

Wisconsin

STATE HIGH COST/PREDATORY LENDING REGULATIONS

Last Updated: May 2016

LAW: Wisconsin Responsible High Cost Mortgage Lending (WIS Stats. 428.202 et seq)

LOAN AMOUNT COVERED: No maximum in regulation

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: WIS Stats. 428.202 et seq

- | | | | |
|-------------------------------------|--|--------------------------|-------------|
| <input checked="" type="checkbox"/> | Loan Amount as defined in HOEPA 226.32 | <input type="checkbox"/> | Note Amount |
| <input 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 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: http://docs.legis.wisconsin.gov/statutes/statutes/428/II/202#JUMPDEST_428.202

- | | | | | | |
|-------------------------------------|-----|--------------------------|--------------|--------------------------|--------|
| <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: WIS Stats. 428.202 et seq

- | | | | |
|-------------------------------------|----------------|--------------------------|------------|
| <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: WIS Stats. 428.202 et seq

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> | Use HC Flag |
| <input type="checkbox"/> | Use APR & Paid To (§1026.32) |
| <input checked="" type="checkbox"/> | Use APR & Paid To, except: exclude reasonable fees paid to affiliates or nonaffiliates of the lender for bona fide services listed in 12 CFR 226.4 (c) (7). |

FEE TEST THRESHOLDS: WIS Stats. 428.202 et seq

All liens: > 6% of TLA

ADJUSTMENTS:

No Yes | How:

FEES INCLUDED IN TEST: WIS Stats. 428.202 et seq

"Total points and fees" does not include reasonable fees paid to affiliates or nonaffiliates of the lender for bona fide services listed in [12 CFR 226.4](#) (c) (7).

OTHER ITEMS TO BE TESTED/CONSIDERED:

SPECIAL NOTES: WIS Stats. 428.202 et seq

- 428.203 Prohibitions on and requirements of lenders and assignees.
- (1) **BALLOON PAYMENTS.** Except as otherwise provided in this subsection, no lender may make a covered loan to a customer that requires, or that permits the lender to require, a payment that is more than twice as large as the average of all earlier scheduled payments. This subsection does not apply to a loan under which the payment schedule is adjusted to account for seasonal or irregular income of the customer or to a bridge loan with a maturity of less than one year that the customer obtains for the purpose of facilitating the acquisition or construction of a dwelling as the customer's principal dwelling.
- (2) **CALL PROVISION.** No lender may make a covered loan to a customer that permits the lender or an assignee of the loan to demand payment of the outstanding balance before the original maturity date, except that a covered loan may permit a lender or assignee to so demand as a result of any of the following:
- (a) The customer's failure to make payments required under the loan.
 - (b) A provision in the loan agreement permitting the lender or assignee to make such a demand after the sale of real property that is pledged as security for the loan.
 - (c) Fraud or material misrepresentation by the customer in connection with the loan.
 - (d) Any act or omission by the customer that adversely affects the lender's or assignee's security for the loan or any right of the lender or assignee in such security.
- (3) **NEGATIVE AMORTIZATION.** No lender may make a covered loan to a customer with a payment schedule that causes the principal balance to increase, except that this subsection does not prohibit such a payment schedule as a result of a temporary forbearance or loan restructuring consented to by the customer.
- (4) **INCREASED INTEREST RATE.** No lender may make a covered loan to a customer that imposes or permits the lender or an assignee of the loan to impose an increase in the interest rate as a result of the customer's default.
- (5) **ADVANCE PAYMENTS.** No lender may make a covered loan to a customer that includes a payment schedule that consolidates more than 2 scheduled payments and pays them in advance out of the proceeds of the loan.
- (6) **REPAYMENT ABILITY.** No lender may make covered loans to customers based on the customer's collateral without regard to the customer's ability to repay, including the customer's current or expected

income, current obligations, and employment. A lender is presumed to have violated this subsection if the lender engages in a pattern or practice of making covered loans without verifying and documenting the customer's repayment ability.

(7) **REFINANCING OF EXISTING COVERED LOAN.** No lender may make a covered loan that refinances an existing covered loan that the lender made to the same customer, unless the refinancing takes place at least one year after the date on which the loan being refinanced was made or the refinancing is in the interest of the customer. No assignee or servicer of a covered loan may make a covered loan that refinances the covered loan, unless the refinancing takes place at least one year after the date on which the loan being refinanced was made or the refinancing is in the interest of the customer. No lender, assignee of a covered loan, or servicer may engage in a pattern or practice of arranging for the refinancing of covered loans by affiliates or unaffiliated creditors, modifying covered loans, or any other acts for the purpose of evading this subsection. This subsection does not apply to bridge loans.

(8) **PAYMENTS TO HOME IMPROVEMENT CONTRACTORS.** No lender under a covered loan made to a customer may pay proceeds of the loan to a person who is under contract to make improvements to an existing dwelling, unless the payment is made by an instrument that is payable to the customer or jointly to the customer and the person who is under contract or, with the consent of the customer, the payment is made through a 3rd party in accordance with a written agreement signed by the customer, the lender, and the person under contract.

(8g) **SINGLE PREMIUM CREDIT INSURANCE PRODUCTS.** A lender may not finance, directly or indirectly, through a covered loan, or finance to the same customer within 30 days of making a covered loan, any individual or group credit life, credit accident and health, credit disability, or credit unemployment insurance product on a prepaid single premium basis sold in conjunction with a covered loan. This prohibition does not include contracts issued by a government agency or private mortgage insurance company to insure the lender against loss caused by a customer's default and does not apply to individual or group credit life, credit accident and health, credit disability, or credit unemployment insurance premium calculated and paid on a monthly or other periodic basis.

(8m) **REFINANCING OF SUBSIDIZED LOW-RATE LOANS.**

(a) In this subsection, "subsidized low-rate loan" means a loan that carries a current interest rate at least 2 percentage points below the then current yield on treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped-up rate, as applicable, shall be used instead of the current rate to determine whether a loan is a subsidized low-rate loan.

(b) A lender may not knowingly replace or consolidate a zero-interest rate or other subsidized low-rate loan made by a governmental or nonprofit lender with a covered loan within the first 10 years of the zero-interest rate or other subsidized low-rate loan unless the current holder of the loan consents in writing to the refinancing.

(9) **UNLICENSED MORTGAGE BANKERS AND BROKERS.** No lender may knowingly contract with any person for the performance of duties in violation of s. 224.72 (1m).

History: 2003 a. 257; 2009 a. 2.

428.204 **False statements.** No lender, licensed lender, mortgage loan originator, mortgage banker, or mortgage broker may knowingly make, propose, or solicit fraudulent, false, or misleading statements on any document relating to a covered loan.

History: 2003 a. 257; 2009 a. 2.

428.206 **Recommending default.** No lender, licensed lender, mortgage loan originator, mortgage banker, or mortgage broker may recommend or encourage an individual to default on an existing loan or other obligation before and in connection with the making of a covered loan that refinances all or any portion of that existing loan or obligation.

History: 2003 a. 257; 2009 a. 2.

Cross-reference: See also ch. DFI-Bkg 46, Wis. adm. code.

428.207 Prepayment.

(1) A customer may prepay a covered loan at any time without penalty if the payment is made in the context of a refinancing of the covered loan and if the covered loan is held by the refinancing lender. This subsection does not prohibit the servicer of a covered loan from imposing a prepayment penalty, unless the servicer is also the lender and holds the loan at the time of the refinancing.

(2) Any prepayment penalty under this section is subject to all of the following limitations:

(a) A prepayment penalty is permitted only during the 36 months immediately following the date of consummation of a covered loan.

(b) A lender may not include a prepayment penalty in a covered loan unless the lender offers the customer the option of choosing a loan product without a prepayment penalty. The terms of the offer shall be in writing and initialed by the customer. The offer shall be in a clear and conspicuous format and include the following disclosure:

LOAN PRODUCT CHOICE DISCLOSURE

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty.

(c) A prepayment penalty may not exceed 60 days' interest at the contract rate on the amount prepaid on fixed-rate covered loans over \$25,000 if the borrower prepays more than 20 percent of the original loan amount within 36 months immediately following the date of consummation of the covered loan.

(d) A prepayment penalty may not be collected on fixed-rate covered loans of \$25,000 or less, on adjustable rate loans, or on those fixed-rate covered loans over \$25,000 not specified in par. (c).

History: 2003 a. 257.

428.208 Disclosure to customers. At least 3 business days before making a covered loan to a customer, a lender shall ensure that the customer has been given the following notice, in writing and in a clear and conspicuous format:

DISCLOSURE TO BORROWER

A. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home and any money that you have put into it if you do not meet your obligations under this loan. Mortgage loan rates and closing costs and fees vary based on many factors, including your particular credit and financial circumstances, your earnings history, your employment status, the loan-to-value ratio of the requested loan, and the type of property that will secure your loan. The loan rate and fees could also vary based on which lender you select.

B. As a consumer you should shop around and compare loan rates and fees. You should also 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.

C. You are not required to complete this 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 or other debts in connection with this transaction and then subsequently incur significant new debt. If you continue to accumulate debt after this loan is made and then experience financial difficulties, you could lose your home and any equity that you have in it if you do not meet your mortgage loan obligations.

D. Property taxes and homeowner's insurance are your responsibility. Some lenders may require you to escrow money for these payments. However, not all lenders provide escrow services for these payments. You should ask your lender about these services.

E. 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.

History: 2003 a. 257.

Cross-reference: See also ch. DFI-Bkg 46, Wis. adm. code.