South Carolina High Cost Mortgage and Consumer Home Act: Act 42 of 2003

SC Appleseed Legal Justice Center
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Landmark piece of Legislation that addresses:

- Home Mortgages: Including 1st, Mobile Home and Land, Purchase Money, Home Improvement;
- Manufactured Homes without Land;
- Auto Title Lenders;
- Mortgage Brokers.
Groundbreaking

• Sets up protections for all homeowners
• For the first time in South Carolina the SC Consumer Protection Code provides real protection of 1st Mortgages.
Mortgage must be for Personal or Household Use

- Protections are for Borrower and Co-Borrower
Creates Category for High Cost Home Mortgages

- Can be either a stick built or Mobile Home (even if Mobile Home not part of land package);
- Personal, family or household use;
- Loan is over the thresholds established by the law.
High Cost Loan Threshold Trigger

• **Interest Rate Threshold:**
  - First Mortgage: 8% over the US Treasury securities;
  - Second Mortgage and Consumer Mobile Homes: 10% over the US Treasury securities.
High Cost Loan Threshold
Trigger
continued

• Points and Fees Threshold:

• Loans more than $20,000: 5% of the loan;

• Loans less than $20,000: 8% of the loan;

• Non-real estate Mobile Homes: 3% of...
What is included in the Fees and Points Threshold?

- General Rule of Thumb, money going into the pocket of the lender or mortgage broker that is paid by the borrower.
Fees and Points that are not included

- Rule of Thumb: Bona fide and reasonable fees going to a third party.
High Cost Loans are more likely to cause Consumer Problems

- Higher interest rate may make the payment harder for the consumer to maintain;
- May have rates that increase after period of time and make payment increase;
- Have high costs associated with the loan that can cause the equity to be stripped.
Special Rights when the Loan is High Cost

• Lender cannot call loan at own discretion;
• No Balloon payment;
• No negative amortization;
• No increase of rate if consumer defaults;
• Lender cannot charge the consumer a fee to modify, renew or extend the loan;
• Lender cannot contain a choice of law provision to avoid protections under SC law.
Lender of High Cost Loan May not:

• Make the loan prior to receiving written notice that the consumer has had counseling by a certified counselor about that particular loan;
• Without first determining whether the consumer can actually repay the loan;
• Directly or indirectly finance more than 2.5% in points or fees;
• Directly or indirectly finance prepayment penalties;
• Charge fees or points to refinance a lender’s own loan.
Home Improvement Contracts

- A lender may not make payment for a home improvement loan to only the contractor—
- The check must be made out to the borrower and the contractor or
- Through a third-party escrow agent
Penalty When High Cost Home Law is Violated

Borrower can receive a statutory penalty and any damages that they may have incurred.
Consumer Home Loans

- Any mortgage that meets the following:
  - Debt is for personal, family or household use;
  - Mortgage is on real estate that is used as consumer’s principal dwelling;
  - Includes High Cost Loans.
Protections for Consumer Home Loans

• It is unlawful to “Flip” a consumer home loan. Flipping is:
  – making a home loan that is refinanced within forty-two months of an existing loan and the borrower receives no reasonable, net tangible benefit;

  There are rebuttable presumptions of when a loan does provide such a benefit contained in the law.

  Presumed to be flipped if the refinance was of a loan with a special mortgage such as a State Housing Authority or Habitat for Humanity Loan.
Additional Protections for Consumer Home Loans

• Cannot finance directly or indirectly Single Premium Credit Insurance or Debt Cancellation Insurance after Jan. 1, 2005;
• Lender cannot recommend default on existing loan;
• Mortgage Broker or originator must give the consumer at time of application information as to where the consumer can file a complaint against a lender.
• Prohibits the lender from charging a prepayment penalty for loans under $150,000. This amount will increase every two years as indexed to the CPI.
Additional Information Consumers Entitled to Receive

- Consumers of both High Cost and Consumer Home Loans are entitled to disclosures of cost when loan is made by Mortgage Broker;
- This includes all direct and indirect costs, which also includes Yield Spread Premium.
Penalty when Consumer Home Loan Provisions has been violated

- Statutory penalty and actual damages.
Mortgage Broker and Originator
Duty of Care

• Mortgage Brokers and Originators must provide the consumer with a statement on duty of care;
• Statement must contain that the Mortgage Broker/Originator is acting as agent for borrower;
• As agent he owes the borrower the duty of utmost care, honesty and loyalty including the disclosure of all material facts;
• Provide a good faith statement of all fees whether paid by borrower or lender or both.
Penalty When Mortgage Broker/Originator Violates Section

- Penalty of not less than $1,500.00 and not more than $7,500.00 for each loan transaction;
- Repayment of fees paid by borrower;
- Actual costs, plus attorneys fees;
- Safe Harbor for bona fide error of law.
Auto Title Lenders

- Establishes new laws for “Short-term Vehicle Secured Loans”
- Loans must be under 120 days
- Have length of at least 30 days
- Lender may charge any rate as long as it files its maximum APR with Consumer Affairs and has it posted conspicuously in its place of business.
Auto Title Lenders

- Lender may flip the loan six times for a maximum total loan amount of two hundred and forty days.
- After two hundred and forty days the loan freezes and consumer has additional one hundred and eighty days to pay loan.
- Lender must have a basis to believe the consumer has the ability to repay the loan.
- Loan cannot be more than the fair market value of the car.
Pay Day Lending

- Not addressed since 1998;
- Seen tremendous growth in the industry since the state first started granting licenses;
- Over 3.5 million payday loans were made between Sep. 2002 and Aug. 2003;
- Charged over $122 million in fees that year;
- Causing people to get caught up in multiple loans at a time;
- Sending many people into debt spiral they cannot get out of.