

# Texas

## STATE HIGH COST/PREDATORY LENDING REGULATIONS

Last Updated: April 2016

**LAW:** Texas High Cost Home Loan Law (Chapter 343.201 Texas Finance Code)

**LOAN AMOUNT COVERED:** Must be between \$20,000 and up to ½ of the FNMA loan limit

### **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:**

- |                                     |   |                          |             |
|-------------------------------------|---|--------------------------|-------------|
| <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 Interim            | <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 type="checkbox"/>            | One Time Closing with Modification |
| <input 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 1-4 Units | <input type="checkbox"/> | Second Home |
| <input type="checkbox"/>            | Investment                  | <input type="checkbox"/> | Raw Land    |

### **APR THRESHOLDS :** <http://www.statutes.legis.state.tx.us/Docs/FI/htm/FI.343.htm#343.201>

- |                                     |     |                          |              |                          |        |
|-------------------------------------|-----|--------------------------|--------------|--------------------------|--------|
| <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:** Regulation Z TILA §1026.32

- |                                     |                |                          |                            |
|-------------------------------------|----------------|--------------------------|----------------------------|
| <input checked="" type="checkbox"/> | APOR           | <input type="checkbox"/> | APR Itself                 |
| <input type="checkbox"/>            | Treasury Yield | <input type="checkbox"/> | Other: [Other description] |

### **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:** Regulation Z TILA §1026.32

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

**FEE TEST THRESHOLDS:**

All Liens: > or = 5 % of TLA >\$20,350

Lesser of 8% or \$1,017 for TLA < \$20,350

**ADJUSTMENTS:**

No  Yes | How: Adjusts annually per CPI

**FEES INCLUDED IN TEST:**

Same as Regulation Z TILA §1026.32

<http://www.statutes.legis.state.tx.us/Docs/FI/htm/FI.343.htm#343.201>

(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:**

N/A

**SPECIAL NOTES:** Chapter 343.201 Texas Finance Code

**High Cost Loan Limitations and Prohibitions:**

Sec. 343.202. BALLOON PAYMENT. A high-cost home loan may not contain a provision for a scheduled payment that is more than twice as large as the average of earlier scheduled monthly payments, unless the balloon payment becomes due not less than 60 months after the date of the loan. This prohibition does not apply if the payment schedule is adjusted to account for the seasonal or otherwise irregular income of the borrower or if the loan is a bridge loan in connection with the acquisition or construction of a dwelling intended to become the borrower's principal dwelling.

Added by Acts 2001, 77th Leg., ch. 622, Sec. 1, eff. Sept. 1, 2001.

Sec. 343.203. NEGATIVE AMORTIZATION. A high-cost home loan may not provide for a payment schedule with regular periodic payments that cause the principal balance to increase, except that this section does not prohibit negative amortization as a consequence of a temporary forbearance, bridge loan, or restructure sought by the borrower.

Added by Acts 2001, 77th Leg., ch. 622, Sec. 1, eff. Sept. 1, 2001.

Sec. 343.204. CONSIDERATION OF OBLIGOR'S PAYMENT ABILITY. (a) In this section, "obligor" means a

person obligated to pay a loan, including a borrower, cosigner, or guarantor. If more than one person is obligated to pay a loan, the term refers to those persons collectively.

(b) A lender may not engage in a pattern or practice of extending credit to consumers under high-cost home loans based on the consumers' collateral without regard to the obligor's repayment ability, including the obligor's current and expected income, current obligations, employment status, and other financial resources, other than the obligor's equity in the dwelling that secures repayment of the loan.

Added by Acts 2001, 77th Leg., ch. 622, Sec. 1, eff. Sept. 1, 2001.

Sec. 343.205. PREPAYMENT PENALTIES PROHIBITED. A lender may not make a high-cost home loan containing a provision for a prepayment penalty.

Added by Acts 2001, 77th Leg., ch. 622, Sec. 1, eff. Sept. 1, 2001.

Sec. 343.206. CHARGE PROHIBITED FOR PRODUCT OR SERVICE NOT RECEIVED. A lender, in connection with a high-cost home loan, may not charge a borrower an amount for a service or product if the borrower does not receive the service or product.

Added by Acts 2003, 78th Leg., ch. 1207, Sec. 3, eff. Sept. 13, 2003.