

## SUMMARY OF NEW YORK STATE'S ANTI-PREDATORY LENDING LAW

**Prepared by the Foreclosure Prevention Project at South Brooklyn Legal Services and the  
Neighborhood Economic Development Advocacy Project  
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### Where to Find the New Law

New York's anti-predatory lending law added three new sections to existing state laws: Banking Law § 6-1, General Business Law § 771-a, and Real Property Actions and Proceedings Law § 1302. These sections took effect on April 1, 2003, and apply to loans made after the effective date.

### What Loans are Covered by the Law

The anti-predatory lending law places substantial restrictions on "high cost loans" that are either first or junior lien mortgages. "High cost loans" are defined as:

1. Loans that have a principal amount that is less than the conforming loan size limit for a comparable dwelling as established by the federal national mortgage association up to a maximum of \$300,000;
2. The borrower is a natural person (i.e., not a corporation) and the loan is for personal or family purposes;
3. The loan is secured by real property in New York that has 1-4 units and is or will be the borrower's principal residence; **and**
4. The loan exceeds one or more of the following "thresholds":
  - If it is a first-lien mortgage, the annual percentage rate of the home loan exceeds 8% of the yield on treasury securities having comparable maturities;<sup>1</sup>
  - If it is a junior-lien mortgage, the annual percentage rate of the loan exceeds 9% of the yield on treasury securities having comparable maturities;
  - If the loan is a conventional loan for more than \$50,000, and total "points and fees" exceed 5% of the loan;
  - If the loan is an FHA or VA loan for more than \$50,000 and the total "points and fees" exceed 6% of the loan; or
  - If the loan is less than \$50,000, and the total "points and fees" exceed 6% of the loan or \$1,500, whichever is greater.

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<sup>1</sup> The yield on treasury securities with comparable maturities is published in the Wall Street Journal and Federal Reserve Board publications.

## **Loan Terms and Practices that Are Prohibited in High-Cost Loans**

If the mortgage is a high-cost loan based on the above definition, the law's restrictions include the following:

- No Lending Without Regard for Borrower's Ability to Repay: Prohibits lending based on a borrower's home equity, rather than income and other financial resources; and requires lenders and brokers to verify sources of income.
- Limited Financing of Points and Fees: A lender may not finance points and fees that exceed 3% of the total loan amount.
- No "Loan Flipping": A lender may not refinance an existing home loan unless the new loan provides a tangible net benefit to the borrower.
- No Kickbacks to Mortgage Brokers.
- No Points and Fees When a Lender Refinances its own High-Cost Home Loan.
- No Balloon Payments: A monthly payment may not exceed twice the average earlier monthly payments if the loan term is less than 15 years.
- No Call Provisions: A lender may not accelerate the indebtedness, unless the borrower defaults (e.g., fails to make payments).
- No Negative Amortization: No high-cost home loan may contain a payment schedule where the principal balance increases over time (e.g., no "interest-only" loans).
- No Increased Interest Rate: A lender may not increase the loan interest rate as a result of default by the borrower.
- Limitation on Advance Payments: No more than two periodic payments may be paid to the lender in advance, from the loan proceeds.
- No Modification or Deferral Fees: A lender may not charge a borrower fees to modify, renew, extend or amend a high-cost loan.
- No Oppressive Mandatory Arbitration Clauses.
- No Financing of Single-Premium Insurance.
- No Refinancing of Special Mortgages: A lender may not refinance a special mortgage, for example where a non-profit organization is the lender, without prior counseling from a HUD-approved counselor.

- No Lending Without Counseling Disclosure: A lender must provide a written notice and list of approved counseling services to borrowers prior to the loan closing.
- Restrictions on Home Improvement Contracts: A lender may not use loan proceeds to pay a home improvement contractor, except through certain mechanisms that ensure that the borrower is protected and has provided authorization. Moreover, a home improvement contractor must disclose any payments received in connection with a high-cost home loan.
- Foreclosure Protections for High-Cost Home Loans: In a complaint initiating foreclosure of a high-cost home loan, the lender must include an averral that the loan terms comply with the anti-predatory lending law. Moreover, the lender must prove such compliance to the court's satisfaction, even if the homeowner defaults in the foreclosure proceeding.

### **Statute of Limitations and Penalties for Violation of the Law**

A borrower can bring an affirmative action against a lender or mortgage broker within 6 years from the date of the origination of the loan, and can raise violations of the law *at any time* as a defense to a foreclosure action. If the borrower proves by a preponderance of the evidence that the lender or broker violated the law, the borrower is entitled to actual damages, attorneys' fees, and statutory damages, which include:

- All of the interest, earned or unearned, points and fees, and closing costs charged on the loan, *except* for violations of provisions regarding (1) loan flipping, and (2) making loans without regard to the borrower's ability to pay if the lender can demonstrate that the time of the loan the borrowers income was verified and corroborated by independent sources; or
- For violations of loan flipping and making loans without regard to the borrower's ability to pay, \$5,000 per violation or twice the amount of points and fees and closing costs, whichever is greater.

A borrower may also be granted declaratory and injunctive relief. Moreover, upon the court's finding that the lender *intentionally* violated the law, the loan shall be rendered void, and the borrower may recover any payments made under the agreement. If the court finds that the lender violated any provision of the law, the loan may be rescinded.

A borrower cannot bring an affirmative suit against a mortgage assignee for violation of the New York State law. However, a borrower sued in foreclosure by a mortgage assignee can raise violations of any law as a defense to the foreclosure, at any time. The assignee liability is capped at the loan amount - in other words, the maximum relief available to a borrower is to reduce or eliminate the assignee's claim against her.