



Outline of New Jersey Home Ownership Security Act

P.L. 2003, c.64;
(Assembly, No. 75)
Predatory Lending Issues

- Signed into Law: May 1, 2003
- Becomes effective 210 days after enactment (November 27, 2003)
- Three categories of loans
 - [Home loans](#)
 - [Covered loans](#)
 - [High-cost home loans](#)
 - These are progressively inclusive categories

Activities Illegal Under Other Law

- LLA: fraud, deceit, misrepresentation, unworthiness, incompetence, bad faith or dishonesty
- Criminal law: theft
- Contract: unconscionability
- Tort: conversion
- Consumer Fraud Act

Home Loan

"Home loan" is defined as (1) an extension of credit, primarily for personal or household purposes, secured by a mortgage on real estate in this State on which there is located or to be located a dwelling which will be occupied by the borrower as the borrower's principal dwelling or (2) a security interest in a manufactured home which is or will be occupied by the borrower as the borrower's principal dwelling.

Aspects of Home Loans

- First, second, or subsequent lien mortgage loans (includes open-end but not reverse mortgages)
- Secured by realty in this State
- Dwelling contains from one to six dwelling units (Mixed-use is still residential)
- Primary residence of the borrower
- Purpose is primarily personal, family or household
- Also includes a security interest in manufactured home

Prohibitions regarding Home Loans

- No financing credit insurance
- No encouraging of default
- No charging a late payment fee in excess of 5% of the amount of the payment due
- No acceleration of the indebtedness
- No charging for payoff information

Frequently Asked Questions

Does the Borrower Make a Difference?

Q: If I make loans to a corporation, limited partnership, or limited liability company, am I subject to the act?

A: No. The borrower must be a natural person for the act to apply. Note that borrower also includes those obligated to repay (co-borrowers, cosigners, and guarantors).

Loans Secured by Out-of-State Realty

Q: I am a NJ licensed lender. If I make a loan secured by realty located in another State, does the NJHOSA law apply?

A: No. NJHOSA only applies to loans secured by NJ realty.

Loans Secured by a Security Interest in a Manufactured Home

Q: Do you reach the same result for loans secured by a security interest in a manufactured home located out-of-state?

A: The law is less clear on this point. In our judgment, NJHOSA would not apply to loans secured by out-of-State manufactured homes.

Escrow Charges - Included?

Q: Escrow charges seem to be included under one subsection and excluded under another. Which is it?

A: Escrow payments that will be applied to taxes and insurance are excluded from points and fees but the lender's escrow charges for managing the escrow account are included in points and fees.

Covered Loans

Thresholds

- EITHER Points and fees exceeds
 - 4% of total loan amount for loans over \$40K or
 - 4.5% for loans of \$40K or less or
 - 4.5% for FHA or VA loans,
- OR the loan is a high-cost home loan (i.e., the rate exceeds the HOEPA rate of treasury bill rate plus 8%)

Prohibitions regarding Covered Loans

- All prohibitions applicable to home loans
- No flipping
 - "Flipping" is making a covered loan that refinances a home loan where the transaction has no reasonable tangible net benefit to the borrower
 - The loan must have been consummated within the prior 60 months

Aspects of Covered Loans

- The covered loan provisions are located as subsection b. of section 17:10B-25, although the rest of this section addresses home loans
- The flipping prohibition applies irrespective of whether the refinance is done with the same lender

Reasonable Tangible Net Benefit

- Includes both economic and non-economic factors
- All the borrower's circumstances must be weighed
- "Net benefit" - The overall benefit must be positive for the consumer

Presumption of Flipping

- If the primary benefit is a lower interest rate and it will take more than 4 years to recoup the closing costs
- If the loan being refinanced is a special subsidized or guaranteed loan with a below-market rate or other beneficial terms

Frequently Asked Questions

Loans Over 60 Months Old

Q: Do the flipping prohibitions apply to loans over 60 months old?

A: No. The loan being refinanced must have been consummated within the prior 60 months for the prohibitions to apply.

Scope of Flipping Prohibition

Q: Some have read the flipping provisions to apply to all home loans. Is that true?

A: No. The flipping provisions apply to covered loans (and to high-cost home loans because each high-cost home loan is also a covered loan.)

High-Cost Home Loans

Thresholds

- EITHER points and fees exceed
 - 5% of total loan amount for loans over \$40K or
 - 6% for loans between \$20K and \$40K or
 - 6% or \$1K for loans under \$20K,
- OR the rate exceeds the HOEPA rate (treasury bill rate plus 8%)

Prohibitions regarding High-Cost Home Loans

- All prohibitions applicable to home loans
- All prohibitions applicable to covered loans
- No balloon payments
- No negative amortization
- No increasing the interest rate after default
- No requiring more than two periodic payments to be paid in advance

- No arbitration forum that is less convenient than a NJ judicial forum
- No lending without providing required notice
- No lending to a borrower who finances points and fees, without a counseling certification
- No payments regarding home improvement contractors except (1) to the borrower, (2) jointly or (3) to escrow
- No fee for loan modifications
- No charging points and fees if the proceeds of a high-cost home loan are used to refinance an existing high-cost home loan held by the same creditor as note holder
- No foreclosure other than by NJ law
- No financing points and fees in excess of 2% of the loan amount

High-Cost Home Loan Counselors

- The Department has proposed a regulation providing for the [registration of high-cost loan counselors](#)
- Not limited to current licensed debt adjusters and credit counselors

High-Cost Home Loan Certifications

- Two types of certifications are proposed:
 - For the specific loan
 - For any high-cost loan up to 90 days
- Certification is only to the fact that the borrower was counseled
 - It is not an authorization for the borrower to take the loan
 - It is not an approval of the loan terms

Broker Liability

- Brokers are included in the definition of "creditor", however
- Mortgage brokers are only liable for acts performed by the mortgage broker in the course of providing mortgage brokering services

Assignee Liability and Limitations

- Assignees are subject to all claims as if they were the lender - except...
 - Applies only to covered and high-cost home loans
 - Borrower's recovery is limited to amount of loan balance plus costs

No liability for HCHL's if the assignee can establish that

- it has a policy against buying high-cost home loans, and
- it requires sellers to warrant no sale of high-cost home loans, or carries forward such a warrant from a prior seller
- it exercises reasonable due diligence at purchase to prevent purchase of high-cost home loan
- Liability terminates six years following the closing of a covered loan
- Liability exists for the term of a high-cost home loan if
 - foreclosure has been commenced,
 - the debt has been accelerated, or

- the loan is 60 days in default

Assignee Liability - Which Damages Section?

- Assignee damages are limited in Section 27 to
 - amounts required to reduce liability under the home loan plus
 - amounts required to cover borrower's costs
- The Section 27 limitations apply in assignee liability cases irrespective of the general Section 29 damages provisions

Damages Section 29

- Consumer Fraud Act or, for material violations of the Act, Statutory damages (finance charges plus up to 10% of amount financed)
- Punitive damages for malicious or reckless violations
- Attorneys fees recoverable
- Preserves all rights and remedies under all other law
- Preserves Attorney General's right of action under other statutes

Frequently Asked Questions

Brokering High-Cost Home Loans

Q: I am a NJ licensed broker. Can I broker a loan that would violate NJHOSA except I'm brokering it to a lender who can make such a loan legally (e.g., a federally-chartered thrift)?

A: Yes, but at potential risk pending the outcome of the federal preemption debate and pending steps to apply bad faith and unworthiness rules. The Attorney General or Division of Consumer Affairs could conclude that such brokering is illegal.

How much Sampling is Due Diligence?

Q: In order to avoid assignee liability, must I look at all of the loans in a portfolio that I purchase?

A: No. Purchasers should exercise reasonable care and that may be satisfied by adequate sampling of the loan pool. More extensive review may be expected for small pools or where sampling uncovers a number of high-cost home loans.

Purchasing High-Cost Home Loans

Q: I am a NJ licensed mortgage banker. Can I purchase a loan that would violate NJHOSA except that the loan was originally made by a lender who could make such a loan legally (e.g., a federally-chartered thrift)?

A: Yes, but at potential risk pending the outcome of the federal preemption debate and pending steps to apply bad faith and unworthiness rules. The Attorney General or Division of Consumer Affairs could conclude that such purchasing is illegal.

Administrative Penalties

- Fines of up to \$10K per violation
 - In comparison, Licensed Lenders Act maximum is \$5K per violation
 - 40% of fines are dedicated to non-profit groups for consumer financial education programs

DOBI's Enforcement Powers

- Bill enhances DOBI's enforcement powers:
 - Temporary suspension of licenses in emergent situations
 - Bar violators from industries regulated by the Department
- Plus traditional enforcement powers are conferred as well



OPRA is a state law that was enacted to give the public greater access to government records maintained by public agencies in New Jersey.



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