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# California

## STATE HIGH COST/PREDATORY LENDING REGULATIONS

Last Updated: \_\_\_2/21/18\_ By: \_\_\_BH\_\_\_\_\_  
Coded: \_\_\_2/22/18\_ By: \_\_\_ZB\_\_\_\_\_  
Reviewed: \_\_\_2/23/18\_ By: \_\_\_BH\_\_\_\_\_

**LAW:** California Covered Loan Law (Finance Code Section 4970)

**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:** CA Financial Code Section 4970

<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 type="checkbox"/> HELOC	<input checked="" type="checkbox"/> Assumption

**BRIDGE LOANS COVERED**

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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**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:**

[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=FIN&division=1.7.&title=&part=&chapter=1.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=FIN&division=1.7.&title=&part=&chapter=1.&article=)

<input checked="" type="checkbox"/> APR	<input type="checkbox"/> Unteased APR	<input type="checkbox"/> Other:
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First Lien: >8%

Subordinate Lien: >8 %

**APR COMPARED AGAINST:** CA Financial Code Section 4970

APOR  APR Itself  
 Treasury Yield  Other:

**DATE FOR APR TEST:**

Application  Closing  
 Other: 15<sup>th</sup> day of month before application

**FEE TEST METHOD:** CA Financial Code Section 4970

Use HC Flag  
 Use APR & Paid To (§1026.32)  
 Other: All APR fees, all compensation and fees to mortgage brokers, and PMI only if going to compensate mortgage originator

**FEE TEST THRESHOLDS:** CA Financial Code Section 4970

First Lien: >6 % of TLA

Subordinate Lien: >6 % of TLA

**ADJUSTMENTS:**

No  Yes | How: **Annually based on CPI**

**FEES INCLUDED IN TEST:**

(c) "Points and fees" shall include the following:  
(1) All items required to be disclosed as finance charges under Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, including the Official Staff Commentary, as amended from time to time, except interest.  
(2) All compensation and fees paid to mortgage brokers in connection with the loan transaction.  
(3) All items listed in Section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, only if the person originating the covered loan receives direct compensation in connection with the charge.

**SPECIAL NOTES:** CA Financial Code Section 4973

**4973. The following are prohibited acts and limitations for covered loans:**

- (a) (1) A covered loan shall not include a prepayment fee or penalty after the first 36 months after the date of consummation of the loan.  
(2) A covered loan may include a prepayment fee or penalty up to the first 36 months after the date of consummation of the loan if:  
(A) The person who originates the covered loan has also offered the consumer a choice of another product without a prepayment fee or penalty.  
(B) The person who originates the covered loan has disclosed in writing to the consumer at least three business days prior to loan consummation the terms of the prepayment fee or penalty to the consumer for accepting a covered loan with the prepayment penalty and the rates, points, and fees that would be available to the consumer for accepting a covered loan without a prepayment penalty.  
(C) The person who originates the covered loan has limited the amount of the prepayment fee or penalty to an amount not to exceed the payment of six months' advance interest, at the contract rate of interest then in effect, on the amount prepaid in any 12-month period in excess of 20 percent of the original principal amount.  
(D) A covered loan will not impose the prepayment fee or penalty if the covered loan is accelerated as a result of default.  
(E) The person who originates the covered loan will not finance a prepayment penalty through a new loan that is originated by the same person.  
(b) (1) A covered loan with a term of 5 years or less may not provide at origination for a payment schedule with regular periodic payments that when aggregated do not fully amortize the principal balance as of the maturity date of the loan.  
(2) For a payment schedule that is adjusted to account for the seasonal or irregular income of the consumer, the total installments in any year shall not exceed the amount of one year's worth of payments on the loan. This prohibition does not apply to a bridge loan. For purposes of this paragraph, "bridge loan" means a loan with a maturity of less than 18 months that only requires payments of interest until the time when the entire unpaid balance is due and payable.  
(c) A covered loan shall not contain a provision for negative amortization such that the payment schedule for regular monthly payments causes the principal balance to increase, unless the covered loan is a first mortgage and the person who originates the loan discloses to the consumer that the loan contains a negative amortization provision that may add principal to the balance of the loan.

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(d) A covered loan shall not include terms under which periodic payments required under the loan are consolidated and paid in advance from the loan proceeds.

(e) A covered loan shall not contain a provision that increases the interest rate as a result of a 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 the acceleration for the indebtedness.

(f) (1) A person who originates covered loans shall not make or arrange a covered loan unless at the time the loan is consummated, the person reasonably believes the consumer, or consumers, when considered collectively in the case of multiple consumers, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources, other than the consumer's equity in the dwelling that secures repayment of the loan. In the case of a covered loan that is structured to increase to a specific designated rate, stated as a number or formula, at a specific predetermined date not exceeding 37 months from the date of application, this evaluation shall be based upon the fully indexed rate of the loan calculated at the time of application. The consumer shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, do not exceed 55 percent of the consumer's monthly gross income, as verified by the credit application, the consumer's financial statement, a credit report, financial information provided to the person originating the loan by or on behalf of the consumer, or any other reasonable means.

(2) No presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that at the time the loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, exceed 55 percent of the consumer's monthly gross income.

(3) In the case of a stated income loan, the reasonable belief requirement in paragraph (1) shall apply, however, for stated income loans that belief may be based on the income stated by the consumer, and other information in the possession of the person originating the loan after the solicitation of all information that the person customarily solicits in connection with loans of this type. A person shall not knowingly or willfully originate a covered loan as a stated income loan with the intent, or effect, of evading the provisions of this subdivision.

(g) A person who originates a covered loan shall not pay a contractor under a home-improvement contract from the proceeds of a covered loan other than by an instrument payable to the consumer or jointly to the consumer and the contractor or, at the election of the consumer, to a third-party escrow agent for the benefit of the contractor in accordance with terms and conditions established in a written escrow agreement signed by the consumer, the person who originates a covered loan, and the contractor prior to the disbursement of funds. No payments, other than progress payments for home-improvement work that the consumer certifies is completed, shall be made to an escrow account or jointly to the consumer and the contractor unless the person who originates the loan is presented with a signed and dated completion certificate by the consumer showing that the home-improvement contract was completed to the satisfaction of the consumer.

(h) It is unlawful for a person who originates a covered loan to recommend or encourage a consumer to default on an existing consumer loan or other debt in connection with the solicitation or making of a covered loan that refinances all or any portion of the existing consumer loan or debt.

(i) A covered loan shall not contain a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition does not apply if repayment of the loan has been accelerated in accordance with the terms of the loan documents (1) as a result of the consumer's default, (2) pursuant to a due-on-sale provision, or (3) due to fraud or material misrepresentation by a consumer in connection with the loan or the value of the security for the loan.

(j) A person who originates a covered loan shall not refinance or arrange for the refinancing of a consumer loan such that the new loan is a covered loan that is made for the purpose of refinancing, debt consolidation or cash out, that does not result in an identifiable benefit to the consumer, considering the consumer's stated purpose for seeking the loan, fees, interest rates, finance charges, and points.

(k) (1) A covered loan shall not be made unless the following disclosure, written in 12-point font or larger, has been provided to the consumer no later than three business days prior to signing of the loan documents of the transaction:

**CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE**

If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan. Mortgage loan rates and closing costs and fees vary based on many other factors, including your particular credit and financial circumstances, your earnings history, the loan-to-value requested, and the type of property that will secure your loan. Higher rates and fees may be justified depending on the individual circumstances of a particular consumer's application. You should shop around and compare loan rates and fees.

This particular loan may have a higher rate and total points and fees than other mortgage loans and is, or may be, subject to the additional disclosure and substantive protections under Division 1.7 (commencing with Section 4970) of the Financial Code. You should consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed. For information on contacting a qualified credit counselor, ask your lender or call the United States Department of Housing and Urban Development's

counseling hotline at 1-888-995-HOPE (4673) or go to [www.hud.gov/offices/hsg/hcc/fc/](http://www.hud.gov/offices/hsg/hcc/fc/) for a list of HUD-approved housing counseling agencies.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application.

If you proceed with this mortgage loan, you should also remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then subsequently incur significant new credit card charges or other debts. If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

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.

Your payments on existing debts contribute to your credit ratings.

You should not accept any advice to ignore your regular payments to your existing creditors.

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(2) It shall be a rebuttable presumption that a licensed person has met its obligation to provide this disclosure if the consumer provides the licensed person with a signed acknowledgment of receipt of a copy of the notice set forth in paragraph (1).

(l) (1) A person who originates a covered loan shall not steer, counsel, or direct any prospective consumer to accept a loan product with a risk grade less favorable than the risk grade that the consumer would qualify for based on that person's then current underwriting guidelines, prudently applied, considering the information available to that person, including the information provided by the consumer.

A person shall not be deemed to have violated this section if the risk grade determination applied to a consumer is reasonably based on the person's underwriting guidelines if it is an appropriate risk grade category for which the consumer qualifies with the person.

(2) If a broker originates a covered loan, the broker shall not steer, counsel, or direct any prospective consumer to accept a loan product at a higher cost than that for which the consumer could qualify based on the loan products offered by the persons with whom the broker regularly does business.

(m) A person who originates a covered loan shall not avoid, or attempt to avoid, the application of this division by doing the following:

(1) Structuring a loan transaction as an open-end credit plan for the purpose of evading the provisions of this division when the loan would have been a covered loan if the loan had been structured as a closed end loan.

(2) Dividing any loan transaction into separate parts for the purpose of evading the provisions of this division.

(n) A person who originates a covered loan shall not act in any manner, whether specifically prohibited by this section or of a different character that constitutes fraud.