

New York

STATE HIGH COST/PREDATORY LENDING REGULATIONS

Last Updated: 2/26/18 By: BH

Coded: 3/5/2018 By: ZB

Reviewed: 3/5/2018 By: BH

LAW: NY High Cost Loan Law (NY Banking Law 6-L and Senate Bill 8143 effective 9/01/2008)

LOAN AMOUNT COVERED: Greater of FNMA loan limits or \$300,000

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: NY Banking Law 6-L

<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
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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: <http://www.banking.state.ny.us/mb6l.htm> and <https://www.nysenate.gov/legislation/laws/BNK/6-L>

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

Subordinate Lien: \geq 9 %

APR COMPARED AGAINST: NY Banking Law 6-L

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

DATE FOR APR TEST:

Application Closing
 Other: 15th of the month prior to application

FEE TEST METHOD: NY Banking Law 6-L

Use HC Flag
 Use APR & Paid To (§1026.32)
 Use APR & Paid To, except: exclude up to 2 discount points if interest rate is not greater than 1% above Treasury as of 15th of preceding month. Exclude all UFMIP, VA FF, USDA Guarantee fee, and PMI

FEE TEST THRESHOLDS: NY Banking Law 6-L

All liens: > 5 % of TLA > or = \$50,000
> 6 % for TLA > or = \$50,000 and loan is Purchase money FHA or VA
> Greater of 6 % or \$1,500 for TLA < \$50,000

ADJUSTMENTS:

No Yes | How:

FEES INCLUDED IN TEST: NY Banking Law 6-L

(f) "Points and fees" means: (i) All items listed in 15 U.S.C. § 1605(a)(1) through (4), except interest or the time-price differential; (ii) All charges for items listed under § 226.4(c)(7) of title 12 of the code of federal regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase "points and fees"; (iii) 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, not otherwise included in subparagraphs (i) and (ii) of this paragraph; (iv) The cost of all premiums financed by the lender, 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 lender 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 lender.

Following discount points shall be excluded from the calculation of the total points and fees payable by the borrower:

(1) Up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than one percentage point the yield on United States treasury securities having comparable periods of maturity to the loan maturity measured as of the fifteenth day of the month immediately preceding the month in which the application is received;

(2) Any and all bona fide loan discount points funded directly or indirectly through a grant from a federal, state or local government agency or 501(c)(3) organization.

SPECIAL NOTES: NY Banking Law 6-L and Senate Bill 8143 effective 9/01/2008

Special Notes: Notice in 12-point type at top of each mortgage that secures high cost loan “THIS MORTGAGE SECURES A HIGH-COST HOME LOAN SUBJECT TO NEW YORK BANKING LAW 6-1 and Banking Board Part 41 section 41.7”

Teaser rates must have duration of six months or more.

41.2 Limitations.

A high cost home loan shall be subject to the following limitations.

(a) No call provision.

No high cost home loan may contain a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition does not apply when repayment of the loan has been accelerated in good faith, due either to a bona fide default or other failure of the borrower to abide by the material terms of the loan, or pursuant to a due-on-sale provision, or pursuant to some other provision of the loan agreement unrelated to the payment schedule such as bankruptcy or receivership.

(b) No balloon payment.

No high cost home loan may contain a scheduled final payment that is more than twice as large as the average of earlier scheduled monthly payments unless such balloon payment becomes due and payable at least 15 years after the loan's origination. This prohibition does not apply when the payment schedule is adjusted to account for the seasonal or irregular income of the borrower or if the purpose of the loan is a bridge loan connected with the acquisition or construction of a dwelling intended to become the borrower's principal dwelling. This subdivision shall not apply to open-end high cost home loans.

(c) No negative amortization.

Notwithstanding any statute or regulation to the contrary, no high cost home loan may contain a payment schedule with regular periodic payments that cause the principal balance to increase. This shall not prohibit negative amortization as a consequence of a temporary forbearance sought by the borrower. This subdivision shall not apply to open-end high cost home loans.

(d) No increased interest rate.

No high cost home loan may contain a provision that increases the interest rate after default. This provision does not apply to periodic interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan agreement, provided the change in the interest rate is not occasioned by the event of default or the acceleration of the indebtedness.

(e) No oppressive mandatory arbitration clause.

No high cost home loan may be subject to a mandatory arbitration clause that is oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers. Arbitration clauses that comply with the standards set forth in the Statement of Principles of the National Consumer Dispute Advisory Committee, as such statement is on file at the New York State Department of Financial Services, shall be presumed not to violate this subdivision. The Statement of Principles may be viewed at the New York State Department of Financial Services located at the New York City office of the New York State Department of Financial Services located at the address stated in Supervisory Policy G1 of this Title or through internet access at <http://www.banking.state.ny.us/41.htm>.

(f) No advance payments.

No high cost home loan may 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.

3 CRR-NY 41.2

Current through January 31, 2016

Effective 9/01/2008 NYSB 8143 added “subprime mortgage rules”. A loan is qualified as subprime if the fully indexed APR exceeds the average commitment rate for loans in the NE Region with a comparable duration by more than 1.75%. The average commitment rate is published by FHLMC in its weekly Primary Mortgage Market Survey as posted as the week prior to the week when the lender receives a completed application.