer is presented with an affidavit of the contractor that the work has been completed, which affidavit meets the requirements of Code Section 44-14-361.2; and
 - (B) The proceeds are disbursed in an instrument payable to the borrower or jointly to the borrower and the contractor or, 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 drafter of the instrument, and the contractor prior to the disbursement;
- (10) A creditor or servicer shall not charge a borrower any fees or other charges to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan;
- (11) A creditor who makes a high-cost home loan and who has the legal right to foreclose shall provide notice of the intent to foreclose to the borrower in writing by certified mail, return receipt requested, to the address of the borrower last known to the creditor. Such notice shall be sent to the borrower at least 14 days prior to the publication of the legal advertisement required by Code Section 44-14-162;
- (12) If a creditor or servicer asserts that grounds for acceleration of a high-cost home loan exist and requires the payment in full of all sums secured by the security instrument, the borrower or anyone authorized to act on the borrower's behalf shall have the right at any time, up to the time title is transferred by means of foreclosure by judicial proceeding and sale or otherwise, to cure the default and reinstate the high-cost home loan by tendering the total amount of principal, interest, late fees, and escrow deposits in arrears, not including any acceleration. Cure of default as provided in this paragraph shall reinstate the borrower to the same position as if the default had not occurred and shall nullify as of the date of the cure any acceleration of any obligation under the security instrument or note arising from the default;
- (13) (A) To cure a default under this Code section, a borrower shall not be required to pay any charge, fee, or penalty attributable to the exercise of the right to cure a default as provided for in this Code section, other than the fees specifically allowed by this Code section. The borrower shall not be liable for any attorneys' fees relating to the borrower's default that are incurred by the creditor or servicer prior to or during the 30 day period set forth in this paragraph, nor for any such fees in excess of \$100.00 that are incurred by the creditor or servicer after the expiration of the 30 day period but prior to the time the creditor or servicer files a foreclosure action or takes other action to seize or transfer ownership of the

home. After the creditor or servicer files a foreclosure action or takes other action to seize or transfer ownership of the home, the borrower shall only be liable for attorneys' fees that are reasonable and actually incurred by the creditor or servicer based on a reasonable hourly rate and a reasonable number of hours plus any other reasonable and necessary expenses incurred by the creditor or servicer.

(B) If a default is cured prior to the initiation of any action to foreclose or to seize or transfer a home, the creditor or servicer shall not institute the foreclosure proceeding or other action for that default. If a default is cured after the initiation of any action to foreclose, the creditor or servicer shall take such steps as are necessary to terminate the foreclosure proceeding or other action.

(C) Before any action is filed to foreclose upon the home or other action is taken to seize or transfer ownership of a home, a notice of the right to cure the default must be delivered to the borrower informing the borrower of the following:

(i) The nature of the default claimed on the high-cost home loan and of the borrower's right to cure the default by paying the sum of money required to cure the default. If the amount necessary to cure the default will change during the 30 day period after the effective date of the notice due to the application of a daily interest rate or the addition of late fees as allowed by this chapter, the notice shall give sufficient information to enable the borrower to calculate the amount at any point during the 30 day period;

(ii) The date by which the borrower shall cure the default to avoid acceleration and initiation of foreclosure or other action to seize the home which date shall not be less than 30 days after the date the notice is effective and the name and address and phone number of a person to whom the payment or tender shall be made;

(iii) That, if the borrower does not cure the default by the date specified, the creditor or servicer may take steps to terminate the borrower's ownership in the property by commencing a foreclosure proceeding or other action to seize the home; and

(iv) The name and address of the creditor or servicer and the telephone number of a representative of the creditor or servicer whom the borrower may contact if the borrower disagrees with the creditor's or servicer's assertion that a default has occurred or the correctness of the creditor's or servicer's calculation of the amount required to cure the default;

(14) A high-cost home loan shall not contain nor shall a creditor or servicer enforce a provision that permits a creditor or servicer, in its sole discretion, to accelerate the indebtedness. This paragraph does not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan; and

(15) All high-cost home loan documents that create a debt or pledge property as collateral shall contain the following notice on the first page in a conspicuous manner: "Notice: This is a mortgage subject to special rules under the 'Georgia Fair Lending Act.' Purchasers or assignees of this mortgage may be liable for all claims and defenses by the borrower with respect to the mortgage."