



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**



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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.**

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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;**

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.**