

Massachusetts

STATE HIGH COST/PREDATORY LENDING REGULATIONS

Last Updated: May 2016

LAW: MA Predatory Home Loan Practices Act 2004 (209 CMR 32.00: Truth in Lending – Effective 1/2/15)

LOAN AMOUNT COVERED: No limitations

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: 209 CMR 32.00

- | | | | |
|--------------------------|----------------------------------------|-------------------------------------|-------------|
| <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 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.mass.gov/legis/laws/mgl/gl-183c-toc.htm> and <http://www.mass.gov/ocabr/business/banking-services/banking-legal-resources/laws-and-regs/dob-regulations/209-cmr-3200.html#thirtytwo>

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

First Lien: 8 %

Subordinate Lien: 9 %

APR COMPARED AGAINST: 209 CMR 32.00

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

DATE FOR APR TEST:

<input type="checkbox"/>	Application	<input type="checkbox"/>	Closing
<input checked="" type="checkbox"/>	Other: 15 th day of the month immediately preceding the month the application is received by creditor		

FEE TEST METHOD: 209 CMR 32.00

<input type="checkbox"/>	Use HC Flag
<input type="checkbox"/>	Use APR & Paid To (§1026.32)
<input checked="" type="checkbox"/>	Use APR & Paid To, except: exclude either a conventional prepayment penalty <u>or</u> up to 2 bona fide discount points, and include full PMI premium

FEE TEST THRESHOLDS: 209 CMR 32.00

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

ADJUSTMENTS:

<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	Yes	How: Adjusts annually with CPI
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FEES INCLUDED IN TEST: 209 CMR 32.00

"Points and fees", (i) items required to be disclosed pursuant to sections 1026.4(a) and 1026.4(b) of Title 12 of the Code of Federal Regulations or 209 CMR 32.04(1) and 209 CMR 32.04(2) of the Code of Massachusetts Regulations, as amended from time to time, except interest or the time-price differential; (ii) charges for items listed under sections 1026.4(c)(7) of Title 12 of the Code of Federal Regulations or 209 CMR 32.04(3)(g) of the Code of Massachusetts Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge, otherwise, the charges are not included within the meaning of the term "points and fees"; (iii) the maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents; (iv) all prepayment fees of penalties that are incurred by the borrower if the loan refinances a previous loan made or currently held by the same lender; (v) all compensation paid directly or indirectly to a mortgage broker, including a broker that originates a home loan in its own name in a table-funded transaction, not otherwise included in clauses (i) or (ii); (vi) 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 or debt cancellation or suspension fees calculated and paid on a monthly basis shall not be considered financed by the creditor. Points and fees shall not include the following: (1) taxes, filing fees, recording and other charges and fees paid to or to be paid to a public official for determining the existence of or for perfecting, releasing or satisfying a security interest; and, (2) fees paid to a person other than a lender or to the mortgage broker for the following: fees for flood certification; fees for pest infestation; fees for flood determination; appraisal fees; fees for inspections performed before closing; credit reports; surveys; notary fees; escrow charges so long as not otherwise included under clause (i); title insurance premiums; and fire insurance and flood insurance premiums, if the conditions in sections 1026.4(d)(2) of Title 12 of the Code of Federal Regulations or 209 CMR 32.04(4)(b) of the Code of Massachusetts Regulations, as amended from time to time, are met. For open-end loans, the points and fees shall be calculated by adding the total points and fees known at or before closing, including the maximum prepayment penalties that may be charged or collected under the terms of the loan documents, plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line.

OTHER ITEMS TO BE TESTED/CONSIDERED: 209 CMR 32.00

“Benchmark rate”: the interest rate which the borrower can reduce by paying bona fide discount points; this rate shall not exceed the weekly average yield of United States Treasury securities having a maturity of 5 years, on the fifteenth day of the month immediately preceding the month in which the loan is made, plus 4 percentage points.

SPECIAL NOTES: 209 CMR 32.00

(4) Limitations.

Compliance with 12 CFR 1026.32(d) constitutes compliance with 209 CMR 32.32(4); provided, however, prepayment penalties are prohibited without exception; and a Due-on-demand Clause is not prohibited in cases where there is fraud or material misrepresentation by the consumer in connection with the loan that is not induced by the creditor, its employees, or agents; and under circumstances where the consumer fails to meet the repayment terms of the agreement for any outstanding balance and after the consumer has been contacted in writing and afforded a reasonable opportunity to meet the outstanding balance as outlined within the repayment terms of the agreement.

32.34: Prohibited Acts or Practices in Connection with High Cost Mortgages

(1) Prohibited Acts or Practices pursuant to 12 CFR 1026.34 are prohibited under 209 CMR 32.34.

(2) It is an unfair act or practice for a creditor to engage in any of the following for any transaction subject to 209 CMR 32.32:

(a) Packing high cost home loans; that is, the practice of selling credit life, accident and health, disability or unemployment insurance products or unrelated goods or services in conjunction with a high cost home loan without the informed consent of the borrower under circumstances where:

1. the creditor solicits the sale of such insurance, goods or services;
2. the creditor receives direct or indirect compensation for the sale of such insurance, goods or services; and
3. the charges for such insurance, goods or services are prepaid with the proceeds of the loan and financed as part of the principal amount of the loan.

Provided, however, it shall not constitute the practice of "packing" if the creditor, at least three business days before the loan is closed, makes a separate oral and a separate clear and conspicuous written disclosure in at least 12 point type to the borrower containing the following information; the cost of the credit insurance or other goods and services; the fact that the insurance, goods, or services will be prepaid and financed at the interest rate provided for in the loan; and that the purchase of such insurance, goods or services is not required to obtain the mortgage loan; provided further, that insurance premiums shall not be considered financed as part of the loan transaction if insurance premiums are calculated, earned and paid on a monthly or other regular, periodic basis.

In addition, the written disclosure shall contain a signed and dated acknowledgment by the obligor(s) that the oral disclosure was made and a signed and dated acknowledgment by the creditor that the oral disclosure was made. In addition to the disclosures required under 209 CMR 32.34(2)(b), a creditor shall comply with the requirements of 209 CMR 52.02(1) and (3) as well as 209 CMR 52.03 for credit life insurance or credit accident and health insurance.

(b) Advertising. Advertising that refinancing pre existing debt with a high cost home loan will reduce a borrower's aggregate monthly debt payment without also disclosing, if such are likely the case, that the high cost home loan will increase both

1. a borrower's aggregate number of monthly debt payments; and
2. the aggregate amount paid by a borrower over the term of the high cost mortgage loan.

(c) Unconscionable Rates and Terms.

1. Making a high cost home loan with rates or fees that violate 940 CMR 8.06, if applicable, or otherwise charge interest rates or fees in a high cost loan transaction that significantly deviate from industry standards or that are otherwise unconscionable.
2. It shall be the creditor's burden to demonstrate that interest rates or fees charged are based upon generally accepted credit worthiness, sound underwriting and other risk related standards or otherwise conform to 209 CMR 32.34(2)(c)1.

(d) Unreasonable Charges. Making high cost home loans in which the creditor charges and retains fees paid by the borrower

1. for services that are not actually performed, or
2. for which the fees bear no reasonable relationship to the value of the services actually performed, or
3. which are otherwise unconscionable.

(e) Oppressive Mandatory Arbitration Clause or Waiver of Participation in Class Action Suits. Requiring a borrower, without regard to whether a borrower is acting individually or on behalf of others similarly situated, 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 the Commonwealth where the borrower may otherwise properly bring a claim or defense or limits in any way any claim or defense the borrower may have.

(f) Failure to Report for Credit Histories. Failing to report both the favorable and unfavorable payment history of the borrower to a nationally recognized consumer credit bureau at least annually if the creditor regularly reports information to a credit bureau.

(g) Single premium Credit Insurance. Notwithstanding the provisions of 209 CMR 32.34(2)(a), making a high cost home loan which contains single premium credit insurance, including credit life, debt cancellation, and debt suspension.