

Colorado

STATE HIGH COST/PREDATORY LENDING REGULATIONS

Last Updated: May 2016

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

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: CO Revised Statutes Section 5-3.5-101

- | | | | |
|-------------------------------------|--|--------------------------|-------------|
| <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 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: <https://law.resource.org/pub/us/code/co/colorado.xml.older/code11.05.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: CO Revised Statutes Section 5-3.5-101

- | | | | |
|-------------------------------------|----------------|--------------------------|------------|
| <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: 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:

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

Same as Regulation Z TILA §1026.32

(E) is a credit transaction described by 12 C.F.R. Section 226.32, as amended, except that the term includes a residential mortgage transaction, as defined by 12 C.F.R. Section 226.2, as amended, if the total loan amount is \$20,000 or more and:

- (i) the annual percentage rate exceeds the rate indicated in 12 C.F.R. Section 226.32(a)(1)(i), as amended; or
- (ii) the total points and fees payable by the consumer at or before loan closing will exceed the amount indicated in 12 C.F.R. Section 226.32(a)(1)(ii), as amended.
- (2) "Points and fees" has the meaning assigned by 12 C.F.R. Section 226.32(b), as amended .

OTHER ITEMS TO BE TESTED/CONSIDERED:

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.