

Colorado

STATE HIGH COST/PREDATORY LENDING REGULATIONS

Last Updated: 2/22/2018 By: BH

Coded: 2/26/2018 By: ZB

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LAW: Colorado Consumer Equity Protection Act (CO Revised Statutes Section 5-3.5-101)

LOAN AMOUNT COVERED: No limitations

BORROWERS COVERED:

Individuals Trusts
 Organizations Other:

TOTAL LOAN AMOUNT (TLA) IS DEFINED AS: CO Revised Statutes Section 5-3.5-101

Loan Amount as defined in HOEPA 226.32 Note Amount
 Loan Amount as defined in HCML 1026.32 Other:

LOAN TYPES COVERED:

Conventional FHA
 VA RHS
 Other:

LOAN PURPOSES COVERED:

Purchase Construction to Perm
 Builder Refinance
 Equity Out Home Equity Closed End
 One Time Closing Modification
 Purchase Plus Improvements Refinance Plus Improvements
 Lot Loan Home Improvement
 Borrower Interim One Time Closing with Modification
 HELOC Assumption

BRIDGE LOANS COVERED

Yes No

PROPERTY OCCUPANCY COVERED:

Primary Residence Second Home
 Investment Raw Land

APR THRESHOLDS: <https://law.resource.org/pub/us/code/co/colorado.xml.older/code11.05.html>

APR Unteased APR Other:

First Lien: >6.5 %

Subordinate Lien: >8.5 %

APR COMPARED AGAINST: CO Revised Statutes Section 5-3.5-101

APOR APR Itself
 Treasury Yield Other:

DATE FOR APR TEST:

- Application Closing
 Other: Date interest rate is set

FEE TEST METHOD: CO Revised Statutes Section 5-3.5-101

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

FEE TEST THRESHOLDS: CO Revised Statutes Section 5-3.5-101

All Liens: > 6 % of TLA

ADJUSTMENTS:

- No Yes | How:

PREPAYMENT PENALTY LIMITATIONS:

Max prepayment penalty 6 months' interest during first 36 months.

FEES INCLUDED IN TEST: CO Revised Statutes Section 5-3.5-101

Same as Regulation Z TILA §1026.32

(2) "Covered loan" means a consumer credit transaction secured by property located within this state that is considered a mortgage under section 152 of the federal "Home Ownership and Equity Protection Act of 1994", 15 U.S.C. sec. 1602 (aa), as amended, and regulations adopted pursuant thereto by the federal reserve board, including, without limitation, 12 CFR 226.32, as amended; except that, if the total points and fees paid by the obligor at or before closing exceed six percent of the total loan amount, such loan shall be deemed to be a covered loan if the transaction otherwise meets the requirements of this subsection (2).

SPECIAL NOTES: CO Revised Statutes Section 5-3.5-102

5-3.5-102. Protection of obligors

(1) A covered loan is subject to the following limitations:

(a) **Limitation on balloon payment.** No covered loan may contain a provision for a scheduled payment that is more than twice as large as the average of earlier regularly scheduled payments, unless such balloon payment becomes due and payable not less than one hundred twenty months after the date of execution of the loan. This prohibition does not apply when the payment schedule is adjusted to account for the seasonal or irregular income of the obligor or if the purpose of the loan is a bridge loan connected with, or related to, the acquisition or construction of a dwelling intended to become the obligor's principal dwelling.

(b) **No call provision.** No covered loan may contain a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition shall not apply when:

(I) Acceleration of repayment of the loan is justified:

(A) By default in which the obligor fails to meet the repayment terms of the agreement for any outstanding balance; or

(B) Pursuant to a due-on-sale provision;

(II) There is fraud or material misrepresentation by an obligor in connection with the loan;

(III) There is a provision permitting acceleration if the lender, in good faith, believes itself to be materially insecure or believes that the prospect of future payment has become materially impaired; or

(IV) There is any action or inaction by the obligor that adversely affects the lender's security for the loan or any rights of the lender in such security.

(c) **No negative amortization.** No covered loan may contract for a payment schedule with regular periodic payments that cause the principal balance to increase; except that this paragraph (c) shall not prohibit negative amortization as a consequence of a temporary forbearance or restructure sought by the obligor.

(d) **No increased interest rate upon default.** No covered loan may contract for any increase in the interest rate as a result of a default; except that this paragraph (d) shall not apply to periodic interest rate changes in a variable rate loan that is otherwise consistent with the provisions of the loan agreement if the change in the interest rate is not occasioned by the event of default or a permissible acceleration of the indebtedness.

(e) **Limitations on mandatory arbitration clauses.** No covered loan may be subject to a mandatory arbitration clause that:

(I) Does not comply with rules set forth by a nationally recognized arbitration organization such as the American arbitration association;

(II) Does not require the arbitration proceeding to be conducted:

(A) Within the federal judicial district in which the subject property is located;

(B) In the city nearest the obligor's residence where a federal district court is located; or

(C) At such other location as may be mutually agreed upon by the parties;

(III) Does not require the lender to contribute at least fifty percent of the amount of any filing fee; and

(IV) Does not require the lender to pay standard daily arbitration fees, both its own and those of the obligor, for at least the first day of arbitration.

(f) **No advance payments.** No covered loan may include terms under which any periodic payments required under the loan are paid in advance from the loan proceeds provided to the obligor.

(g) **Limitations on prepayment fees.** (I) **First thirty-six months only.** A prepayment fee or penalty shall be permitted only on a refinance to a different lender other than pursuant to a sale and only during the first thirty-six months after the date of execution of a covered loan. Prepayment fees and penalties shall not exceed six months' interest for prepayment within the first three years of the loan. The prepayment fees or penalties permitted by this paragraph (g) shall apply only to covered loans that are secured by a first mortgage, deed of trust, or security interest to refinance, by amendment, payoff, or otherwise, an existing loan made to finance the acquisition or construction of a dwelling, including a refinance loan providing additional sums of money for any purpose, regardless of whether related to acquisition or construction. No prepayment fees or penalties shall be included in the loan documents or charged to the obligor for prepayment:

(A) After the third year of the loan;

(B) Pursuant to a refinance with the same lender; or

(C) That is partial.

(II) **No prepayment fees for certain refinancing.** No prepayment fee or penalty may be charged on a refinancing of a covered loan if the covered loan being refinanced is owned by the refinancing lender at the time of such refinancing.

(III) **Lender must offer choice.** A lender shall not include a prepayment penalty fee in a covered loan unless the lender offers the obligor the option of choosing a loan product without a prepayment penalty fee. A lender shall be deemed to have complied with this requirement if the obligor receives and executes the following disclosure, which may be incorporated with any other required disclosure:

Consumer Caution - A lender may not make a covered loan unless the lender or a mortgage broker has given the Cautionary Notice in writing to the borrower within a reasonable time, once it is determined that the loan would result in a "covered loan" but no later than 72 hours prior to closing. A signed notice must be received by the lender or broker.