

# New Jersey

## STATE HIGH COST/PREDATORY LENDING REGULATIONS

Last Updated: May 2016

**LAW:** NJ Home Ownership Security Act of 2002 (NJSA 46:10B-22 et seq)

**LOAN AMOUNT COVERED:** \$468,236.30 – Changes each January 1

**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:** NJSA 46:10B-22 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 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 – 1-6 unit | <input type="checkbox"/> | Second Home |
| <input type="checkbox"/>            | Investment                   | <input type="checkbox"/> | Raw Land    |

**APR THRESHOLDS:** [http://www.njleg.state.nj.us/2002/bills/pl03/64\\_.pdf](http://www.njleg.state.nj.us/2002/bills/pl03/64_.pdf)

- |                                     |     |                          |              |                          |        |
|-------------------------------------|-----|--------------------------|--------------|--------------------------|--------|
| <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:** NJSA 46:10B-22 et seq

- |                                     |                |                          |            |
|-------------------------------------|----------------|--------------------------|------------|
| <input checked="" type="checkbox"/> | APOR           | <input type="checkbox"/> | APR Itself |
| <input 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: Date interest rate is set |                          |         |

**FEE TEST METHOD:** NJSA 46:10B-22 et seq

- |                                     |                                                                                                                  |
|-------------------------------------|------------------------------------------------------------------------------------------------------------------|
| <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 or up to 2 bona fide discount points |

**FEE TEST THRESHOLDS:** NJSA 46:10B-22 et seq

- All liens: >4.5 % of TLA  $\geq$  \$40,000  
>6 % of TLA  $\geq$  \$20,000 to 39,999  
Lesser of 6 % of TLA or \$1,000 < \$20,000

**ADJUSTMENTS:**

No  Yes | How:

**FEES INCLUDED IN TEST:** NJSA 46:10B-22 et seq

"Points and fees" means:

- (1) All items listed in 15 U.S.C. s.1605(a)(1) through (4), except interest or the time-price differential;
- (2) All charges listed in 15 U.S.C. s.1605(e);
- (3) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table-funded transaction;
- (4) 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 calculated and paid on a monthly basis shall not be considered financed by the creditor;
- (5) The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents;
- (6) All prepayment fees or penalties that are incurred by the borrower if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and
- (7) For open-end loans, the points and fees are calculated by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the loan documents if prepayment penalties are authorized by law other than by this act, plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line.

(2) "Total points and fees threshold" means that the total points and fees payable by the borrower at or before the loan closing, excluding either a conventional prepayment penalty or up to two bona fide discount points...

**OTHER ITEMS TO BE TESTED/CONSIDERED:**

**SPECIAL NOTES:** NJSA 46:10B-22 et seq

[Changes effective January 1, 2014] The following definitions apply:

"High-cost home loans" means a home loan for which the principal amount of the loan does not exceed [\$452,288.55], which amount shall be adjusted annually to include the last published increase of the housing component of the national Consumer Price Index, New York-Northeastern New Jersey Region, in which the terms of the loan meet or exceed one or more of the thresholds as defined.

"Home loans" means an extension of credit primarily for personal, family or household purposes, including an open-end credit plan, other than a reverse mortgage transaction, in which the loan is secured by: (1) A mortgage or deed of trust on real estate in this State upon which there is located or there is to be located a one to six family dwelling which is or will be occupied by a borrower as the borrower's principal dwelling; or (2) A security interest in a manufactured home which is or will be occupied by a borrower as the borrower's principal dwelling.

[NJ Stat Ann 46:10B-24; 2013 NJ Bulletin 13-20]

C.46:10B-26 High-cost home loans, limitations, prohibited practices.

P.L. 2003, CHAPTER 64

5. A high-cost home loan shall be subject to the following additional limitations and prohibited practices:

a. No high-cost home loan shall contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision shall not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.

b. No high-cost home loan shall 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.

c. No high-cost home loan shall contain a provision that increases the interest rate after default. This provision shall 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 the acceleration of the indebtedness.

d. No high-cost home loan shall 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.

e. 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 if the borrower may otherwise properly bring a claim or defense or limits in any way any claim or defense the borrower may have is unconscionable and void.

f. A creditor shall not make a high-cost home loan unless the creditor has given the following notice, or substantially similar notice, in writing, to the borrower, acknowledged in writing and signed by the borrower not later than the time the notice is required under the notice provision contained in 12 C.F.R. s.226.31(c).

**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 CREDITOR OR BROKER YOU SELECT.

IF YOU ACCEPT THE TERMS OF THIS LOAN, THE CREDITOR 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 AN ATTORNEY-AT-LAW AND A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE, FEES AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. A LIST OF QUALIFIED COUNSELORS IS AVAILABLE BY CONTACTING THE NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE.

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 CREDITORS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR CREDITOR ABOUT THESE SERVICES.