



# Expere Knowledge Base - Loan Acts Guide

Residential Lending Edition

January 2017  
2017.1.1

This publication was written for the Expere Knowledge Base.

**Publication Information / Version**

Expere Knowledge Base-Loan Acts Guide

Residential Lending Edition

Software Version Information: 2017.1.1

Document Version Information: 2017.1.1

Release Date: January 2017

**Distributed Subject to Terms of a License or other Agreement**

The contents of this publication, including its appendices, exhibits, and other attachments, as updated or revised, are highly confidential and proprietary to Wolters Kluwer Financial Services, Inc. or its subsidiaries or affiliates ("Wolters Kluwer Financial Services"). This publication is distributed pursuant to a Non-Disclosure Agreement, Evaluation Agreement, License Agreement and/or other similar agreement(s) with Wolters Kluwer Financial Services, Inc. or its subsidiary or affiliate. Unless otherwise specifically provided in such agreement(s), the reproduction of this publication is strictly prohibited. Use and distribution of this publication are also subject to the responsibilities and obligations of such agreement(s), which require confidential treatment of this publication and its contents.

Information in this guide is subject to change without notice and does not represent a commitment on the part of Wolters Kluwer Financial Services.

**Do Not Reproduce or Transmit**

Unless otherwise specifically authorized in the agreement or license under which this publication has been provided, no part of this publication may be posted, played, transmitted, distributed, copied or reproduced in any form or by any means, electronic or mechanical, including photocopying, recording, or retaining on any information storage and retrieval system, without prior written permission from Wolters Kluwer Financial Services.

Requests for permission to reproduce content should be directed to Wolters Kluwer Financial Services, Inc., Corporate Legal Department, by telephone at 1-800-397-2341.

**Not a Substitute for Legal Advice**

This publication is intended to provide accurate and authoritative information about the subject matter covered based upon information available at the time of publication. Examples given in this publication are for illustrative purposes only.

Development of this publication and the software (including forms, disclosures, reports, and other documents generated by the software) or other products that it describes was based on Wolters Kluwer Financial Services' understanding of various laws, regulations and commentaries. Wolters Kluwer Financial Services cannot and does not guarantee that its understanding is correct.

This publication is not intended, and should not be used, as a substitute for legal, accounting, or other professional advice. Wolters Kluwer Financial Services is not engaged in providing legal, accounting or other professional services. If legal or other professional assistance is required, you should seek the services of a competent professional. We encourage you to seek the advice of your own attorney concerning all legal issues involving the use of this publication and any products described in this publication. If your interpretations or your counsel's interpretations are contrary to those expressed in this publication, you should of course, follow your/your counsel's interpretations.

The following notice is required by law:

**WOLTERS KLUWER FINANCIAL SERVICES' PRODUCTS AND SERVICES ARE NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY.**

**Warranty Disclaimer**

Except only for the warranties (if any) expressly set forth in the agreement(s) under which this publication is provided (i.e., your agreement or license for the described product), this publication is provided "as is", and Wolters Kluwer Financial Services makes no warranty, express, implied, by description, by sample or otherwise, and in particular and without limitation, makes no implied warranties of merchantability or fitness for purpose. No modifications to this Warranty Disclaimer are authorized unless in writing and signed by the President or a Vice President of the Wolters Kluwer Financial Services entity licensing the product described in this publication.

**Attributions and Acknowledgements**

U.S. Patent is pending on the product described in this publication.

X-Template U.S. Patent No. 7,496,840

Expere is the registered trademark of Wolters Kluwer Financial Services, Inc. All other trademarks are the property of their respective owners.

**Copyright Information**

© 2016 Wolters Kluwer Financial Services, St. Cloud, Minnesota

This publication is the confidential information of Wolters Kluwer Financial Services. Distribution of this publication is subject to restrictions in the license or agreement under which this publication is provided to authorized Wolters Kluwer Financial Institution customers.

All rights reserved.

# Table of Contents

<b>Introduction .....</b>	<b>1</b>
<b>Colorado Loan Act .....</b>	<b>2</b>
Introduction .....	2
Uniform Consumer Credit Code (UCCC) .....	2
Consumer Loan Defined .....	2
Maximum Rate .....	2
Additional Fees .....	3
<b>Georgia Loan Acts .....</b>	<b>5</b>
Introduction .....	5
The Georgia Industrial Loan Act (currently unsupported) .....	5
Limitations .....	5
Rates .....	5
Additional Fees .....	6
The Georgia Fair Lending Act .....	7
Background .....	7
Preemption .....	7
Home Loan Definition .....	7
Home Loan Requirements and Restrictions .....	8
High-Cost Home Loan Definition .....	8
High-Cost Home Loan Requirements and Restrictions .....	8
<b>Idaho Loan Act .....</b>	<b>11</b>
Introduction .....	11
Consumer Loan Law .....	11
<i>Definitions</i> .....	11
<i>Maximum Rates</i> .....	11
<i>Additional Charges</i> .....	11
<i>Right to Refinance</i> .....	13
<i>Opting-In</i> .....	13
<b>Indiana Loan Act .....</b>	<b>14</b>
Introduction .....	14
Uniform Consumer Credit Code (UCCC) .....	14

Consumer loan defined .....	14
Maximum Rate.....	14
Additional Fees.....	15
<b>Iowa Loan Acts .....</b>	<b>18</b>
Introduction .....	18
Uniform Consumer Credit Code (consumer loans and supervised loans) .....	18
Maximum Rate.....	18
Additional Fees.....	19
<b>Kansas Loan Act.....</b>	<b>21</b>
Introduction .....	21
Uniform Consumer Credit Code .....	21
<i>Consumer Loan Defined</i> .....	21
<i>Supervised Loan Defined</i> .....	22
Maximum Rate.....	22
Additional Charges .....	22
<b>Louisiana Loan Acts .....</b>	<b>24</b>
1. Louisiana Consumer Credit Law ("LCCL").....	24
<i>Applicability</i> .....	24
Maximum Rate.....	25
Additional Fees .....	26
Miscellaneous.....	28
2. Motor Vehicle Sales Finance Act ("MVSFA").....	28
<i>Applicability</i> .....	28
Maximum Rate.....	29
Additional Fees .....	30
Miscellaneous.....	32
3. Residential Mortgage Lending Act ("RMLC").....	32
<i>Applicability</i> .....	32
Maximum Rate.....	33
Additional Fees .....	33
<b>Maine Loan Act.....</b>	<b>36</b>
Introduction .....	36
Uniform Consumer Credit Code (UCCC).....	36
Consumer Loan Defined.....	36

Supervised Loan Defined .....	36
<i>Maximum Rate</i> .....	36
<i>Additional Fees</i> .....	37
<b>Maryland Loan Act</b> .....	<b>39</b>
Introduction .....	39
Closed End Credit Provisions.....	39
<i>Maximum Rate</i> .....	39
<i>Applicable Transactions</i> .....	39
<i>Fees and Charges</i> .....	40
<b>Minnesota Loan Act</b> .....	<b>44</b>
Introduction .....	44
General Interest Law .....	44
<b>Missouri Loan Act</b> .....	<b>48</b>
Introduction .....	48
Consumer Loan Act .....	48
<b>New Mexico Loan Act</b> .....	<b>51</b>
Introduction .....	51
Bank Installment Loan Act of 1959 .....	51
Charter-Related Loan Requirements .....	52
<b>Oklahoma Loan Act</b> .....	<b>53</b>
Introduction .....	53
Uniform Consumer Credit Code .....	53
<i>Consumer Loan Defined</i> .....	53
<i>Maximum Rate</i> .....	53
<i>Additional Charges</i> .....	54
<b>South Carolina Loan Acts</b> .....	<b>56</b>
Introduction .....	56
South Carolina Consumer Protection Code .....	56
<i>Consumer Loan Defined</i> .....	56
<i>Maximum Rate</i> .....	56
<i>Additional Fees</i> .....	57
<b>Tennessee Loan Acts</b> .....	<b>59</b>
Introduction .....	59
Tennessee Home Loan Protection Act.....	59

Home Loan Definition .....	59
High-Cost Home Loan Definition .....	59
High-Cost Home Loan Requirements And Restrictions .....	60
<b>Texas Loan Act .....</b>	<b>63</b>
Introduction .....	63
General Interest Law - Home Equity .....	63
Applicability .....	63
Maximum Rate .....	63
Secondary Mortgage Loans - Home Equity .....	64
Applicability .....	64
Definition .....	65
Maximum Rate .....	65
Revolving Credit Accounts - Open End Home Equity .....	66
Applicability .....	66
Maximum Rates .....	66
Limitations .....	66
<b>Utah Loan Act .....</b>	<b>68</b>
Introduction .....	68
Consumer Credit Code .....	68
<i>Covered Transactions</i> .....	68
<i>Exempted Transactions</i> .....	68
<i>Maximum Rate</i> .....	68
<i>Additional Fees</i> .....	68
<b>West Virginia Loan Acts .....</b>	<b>70</b>
Introduction .....	70
Consumer Credit and Protection Act .....	70
<i>Consumer Loan Defined</i> .....	70
<i>Maximum Rate</i> .....	70
<i>Additional fees</i> .....	71
<b>Wisconsin Loan Act .....</b>	<b>73</b>
Introduction .....	73
Wisconsin Consumer Act .....	73
Additional Charges—Origination Fees .....	74
Additional Charges—Post-Origination Fees .....	75

Wyoming Loan Acts ..... 77

    Introduction ..... 77

    Uniform Consumer Credit Code (UCCC) ..... 77

        Consumer Loan Defined ..... 77

        Maximum Rate ..... 77

        Additional Fees ..... 78





# Introduction

A loan act is a state specific legal lending authority. It may be an organized and comprehensive statutory scheme or a single statutory provision. A loan act may apply only to certain types of financial institutions, collateral types, loan purposes, or loan amounts, or it may apply to all of these.

Not all states have loan acts; therefore, a lender will not have to choose a loan act for those states or in the instance that a loan act is not applicable to the transaction. The Loan Act Guide provides information only for those states that have loan acts.

A loan act will generally provide authority for interest rates and/or fees, and the loan act may authorize or prohibit various lending practices and may mandate disclosures. A lender may have to choose a loan act in certain states to ensure that the correct documents or disclosures are provided for the transaction. For example, if the loan is a Georgia high cost loan, the lender must choose the Georgia Fair Lending Act to receive the appropriate loan documents.

Knowing the provisions of a loan act allows the lender to indicate the legal authority for the interest rate and fees you charge on a loan. Documenting legal authority demonstrates that the lender's rate and fees are, in fact, authorized, and provides a record should anyone later question these terms.

# Colorado Loan Act

## Introduction

To ensure that a transaction contains the correct documents and disclosures, lenders must indicate whether the Uniform Consumer Credit Code applies, Colo. Rev. Stat. title 5, arts. 1-9.

## Uniform Consumer Credit Code (UCCC)

### Consumer Loan Defined

A consumer loan is a loan made or arranged by a person regularly engaged in the business of making loans in which:

- The consumer is a person other than an organization;
- The debt is incurred primarily for a personal, family, or household purpose;
- Either the debt is payable in installments or a loan finance charge is made; and
- Either the principal does not exceed \$75,000 or the debt is secured by an interest in land. (Colo. Rev. Stat. § 5-1-301(15)(a)).

Excluded from this definition are:

- A loan primarily secured by an interest in land;
- A loan for business, investment, or commercial purpose;
- A loan primarily for an agricultural purpose; and
- A reverse mortgage. (Colo. Rev. Stat. § 5-1-301(15)(b) and (c)).

### Maximum Rate

The maximum rate of finance charge for a consumer loan depends on the lender's status. Non-licensees and non-supervised financial institutions may charge a maximum rate of 12 percent per year. (Colo. Rev. Stat. § 5-2-201(1)). "Supervised" lenders (so called because they are either licensed by the state or are supervised by a financial institution regulatory agency) can charge more than 12 percent per year. The maximum rate for a supervised lender other than on a revolving loan account is the greater of either of the following:

- The total of:
  - 36 percent per year on that part of the unpaid balances of the principal which is \$1,000 or less;
  - 21 percent per year on that part of the unpaid balances of the principal which is more than \$1,000 but does not exceed \$3,000; and

- 15 percent per year on that part of the unpaid balances of the principal which is more than \$3,000;

or

- 21 percent per year on the unpaid balances of the principal. (Colo. Rev. Stat. § 5-2-201(2)).

The maximum rate for a supervised lender on a revolving loan accounts is 21 percent per year. (Colo. Rev. Stat. § 5-2-201(3)(a)). Any maximum rate is an actuarial rate, though the lender may actually calculate the loan finance charge by the add-on or discount method or some other method as long as the lender does not charge more than what the maximum rate would yield using the actuarial method. (Colo. Rev. Stat. §§ 5-2-201(2) and (4)(a)). For usury purposes, a rate of finance charge reflects the entire "loan finance charge," which includes both interest and other charges. See Colo. Rev. Stat. § 5-1-301(20).

## Additional Fees

For consumer loans other than a loan pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than \$25. (Colo. Rev. Stat. §§ 5-2-201(7) and 5-2-211(2)).

The lender may also contract for and receive the following charges, including, but not limited to:

- Official fees and taxes. (Colo. Rev. Stat. § 5-2-202(1)(a)).
- Charges for insurance (subject to restrictions). (Colo. Rev. Stat. §§ 5-2-202(1)(b) and 5-2-202(3)).
- Annual charges, payable in advance, for the privilege of using a lender credit card or similar. (Colo. Rev. Stat. § 5-2-202(1)(c)).
- Charges for other benefits conferred on the consumer, including insurance, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are authorized as permissible additional charges by rule adopted by the administrator. (Colo. Rev. Stat. § 5-2-202(1)(d)).
- If agreed to by the parties, a fee, not to exceed \$25, assessed upon return or dishonor of a check or other instrument tendered as payment. (Colo. Rev. Stat. § 5-2-202(1)(e)(II)).
- Boan fide and reasonable closing costs for a debt secured by an interest in land. (Colo. Rev. Stat. § 5-2-202(4)).
- A late charge. (Colo. Rev. Stat. § 5-2-203). (A late charge can be collected on any installment or minimum payment not paid in full within 10 days after its scheduled due date. For a transaction not secured by an interest in land, the late charge is limited to \$15. In the case of a precomputed transaction, the amount may not exceed the greater of \$15 or the deferral charge described in Colo. Rev. Stat. 5-2-204(1). For a transaction secured by an interest in land, the late charge is limited to 5% of the unpaid amount of the installment).
- Reasonable attorney's fees not in excess of 15 percent of the unpaid debt after default and referral to an attorney not a salaried employee of the lender, or such additional fee as may be directed by the court. (Colo. Rev. Stat. § 5-5-112).

**Special Note on Fees:** Selection of this loan act generally prohibits the inclusion of a prepayment penalty in consumer transactions not secured by an interest in real property. For non-agency

transactions, a minimum finance charge may be assessed on such transactions and, if so selected, will be included and disclosed in the loan documentation.

# Georgia Loan Acts

## Introduction

To ensure that a transaction contains the correct documents and disclosures, lenders must indicate whether the Georgia Industrial Loan Act (GILA - currently unsupported) or the Georgia Fair Lending Act applies to the transaction. The Acts are described in greater detail below.

## The Georgia Industrial Loan Act (currently unsupported)

All types of financial institutions may lend under the Georgia Industrial Loan Act (O.C.G.A. §§ 7-3-1, 7-3-3 and 7-3-4 (1989)). Whether a loan transaction falls within the provisions of GILA is determined by the amount of money advanced, including insurance premiums, but excluding interest and fees. (GA. COMP. R. & REGS. r. 120-1-3-.02). The transaction is deemed to be within GILA if the amount advanced is \$3,000.00 or less. (O.C.G.A. § 7-3-4).. Financial institutions making GILA loans are not required to acquire a license. (O.C.G.A. §§ 7-3-4 and 7-3-6). GILA loans are exclusively precomputed-interest loans.

## Limitations

There is no minimum amount that may be loaned under GILA. There is, however, a maximum amount.

- A GILA loan's "face value" (which includes financed insurance premiums, but not fees) may not exceed \$3,000.00. (O.C.G.A. § 7-3-4).
- Also, the combined outstanding principal balance of all GILA loans may not exceed \$3,000.00. *Securities Investment Company v. Pearson*, 143 S.E.2d 36 (Ga. Ct. App. 1965). The Court of Appeals holding that the combined principal balance of all such loans cannot exceed the statutory maximum amount).
- The term of an add-on precomputed GILA loan may not exceed 36 months and 15 days. (O.C.G.A. § 7-3-14 and GA. COMP. R. & REGS. r. 120-1-10-.01).
- The term of a discounted precomputed GILA loan may not exceed 18 months. (O.C.G.A. § 7-3-14(1)).
- The term of a single-pay GILA loan may not exceed 3 months. (O.C.G.A. § 7-3-14 and GA. COMP. R. & REGS. r. 120-1-10-.02)).
- There are no limitations on the types of collateral the lender may require.

## Rates

Under GILA, interest may not exceed 10% per annum on the face amount of the contract, whether repayable in one single payment or in monthly or other periodic installments. (O.C.G.A. § 7-3-14(1)).

On loan contracts repayable in 18 months or less, the interest may be discounted in advance. (O.C.G.A. § 7-3-14(1)). A “discounted” interest rate means, for example, on an installment loan of \$1,000.00 for twelve months at 10%, you may retain the \$100.00 interest and the borrower will receive only \$900.00. The borrower then pays \$1,000.00 at the end of the term.

On loan contracts repayable over a period greater than 18 months, the interest must be added to the principal amount of the loan. (O.C.G.A. § 7-3-14(1)). “Add-on” interest is computed by taking interest on the entire principal at the stated annual rate for the entire term of credit extension, and then dividing the total of principal and precomputed interest by the number of periodic payments to be made. Thus, for example, on a \$1,000.00 “add-on” loan for twenty-four months at 10% per annum, the interest charge of \$240.00 would be added to the \$1,000.00 and the total of \$1,240.00 would be divided by the twelve payments to produce a monthly payment of \$51.67.

Under O.C.G.A. § 7-3-14(2), lenders are, however, still subject to the criminal usury provision found at Section 7-4-18, which section provides that no rate of interest greater than 5% per month may be charged.

Late charges under GILA are limited to the greater of \$10.00 or 5% of any installment not paid within 5 days after the payment date. (O.C.G.A. § 7-3-14(4)).

## Additional Fees

GILA’s provisions regarding additional charges include, but are not limited to, the following:

- A **loan fee** in an amount not greater than 8% of the first \$600.00 of the face amount of the contract plus 4% of the excess is authorized by O.C.G.A. § 7-3-14(2). The loan fee shall not, however, be charged on that part of a loan used to pay off a GILA loan from the same lender made within the preceding 6 months unless the loan balance is \$300.00 or less, then the time period for the previous GILA loan being repaid to the same lender is 2 months. (Id.). These same loan fee restrictions apply when the borrower pays off a loan and within 15 days obtains a new one from the same lender. (Id.).
- A **maintenance charge** is authorized at O.C.G.A. § 7-3-14(5). A lender may charge \$3.00 for each month in the term of the loan regardless of whether the loan is repayable in a single payment or in monthly or other installments. The charge is refundable if prepayment occurs and the charge is unearned. (GA. COMP. R. & REGS. r. 120-1-15-.05). The maintenance charge must be contracted for. (GA. COMP. R. & REGS. r. 120-1-15-.07).
- With respect to fees and charges paid to others, O.C.G.A. § 7-3-15 specifically authorizes actual lawful fees paid to public officials or a state agency for filing and recording loans. In addition, for loans of more than \$100.00, the amount for non-filing insurance may also be charged, so long as the amount doesn’t exceed the amount that would have been paid for filing. (O.C.G.A. § 7-3-15).
- A lender may also collect insurance premiums from the borrower, so long as the insurance is reasonably related to the type and value of the property insured, and to the amount and term of the loan. (O.C.G.A. § 7-3-14(3)).

# The Georgia Fair Lending Act

## Background

The Georgia Fair Lending Act (GAFLA) is an anti-predatory lending statute. (O.C.G.A. § 7-6a-1 et seq. (2010)). Although similar to the federal high-cost home loan law found in HOEPA and Section 32 of Reg Z, parts of GAFLA apply to a wider segment of residential loans. GAFLA defines two types of residential loans, each with certain restrictions and requirements.

## Preemption

The provisions of GAFLA do not apply to any bank, savings and loan, savings bank, or subsidiary thereof, that is chartered under the laws of Georgia or any other state only to the extent federal law precludes or preempts or has been determined to preclude or preempt the application of the provisions of GAFLA to any federally chartered bank, savings and loan, or savings bank. Such federal preclusion or preemption applies only to the same type of state chartered entity as the federally chartered entity affected. (O.C.G.A. § 7-6A-12).

## Home Loan Definition

- A loan, including an open-end credit plan, secured by real estate located in Georgia
- Where a 1-4 family structure, including a manufactured home, is (or will be) located
- Which is (or will be) the borrower's principal dwelling, and
- The principal loan amount does not exceed the FNMA conforming loan size limit for a single-family dwelling. (O.C.G.A. § 7-6A-2(8)).

A home loan does not include:

- A reverse mortgage
- Temporary financing for the acquisition of land by the borrower and initial construction of a borrower's dwelling or the initial construction of a borrower's dwelling on land owned by the borrower
- A bridge loan pending the sale of the borrower's principal dwelling or a temporary loan secured by the borrower's principal dwelling pending the borrower's obtaining permanent financing
- A loan secured by personal property (such as a motor vehicle) and also secured by the borrower's principal dwelling to provide borrower with potential income tax advantages
- A new loan secured by a borrower's principal dwelling as a result of a lien taken in connection with a previous debt when the documents for the new loan do not include a mortgage or security deed expressly securing the new loan
- A business, agricultural or commercial loan. (Id.).

## Home Loan Requirements and Restrictions

**Credit insurance:** Credit insurance may not be financed. (Premiums calculated and paid on a monthly basis are not considered to be “financed.”) (O.C.G.A. § 7-6A-3(1)(A) and (B)).

**Encouraging default:** May not encourage default in connection with a refinancing of an existing debt. (O.C.G.A. § 7-6A-3(2)).

**Late charge:** Late charges are limited to 5% and require a grace period of at least 10 days. If a late charge is deducted from a payment, resulting in a default on a subsequent payment, no late charge may be imposed for such default. A lender may apply any payment made in the order of maturity to a prior period’s payment even if the result is late charges accruing on subsequent payments. O.C.G.A. § 7-6A-3(3)).

**Payoff balance:** No fee is permitted for providing loan payoff amount, except a \$10.00 processing fee for providing the information by fax or within 60 days of fulfilling a previous request. Payoff balance must be provided within 5 business days after the request. (O.C.G.A. § 7-6A-3(4)).

## High-Cost Home Loan Definition

- Pursuant to GAFLA Section 7-6A-2(7) and (17), a high-cost home loan is a home loan, and
- The APR equals or exceeds that set out in HOEPA and Section 32 of Reg Z:
  - If a first lien, exceeds by more than 8 points the yield on comparable Treasury securities as of the 15<sup>th</sup> of the month preceding the month the application is received;
  - If a junior lien, exceeds by more than 10 points the yield on comparable Treasury securities as of the 15<sup>th</sup> of the month preceding the month the application is received; or
- The total loan points and fees (except for 2 bona fide discount points) exceed:
  - If the total loan amount is at least \$20,000, 5% of the total loan amount, or
  - If the total loan amount is less than \$20,000, the lesser of:
    - 8% of the total loan amount, or
    - \$1,000.

## High-Cost Home Loan Requirements and Restrictions

In addition to the requirements and restrictions on home loans:

- **Flipping a home loan:** “Flipping” an existing home loan is prohibited. (O.C.G.A. § 7-6A-4). Flipping is:
  - The consummating of a high cost home loan to a borrower that refinances an existing home loan consummated within the prior 5 years, and
  - The new loan does not provide a reasonable, tangible net benefit to the borrower considering all of the circumstances, or
  - The existing loan is a “special mortgage” bearing a below-market interest rate or with nonstandard payment terms beneficial to the borrower. Home loan refinancings of first



mortgage loans originated by, purchased by, or assigned to the Georgia Housing and Finance Authority are not presumed to be a flipping.

- **Prepayment penalty:** Limited to 2 percent of the loan amount prepaid in the first 12 months after the loan closing and 1 percent of the loan amount prepaid in the second 12 months. (O.C.G.A. § 7-6A-5(1)).
- **Balloon payment:** Prohibited except when the payment schedule is adjusted to the seasonal or irregular income of the borrower. (O.C.G.A. § 7-6A-5(2)).
- **Negative amortization:** Prohibited. (O.C.G.A. § 7-6A-5(3)).
- **Default interest rate:** Prohibited from increasing the interest rate after default, except for variable rate loan interest increases consistent with the loan documents. (O.C.G.A. § 7-6A-5(4)).
- **Advance payments:** Limited to 2 periodic payments consolidated and paid in advance from the loan proceeds provided to the borrower. (O.C.G.A. § 7-6A-5(5)).
- **Judicial forum:** Cannot require borrower to assert a claim or defense in a less convenient or more costly forum, and cannot limit any claim or defense the borrower might have. (O.C.G.A. § 7-6A-5(6)).
- **Credit counseling:** Must have certification that the borrower has received counseling on the advisability of the loan transaction. (O.C.G.A. § 7-6A-5(7)).
- **Ability to pay:** Borrower must be able to make the scheduled payments associated with the loan based on income, current obligations, employment status, and other financial resources. (O.C.G.A. § 7-6A-5(8)).
- **Home improvement proceeds:** Must have an affidavit of work completion from a home improvement contractor before paying proceeds from a high-cost home loan, and must disburse proceeds to the borrower, jointly to the borrower and contractor, or according to a third-party escrow agreement. (O.C.G.A. § 7-6A-5(9)).
- **Extension fees:** Prohibited from charging to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan. (O.C.G.A. § 7-6A-5(10)).
- **Foreclosure notice:** Must provide notice of the intent to foreclose to the borrower in writing by certified mail, at least 14 days prior to the publication of the legal advertisement. (O.C.G.A. § 7-6A-5(11)).
- **Right to cure:** Until title is transferred by means of foreclosure by judicial proceeding and sale or otherwise, borrower has the right to cure the default and reinstate the loan. (O.C.G.A. § 7-6A-5(12)).
- **Default fees:** Shall not charge borrower a fee to exercise the right to cure a default, other than the fees specifically allowed by the Act. (O.C.G.A. § 7-6A-5(13)(A)).
  - Attorneys' fees - less than 30 days after the notice of right to cure: Prohibited.
  - Attorneys' fees - more than 30 days after notice and before filing foreclosure action: Limited to \$100.
  - Attorneys' fees and expenses - after filing foreclosure action: Must be reasonable and actually incurred by the creditor or servicer.

- **Foreclosure after cure:** Prohibited from starting foreclosure proceeding or other action on a default after it is cured. If a default is cured after initiation of action to foreclose, the creditor or servicer must terminate the foreclosure proceeding or other action. (O.C.G.A. § 7-6A-5(13)(B)).
- **Notice of right to cure:** Before any action is filed to foreclose or other action is taken to seize or transfer ownership of a home, a notice of the right to cure the default must be delivered to the borrower. The Act specifies what must be included in the notice. (O.C.G.A. § 7-6A-5(13)(C)).
- **Acceleration:** Prohibits any loan provision that permits a creditor or servicer, in its sole discretion, to accelerate the loan. This does not prohibit acceleration due to borrower's failure to abide by the terms of the loan. (O.C.G.A. § 7-6A-5(14)).
- **Required notice:** All high-cost home loan documents that create a debt or pledge property as collateral must contain the following notice: 'Notice: This is a mortgage subject to special rules under the "Georgia Fair Lending Act." Purchasers or assignees of this mortgage may be liable for all claims and defenses by the borrower with respect to the mortgage.' (O.C.G.A. § 7-6A-5(15)).

# Idaho Loan Act

## Introduction

To ensure that a transaction contains the correct documents and disclosures, lenders must indicate whether the **Idaho Consumer Loan Law applies**, Idaho Code §§ 28-41-101 to 28-49-107.

## Consumer Loan Law

### Definitions

The entire Idaho Credit Code applies only to “credit transactions for a consumer purpose”. Idaho Code § 28-41-204. A loan made by a creditor regularly engaged in the business of making loans, in which the debt is payable in installments or a finance charge is made, or a refinancing or consolidation thereof, is a “regulated credit transaction”. Idaho Code § 28-41-301(37) & (39). “Consumer purpose” means primarily a personal, family, or household purpose, and for purposes of the Idaho Credit Code it **does not** include a credit transaction:

- Engaged in by a debtor for an agricultural purpose; or
- Engaged in by a debtor for an investment purpose; or
- Creating a debt secured by a first mortgage or first deed of trust on real property; or
- In which the debtor is an organization, rather than a natural person. Idaho Code § 28-41-301(12).

In addition, the Idaho Credit Code **does not** apply to the sale of insurance by an insurer, except as otherwise provided in the Idaho Credit Code’s insurance provisions;

### Maximum Rates

The Idaho Credit Code does not restrict the rate of finance charge, or the manner in which the finance charge is calculated for consumer purpose loans. Idaho Code § 28-42-201. In 1984 however, the Idaho Department of Finance issued a Policy Statement that indicated that loans charging more than 45% “annual percentage rate interest” are unconscionable. Idaho Department of Finance Policy Statement 84-5 (Dec. 6, 1984).

### Additional Charges

The Idaho Credit Code provides that, in addition to the finance charge, a creditor may contract for and receive any other charge, except to the extent expressly prohibited or limited by the Idaho Credit Code. Idaho Code § 28-42-201.

The Idaho Credit Code’s provisions regarding additional charges include, but are not limited to, the following:

- Delinquency Charges:
  - 1) For precomputed consumer loans the parties may contract for a delinquency charge on any installment not paid in full within 10 days after its due date, as originally scheduled or as

- deferred, in an amount which is not more than 5% of the unpaid amount of the installment, or \$12.50, whichever is greater. Idaho Code § 28-42-301(1).
- 2) For non-precomputed consumer loans secured by a security interest in real property which is used or expected to be used as the residence of the debtor, the parties may contract for a delinquency charge on any installment not paid in full within 15 days after its scheduled due date in an amount not exceeding 5% of the unpaid amount of the installment, or \$15.00, whichever is greater. Idaho Code § 28-42-301(2).
  - 3) For all other consumer loans, whether secured or unsecured, and whether open-end or closed-end credit, the parties may contract for a delinquency charge on any installment or scheduled payment not paid in full within 10 days after its scheduled due date in an amount not exceeding 5% of the unpaid amount of the installment or scheduled payment, or \$15.00, whichever is greater. Idaho Code § 28-42-301(3).
- **Deferral Charges:** The parties may agree in writing at the time of a precomputed loan, refinancing or consolidation that if an installment is not paid within 10 days after its due date, the creditor may unilaterally grant a deferral and collect a charge not exceeding the rate previously stated to the debtor applied to the amount or amounts deferred for the period of deferral, calculated without regard to differences in the lengths of months, but proportionally for a part of a month, counting each day as 1/30th of a month. Idaho Code § 28-42-302.
  - **Prepayment Charge:** For consumer loans that are primarily secured by a mortgage or deed of trust on real property, the parties may agree upon a prepayment charge if the debt is repaid in full prior to its due date, during the first 3 years of the contract, which shall not exceed: (1) For closed-end loans the prepayment charge may not exceed an amount equal to 6 months interest calculated on the average balance for the prior 6 months at the rate of interest designated in the contract. If the prepayment occurs prior to the expiration of 6 months from the date of the contract, the prepayment charge may be calculated in the same manner, except the number of months shall be the number of months the loan has existed; (2) For open-end loans, the amount of the prepayment charge shall not exceed an amount equal to 6 months finance charge at the annual percentage rate in effect at the time of prepayment, calculated on the average of the average daily balances on the account for the last 6 billing periods prior to prepayment. If the account has been open for less than 6 billing periods, the prepayment charge shall be calculated in the same manner, except the number of billing periods shall be the number of billing periods the account has been open. If the loan is refinanced or consolidated with the same lender, no prepayment charge may be charged or collected. Idaho Code § 28-42-306.
  - **Minimum Charge Upon Prepayment:** Upon prepayment in full of a closed-end consumer loan, or a refinancing or consolidation thereof, the creditor may collect or retain a minimum charge if the finance charge earned is less than any minimum charge contracted for. Such minimum charge may not exceed the amount of finance charge contracted for, or \$5.00 in a transaction which had a principal of \$75.00 or less, or \$7.50 in a transaction which had a principal of more than \$75.00. Idaho Code § 28-42-307(2).
  - **Bad Check Fee:** A creditor can charge and collect a dishonored check fee of \$20.00 for the return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft, offered by a debtor in full or partial repayment of a loan. The fee must be contracted for between the parties. Idaho Code §§ 28-42-308 & 28-22-105.
  - **Attorney's Fees:** A consumer loan agreement in which the principal amount is \$1000.00 or less may not provide for the payment by the debtor of attorney's fees. Consumer loan agreements in which

the principal amount is more than \$1000.00 may provide for the payment by the debtor of reasonable attorney's fees after default and referral to an attorney not a salaried employee of the creditor. Idaho Code §§ 28-43-312 & 28-43-311.

- **Insurance:** A creditor who receives a separate charge for insurance may not charge an amount that exceeds the premium charged by the insurer as computed at the time the charge to the debtor is determined, which amount must conform to the required rate filings. Idaho Code § 28-44-107.
- **Default Charges:** Except for reasonable expenses incurred in realizing on a security interest, a consumer loan agreement may not provide for any charges as a result of default by the debtor except those authorized by the act. Any provision in violation of this section is unenforceable. Idaho Code § 28-45-301.

## Right to Refinance

The Idaho Credit Code provides that if any scheduled payment of a regulated consumer credit transaction is more than twice as large as the average of earlier scheduled payments, the debtor has the right to refinance, without penalty, the amount of that payment at the time it is due. In addition, the terms of the refinancing shall be no less favorable to the debtor than the terms of the original transaction. Idaho Code § 28-43-307(1).

This right to refinance does not apply to:

- 1) A transaction pursuant to open-end credit. Idaho Code § 28-43-307(2)(a);
- 2) A transaction to the extent that the payment schedule is adjusted to the seasonal or irregular income or scheduled payments or obligations of the debtor. Idaho Code § 28-43-307(2)(b);
- 3) A transaction if the creditor makes available to the debtor at least all of the following four options:
  - Collateral Sale. The debtor is permitted to sell the collateral, applying the proceeds to the outstanding balance owed to the creditor, and retain any excess proceeds; or
  - Collateral Return. The debtor returns the collateral pursuant to a predetermined written agreement and is released from further liability or obligation on the balloon payment, or
  - Payment. the debtor is permitted to pay off the balloon payment and keep the collateral; or
  - Refinance. If creditworthy, the debtor is permitted to refinance the balloon payment with the creditor at the prevailing terms at that time. However, the interest rate on the refinancing may not exceed, by more than 5 points, the interest rate charged on the original consumer credit transaction. Idaho Code § 28-43-307(2)(c) & IDAPA 12.01.09.005; or
- 4) A transaction secured by a second deed of trust or mortgage on a 1 to 4 family dwelling occupied by the debtor. Idaho Code § 28-43-307(2)(d).

## Opting-In

The Idaho Credit Code provides that the parties to a credit transaction or modification thereof that is not a regulated consumer credit transaction may agree in writing signed by them that the transaction is nonetheless subject to the provisions of the Idaho Credit Code applying to regulated consumer credit transactions. Idaho Code § 28-41-108.

# Indiana Loan Act

## Introduction

To ensure that a transaction contains the correct documents and disclosures, lenders must indicate whether the Uniform Consumer Credit Code applies, Ind. Code Ann. title 24, art. 4.5.

## Uniform Consumer Credit Code (UCCC)

### Consumer loan defined

A consumer loan is “a loan made or arranged by a person regularly engaged in the business of making loans in which:

- The debtor is a person other than an organization;
- The debt is primarily for a personal, family, or household purpose;
- Either the debt is payable in installments or a loan finance charge is made; and
- Either
  - The amount of credit extended, the written credit limit, or the initial advance does not exceed fifty-three thousand five hundred dollars (\$54,600) or another amount as adjusted in accordance with the annual adjustment of the exempt threshold amount specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); or  
(Note: the dollar amount above will increase to \$54,600, effective January 1, 2015, and will be updated on January 1 of each year.)
  - The debt is secured by an interest in land or by personal property used or expected to be used as the principal dwelling of the debtor.” (Ind. Code Ann. § 24-4.5-1-301.5)."

Excluded from this definition is any first lien mortgage transaction (Ind. Code Ann. § 24-4.5-3-301.5) except “with respect to disclosure (IC 24-4.5-3-301), debtors' remedies (IC 24-4.5-5-201), providing payoff amounts (IC 24-4.5-3-209), providing property tax information (IC 24-4.5-3-701), and powers and functions of the department (IC 24-4.5-6-104) (Ind. Code Ann. § 24-4.5-3-105).

### Maximum Rate

The maximum rate of finance charge for a consumer loan is 25 percent per year on the unpaid balances of principal. (Ind. Code Ann. § 24-4.5-3-201). The maximum rate is calculated according to the actuarial method. “Supervised” lenders (so called because they are either licensed by the state or are supervised by a financial institution regulatory agency) can charge more than 25 percent per year. (A loan at more than 25 percent per year is known as a “supervised loan.”). The maximum rate for a supervised loan is the greater of either of the following:

- The total of:
  - 36 percent per year on that part of the unpaid balances of the principal which is \$2,000 or less;
  - 21 percent per year on that part of the unpaid balances of the principal which is more than \$2,000 but does not exceed \$4,000; and
  - 15 percent per year on that part of the unpaid balances of the principal which is more than \$4,000;

or

- 25 percent per year on the unpaid balances of the principal (Ind. Code Ann. § 24-4.5-3-508(2)).

(Note: the dollar amounts above change effective July 1 of every even-numbered year. The figures above are effective July 1, 2014.)

Section 24-4.5-3-508 of the UCCC does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed,

- The loan finance charge may be calculated on the assumption that all scheduled payments will be made when due, and
- The effect of prepayment is governed by the provisions on rebate upon prepayment in Section 24-4.5-3-210. (Ind. Code Ann. § 24-4.5-3-508(3)).
- For usury purposes, a rate of finance charge reflects the entire "loan finance charge," which includes both interest and other charges. See Ind. Code Ann. § 24-4.5-3-109(1).

## Additional Fees

For consumer loans other than a loan pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than \$48. (Ind. Code Ann. § 24-4.5-3-201(6)). Lenders should be aware that minimum finance charges made in lieu of interest are still subject to the Indiana usury limitations. See *Livingston v. Fast Cash USA*, 753 NE2d 572 (2001).

For consumer loans that are not supervised loans, a lender may contract for a loan origination fee in addition to a loan finance charge. If the loan is secured by an interest in land, the loan origination fee is limited to 2% of the loan amount or 2% of the line of credit if the consumer loan is made under a revolving loan account. See Ind. Code Ann. § 24-4.5-3-201(8)(a). If the loan is not secured by an interest in land, the loan origination fee is limited to \$50 regardless of the loan amount. For both loans secured by an interest in land and loans not secured by an interest in land, the loan origination fee is not subject to refund or rebate. See Ind. Code Ann. § 24-4.5-3-201(9). Additionally, for consumer loans that are not secured by an interest in land, if a lender retains any part of a loan origination fee charged on a loan that is paid in full by a new loan from the same lender, the following apply: (a) If the loan is paid in full by the new loan within three (3) months after the date of the prior loan, the lender may not charge a loan origination fee on the new loan, or in the case of a revolving loan, the increased credit line; (b) The lender may not assess more than two (2) loan origination fees in any twelve (12) month period. See Ind. Code Ann. § 24-4.5-3-201(10).

For consumer loans that are supervised loans, the loan origination charge is limited to \$50 regardless of the loan amount. See Ind. Code Ann. § 24-4.5-3-508(8). It is not subject to refund or rebate. See Ind.

Code Ann. § 24-4.5-3-508(9). If the supervised loan is not secured by an interest in land, the lender may not charge a new loan origination fee if the loan is paid off by a new loan from the same lender within three months after the funding date of the prior loan. Additionally, "[t]he lender may not assess more than two (2) loan origination fees in any twelve (12) month period." See Ind. Code Ann. § 24-4.5-3-508(10).

On any consumer loan, including revolving loan accounts, the lender may contract for and receive the following:

- Official fees and taxes. (Ind. Code Ann. § 24-4.5-3-202(1)(a)).
- Charges for insurance (subject to restrictions). (Ind. Code Ann. § 24-4.5-3-202(1)(b)).
- Annual or periodic participation fees assessed in connection with a revolving loan account. (Ind. Code Ann. § 24-4.5-3-202(1)(c)).
- With respect to a debt secured by an interest in land, the following closing costs, if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of the Indiana UCCC (Ind. Code Ann. § 24-4.5-3-202(1)(d)):
- Fees for title examination, abstract of title, title insurance, property surveys, or similar purposes;
- Fees for preparing deeds, mortgages, and reconveyance, settlement, and similar documents;
- Notary and credit report fees;
- Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the loan finance charge; and
- Appraisal fees.
- Charges for other benefits, including insurance, conferred on the debtor, if the benefits are of value to him and if the charges are reasonable in relation to the benefits, and are excluded as permissible additional charges from the loan finance charge. (Ind. Code Ann. § 24-4.5-3-202(1)(e)).
- A charge not to exceed \$25 for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the debtor. (Ind. Code Ann. § 24-4.5-3-202(1)(f)).
- With respect to a revolving loan account, a fee not to exceed \$25 in each billing cycle during which the balance due under the revolving loan account exceeds by more than \$100 the maximum credit limit for the account established by the lender. (Ind. Code Ann. § 24-4.5-3-202(1)(g)).
- With respect to a revolving loan account, a transaction fee that may not exceed the lesser of 2 percent of the amount of the transaction or \$10. (Ind. Code Ann. § 24-4.5-3-202(1)(h)).
- A late charge of not more than \$18.50 on any installment or minimum payment due not paid in full within 10 days after its scheduled due date. (Ind. Code Ann. § 24-4.5-3-203.5).
- Reasonable attorney's fees after default and referral to an attorney not a salaried employee of the lender. (Ind. Code Ann. § 24-4.5-3-404). Reasonable expenses incurred in realizing on a security interest. (Ind. Code Ann. § 24-4.5-3-405).
- Reasonable expenses incurred in realizing on a security interest. (Ind. Code Ann. § 24-4.5-3-405).

**Special Note on Fees:**



Selection of this loan act generally prohibits the inclusion of a prepayment penalty in consumer transactions not secured by an interest in real property. For non-agency transactions, a minimum finance charge may be assessed on such transactions and, if so selected, will be included and disclosed in the loan documentation. With respect to a consumer loan that is primarily secured by an interest in land, a lender may contract for a penalty for prepayment of the loan in full, not to exceed two percent (2%) of any amount prepaid within sixty (60) days of the date of the prepayment in full, after deducting all refunds and rebates as of the date of the prepayment. (Ind. Code Ann. § 24-4.5-3-209).

# Iowa Loan Acts

## Introduction

To ensure that a transaction contains the correct documents and disclosures, lenders must indicate whether the Uniform Consumer Credit Code applies, Iowa Code §§ 537.1101 et seq.

## Uniform Consumer Credit Code (consumer loans and supervised loans)

A consumer loan is a loan made or arranged by a person “regularly engaged in the business of making loans” when all of the following conditions are true (Iowa Code § 537.1301(15)):

- The debtor is a person other than an organization.
- The debt is primarily for a personal, family, or household purpose.
- Either the debt is payable in installments or a loan finance charge is made.
- The amount financed does not exceed the threshold amount. “Threshold amount” means the threshold amount, as determined by 12 C.F.R. §1026.3(b), in effect during the period the consumer credit transaction was entered into. (Iowa Code § 537.1301(46)).

Excluded from the definition of “consumer loan” is any debt secured by a first lien on real property. (Iowa Code § 537.1301(15)(b)(2)). (Note: This does not address the requirements of insurance premium loans as defined by Iowa Code § 537.1301(24). In addition, this does not address noncredit property insurance loans as regulated by IAC 61-20.1 to 20.6.).

## Maximum Rate

The maximum rate of finance charge for a closed end consumer loan is 21 percent per year (Iowa Code § 537.2401), subject to certain exceptions. A consumer loan that exceeds the rate published pursuant to Iowa Code § 535.2 is known as a “supervised loan.” Supervised financial organizations are specifically authorized to make supervised loans. (Iowa Code § 537.2301(3)(a)). Supervised loans have some additional restrictions such as the term length and collateral permitted. (Iowa Code §§ 537.2307 and 537.2308). If authorized to make supervised loans, a creditor may receive a finance charge for an open-end consumer loan without limitation as to amount or rate (Iowa Code § 537.2402(1)); however the calculation for application of a rate is subject to certain restrictions in § 537.2402(2).

The maximum rate is an actuarial rate. The lender may calculate the loan finance charge by some other method as long as the lender does not charge more than what the maximum rate would yield using the actuarial method. (Iowa Code § 537.2401(2)). For usury purposes, a rate of finance charge reflects the entire “loan finance charge,” which includes both interest and other charges. (Iowa Code § 537.1301(21)).

In addition to the rate limitations, lenders are restricted to calculating the finance charge based on a 365 day year. Basing calculations on a 360 day year is prohibited. (Iowa Code § 537.2401(3)).

## Additional Fees

All charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit must be included in the loan finance charge. (Iowa Code § 537.1301(21)(a)(1)). On any consumer loan, including revolving loan accounts, the lender may contract for and receive additional charges that are not considered part of the loan finance charge, including, but not limited to (Iowa Code §§ 537.2501 and 537.1301(21)(b)(2)):

- Official fees and taxes. (Iowa Code § 537.2501(1)(a)).
- Charges for insurance, subject to certain restrictions. (Iowa Code § 537.2501(1)(b)).
- Amounts actually paid or to be paid by the creditor for registration, certificate of title or license fees. (Iowa Code § 537.2501(1)(c)).
- Annual charges, payable in advance, for the privilege of using a credit card that entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, under an arrangement pursuant to which the debts resulting from the purchases or leases are payable to the card issuer. (Iowa Code § 537.2501(1)(d)).
- With respect to open-end credit pursuant to a credit card issued by the creditor that entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, the parties may contract for an over-limit charge up to \$15 if the account balance exceeds the credit limit established by agreement. (Iowa Code § 537.2501(1)(f)).
- A reasonable annual account maintenance fee, payable in advance, for the privilege of maintaining a demand deposit account with a line of credit that may be accessed by the account holder writing a check. (Iowa Code § 537.2501(1)(i)).
- With respect to a debt secured by an interest in land, the following closing costs, if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of the Iowa UCCC (Iowa Code § 537.2501(1)(e)) :
  - Fees or premiums for title examination, abstract of title, title insurance, or similar purposes including surveys;
  - Fees for preparation of a deed, settlement statement, or other documents, if not paid to the creditor or a person related to the creditor;
  - Escrows for future payments of taxes, including assessments for improvements, insurance, and water, sewer and land rents;
  - Fees for notarizing deeds and other documents, if not paid to the creditor or a person related to the creditor; and
  - Fees or charges listed in Iowa Code § 535.8(2) (a) and (b).
- Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, are of a type that is not for credit, and are authorized as permissible additional charges by rules adopted by the administrator. (Iowa Code § 537.2501(1)(h)).

- A surcharge of not more than 5% of the amount of the face value of the payment instrument or \$20, whichever is greater, for each dishonored payment instrument provided that the fee is clearly and conspicuously disclosed in the cardholder agreement. However, the surcharge shall not exceed \$20 unless the check, draft or order was presented twice or the maker does not have an account with the drawee in which case the surcharge may not exceed \$50. The surcharge shall not be assessed if the reason for dishonor is that the maker had stopped payment of the instrument. (Iowa Code § 537.2501(1)(g)).
- With certain limitations, for a consumer loan where the amount financed does not exceed \$3,000 and the term of the loan does not exceed twelve months, an additional application fee may be charged not to exceed the lesser of 10% of the amount financed or \$30. If the loan is not approved, the application fee shall not exceed the lesser of 10% of the amount applied for by the applicant or \$30. This fee shall not be charged for a loan used for the purchase of a motor vehicle or for a loan where the borrower's dwelling is used as security. (Iowa Code § 537.2501(1)(j)).
- On a precomputed consumer loan, a late charge of not more than 5% of the unpaid portion of the installment or \$20, whichever is less, on any installment not paid in full within 10 days after its due date. (Iowa Code § 537.2502(1)(a)).
- Subject to certain limitations, on a simple interest consumer loan, a late charge of not more than 5% of the unpaid portion of the installment or a maximum of \$15.00 on any installment not paid in full within 10 days after its due date. (Iowa Code § 537.2502(1)(b)).
- Subject to certain limitations, for consumer open-end credit subject to Ch. 537, the parties may contract for a delinquency charge on any payment not paid in full when due, as originally scheduled or as deferred, in an amount up to \$15. (Iowa Code § 537.2505(4)).
- In lieu of a late charge, a deferral charge calculated according to Iowa Code § 537.2503.
- In a consumer credit transaction with an amount financed exceeding \$25,000 secured by an interest in land, the agreement may provide for the payment by the consumer of reasonable attorney fees. (Iowa Code § 537.2507).
- Upon prepayment of a consumer loan, the creditor may retain a minimum charge not exceeding \$5 in a transaction that had a amount financed of \$75 or less, or not exceeding \$7.50 in a transaction that had a amount financed of more than \$75, if the charge was contracted for and the loan finance charge earned at the time of prepayment is less than the charge contracted for. Otherwise, the debtor has the right to prepay a consumer loan in full at any time without penalty. (Iowa Code §§ 537.2509 and 537.2510(3)(a)).
- Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer loan may not provide for any charges as a result of default by the consumer other than those authorized by the Iowa UCCC. A provision in violation of the Iowa UCCC is unenforceable. (Iowa Code § 537.3402).

# Kansas Loan Act

## Introduction

To ensure that a transaction contains the correct documents and disclosures, lenders must indicate whether the Uniform Consumer Credit Code applies, Kan. Stat. Ann. § 16a-2-101 et seq.

## Uniform Consumer Credit Code

### Consumer Loan Defined

A consumer loan is, “a loan made by a person regularly engaged in the business of making loans in which:

- The debtor is a person other than an organization;
- The debt is incurred primarily for a personal, family, or household purpose;
- Either the debt is payable by written agreement in more than 4 installments or a finance charge is made; and
- Either the amount financed does not exceed \$25,000 or the debt is secured by an interest in land. (Kan. Stat. Ann. § 16a-1-301(17)(a)).

Excluded from this definition are:

- A loan secured by a first mortgage unless
  - the loan to value ratio of the loan at closing exceeds 100%; or
  - the loan exceeds the code mortgage rate. (Note, this exception to the exclusion does not apply to open end credit loans; purchase-money loans to acquire or construct the consumer’s principle residence; or reverse mortgages.)
- A loan made by a qualified plan, as defined in section 401 of the internal revenue code, to an individual participant in such plan or to a member of the family of such individual participant. (Kan. Stat. Ann. § 16a-1-301(17)(b)).

There are some key definitions that go along with these terms. “Loan to value ratio” is defined as the aggregate unpaid principal balance of all loans secured by a first mortgage or a second mortgage on the real estate at such time divided by the appraised value of the real estate. (Kan. Stat. Ann. § 16a-1-301(28)). “**Appraised value**” is defined to be (a) the total appraised value of the real estate, as reflected in the most recent records of the tax assessor of the county in which the real estate is located; (b) the fair market value of the real estate, as reflected in a written appraisal of the real estate performed by a Kansas licensed or certified appraiser within the past 12 months; or (c) in the

case of a nonpurchase money real estate transaction, the estimated market value as determined through an automated valuation model acceptable to the administrator. . . . (Kan. Stat. Ann. § 16a-1-301(6)). The “Code mortgage rate” is the greater of: (a) 12%; or (b) the sum of the yield on 30-year fixed rate conventional home mortgage loans and 5%. This rate is published monthly in the Kansas Register. (Kan. Stat. Ann. § 16a-1-301(11)).

### Supervised Loan Defined

The UCCC also applies to supervised loans. A “supervised loan” is a consumer loan, including a loan made pursuant to open end credit, in which the annual percentage rate exceeds 12 percent. (Kan. Stat. Ann. § 16a-1-301(46)). Only supervised financial organizations and supervised lenders licensed by the state are authorized to make supervised loans. (Kan. Stat. Ann. § 16a-2-301(45)).

### Maximum Rate

For any closed end consumer loan not secured by a first mortgage or a second mortgage, the maximum rate of finance charge is calculated according to the actuarial method, is not to exceed 36 percent per year on any portion of the unpaid balance which is \$860 or less and 21 percent per year on any the portion of the unpaid balance which exceeds \$860 subject to a prepaid finance charge in an amount not to exceed the lesser of 2 percent of the amount financed or \$100. (Kan. Stat. Ann § 16a-2-401(2), (6)(b)). For open end consumer loans not secured by a first mortgage or a second mortgage, including, without limitation, lender credit cards, the lender may charge any rate of finance charge agreed upon, subject to the prepaid finance charge in an amount not to exceed the lesser of 2 percent of the amount financed or \$100. (Kan. Stat. Ann § 16a-2-401(1), (6)(b)).

Consumer loans, under the UCCC, whether by law or by agreement, secured by a first mortgage or a second mortgage, or a manufactured home, may charge a periodic finance charge, calculated according to the actuarial method, not to exceed 18 percent per year, subject to a prepaid finance charge in an amount not to exceed 8 percent of the amount financed, provided that the aggregate amount of prepaid finance charges payable to the lender or any person related to the lender do not exceed 5 percent of the amount financed. (Kan. Stat. Ann § 16a-2-401(3), (4), (6)).

### Additional Charges

The lender on a consumer loan may impose additional charges, including, but not limited to:

- Official fees and taxes. (Kan. Stat. Ann § 16a-2-501(1)(a)).
- Charges for insurance, subject to certain restrictions. (Kan. Stat. Ann § 16a-2-501(1)(b) and (2)).
- Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the finance charge by rules and regulations adopted by the administrator. (Kan. Stat. Ann § 16a-2-501(1)(d)).
- An insufficient check charge of up to \$30 if provided for in the contract and subject to detailed rules. (Note, if the insufficient check is proffered pursuant to a lender credit

card, the amount of the service charge is unlimited as long as it is agreed upon by the parties.) (Kan. Stat. Ann § 16a-2-501(1)(e)).

- A delinquency charge on any installment not paid in full within 10 days after its scheduled or deferred due date in an amount not exceeding 5 percent of the unpaid amount of the installment or \$25, whichever is less. As an alternative, the delinquency charge can be an amount not to exceed \$10 on any installment not paid within 10 days after its scheduled or deferred due date, except that if the scheduled payment amount is \$25 or less, the maximum delinquency charge shall be \$5. (Note, if the delinquency charge is pursuant to a lender credit card, the amount of the charge is unlimited as long as it is agreed upon by the parties.) (Kan. Stat. Ann § 16a-2-502).
- For consumer open end loans a lender may impose any fees on a monthly or annual basis; any over-the-limit fees; or any cash advance fees agreed to by the consumer. (Kan. Stat. Ann § 16a-2-501(3)).
- Reasonable costs of collection, including, but not limited to, court costs, attorney fees, and collection agency fees, except that such cost of collection: (i) may not include costs that were incurred by a salaried employee of the creditor or its assignee; (ii) may not include the recovery of both attorney fees and collection agency fees; and (iii) shall not be in excess of 15 percent of the unpaid debt after defaults. (Kan. Stat. Ann § 16a-2-507)
- A minimum charge upon prepayment in full (but not upon a refinancing or for open end credit) of \$5 in a transaction which had an amount financed of \$75 or less, or \$7.50 in a transaction which had an amount financed of more than \$75 if the minimum charge was contracted for and the finance charge earned at the time of prepayment is less than the minimum charge contracted for. (Kan. Stat. Ann § 16a-2-510).

Special Note on Fees: Selection of this loan act generally prohibits the inclusion of a prepayment penalty in consumer transaction. (Kan. Stat. Ann. § 16a-2-509). For non-agency transactions, a minimum finance charge as indicated above may be assessed on such transactions and, if so selected, will be included and disclosed in the loan documentation. (Kan. Stat. Ann § 16a-2-510).

# Louisiana Loan Acts

## Introduction

To ensure that a transaction contains the correct documents and disclosures, lenders must indicate when the Louisiana Consumer Credit Law, La. Rev. Stat. Ann. § 9:3510 *et seq.*, or the Louisiana Motor Vehicle Sales Finance Act apply, La. Rev. Stat. Ann. § 6:951 *et seq.*

### 1. Louisiana Consumer Credit Law (“LCCL”)

#### Applicability

The LCCL covers “consumer loans”. A consumer loan is defined as a:

“ . . . a loan of money or its equivalent made by a supervised financial organization, a licensed lender, or lender in which the debtor is a consumer, and the loan is entered into primarily for personal, family, or household purposes and includes debts created by the use of a lender credit card, revolving loan account, or similar arrangement, as well as insurance premium financing.” LA. Rev. Stat. Ann. § 9:3516(14). The LCCL excludes a number of transactions and entities from its coverage, including the following:

- Extensions of credit to organizations, including government or governmental agencies or instrumentalities. La. Rev. Stat. Ann. § 9:3512(1).
- Motor vehicle credit transactions, including refinancings, subject to the Motor Vehicle Sales Finance Act, R.S. 6:969.1 *et seq.* La. Rev. Stat. Ann. § 9:3512(4).
- Federally chartered and state chartered credit unions and transactions between credit unions and members thereof. La. Rev. Stat. Ann. § 9:3512(5).
- Credit transactions involving extensions of credit for business, commercial, or agricultural purposes. La. Rev. Stat. Ann. § 9:3512(7).
- Federally related mortgage loans. However, this exclusion does not apply to loans secured by residential property made specifically subject to the LCCL by contract. La. Rev. Stat. Ann. § 9:3512(8).

Section 9:3516(19) of the LCCL provides that a “federally related mortgage loan” as used in the LCCL, has the same meaning as in the Residential Mortgage Lending Act, La. Rev. Stat. Ann. § 6:1081 *et. seq* (“RMLA”). For purposes of the RMLA, a “federally related mortgage loan” is defined as an “. . . extension of credit to a consumer secured by a first mortgage on residential immovable property, including a mobile home which will be immobilized pursuant to R. S. 9:1149.4, located in Louisiana and designed principally for the occupancy of from one to four families and which is one of the following:

- a) An extension of credit made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the federal government, or is made in whole or in part by a lender that is regulated by any agency of the federal government.
- b) An extension of credit made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the federal Department of



Housing and Urban Development, or any other agency of the federal government or under or in connection with a housing or urban development program administered by the Department of Housing and Urban Development or a housing or related program administered by any other such agency.

- c) An extension of credit intended to be sold by the originating lender to Fannie Mae, Ginnie Mae, Freddie Mac, or the Federal Home Loan Mortgage Corporation, or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation.
- d) An extension of credit made in whole or in part by any lender, as defined in Section 103(f) of the federal Consumer Credit Protection Act (15 U.S.C. §1602(f)), who makes or invests in consumer real estate loans aggregating more than one million dollars per year." La Rev. Stat. Ann. § 6:1083(6).

## Maximum Rate

**Generally:** The maximum rate of loan finance charge for a consumer loan other than one made with a lender credit card that may be charged, contracted for or received may equal but not exceed:

- 36% per year for that portion of the unpaid principal amount of the loan not exceeding \$1,400.
- 27% per year for that portion of the unpaid principal amount of the loan exceeding \$1,400 and not exceeding \$4,000.
- 24% per year for that portion of the unpaid principal amount of the loan exceeding \$4,000 and not exceeding \$7,000.
- 21% per year for that portion of the unpaid principal amount of the loan exceeding \$7,000. La. Rev. Stat. Ann. § 9:3519(A).

This section does not limit or restrict the manner of contracting for loan finance charges, whether by way of precomputed interest, simple interest, or otherwise, so long as the annualized loan finance charge rate computed on an actuarial or U.S. Rule basis over the entire scheduled term of the transaction (assuming that all payments will be made when due and disregarding the possible effects of early prepayment or acceleration of maturity) does not exceed the maximum rates permitted above. Demand loans are presumed to have a term of 5 years. La. Rev. Stat. Ann. § 9:3519(B).

**Open-End Plans:** For consumer loans made pursuant to a revolving loan account:

1. the loan finance charge will not be deemed to exceed the maximum annual rates if the loan finance charge contracted for and received does not exceed a charge in each monthly billing cycle which is 1/12 of the maximum annual rates computed on an amount no greater than:
  - the average daily balance of the debt;
  - the unpaid balance of the debt on the 1st day of the billing cycle, or
  - the median amount within a specified range within which the average daily balance or the unpaid balance of the debt, on the first day of the billing cycle, is included.
2. if the billing cycle is not monthly, the loan finance charge shall be deemed not to exceed the maximum annual rates if the loan finance charge contracted for and received does not exceed

a percentage which bears the same relation to the maximum annual rates as the number of days in the billing cycle bears to 360. La. Rev. Stat. Ann. § 9:3519(D).

**Fee-in-Lieu of Interest:** As an alternative to the maximum rates provided above, a lender may contract for and receive a minimum loan finance charge of not more than \$15 when the amount advanced does not exceed \$200, or \$25 when the amount advanced exceeds \$200, in lieu of all other finance charges. La. Rev. Stat. Ann. § 9:3519(E).

**Post-Default Interest Rate:** A lender may contractually reserve the right to prospectively increase the simple interest rate under a consumer loan upon or at any time following the borrower's default. However, such a default interest rate cannot exceed the loan finance charge rate(s) authorized above. La. Rev. Stat. Ann. § 9:3527(E).

**Post-Contractual Maturity Rate for Precomputed Contracts:** For a precomputed consumer loan that is unpaid at contractual maturity, the rate of the loan finance charge for the period beginning as of the contractual maturity until payment in full, may not exceed the rate of the loan finance charge previously agreed to by the lender and the debtor at the time the loan was entered into. Provided however, that beginning 1 year after contractual maturity, the rate shall not exceed 18% per annum. La. Rev. Stat. Ann. § 9:3522.

**Post-Acceleration Interest Rate:** If the maturity of a consumer loan is accelerated and suit is filed, the obligation sued upon will bear a loan finance charge on the amount due at the annualized rate previously agreed to by the consumer until the transaction is paid in full. La. Rev. Stat. Ann. § 9:3533.

## Additional Fees

The LCCL provides that the Commissioner of Financial Institutions shall prescribe by rule additional fees and charges which may be imposed and collected by a lender if such fees and charges have been contractually provided for in the consumer's promissory note, or credit contract or agreement. La. Rev. Stat. Ann. § 9:3517(C).

The LCCL's specific provisions on fees and charges, includes the following:

- **Standard Late Charge:** The parties may contract for the payment of a delinquency charge on any installment or other regular payment not paid in full within 10 days after its scheduled or deferred due date in either one of the following amounts: (1) 5% of the unpaid amount of the delinquent installment; or \$10.00; whichever is greater; or (2) the deferral charge that would be permitted to defer the unpaid amount of the installment or other regular payment for the period that it is delinquent. La. Rev. Stat. Ann. § 9:3527(A).
- **Revolving Loan Account Late Charge:** The parties to a revolving loan account may contract for the payment of a delinquency charge not to exceed \$15 on any regularly scheduled payment not paid in full within 10 days of the payment due date. La. Rev. Stat. Ann. § 9:3527(B).
- **Standard Origination Fee:** A lender may charge an origination fee not to exceed \$50 on a consumer loan. This fee is not considered a loan finance charge for purposes of the LCCL, and it is not subject to refund upon prepayment or acceleration. It is however subject to other restrictions on the frequency with which it can be charged on a single loan, and any renewals or refinancings thereof. La. Rev. Stat. Ann. § 9:3530(A).
- **Revolving Loan Account Secured by Immovable Property Origination Fee:** A lender, upon entering a revolving loan account that is secured by real property, may assess an origination fee in an amount not to exceed 2% of the consumer's established credit limit. This fee may be assessed in addition to permissible loan finance charges and is not subject to rebate upon cancellation or termination of the consumer's account. La. Rev. Stat. Ann. § 9:3530(D).

- **Non-Real Estate Notary Fees:** A consumer loan may not have non-real estate notary fees in excess of \$15. La. Rev. Stat. Ann. § 9:3530(B).
- **Non-Real Estate Documentation Fee:** A lender may charge a documentation fee as reimbursement for actual costs incurred, not to exceed \$10, in connection with a non-real estate consumer loan. This fee is not considered a loan finance charge for purposes of the LCCL. La. Rev. Stat. Ann. § 9:3530(C).
- **Overlimit Fee:** A lender may contract for and receive reasonable over-the-credit-limit fees in connection with a revolving loan account that are payable whenever the consumer exceeds the credit limit established for the account. La. Rev. Stat. Ann. § 9:3530(E).
- **Convenience Fee:** A lender may charge a convenience fee as authorized by La. Rev. Stat. Ann. § 47:532.1(C) for services performed by a public license tag agent. The fee cannot be charged to a consumer more than once. The fee is not considered as interest for purposes of the LCCL. La. Rev. Stat. Ann. § 9:3530(F).
- **Deferral Charge:** The LCCL allows, provides the means of calculating, and limits the amount of any deferral charge for both precomputed and simple interest loans. See La. Rev. Stat. Ann. § 9:3528. This charge should not be entered, as it should be governed by a separate deferral agreement entered into at the time of deferral.
- **Minimum Loan Finance Charge:** See Fee-in-Lieu of Interest subsection of the Maximum Rate section above.
- **Returned Payment Charge:** Parties to a consumer loan may contract for a returned payment fee not to exceed \$25 or 5% of the amount of the check or electronic payment, whichever is greater. La. Rev. Stat. Ann. § 9:3529.
- **Prepayment Charge:** If a consumer loan is prepaid in full, or accelerated and suit is filed, the lender must refund unearned loan finance charges according to the "Rule of 78's" in a precomputed consumer loan, and perhaps prepaid finance charges in a simple interest consumer loan. La. Rev. Stat. Ann. §§ 9:3532 & 9:3533. In calculating the amount of any such rebate the lender is entitled to first deduct a prepayment charge of up to \$25. La. Rev. Stat. Ann. §§ 9:3532 & 9:3533. However, if more than one-half of the term of the installment contract has elapsed at the time of prepayment, or acceleration and the filing of suit, the lender may not deduct this prepayment charge. La. Rev. Stat. Ann. §§ 9:3532 & 9:3533.
- **Prepayment Penalty:** Extender of credit may contract for and receive a prepayment penalty in an amount not to exceed:
  1. 5% of the unpaid principal balance if the loan is prepaid in full during the first year of its term.
  2. 4% of the unpaid principal balance if the loan is prepaid in full during the second year of its term.
  3. 3% of the unpaid principal balance if the loan is prepaid in full during the third year of its term.
  4. 2% of the unpaid principal balance if the loan is prepaid in full during the fourth year of its term.
  5. 1% of the unpaid principal balance if the loan is prepaid in full during the fifth year of its term.

No prepayment penalty may be assessed if the loan is prepaid in full after the fifth year of its term. The prepayment penalty is only available if the consumer loan: (1) is secured by real estate; (2) bears simple interest; (3) has an original principal balance of \$25,000 or more; and (4) has an original term of 7 years or longer. La. Rev. Stat. Ann. § 9:3532.1.

Prepayment penalties or similar fees or charges are prohibited when a prepayment is made with insurance proceeds paid out in connection with a disaster declared by the governor of Louisiana. La. Rev. Stat. Ann. § 9:3532.1(C).

- **Attorney Fees & Collection Costs:** A consumer loan may provide for the payment by the consumer of attorney's fees not in excess of 25% of the unpaid debt after default and referral to an attorney for collection. However, a lender may not contract with a consumer for the reimbursement of fees paid to a collection agency employed to collect the consumer's indebtedness. La. Rev. Stat. Ann. § 9:3534.
- **Insurance:** The LCCL has extensive provisions on insurance. Please refer to the following provisions for more details. La. Rev. Stat. Ann. §§9:3542-3550.

## Miscellaneous

There are a couple of miscellaneous provisions of the LCCL that are worthy of special note:

- **Opting-In:** The parties to a transaction other than a consumer credit transaction may contract with one another that such transaction shall be subject to the provisions of the LCCL, in which event the transaction shall be a consumer credit transaction within the provisions of the LCCL. Notwithstanding the foregoing, the parties to a consumer credit transaction otherwise subject to the MVSFA may not contract to become subject to the provisions of the LCCL. La. Rev. Stat. Ann. § 9:3514.
- **Conversion:** If two installments or other regular payments or parts thereof of a precomputed consumer loan are in default for 10 days or more, the lender may, upon first giving the consumer written notice, elect to convert the precomputed consumer loan into a simple interest transaction. The LCCL provides specific notice and rebate requirements. See La. Rev. Stat. Ann. § 9:3527(D).
- **Unilateral Deferral:** The parties may agree in writing at the time of a precomputed consumer loan that, if an installment is not paid within 10 days after its due date, the lender may unilaterally grant a deferral and make charges for such deferral as provided by the LCCL. See La. Rev. Stat. Ann. § 9:3528(B). The precomputed consumer loan must be payable in more than one installment. See La. Rev. Stat. Ann. § 9:3528(B).
- **Revolving Loan Account Advance Increments:** The amount borrowed under a revolving loan account may include, if required by the lender, an amount not greater than \$99.99 exceeding the draft or similar order if the amount is immediately credited to the consumer's deposit account with the lender, or with the lender's agent. La. Rev. Stat. Ann. § 9:3516(30)(b).

## 2. Motor Vehicle Sales Finance Act ("MVSFA")

### Applicability

The MVSFA covers consumer loans where the loan proceeds are used to purchase, or refinance the purchase, of a motor vehicle, and where the lender acquires a purchase money security interest in the motor vehicle. La. Rev. Stat. Ann. § 6:969.6(5) and (8). The MVSFA defines a "motor vehicle" as:

"... any new or used transportation device, including automobiles, motorcycles, trucks and other vehicles that are operated over the public highways and the

streets of this state, but does not include traction engines, boat trailers, road rollers, implements of husbandry and other agricultural vehicles. A manufactured home is deemed to be a 'motor vehicle' for purposes of [the MVSFA] only if it is anticipated at the time of the transaction that the manufactured home will not be immobilized pursuant to R.S. 9:1149.4." La. Rev. Stat. Ann. § 6:969.6(23).

The MVSFA excludes a number of transactions and entities from its coverage, including the following:

- Loans to business entities, including government or governmental agencies or instrumentalities.
- Loans primarily for business, commercial or agricultural purposes.
- Open-end credit transactions, including without limitation, revolving loan and lender credit card transactions that may involve the secured purchase money financing of a motor vehicle.
- Loans subject to the LCCL.
- Loans by federally and state chartered credit unions.
- Federally related mortgage loans subject to the LCCL. La. Rev. Stat. Ann. § 6:969.3.

A "federally related mortgage loan" is defined by the MVSFA as a "loan secured by a first lien or mortgage on one-to-four family residential immovable property subject to 12 U.S.C. § 1735F-7." La. Rev. Stat. Ann. § 6:969.6(18).

## Maximum Rate

A loan subject to the MVSFA may include a finance charge that equals, but does not exceed, the greater of the two following rates:

1. The sum of all of the following:
  - 36% per year for that portion of the unpaid principal amount of the loan not exceeding \$1,400.
  - 27% per year for that portion of the unpaid principal amount of the loan exceeding \$1,400 and not exceeding \$4,000.
  - 24% per year for that portion of the unpaid principal amount of the loan exceeding \$4,000 and not exceeding \$7,000.
  - 21% per year for that portion of the unpaid principal amount of the loan exceeding \$7,000.
2. The maximum rate that would otherwise apply to a comparable consumer credit sale of a Class 2, Class 3, or Class 4 motor vehicle, regardless of amount. La. Rev. Stat. Ann. § 6:969.9(A).

The consumer credit sale provisions of the MVSFA provides the following maximum rates.

- **Class 1.** For any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made: 18% per annum.
- **Class 2.** For any new motor vehicle not in Class 1, and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two years prior to the year in which the sale is made: 24% per annum.

- **Class 3.** For any used motor vehicle not in Class 2 and designated by the manufacturer by a year model not more than four years prior to the year in which the sale is made. 27% per annum.
- **Class 4.** For any used motor vehicle not in Class 2 or Class 3 and designated by the manufacturer by a year model more than four years prior to the year in which the sale is made. 33% per annum. La. Rev. Stat. Ann. § 6:969.10(A).

This section does not limit or restrict the manner of contracting for a finance charge, whether by way of precomputed interest, simple interest or otherwise, provided the rate of finance charge, computed on an actuarial or U.S. Rule basis over the entire scheduled term of the transaction (assuming that all payments will be made when due and disregarding the possible effects of early prepayment or acceleration of maturity) does not exceed the maximum rates permitted above. La. Rev. Stat. Ann. § 6:969.9(B).

**Fee-in-Lieu of Interest:** As an alternative to the maximum rates provided above, a lender may contract for and receive a minimum loan finance charge of not more than \$15 when the amount advanced does not exceed \$200, or \$25 when the amount advanced exceeds \$200, in lieu of all other finance charges. La. Rev. Stat. Ann. § 6:969.9(D).

**Post-Default Interest Rate:** A lender may contractually reserve the right to prospectively increase the simple interest rate under a motor vehicle loan upon or at any time following the consumer's default. However, such a default interest rate cannot exceed the maximum rate(s) authorized above. La. Rev. Stat. Ann. § 6:969.15(D).

**Post-Contractual Maturity Rate for Precomputed Contracts:** For a precomputed loan that is unpaid at contractual maturity, the rate of the finance charge for the period beginning as of the contractual maturity until payment in full, may not exceed the rate of the finance charge previously agreed to by the lender and the debtor at the time the loan was entered into. La. Rev. Stat. Ann. § 6:969.12.

**Post-Acceleration Interest Rate:** If the maturity of a precomputed loan is accelerated and suit is filed, the obligation sued upon will bear a finance charge on the amount due at the annualized rate previously agreed to by the consumer until the transaction is paid in full. La. Rev. Stat. Ann. § 6:969.21(A).

## Additional Fees

Except to the extent specifically limited in amount or prohibited by the MVSFA, a lender may impose and collect additional fees and charges contractually provided for under the consumer's promissory note or credit agreement. La. Rev. Stat. Ann. § 6:969.7(B). However, the MVSFA also provides that a lender may contract for and receive payment of additional fees and charges not specifically mentioned by the MVSFA, provided that such additional fees and charges are not considered to be additional finance charges for purposes of 12 C.F.R. 226.4. La. Rev. Stat. Ann. § 6:969.18(E). Because it is unclear which of these dissimilar statements is controlling, we recommend that lenders lending under the MVSFA not contract for fees and charges unless they are either specifically provided for in the MVSFA, or are not a finance charge for purposes of Regulation Z of the Board of Governors of the Federal Reserve System, 12 C.F.R. 226.1 et. seq.

The MVSFA's specific provisions on fees and charges, includes the following:

- **Late Charge:** The parties may contract for the payment of a delinquency charge on any installment or other regular payment not paid in full within 10 days after its scheduled or deferred due date in either one of the following amounts: (1) 5% of the amount of the installment in default or \$10.00 whichever is greater; or (2) the deferral charge that would be permitted to defer the unpaid amount of the delinquent installment for the period that it is delinquent. La. Rev. Stat. Ann. § 6:969.15(A).



- **Documentation Fee:** A lender may contract for and receive up to \$35.00 for loan documentation. Under the MVSFA, this fee is nonrefundable and not considered to be an additional loan finance charge. La. Rev. Stat. Ann. § 6:969.18(A)(1).
- **Credit Investigation, Compliance with Federal and State Law, Preparation of Documents Fee:** A seller may charge a \$200 fee for "credit investigation, compliance with federal and state law, preparation of the documents necessary to perfect or satisfy a lien upon the objects sold, and any other functions incidental to the titling of the retail sale." La. Rev. Stat. Ann. § 6:969.18(A)(2)(a). If a seller charges this fee, a written disclosure described in La. Rev. Stat. Ann. § 6:969.18(A)(2)(b) shall be provided.
- **Convenience Fee:** A lender may charge the consumer a \$18 convenience fee for services performed in obtaining a motor vehicle license and/or title on the consumer's behalf. Under the MVSFA, this fee is nonrefundable and not considered to be an additional loan finance charge. La. Rev. Stat. Ann. § 6:969.18(A)(3).
- **Notary Fees:** A lender may charge a notary fee not in excess of \$15 for notarizing acts of sale, applications for license and title, and such other documents that are required to be notarized. Under the MVSFA, this fee is nonrefundable and is not considered to be an additional loan finance charge. La. Rev. Stat. Ann. § 6:969.18(B).
- **Transfer of Equity Fee:** Where the consumer transfers his/her equity in the motor vehicle, the lender is entitled to a transfer of equity fee not to exceed \$25. La. Rev. Stat. Ann. § 6:969.18(C).
- **Returned Payment Charge:** The parties may contract for a returned payment fee of 5% of the amount of the check, electronic payment or other payment, not to exceed \$15. La. Rev. Stat. Ann. § 6:969.17.
- **Prepayment Charge:** If a precomputed loan is prepaid in full, or accelerated and suit is filed, the lender must refund unearned finance charges. La. Rev. Stat. Ann. §§ 6:969.20 & 6:969.21. In calculating the amount of any such refund the lender is entitled to first deduct a prepayment charge of \$25. La. Rev. Stat. Ann. §§ 6:969.20 & 6:969.21. However, if more than one-half of the term of the precomputed installment contract has elapsed at the time of prepayment, or acceleration and the filing of suit, the lender may not charge the prepayment charge. La. Rev. Stat. Ann. § 6:959.20. Where a simple interest loan is prepaid in full, or accelerated and suit is filed, the lender is entitled to charge a prepayment charge of \$25, regardless of the timing of the prepayment or acceleration. La. Rev. Stat. Ann. §§ 6:969.20 & 6:969.21.
- **Attorney Fees & Collection Costs:** The parties may contract for the payment of collection/enforcement attorney fees by the consumer in an amount not to exceed 25% of the total amount payable under the transaction. La. Rev. Stat. Ann. § 6:969.22. In addition, the consumer shall be obligated and responsible to reimburse the lender for its out-of-pocket collection costs and expenses incurred in collecting the consumer's obligation and in enforcing the lender's security rights against the secured motor vehicle and any other collateral. Moreover, the consumer is also obligated and responsible to reimburse the lender for such additional collection costs and expenses as may be authorized under Chapters 3 & 9 of the Louisiana Commercial Laws. La. Rev. Stat. Ann. § 6:969.23.
- **Insurance:** The MVSFA has extensive provisions on insurance. Please refer to the following provisions for more details. La. Rev. Stat. Ann. §§ 6:969.25 *et seq.*
- **Deferral Charge:** The MVSFA allows, provides the means of calculating, and limits the amount of any deferral charge for both precomputed and simple interest loans. See La. Rev. Stat. Ann. § 6:969.16. This charge should **not** be entered, as it should be governed by a separate deferral agreement entered into at the time of deferral.

## Miscellaneous

There are a couple of miscellaneous provisions of the MVSFA that are worthy of special note:

- **Conversion:** If two installments or parts thereof of a precomputed consumer loan are in default for 10 days or more, the lender may, upon first giving the consumer written notice, elect to convert the precomputed consumer loan into a simple interest transaction. The MVSFA provides specific notice and rebate requirements. See La. Rev. Stat. Ann. § 6:969.15(C).
- **Unilateral Deferral:** The parties may agree in writing at the time of a precomputed consumer loan that if an installment is not paid within 10 days after its due date, the lender may unilaterally grant a deferral and make charges for such deferral as provided by the MVSFA. See La. Rev. Stat. Ann. § 6:969.16(B).
- **Other Collateral:** A consumer loan may be secured by other collateral in addition to the purchased motor vehicle. La. Rev. Stat. Ann. § 6:969.6(8).
- **Credit Unions Opting-In:** As noted above, federal and state credit unions are excluded from coverage under the MVSFA. However, it appears that credit unions may be able to lend under the provisions of the MVSFA if they so elect. This can be done by simply selecting the MVSFA loan act for a loan that would otherwise fall under the MVSFA's coverage.

## 3. Residential Mortgage Lending Act (“RMLC”)

### Applicability

The RMLA covers “residential mortgage loans”. A residential mortgage loan means: (a) a closed-end, federally related mortgage loan (Federally Related Mortgage Loan); or (2) a consumer loan, secured by a mortgage on residential immovable property not specifically contracted for under the LCCL (Other Residential Mortgage Loan). La. Rev. Stat. Ann. § 6:1083(21).

For purposes of the RMLA a “federally related mortgage loan” is defined as an “. . . extension of credit to a consumer secured by a first mortgage on residential immovable property, including a mobile home which will be immobilized pursuant to R. S. 9:1149, located in this state and designed principally for the occupancy of from one to four families and which is one of the following:

- a) An extension of credit made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the federal government, or is made in whole or in part by an lender which is regulated by any agency of the federal government.
- b) An extension of credit made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the federal Department of Housing and Urban Development, or any other agency of the federal government or under or in connection with a housing or urban development program administered by the Department of Housing and Urban Development or a housing or related program administered by an other such agency.



- c) An extension of credit intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation.
- d) An extension of credit made in whole or in part by any creditor, as defined in Section 103(f) of the federal Consumer Credit Protection Act (15 U.S.C. §1602(f)), who makes or invests in consumer real estate loans aggregating more than one million dollars per year.” La Rev. Stat. Ann. § 6:1083(6).

### Maximum Rate

**Federally Related Mortgage Loans:** There is no state limit on the maximum rate of conventional interest for federally related mortgage loans. La. Rev. Stat. Ann. § 6:1096(A).

**Other Residential Mortgage Loans:** The parties may agree to pay fees and interest up to a maximum annual percentage rate in an amount which is the greater of either 21% or 15 percentage points above the Federal Reserve Board of Governors approved “Discount Rate” published semi-annually in the Wall Street Journal on the first business day in January and July in the year the loan was originated, consummated or renewed. La. Rev. Stat. Ann. § 6:1096(B).

### Additional Fees

**Federally Related Mortgage Loans:** Notwithstanding any other law to the contrary, in addition to those fees, charges, costs, and expenses not considered interest and not defined as finance charges under federal Regulation Z, the parties to a federally related mortgage loan may agree to the payment of any fees, charges, costs, and expenses, and the amounts thereof. This includes, but is not limited to the types of fees, charges, costs, and expenses provided for Other Loans (Opt-Under Loans) if the fees, charges, costs and expenses, and the amounts thereof, or the methods for fixing such are provided in a writing signed by the consumer. La. Rev. Stat. Ann. § 6:1097(A).

**Other Residential Mortgage Loans:** The parties may agree to pay the following fees, charges, costs, and expenses:

- **Prepayment Penalty:** Charges for the prepayment of the loan or any installment or part of the loan prior to the time fixed for payment. La. Rev. Stat. Ann. § 6:1097(B)(1).
- **Late Charge:** Charges in the amount of 5% of the unpaid amount, assessed for nonpayment of the loan or any installment or part of the loan after the loan or installment or principal or interest has become delinquent and is not timely paid. La. Rev. Stat. Ann. § 6:1097(B)(2).

- **Attorney Fees & Collection Costs:** Costs of collection and reasonable attorney fees not in excess of 25% of the unpaid debt after default, when the debt has been referred to an attorney for collection. La. Rev. Stat. Ann. § 6:1097(B)(3).
- **Credit Life Insurance:** Charges or premiums for credit life insurance actually written on the life of the borrower or endorser in an amount not to exceed the total sum payable under the residential mortgage loan, including all interest, fees, costs, and charges. La. Rev. Stat. Ann. § 6:1097(B)(5).
- **Returned Payment Charge:** Returned payment charges not to exceed \$25 or 5% of the amount of the check, electronic payment or other payment, whichever is greater. La. Rev. Stat. Ann. § 6:1097(B)(6).
- **Miscellaneous:** The following may also be assessed:
  - i. Fees, taxes, or charges, and other expenses incurred in making the loan which are collected from or paid by or on behalf of the borrower, if such fees, taxes, charges, or other expenses are actually paid to or payable to persons other than the lender or the person making the loan or any employee of such lender or person. La. Rev. Stat. Ann. § 6:1097(B)(4);
  - ii. Other fees, charges, costs, and expenses not defined as finance charges under federal Regulation Z, if the fees, charges, costs, and expenses, or the methods for fixing such are provided in a writing signed by the consumer. La. Rev. Stat. Ann. § 6:1097(B)(7).

**Other Fee Provisions.** The following RMLA fee provisions appear to apply to both Federally Related Mortgage Loans and Other Residential Mortgage Loans:

- **Prepayment Penalty:** A mortgage lender may contract for and receive a prepayment penalty in an amount not to exceed:
  1. 5% of the unpaid principal balance if the loan is prepaid in full during the first year of its term.
  2. 4% of the unpaid principal balance if the loan is prepaid in full during the second year of its term.
  3. 3% of the unpaid principal balance if the loan is prepaid in full during the third year of its term.
  4. 2% of the unpaid principal balance if the loan is prepaid in full during the fourth year of its term.
  5. 1% of the unpaid principal balance if the loan is prepaid in full during the fifth year of its term. La. Rev. Stat. Ann. § 6:1096(E)(2).

Prepayment penalties or similar fees or charges are prohibited when a prepayment is made with insurance proceeds paid out in connection with a disaster declared by the governor of Louisiana. La. Rev. Stat. Ann. § 6:1096(E)(3).

- **Yield Spread Premiums:** Agreements to compensate mortgage brokers through yield spread premiums for goods, facilities, and services actually provided in connection with a residential loan transaction are valid and enforceable. La. Rev. Stat. Ann. § 6:1096(F).

### Single Premium Credit Insurance

The RMLA prohibits mortgage lenders from financing or including in the loan amount of a residential mortgage loan the amount of certain single premium insurance, including credit life, dismemberment, health and accident, mortgage life and disability, or debt cancellation insurance sold in connection with a residential mortgage loan transaction. This prohibition does not include the financing of private mortgage insurance paid on a single premium basis in connection with a residential mortgage loan transaction. La. Rev. Stat. Ann. § 6:1096(G)(3).

# Maine Loan Act

## Introduction

To ensure that a transaction contains the correct documents and disclosures, lenders must indicate whether the Uniform Consumer Credit Code applies, Title 9-A, M.R.S.A.

## Uniform Consumer Credit Code (UCCC)

### Consumer Loan Defined

A consumer loan is “a loan made by a person regularly engaged in the business of making loans in which:

- The debtor is a person other than an organization;
- The debt is primarily for a personal, family, or household purpose;
- Either the debt is payable in installments or a finance charge is made; and
- Either the principal does not exceed \$50,000 or the debt is secured by manufactured housing or an interest in land.” (Title 9-A § 1-301 M.R.S.A.).”

### Supervised Loan Defined

The UCCC also applies to supervised loans. A supervised loan is a consumer loan, including a loan made pursuant to open-end credit, in which the rate of the finance charge, calculated according to the actuarial method, exceeds 12¼% per year, or which is secured by an interest in real estate. (Title 9-A § 1-301(40) M.R.S.A.).

### Maximum Rate

The maximum rate for a consumer loan, other than a loan pursuant to open-end credit, is the equivalent of the following:

- The total of:
  - 30 percent per year on that part of the unpaid balances of the amount financed which is \$2,000 or less;
  - 24 percent per year on that part of the unpaid balances of the amount financed which is more than \$2,000 but does not exceed \$4,000; and
  - 18 percent per year on that part of the unpaid balances of the amount financed which is more than \$4,000;

However, on a consumer loan in which the amount financed exceeds \$8,000, the lender may not contract for a finance charge calculated on the actuarial method in excess of 18% per year on the entire amount of the loan. (Title 9-A § 2-401 M.R.S.A.).

The maximum rate on a consumer loan made on open-end credit is a periodic rate of  $1\frac{1}{2}\%$  of the greater of the average daily balance or unpaid balance on the first day of the billing cycle if the billing cycle is monthly, or .049315% of the average daily balance times the number of days in the billing cycle if the billing cycle is other than monthly. (Title 9-A § 2-402 M.R.S.A.).

On a transaction other than a consumer credit transaction the parties may contract for the payment of any finance charge. (Title 9-A § 2-601 M.R.S.A.).

### Additional Fees

On any consumer loan, including open-end credit plans, the lender may contract for and receive the following:

- Official fees and taxes. (Title 9-A § 2-501(1)(A) M.R.S.A.).
- Charges for insurance (subject to restrictions). (Title 9-A § 2-501(1)(B) M.R.S.A.).
- Annual charges, payable in advance, for the privilege of using a credit card, other than a lender credit card. (Title 9-A § 2-501(1)(C) M.R.S.A.).
- Closing costs, as defined in Title 9-A § 1-301 subsection 8, M.R.S.A., if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of the Maine UCCC (Title 9-A § 2-501(1)(D) M.R.S.A.).
- An annual charge for the privilege of using a retail credit card or lender credit card. (Title 9-A § 2-501(1)(E) M.R.S.A.).
- Charges for other benefits conferred on the consumer, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are authorized as permissible additional charges by rule adopted by the administrator. (Title 9-A § 2-501(1)(F), M.R.S.A.).
- A late fee on any installment not paid in full within 15 days after its scheduled or deferred due date in an amount of 5% of the unpaid amount up to \$10.00 or the deferral charge under 2-503, whichever is greater. (Title 9-A § 2-502, M.R.S.A.).
- On loans secured by real property, reasonable attorney's fees, legal expenses and other reasonable costs incurred in realizing on the real property after default. (Title 9-A § 3-402(C) M.R.S.A.). On supervised loans not secured by real property, reasonable charges incurred in realizing on a security interest in personal property securing the loan other than attorney's fees. (Title 9-A § 3-402(B) M.R.S.A.). On other consumer loans, reasonable attorney's fees not in excess of 15% of the unpaid debt after default and referral to an attorney not a salaried employee of the lender, but no other collection costs. . (Title 9-A § 2-507(2) M.R.S.A.).
- Deferral charges, subject to limitations. . (Title 9-A § 2-503 M.R.S.A.).
- A prepayment penalty may be charged on a loan secured by an interest in land other than a high-rate high-fee mortgage. (Title 9-A § 2-509 M.R.S.A.)

In addition to the above fees, in an open-end credit plan involving the use of a lender credit card but not secured by a consumer's principal dwelling or by any second or vacation home, the lender may provide for the following fees as an additional finance charge. (Title 9-A § 2-501(4) M.R.S.A.):

- Periodic charges.
- Transaction charges.
- A minimum charge per each billing period when there is an outstanding, unpaid indebtedness.
- Reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by the lender or its agents in connection with the plan, or other reasonable fees incident to the application for and the opening, administration and termination of the plan, including, without limitation, commitment, application and processing fees, official fees and taxes, and filing fees, but excluding costs of collections after default, other than reasonable attorney's fees not in excess of 15% of the unpaid debt incurred in connection with a legal action brought by an attorney who is not a salaried employee of the lender.
- Return-payment charges.
- Documentary evidence charges.
- Stop-payment fees.
- Over-the-limit charges.
- ATM charges or similar electronic or interchange fees or charges.

The fees listed above are excluded from the definition of the maximum finance charge. Other fees that are not prohibited may be charged on credit other than retail credit card accounts as long as these charges together with all other finance charges do not exceed the maximum finance charge. (Title 9-A § 2-501(3) M.R.S.A.).

Special Note on Fees: Selection of this loan act generally prohibits the inclusion of a prepayment penalty in consumer transactions other than those secured by real estate. For non-agency transactions, a minimum finance charge may be assessed on such transactions and, if so selected, will be included and disclosed in the loan documentation.

# Maryland Loan Act

## Introduction

To ensure that a transaction contains the correct documents and disclosures, lenders must indicate whether the Maryland Closed End Credit Provisions apply. (Md. Commercial Law II Code Ann., Title 12, Subtitle 10, §§ 12-1001-1029)

## Closed End Credit Provisions

This loan act authorizes lenders (credit grantors) to extend closed end credit to a borrower. (Md. Commercial Law II Code Ann. § 12-1002 (a)). A credit grantor may take any security as collateral as may be acceptable to the credit grantor. (Md. Commercial Law II Code Ann. § 12-1002 (b)).

## Maximum Rate

Loans made under this act can be made at an effective rate of simple interest that does not exceed 24 percent per year. (Md. Commercial Law II Code Ann. § 12-1003 (a)).

A variable interest rate is permitted if it varies in accordance with an index that is made readily available to and verifiable by the borrower and is beyond the control of the credit grantor. (Md. Commercial Law II Code Ann. § 12-1004 (a)) The variable interest rate may not exceed the 24% maximum rate. (Md. Commercial Law II Code Ann. § 12-1004 (d))

Balloon payments are prohibited for loans secured by collateral other than real property or a motor vehicle that is a motorcycle or a passenger car. (Md. Commercial Law II Code Ann. § 12-1003 (c)(1)(i)) Balloon payments are allowed at maturity if an installment loan is secured by:

- a secondary lien on residential real property (Md. Commercial Law II Code Ann. § 12-1003 (c)(1)(ii));
- a lien on a motor vehicle that is a motorcycle and the amount of the installment loan exceeds \$10,000; or
- a lien on a motor vehicle that is a passenger car, and the amount of the installment loan exceeds \$30,000. (Md. Commercial Law II Code Ann. § 12-1003 (c)(2))

## Applicable Transactions

This loan act applies only if:

- The creditor has made a written election in the agreement, note, or other evidence of the extension of credit to apply Subtitle 10 to the transaction; or
- The agreement, note, or other evidence of the extension of credit is made pursuant to the provisions of Subtitle 10. (Md. Commercial Law II Code Ann. § 12-1013 (b))

This loan act distinguishes between consumer borrowers and nonconsumer borrowers, and permits different fees and charges depending on the type of borrower.

- A *consumer borrower* is defined to mean an individual receiving a loan or extension of credit for personal, household, or family purposes or an individual receiving a commercial loan or other

extension of credit for any commercial purpose not in excess of \$75,000, secured by residential real property. (Md. Commercial Law II Code Ann. § 12-1001 (f)).

- A *nonconsumer borrower* is not defined under this subtitle. However, subtitle 9 defines *nonconsumer borrower* to mean any borrower other than a consumer borrower. (Md. Commercial Law II Code Ann. § 12-901 (j)); see also Md. Commercial Law II Code Ann. § 12-1001 (c) for the definition of “borrower”).

## Fees and Charges

The statutes relating to charging and collecting fees under this subtitle are fairly complex and sometimes confusing. If you are unsure whether a specific fee is available please consult with your local counsel. That said, the following fees are specifically authorized:

### Deferral/Default/Delinquency Charges

- A credit grantor may at any time permit a borrower to defer scheduled payments of a loan and may, in connection with the deferral and by agreement of the credit grantor and borrower: (1) Charge and collect deferral charges; and (2) Require payment by the borrower of the additional cost to the credit grantor of premiums for continuing in force, until the end of the period of deferral, any insurance coverage provided in connection with the loan. (Md. Commercial Law II Code Ann. § 12-1006)
- If the agreement governing the loan permits, the credit grantor may also collect a charge not to exceed \$15 for a payment made with a check that is dishonored on the second presentment. (Md. Commercial Law II Code Ann. § 12-1008 (a)(2)(ii))
- If the agreement governing the loan permits, the credit grantor may also collect a late charge on payments or portions of payments. (Md. Commercial Law II Code Ann. § 12-1008 (a)(2)(i))
  - For a *nonconsumer borrower*, the credit grantor may charge a higher periodic percentage rate on the amount of outstanding unpaid payments which are in default. (Md. Commercial Law II Code Ann. § 12-1008 (a)(1))
  - For a *consumer borrower*, any late or delinquency charges must be permitted by the agreement, note, or other evidence of the loan. No more than 1 late or delinquency charge may be imposed for any single payment or portion of payment, regardless of the period during which it remains in default. (Md. Commercial Law II Code Ann. § 12-1008 (c))

### Collection Costs

- If the agreement, note, or other evidence of the loan permits, the credit grantor may recover from the borrower all court and other collection costs actually incurred by the credit grantor relating to the borrower's default. (Md. Commercial Law II Code Ann. § 12-1011 (b))
  - If a *consumer borrower* defaults under the terms of a loan and the credit grantor refers the borrower's account to an attorney who is not a salaried employee of the credit grantor for collection, the credit grantor may, if the agreement, note, or other evidence of the loan permits, charge and collect from the borrower a reasonable attorney's fee. (Md. Commercial Law II Code Ann. § 12-1011 (a))
  - Note that, while attorneys' fees are expressly permitted, the statutes do not specify any limitations on loans for *nonconsumer borrowers*. (Md. Commercial Law II Code Ann. § 12-1012 (b)(4))



## Repairs

- A credit grantor may include in the loan amount the cost to the borrower of a mechanical repair contract sold in connection with a motor vehicle, provided that the cost of the mechanical repair contract is not required and is separately itemized in the financing agreement. (Md. Commercial Law II Code Ann. § 12-1012 (a))

## Refinancing Charge

- A credit grantor may charge a *consumer borrower* a refinancing charge in connection with any refinancing in an amount agreed to by the credit grantor and the borrower. (Md. Commercial Law II Code Ann. § 12-1010 (a)) A credit grantor may not impose any refinancing charges on the refinancing of an installment loan more often than once during any 12-month period of the loan if the loan is: (1) Made by the credit grantor; (2) Secured by a secondary lien on residential real property; and (3) Made to cure a default on the loan being refinanced where the default has been in existence for more than 30 days. (Md. Commercial Law II Code Ann. § 12-1010 (c)) Note that, while refinancing is expressly permitted, the statutes do not specify any limitations relating to charging a refinancing fee on loans for *nonconsumer borrowers*. (Md. Commercial Law II Code Ann. § 12-1012 (b)(2)&(3))

## Additional Fees

In addition to the fees just listed, a number of other fees may be available depending on factors such as whether the borrower is a consumer borrower, the type of security, and the lien position. (Md. Commercial Law II Code Ann. § 12-1005)

### Additional fees applicable to all borrowers

The following fees are not considered interest with respect to a loan. (Md. Commercial Law II Code Ann. § 12-1005 (e)) In addition to interest at the periodic percentage rate, a credit grantor may charge and collect the following:

- *Loan fees, points, finder's fees, and other charges.* However, all such fees, when combined with any finder's fee imposed by a mortgage broker, cannot exceed 10% of the original extension of credit. (Md. Commercial Law II Code Ann. § 12-1005 (a)(1))
- Reasonable *fees for services* rendered or for reimbursement of expenses incurred in good faith by the credit grantor or its agents in connection with the loan, including:
  1. Commitment fees;
  2. Official fees and taxes;
  3. Premiums or other charges for any guarantee or insurance protecting the credit grantor against the borrower's default or other credit loss;
  4. Costs incurred by reason of examination of title, inspection, recording, and other formal acts necessary or appropriate to the security of the loan;
  5. Filing fees;
  6. Attorney's fees; and
  7. Travel expenses. (Md. Commercial Law II Code Ann. § 12-1005 (b))
- The *cost to the borrower of an optional debt cancellation agreement*, provided that the cost of the debt cancellation agreement is separately itemized in the financing agreement. (Md. Commercial Law II Code Ann. § 12-1005 (c))

### Additional fees specific to consumer borrowers

In the case of a loan to a *consumer borrower*, the following restrictions apply:

- *Loan fees, points, finder's fees, and other charges* are only available if: 1) provided for in the agreement and the borrower agrees to them in writing; 2) the loan is secured by residential real property; and 3) the fees are disclosed pursuant to the federal Truth-in-Lending Act. (Md. Commercial Law II Code Ann. § 12-1005 (a)(2)) Again these charges, when combined with a finder's fee, may not exceed 10% of the original extension of credit. (Md. Commercial Law II Code Ann. § 12-1005 (a)(2)(ii)). However, these limitations do not apply to loans secured by a first lien on residential real property or to loans made for a commercial purpose in excess of \$75,000. (Md. Commercial Law II Code Ann. § 12-1005 (a)(3)).
- The service fees mentioned above may not be charged and collected unless: (1) The agreement, note, or other evidence of the loan permits; (2) The fee is an actual and verifiable expense of the credit grantor not retained by him; and (3) The fees are limited to charges for:
  - i. Attorney's fees for services rendered in connection with the preparation, closing, or disbursement of the loan;
  - ii. Any expense, tax, or charge paid to a governmental agency;
  - iii. Examination of title, appraisal, or other costs necessary or appropriate to the security of the loan; and
  - iv. Premiums for any insurance coverage permitted under this subtitle. (Md. Commercial Law II Code Ann. § 12-1005 (d)).
- The following limitation on attorneys and attorney's fees only applies to a loan to a *consumer borrower* secured by a first lien on residential real property used as the consumer borrower's primary residence:
  - A credit grantor may require a consumer borrower to pay for services rendered by the credit grantor's attorney only if the attorney's fee: (1) Is limited to legal services attributable to processing and closing the loan and not to unrelated services performed by the attorney for the credit grantor; (2) If in excess of \$100, is supported by a statement provided to the borrower at or prior to settlement that: (i) Describes the services performed; (ii) Sets forth the time spent by the attorney and the hourly rate or other basis for determining the fee; (iii) States that the legal services are being performed on behalf of the credit grantor and not on behalf of the consumer borrower; and (iv) States that the services are being paid for by the consumer borrower; (3) Is reasonable on the basis of the legal services performed; and (4) Is separately itemized on the loan settlement sheet and identified as a fee to the credit grantor's attorney. (Md. Commercial Law II Code Ann. § 12-1028 (b)).
  - A credit grantor may not require as a condition of settlement that a consumer borrower employ a particular attorney or title insurance company to perform a title search, examination of title, or closing if: (1) The consumer borrower notifies the credit grantor, within 7 days after application for the loan, of the name and business address of the borrower's choice of attorney or title insurance company to perform the title search, examination of title, or closing; and (2) The credit grantor does not reject the consumer borrower's choice of attorney or title insurance company for good cause within 7 days after the receipt of the notice. This may not be construed to prohibit a credit grantor from requiring a consumer borrower to pay for: (i) Preparation of loan closing documents; (ii) Title insurance; (iii) Review of documents prepared by the borrower's attorney; or (iv) Attendance at settlement by the credit grantor's attorney. (Md. Commercial Law II Code Ann. § 12-1028 (c)).

### ***Prohibited fees***

The following fees are specifically prohibited under this subtitle:

- A credit grantor may not impose a lender's inspection fee in connection with a loan made to a *consumer borrower* that is secured by residential real property unless the inspection is needed to ascertain completion of: (1) The construction of a new home; or (2) Repairs, alterations, or other work required by the credit grantor. (Md. Commercial Law II Code Ann. §§ 12-1027 (b) and (c))
  - "Lender's inspection fee" means a fee imposed by a credit grantor to pay for a visual inspection of residential real property. Note that this limitation does not apply to an appraisal of the value of real property or to fees imposed in connection with an appraisal. (Md. Commercial Law II Code Ann. §§ 12-1027 (a) and (d)).
- A credit grantor may not impose a prepayment charge in connection with any prepayment by a *consumer borrower*, except as provided in Md. Commercial Law II Code Ann. § 12-1005 (d), which permits the service fees described above. (Md. Commercial Law II Code Ann. § 12-1009 (e)) If the credit extension is prepaid in full, the lender must refund to the debtor the unearned precomputed interest (unless less than \$5.00) as well unearned insurance premiums. (Md. Commercial Law II Code Ann. §§ 12-1009 (b)-(d)).
  - Note that, for loans to *nonconsumer borrowers*, while prepayment is expressly permitted, the statutes do not set any limitations on charging a prepayment penalty. (Md. Commercial Law II Code Ann. § 12-1012 (b)(2))

# Minnesota Loan Act

## Introduction

To ensure that a transaction contains the correct documents and disclosures, lenders must indicate whether the General Interest Law applies, Minn. Stat. §47.59.

## General Interest Law

The General Interest Law, Minn. Stat. §47.59, provides rate and fee authority to “financial institutions,” meaning state or federally-chartered banks, state or federally chartered bank and trusts, trust companies with banking powers, state or federally chartered saving banks, state or federally chartered savings associations, industrial loan and thrift companies, or regulated lenders (Minn. Stat. § 47.59, subd. 1(k)). [State credit unions should see Minn. Stat. § 52.14 and 52.141 for information on authorized rates and fees.]

General Interest Law allows financial institutions lending under its authority to impose an “annual percentage rate” of 21.75 percent. Alternately, financial institutions can impose a total of 33 percent per year on that part of the unpaid balance of the principal amount not exceeding \$900 and 19 percent per year on that part of the unpaid balance of the principal amount exceeding \$900. The dollar amounts are subject to change on July 1 of each even-numbered year by the Minnesota Commissioner of Commerce. The rates apply to closed-end credit loans and open-credit not pursuant to a credit card. Open-end credit pursuant to a credit card can earn an annual percentage rate 18 percent (Minn. Stat. § 47.59, subd. 3(a)).

The rates provided by General Interest Law are computed in the same manner as the Truth-in-Lending “annual percentage rate”, but the lender uses a narrower definition of “finance charge” provided by the General Interest Law (Minn. Stat. § 47.59, subd. 3(c) and subd. 1(j)). In other words, the annual percentage rate *imposed* under the General Interest Law will be less than the APR *disclosed* under Truth-in-Lending if the lender imposes a charge which is not a finance charge under this law but which is a finance charge under Truth-in-Lending. For example, Minn. Stat. § 47.59, subd. 6(d), authorizes a \$25 administrative fee on certain loans. This fee is *excluded* from the finance charge as that term is defined in Minn. Stat. 47.59, subd. 1(j). However, the fee is *within* the finance charge the lender must disclose under Truth in Lending. Therefore, the APR disclosed under Truth in Lending is higher than the APR imposed under Minn. Stat. § 47.59.

General Interest Law requires that the APR calculated with the narrow, Minn. Stat. § 47.59, definition of finance charge not exceed the maximum rates of Minn. Stat. § 47.59. As long as that is true, the lender can compute the finance charge by way of add-on, discount, discount points, precomputed charges, single annual percentage rate, variable rate, interest in advance, compounding, average daily balance method or other method (Minn. Stat. § 47.59, subd. 3(d)).

To calculate the APR imposed under Minn. Stat. § 47.59 (not the Truth-in-Lending APR), first determine the finance charge for purpose of the maximum rate determination. The finance charge definition is

complex because it refers to other subdivisions of the statute. The definition of finance charge is provided by Minn. Stat. § 47.59, subd. 1(j). Finance charge has the same meaning given in Regulation Z, except that the following is not considered part of the finance charge:

- A charge as a result of default or delinquency under subdivision 6 (the delinquency fee is listed below) if made for actual unanticipated late payment, delinquency, default or other similar occurrence, and a charge made for an extension or deferment under subdivision 5, unless the parties agree these charges are finance charges (subdivision 5 authorizes the parties to agree in writing to defer wholly unpaid installments, and impose a specified maximum charge for the deferment).
- An additional charge under subdivision 6 (these fees are listed below).
- A discount, if a financial institution purchases a loan at less than the face amount of the obligation or purchases or satisfies obligations of a cardholder pursuant to a credit card and the purchase or satisfaction is made at less than the face amount of the obligation.

Minn. Stat. § 47.59 authorizes lenders to charge the following additional fees (Minn. Stat. § 47.59, subd. 6):

- Official fees (filing fees and non-filing insurance) and taxes.
- Charges for insurance (as long as specified conditions are met and disclosures made).
- The following real estate “closing costs” if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of Minn. Stat. § 47.59:
  - Fees or premiums for title examination, abstract of title, title insurance, surveys, or similar purposes.
  - Fees for preparation of a deed, mortgage, settlement statement, or other documents, if not paid to the financial institution.
  - Escrows for future payments of taxes, including assessments for improvements, insurance, and water, sewer, and land rents.
  - Fees for notarizing deeds and other document.
  - Appraisal and credit report fees.
  - Fees for determining whether any portion of the property is located in a flood zone and fees for ongoing monitoring of the property to determine changes, if any, in flood zone status.
- A delinquency charge for payments not paid in full on or before the tenth day after the due date in an amount not to exceed five percent of the amount of the payment or \$7.80, whichever is greater. (The late charge dollar amount is accurate as of April 2015. It is subject to change on July 1 of each even-numbered year by the Minnesota Commissioner of Commerce.)
- A returned check or returned automatic payment withdrawal request.
- Charges for other benefits, including insurance, conferred on the borrower that are of a type that is not for credit.
- If the credit is open end, an annual charge of up to \$50 per year, payable in advance, for the privilege of opening and maintaining open-end credit, plus ATM charges, charges for exceeding the maximum line of credit, for obtaining a cash advance, and for copies of checks and drafts and replacement of lost or stolen credit cards (Minn. Stat. § 47.59, subd. 6(c)).

The General Interest Law also allows the lender to contract for and receive a one-time “loan administrative fee” of up to \$25 in connection with closed-end credit in an original principal amount of \$6,480 or less. This fee may be included in the amount financed or principal balance upon which the interest accrues, but the amount of the loan administrative fee is not included in the principal amount of the loan for purposes of determining whether the loan meets the maximum amount ceiling (\$6,480) (Minn. Stat. § 47.59, subd. 6(d)).

The General Interest Law allows the contract to provide for payment by the borrower of attorney’s fees and court costs incurred in connection with collection or foreclosure. (Minn. Stat. § 47.59, subd 8).

## Limitations in the General Interest Law

While the General Interest Law, Minn. Stat. § 47.59, is attractive to lenders, financial institutions should keep in mind these reasons for relying on other statutes for authority:

- As generous as the rates and fees of the General Interest Law might be, there may be circumstances when they are not generous enough. In such a case, a lender will want to explore the other options.
- The General Interest Law has two prepayment rebate provisions. The first of these applies to loans secured by real estate and says “if a finance charge is calculated or collected in advance, or included in the principal amount of the loan, and the borrower prepays the loan in full, the financial institution shall credit the borrower with a refund of the charge to the extent that the annual percentage rate yield on the loan would exceed the maximum rate permitted...taking into account the prepayment. The refund need not be made if it would be less than \$7.50” (Minn. Stat. § 47.59, subd. 3(e)). The maximum rate referred to is the maximum rate permitted by Minn. Stat. § 47.59.

The second prepayment provision applies to all loans *not* secured by real estate. The second prepayment provision says that “if the finance charge is calculated or collected in advance, or included in the principal amount of the loan, and the borrower prepays the loan in full, the financial institution shall credit the borrower with a refund of the charge to the extent the annual percentage rate yield on the loan would exceed the annual percentage rate on the loan as originally determined...and taking into account the prepayment. The refund need not be made if it would be less than \$7.50” Minn. Stat. § 47.59, subd. 3(f)).

These provisions appear to require a refund of “non-interest” type fees collected up-front or included in the principal, such as points or a loan fee, which might normally be considered nonrefundable. Furthermore, both rebate provisions require the lender to calculate an APR at the time of prepayment to determine whether the *effective* APR, taking into account the prepayment, exceeds either the maximum APR (for real estate secured loans) or the original APR (for all others).

- The General Interest Law gives borrowers the right to prepay in full the unpaid balance of a consumer loan at any time without penalty (Minn. Stat. § 47.59, subd. 9). Most lenders probably allow penalty-free prepayment on consumer loans, anyway, but you should be aware that Minn. Stat. § 47.59 requires the practice. The General Interest Law says that “an assignment of a consumer’s earnings by the consumer to a financial institution as payment or as security for payment of a debt arising out of a consumer loan or consumer credit sale is unenforceable by the financial institution” (Minn. Stat. § 47.59, subd. 12(c)). Wage assignments on consumer debt are

already restricted under the various federal credit practices rules, so this limitation does not constitute any significant disadvantage under Minn. Stat. § 47.59.

# Missouri Loan Act

## Introduction

To ensure that a transaction contains the correct documents and disclosures, lenders must indicate whether the Consumer Loan Act, Mo. Rev. Stat. § 408.100, or the Second Mortgage Loan Act, Mo. Rev. Stat. § 408.231, applies.

## Consumer Loan Act

The provisions described in this section are known as the Consumer Loan Act, although they appear to apply to more than just consumer loans. The interest rate authority applies to “all loans which are not made as permitted by other laws of this state except that it shall not apply to loans which are secured by a lien on real estate, nonprocessed farm products, livestock, farm machinery or crops or to loans to corporations” (Mo. Rev. Stat. § 408.100). The rates are available to all types of lenders.

The Act authorizes a lender to charge interest on the unpaid principal balance at any rate agreed to by the parties (Mo. Rev. Stat. § 408.100). The interest calculation may be simple interest or precomputed interest (add-on only). (Mo. Rev. Stat. 408.120). If precomputed, the lender must provide a prepayment rebate if the loan is prepaid in full one month or more before the final installment date. The rebate must be calculated by the actuarial method unless the initial term of the contract is 61 months or less and the contract is for five thousand dollars or less, in which case the sum of the balances method may be used. (Mo. Rev. Stat. § 408.170). Lenders may not permit any borrower to be indebted to the lender on two or more contracts at any time for the purpose or with the result of contracting for or receiving more interest than would have been permissible on a single note or contract (Mo. Rev. Stat. § 408.200).

The following are the only additional fees allowed on loans made under this interest rate authority:

- Origination fee. On closed end loans for thirty days or longer, the lender may impose a fee not to exceed ten percent of the principal amount loaned not to exceed \$75. (This fee is not permitted on any extension, refinance, restructure, or renewal of any loan, unless any investigation is made on the application to extend, refinance, restructure, or renew the loan.) (Mo. Rev. Stat. § 408.140 (1)(1))
- Filing fees. (Fees actually and necessarily paid out by the lender to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter. But premiums for insurance in lieu of perfecting a security interest required by the lender may be charged if the premium does not exceed the fees which would otherwise be payable.) (Mo. Rev. Stat. § 408.140 (1)(2))
- Late charge. The Consumer Loan Act has separate late charge provisions for single pay and installment loans. A late charge may be imposed for late payment on each installment or minimum payment in default for a period of not less than 15 days in an amount not to exceed five percent of each installment due or minimum payment due or 15 dollars, whichever is greater, not to exceed



50 dollars. For installments or minimum payments of \$25 or less in default for a period of not less than 15 days, the late charge cannot exceed five dollars (Mo. Rev. Stat. § 408.140 (1)(3)).

- For a single payment not in default, for a period of not less than 15 days, an amount not to exceed five percent of the payment due; provided that, the late charge for a single payment shall not exceed 50 dollars (Mo. Rev. Stat. § 408.140 (1)(4)).
- Property insurance charges (Mo. Rev. Stat. § 408.140 (1)(5)).
- Returned check fee of \$25 or less (Mo. Rev. Stat. § 408.140 (1)(7)).
- Attorney fees of up to 15 percent of the amount due and payable plus court costs, if the contract or note signed by the borrower so provides and it is necessary to bring suit (Mo. Rev. Stat. § 408.140 (1)(8)).
- Deferral fee. If agreed to in writing, the lender may collect a fee in advance for allowing the borrower to defer up to three monthly loan payments, so long as the fee is no more than the lesser of \$50 or ten percent of the loan payments deferred, no extensions are made until the first loan payment is collected and no more than one deferral in a 12 month period is agreed to and collected on any one loan. This section applies only to nonprecomputed loans. (Mo. Rev. Stat. § 408.140 (1)(9)).
- Deferral fee. If agreed to in writing, and notwithstanding any other law to the contrary, on loans with an original amount of \$600 or more the lender may collect a fee in advance for allowing the debtor to defer monthly loan payments, so long as the fee on each deferred period is no more than the lesser of fifty dollars or ten percent of the loan payments deferred. However, a minimum fee of \$25 is permitted, and no extensions are made until the first loan payment is collected on any one loan. This section applies only to nonprecomputed loans. (Mo. Rev. Stat. § 408.178).
- Open-end credit advance fee. If the open-end credit contract is tied to a transaction account in a depository institution, and the account is in the institution's assets and the contract provides for loans of thirty-one days or longer that are "open-end-credit," as the term is defined in the federal Consumer Credit Protection Act and regulations, the creditor may charge a credit advance fee equal to the lesser of seventy-five dollars or ten percent of the credit advanced from time to time from the line of credit. The credit advance fee may be added to the open-end credit outstanding along with any interest, and will not be considered the unlawful compounding of interest as that term is defined in section 408.120 (Mo. Rev. Stat. 408.140(1)(10)).
- Annual fee for open-end credit not to exceed \$50 (Mo. Rev. Stat. §408.140 (3)).

## Second Mortgage Loan Act

The interest rates and fees authorized by this Act are available to any type of lender but only for loans fitting the definition of second mortgage loan. A "second mortgage loan" is "a loan secured in whole or in part by a lien upon any interest in residential real estate created by a security instrument ... which residential real estate is subject to one or more prior mortgage loans" (Mo. Rev. Stat. § 408.231(1)). The term "residential real estate" is defined as "any real estate used or intended to be used as a residence by not more than four families, notwithstanding the provisions of section 408.015" (Mo. Rev. Stat. § 408.231(3)). The loan must have an initial principal amount of at least \$2,500 (Mo. Rev. Stat. § 408.234(1)).

However, the Second Mortgage Loan Act does not apply to any transaction in which a single extension of credit is allocated between a first lien and any number of subordinate liens, for the purpose or with

the result of contracting for or receiving a higher rate of interest than would have been permitted if the loan had been made under the general interest act (Mo. Rev. Stat. § 408.237).

A lender on a second mortgage loan may charge, contract for, and receive interest in any manner at rates agreed to by the parties computed on unpaid balances of the principal for the time actually outstanding (Mo. Rev. Stat. § 408.232(1)).

The following additional fees are permitted on a second mortgage loan (Mo. Rev. Stat. § 408.233):

- Filing fees.
- Taxes.
- Closing costs paid to third parties, including:
  - Fees for title examination, title insurance, or similar purposes.
  - Fees for preparation of a deed, settlement statement, or other documents.
  - Fees for notarizing deeds and other documents.
  - Appraisal fees.
  - Fees for credit reports.
- Charges for insurance.
- A nonrefundable origination fee not to exceed 5 percent of the principal which may be used by the lender to reduce the rate on a second mortgage loan.
- Any amounts paid to the lender by any person, corporation, or entity, other than the borrower, to reduce the rate on a second mortgage loan or to assist the borrower in qualifying for the loan.
- For revolving loans, an annual fee not to exceed \$50.
- A default charge (if contracted for) on any installment or minimum payment not paid in full within 15 days of its scheduled due date equal to 5 percent of the amount or \$15, whichever is greater, not to exceed 50 dollars (Mo. Rev. Stat. § 408.233(4)).
- A charge on refused instruments of the amount actually charged by the institution for processing the instrument, plus a handling fee of not more than \$25 (Mo. Rev. Stat. § 408.233(5)).
- If the contract or note provides for attorney fees and it is necessary to bring suit, the attorney fees may not exceed 15 percent of the amount due and payable under such contract or note, together with any court costs assessed (Mo. Rev. Stat. § 408.233(5)).
- A prepayment penalty if the balance is paid within five years from the origination date and prior to maturity. The penalty may not exceed 2 percent of the balance at the time of prepayment, except for, when an existing mortgage loan is replaced with a new mortgage loan made by another lender and the proceeds from the new loan are used to either pay down or reduce the balance to a smaller amount before paying in full and in order to avoid or reduce the prepayment penalty, then the prepayment penalty cannot be more than 2 percent of the average daily balance for the prior six months (Mo. Rev. Stat. § 408.241).

# New Mexico Loan Act

## Introduction

To ensure that a transaction contains the correct documents and disclosures, lenders must indicate whether the New Mexico Bank Installment Loan Act of 1959 applies, N.M. Stat. Ann. Ch. 58, art. 7

## Bank Installment Loan Act of 1959

This act applies to “any state or national bank located in and authorized to do business” in New Mexico, as well as to small loan licensees and sales finance companies. (N.M. Stat. Ann. § 58-7-2)  
Two types of loans are covered:

- Precomputed loans repayable in installments; or
- Loans where this Act is identified in the loan documents as being applicable.

Although the interest rate limits for this Act have been repealed, there are several provisions affecting loans made under this Act:

- If the borrower and lender execute an extension agreement for the deferral of an installment payment in a precomputed loan transaction, the interest on the deferred payment may not exceed the original loan rate (N.M. Stat. Ann. § 58-7-3.2);
- If the loan balance is paid prior to maturity, the lender must refund the unearned portion according to the “Rule of 78’s”, which must represent at least as great a portion of the original charge as the ratio of the sum of the monthly balances prepaid bears to the original sum of the monthly balances. If the prepayment is in cash, as opposed to renewal or refinance, no refund must be made of less than \$1.00. (N.M. Stat. Ann. § 58-7-5);
- Only the following charges are allowed and may be added to the balance due from the borrower (N.M. Stat. Ann. § 58-7-6);
  - A one-time delinquency charge of five cents per dollar for each payment more than ten days late with a maximum of ten dollars per installment;
  - The actual cost of insurance from any licensed insurer that the borrower may choose;
  - The cost of forced-placed or lender’s single interest insurance if the borrower fails to maintain any required insurance;
  - Fees paid to a public officer for filing, recording or releasing any instrument or lien;
  - The amount of any government or other levy arising after the date of a secured loan that would be superior to the lender’s lien;
  - Collection costs, including attorney’s fees if the attorney is not the lender’s salaried employee;

- The actual cost of charges incurred in making a real estate loan, including the cost of an abstract of title, title examination, title insurance, survey, appraisal, notary, document preparation, escrow charges, credit reports and filing and recording fees; and
- A one-time charge of up to twenty-five dollars on loans payable in two or more installments made to a natural person primarily for personal, family or household purposes to cover the actual costs of preparing truth-in-lending disclosures, equal credit opportunity disclosures and other disclosures required by federal law.

## Charter-Related Loan Requirements

There are certain loan requirements that apply only to lenders of a certain type. For example:

- State banks may not make any loan on the security of their own stock, or the stock of another bank where the borrower owns or controls ten percent of the voting stock of that bank and the lending bank. State banks must also comply with certain loan-to-value limitations. (N.M. Stat. Ann. § 58-1-21);
- State savings associations (with the exception of federally insured or guaranteed loans) may not make a loan of more than thirty years, make a real estate loan unless appraisal and insurance requirements are met, make real estate loans with junior lien position, make a loan to one of its officers or directors without board approval, or make certain loans without meeting loan-to-value limits. (N.M. Stat. Ann. § 58-10-39);
- State credit unions may only make loans as authorized by their by-laws. (N.M. Stat. Ann. § 58-11-49).

# Oklahoma Loan Act

## Introduction

To ensure that a transaction contains the correct documents and disclosures, lenders must indicate whether the **Oklahoma Uniform Consumer Credit Code** applies, 14A OSA §§ 1-101 et seq.

## Uniform Consumer Credit Code

### Consumer Loan Defined

A consumer loan is “a loan made by a person regularly engaged in the business of making loans in which:

- The debtor is a person other than an organization;
- The debt is primarily for a personal, family, or household purpose;
- Either the debt is payable in installments or a loan finance charge is made; and
- Either the amount financed does not exceed \$50,000 or the debt is secured by an interest in land.” (14A OSA § 3-104)

Excluded from this definition is any debt which is “primarily secured by an interest in land.” This phrase is defined to mean a loan where the value of the collateral is substantial in relation to the amount of the loan and the loan finance charge does not exceed 13% per year calculated according to the actuarial method. (14A OSA § 3-105)

Also excluded from the Oklahoma UCCC are loans made to enable the debtor to build or purchase a residence or to refinance such a loan. (14A OSA § 1-202(5)).

### Maximum Rate

The maximum rate of finance charge for a consumer loan is 10 percent per year (14A OSA § 3-201). Lenders authorized to make “supervised loans” can charge more than 10 percent per year. (A consumer loan at more than 10 percent per year is known as a “supervised loan.”) Only supervised financial organizations and lenders licensed by the state are authorized to make supervised loans. (14A OSA §§ 3-501 and 3-502). The maximum rate for a supervised loan shall not exceed either 25% or a split rate which is the total of:

- 27% on that part of the unpaid balance which is \$2,910 or less;
- 23% on that part of the unpaid balance which is greater than \$2,910 but does not exceed \$6,200; and
- 20% on that part of the unpaid balance which is greater than \$6,200.

(14A OSA § 3-508A(2))

A loan made under 14A OSA § 3-508A shall not be repayable in fewer than 12 months. (14A OSA § 3-508A(4)).

The lender may calculate the loan finance charge by the add-on or discount method or some other method as long as the loan finance charge does not exceed the maximum amount permitted. (14A OSA § 3-508A(3)). For usury purposes, a rate of finance charge reflects the entire "loan finance charge," which includes both interest and other charges. (14A OSA § 3-109)

On loans of \$1,470 or less, in lieu of the finance charge permitted under 14A OSA § 3-508A, a lender may collect the following:

- On loans not exceeding \$146.95, a charge of \$4.90 for each \$24.50 advanced. (14A OSA § 3-508B(1)(a))
- On loans greater than \$146.95 but not exceeding \$171.50 an acquisition charge not in excess of 1/10 of the amount of the cash advanced, plus an installment account handling charge not to exceed \$14.70 per month. (14A OSA § 3-508B(1)(b))
- On loans greater than \$171.50 but not exceeding \$343.00 an acquisition charge not in excess of 1/10 of the amount of the cash advanced, plus an installment account handling charge not to exceed \$17.15 per month. (14A OSA § 3-508B(1)(c))
- On loans greater than \$343.00 but not exceeding \$490.00 an acquisition charge not in excess of 1/10 of the amount of the cash advanced, plus an installment account handling charge not to exceed \$19.60 per month. (14A OSA § 3-508B(1)(d))
- On loans greater than \$490.00 but not exceeding \$735.00 an acquisition charge not in excess of 1/10 of the amount of the cash advanced, plus an installment account handling charge not to exceed \$22.05 per month. (14A OSA § 3-508B(1)(e))
- On loans greater than \$735.00 but not exceeding \$1,470.00 an acquisition charge not in excess of 1/10 of the amount of the cash advanced, plus an installment account handling charge not to exceed \$24.50 per month. (14A OSA § 3-508B(1)(f))

(NOTE: The dollar amounts for split rates and small loan rates change pursuant to 14A OSA § 1-106 effective July 1 of most years.)

### Additional Charges

All charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, must be included in the loan finance charge (14A OSA § 3-109(1)). On any consumer loan, including revolving loan accounts, the lender may contract for and receive the following additional charges that are not considered part of the loan finance charge (14A OSA § 3-109(2)):

- Official fees, reasonable closing costs, and taxes (14A OSA § 3-202(1)(a)).
- Charges for insurance, subject to certain restrictions (14A OSA § 3-202(1)(b)).
- Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges by rules adopted by the administrator. (14A OSA § 3-202(1)(c)).
- With respect to a revolving loan account accessed by a lender credit card or similar arrangement, the parties may contract for an over-limit charge up to \$10 for each time the debtor exceeds the designated credit limit on the account (14A OSA § 3-202.2).

- A late charge of not less than \$5 nor more than the greater of 5% of the unpaid portion of the installment or \$24.50 on any installment not paid in full within 10 days after its due date. (14A OSA § 3-203). (NOTE: The dollar amount for late charges changes pursuant to 14A OSA § 1-106 effective July 1 of most years.)
- On a precomputed consumer loan, in lieu of a late charge, a deferral charge calculated according to 14A OSA § 3-204.
- Upon prepayment of a consumer loan, the creditor may retain a minimum charge not exceeding \$5 in a transaction that had a principal of \$75 or less, or not exceeding \$7.50 in a transaction that had a principal of more than \$75, if the charge was contracted for and the loan finance charge earned at the time of prepayment is less than the charge contracted for. Otherwise, the debtor has the right to prepay a consumer loan in full at any time without penalty. (14A OSA §§ 3-209 and 3-210(2)).
- For loans under the Oklahoma UCCC, we recommend not charging a post maturity interest rate that is higher than the contract rate. Any provision providing for an increase in the rate after maturity could be interpreted as an unauthorized charge on default. (14A OSA § 3-405).
- Fees for preparing loan-related documents. (14A OSA §3-202 (1) (d)).
- Special Note on Fees: Selection of this loan act generally prohibits the inclusion of a prepayment penalty in consumer transactions not secured by an interest in real property. For non-agency transactions, a minimum finance charge may be assessed on such transactions and, if so selected, will be included and disclosed in the loan documentation.

# South Carolina Loan Acts

## Introduction

To ensure that a transaction contains the correct documents and disclosures, lenders must indicate whether the Consumer Protection Code applies, S.C. Code Ann. §§ 37-3-101 et seq.

## South Carolina Consumer Protection Code

### Consumer Loan Defined

A consumer loan is “a loan made by a person regularly engaged in the business of making loans in which:

- The debtor is a person other than an organization;
- The debt is primarily for a personal, family, or household purpose;
- Either the debt is payable in installments or a loan finance charge is made; and
- Either the principal does not exceed \$90,000 or the debt is secured by an interest in land.” (S.C. Code Ann. § 37-3-104)
- The loan is not secured by a first lien or equivalent security interest in real estate. (S.C. Code Ann. § 37-3-105)

(Note: the \$90,000 dollar amount above changes effective July 1 of every even-numbered year. The figure above is effective July 1, 2014 to June 30, 2016.)

### Maximum Rate

The maximum rate of finance charge for a consumer loan is 12 percent per year. (S.C. Code Ann. § 37-3-201). Lenders authorized to make “supervised loans” can charge more than 12 percent per year. (A consumer loan at more than 12 percent per year is known as a “supervised loan.” S.C. Code Ann. § 37-3-501). Only supervised financial organizations and lenders licensed by the state are authorized to make supervised loans. (S.C. Code Ann. § 37-3-502). The maximum rate for a supervised loan is:

- on loans of any amount, 18 percent per year on the unpaid balances of principal; or
- on loans with a cash advance exceeding \$600, and on loans, regardless of the dollar amount, made by Supervised Financial Organizations, any rate posted and filed pursuant to S.C. Code Ann. § 37-3-305; or
- on loans with a cash advance not exceeding \$600, a maximum charge not exceeding the rate posted and filed pursuant to S.C. Code Ann. § 37-3-305. Note that the maximum rate filed and posted for such loans cannot exceed the maximum charge imposed in S.C. Code Ann. § 34-29-140 as disclosed as an annual percentage rate.
- The maximum rate is an actuarial rate, though the lender may calculate the loan finance charge by the add-on or discount method or some other method as long as the lender does not charge more than what the maximum rate would yield using the actuarial method. (S.C. Code Ann. § 37-3-



201(3)). For usury purposes, a rate of finance charge reflects the entire “loan finance charge,” which includes both interest and other charges. See S.C. Code Ann. § 37-3-109(1).

- The filing and posting of a maximum rate schedule is governed by S.C. Code Ann. § 37-3-305. Every “supervised lender” (any person authorized to make supervised loans) must file with the Department of Consumer Affairs a certified maximum rate schedule. The maximum rate schedule must be posted in at least one conspicuous place in every place of business located in South Carolina. The rate schedule must contain the maximum loan finance charge, stated as an annual percentage rate, that the creditor intends to charge for loans in each of the following categories:
  - unsecured personal loans;
  - secured personal loans other than those secured by real estate;
  - real estate mortgage loans;
  - open-end (revolving) credit; and
  - all other.

The statute permits a lender to include as many subcategories as it chooses under each category specified above.

### Additional Fees

All charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit must be included in the loan finance charge. (S.C. Code Ann. § 37-3-109(1)). On any consumer loan, including revolving loan accounts, the lender may contract for additional charges that are not considered part of the loan finance charge. (S.C. Code Ann. § 37-3-109(2)). These changes include, but may not be limited to:

- Official fees and taxes. (S.C. Code Ann. § 37-3-202(1)(a))
- Charges for insurance (subject to restrictions). (S.C. Code Ann. § 37-3-202(1)(b)&(2))
- Annual charges assessed in connection with a revolving loan account. (S.C. Code Ann. § 37-3-202(1)(c)(i))
- An over-limit charge assessed in connection with a revolving loan account if the account balance exceeds the credit limit established by agreement. The over-limit charge cannot exceed \$10 plus the lesser of 10% of the credit limit or \$100. (S.C. Code Ann. § 37-3-202(1)(c)(ii))
- With respect to a debt secured by an interest in land, the following closing costs, if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of the South Carolina Consumer Protection Code (S.C. Code Ann. § 37-3-202(1)(d)):
  - Fees or premiums for title examination, abstract of title, title insurance, surveys, or similar purposes;
  - Fees for preparation of a deed, settlement statement, or other documents, if not paid to the creditor or a person related to the creditor;
  - Escrows for future payments of taxes, including assessments for improvements, insurance, and water, sewer and land rents;
  - Fees for notarizing deeds and other documents, if not paid to the creditor or a person related to the creditor; and
  - Fees for appraising the real estate that is collateral for the loan, if not paid to the creditor or a person related to the creditor.

- Charges for other benefits, including insurance, conferred on the debtor, if the benefits are of value to him and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are authorized as permissible additional charges from the loan finance charge by rules adopted by the administrator. (S.C. Code Ann. § 37-3-202(1)(e))
- Fees and charges paid to persons registered as mortgage loan brokers pursuant to S.C. Code Ann. §§ 40-58-101 et. seq. (S.C. Code Ann. § 37-3-202(1)(f)).
- With respect to an assumption of an existing obligation, the lender may charge an assumption fee not exceeding the lesser of \$400 or 1% of the unpaid balance of the debt at the time the assumption transaction is consummated if the primary collateral securing the credit is real estate or a manufactured home. If the primary collateral securing the loan is something other than real estate or a manufactured home, the lender can collect an assumption fee not exceeding the lesser of \$50 or 1% of the unpaid balance of the debt at the time the assumption transaction is consummated. (S.C. Code Ann. § 37-3-202(3)).
- A late charge of not more than 5% of the unpaid portion of the installment or \$18.00, whichever is less, on any installment not paid in full within 10 days after its due date. Note: the \$18.00 dollar amount changes effective July 1 of every even-numbered year. The \$18.00 figure is effective July 1, 2014 to June 30, 2016. A lender can contract so as to always receive the maximum amount allowed by law. (S.C. Code Ann. § 37-3-203) Notwithstanding the above formula a lender may contract for and receive a minimum delinquency charge not to exceed \$7.20. The \$7.20 figure is effective July 1, 2014 to June 30, 2016.
- In lieu of a late charge, a deferral charge calculated according to S.C. Code Ann. § 37-3-204.
- Upon prepayment of a consumer loan, whether or not precomputed, the lender may retain a minimum loan finance charge not exceeding \$15 if that minimum was contracted for and the loan finance charge earned at the time of prepayment is less than the charge contracted for. (With the above exception, the debtor has the right to prepay a consumer loan in full at any time without penalty. (S.C. Code Ann. §§ 37-3-209 and 37-3-210(2)).)
- Reasonable attorney's fees not to exceed 15% of the unpaid debt after default and referral to an attorney not a salaried employee of the lender. (S.C. Code Ann. § 37-3-404(1)). Attorney's fees are not available on supervised loans of \$3,600 or less. Note: the \$3,600 dollar amount changes effective July 1 of every even-numbered year. The \$3,600 figure is effective July 1, 2014 to June 30, 2016. (S.C. Code Ann. § 37-3-514).
- Lenders should consider whether to charge a post maturity interest rate that is higher than the contract rate for loans under the South Carolina Consumer Protection Code. Any provision providing for an increase in the rate after maturity could be interpreted as an unauthorized charge on default. (S.C. Code Ann. § 37-3-405).

# Tennessee Loan Acts

## Introduction

To ensure that a transaction contains the correct documents and disclosures, lenders must indicate whether the Tennessee Home Loan Protection Act applies to the transaction. Tenn. Code Ann. § 45-20-101 et seq.

## Tennessee Home Loan Protection Act

The Tennessee Home Loan Protection Act ("THLPA") is an anti-predatory lending statute. Although similar to the federal high-cost home loan law found in HOEPA and Section 32 of Reg. Z, parts of THLPA apply to a wider segment of residential loans.

## Home Loan Definition

A home loan is defined as:

- A closed-end, non-purchase money loan, secured by real estate located in Tennessee,
- Where a 1-4 family structure is (or will be) located,
- Which is (or will be) the borrower's principal dwelling,
- The debt is incurred primarily for personal, family, or household purposes, and
- The principal loan amount does not exceed the lesser of FNMA conforming loan size limit for a single-family dwelling or \$350,000. (Tenn. Code Ann. § 45-20-102 (9)).

A home loan, for the purposes of this Act, does not include:

- A residential mortgage transaction,
- An open-end credit loan,
- A reverse mortgage
- A construction loan, or
- Loans insured by or sold to government agencies. (Tenn. Code Ann. § 45-20-102 (9)(D)).

## High-Cost Home Loan Definition

A high-cost home loan is defined as a home loan in which the terms of the loan meet or exceed the rate threshold or the total points and fees threshold. (Tenn. Code Ann. § 45-20-102 (8)).

- A home loan, and

- The APR equals or exceeds that set out in HOEPA and Section 32 of Reg Z:
  - If a first lien, exceeds by more than 8 points the yield on comparable Treasury securities as of the 15<sup>th</sup> day of the month preceding the month the application is received;
  - If a subordinate lien, exceeds by more than 10 points the yield on comparable Treasury securities as of the 15<sup>th</sup> day of the month preceding the month the application is received; (Tenn. Code Ann. § 45-20-102 (14), referencing 12 CFR 226.32 (a)(1)(i)) or
- The total loan points and fees exceed:
  - If the total loan amount is more than \$30,000, the greater of 5% of the total loan amount or \$2400, or
  - If the total loan amount is \$30,000 or less, 8% of the total loan amount. (Tenn. Code Ann. § 45-20-102 (17)(A), (B)).

## High-Cost Home Loan Requirements And Restrictions

The THLPA in §. 45-20-103 sets forth several requirements and restrictions for lenders engaging in high-cost home loans. These include, but are not limited to:

- No lender shall recommend or encourage default or skipping a payment on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost home loan that refinances all or any portion of the existing loan or debt. (Tenn. Code Ann. § 45-20-103 (1)).
- No lender shall knowingly or intentionally make a high-cost home loan that refinances within 30 months an existing home loan or high-cost home loan of the borrower when the new loan does not have a reasonable benefit to the borrower, considering all the circumstances, including the terms of both the new and refinanced loans, the economic and non-economic circumstances, the cost of the new loan, and the borrower's circumstances. (Tenn. Code Ann. § 45-20-103 (4)).
- No lender shall make a high-cost home loan that finances, directly or indirectly, any single premium credit life insurance, credit accident, credit disability, credit unemployment, credit property or health insurance, any other credit insurance product, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, unless:
  - The total benefits payable under all of the policies or contracts issued in connection with the loan do not exceed \$50,000;
  - The principal amount of financed premiums for the policy or contract are repayable during the term of the policy or contract; and
  - The amount payable under the credit life insurance policy is not at any time during the term of the loan more than 103% of the then unamortized principal balance of the loan. (Tenn. Code Ann. § 45-20-103 (5)(A)). (As used above, "credit property insurance" means property insurance written in connection with credit transactions under which the lender is the primary beneficiary. (Tenn. Code Ann. § 45-20-103 (5)(C))).
- A lender may not make a high-cost home loan unless the lender reasonably believes at the time the loan is made that one or more of the borrowers, when considered individually or collectively, will be able to make scheduled payments to repay the obligation based upon consideration of their current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan). (Tenn. Code Ann. § 45-20-103 (6)(A)).

- A borrower shall be deemed to be able to make the scheduled payments to repay the high-cost home loan if, at the time the loan is consummated, the borrower's total monthly debts as identified on the borrower's credit report and as computed by the lender's underwriting guidelines and methodology, including amounts owed under the loan, do not exceed 50% of the borrower's monthly gross income:
  - As verified by the credit application, the borrower's financial statements, tax returns, payroll receipts or third party income verification; and
  - As underwritten in accordance with the lender's underwriting guidelines and methodology. (Tenn. Code Ann. § 45-20-103 (6)(B)).
- No presumption of inability to make the scheduled payments to repay the high-cost home loan shall arise solely from the fact that, at the time the loan is consummated, the borrower's total monthly debts (including amounts owed under the loan) exceed 50% of the borrower's monthly gross income. (Tenn. Code Ann. § 45-20-103 (6)(C)).
- No lender shall make a high-cost home loan that contains a scheduled payment that is more than twice as large as the average of the earlier scheduled payments. This prohibition does not apply when the payment schedule is adjusted to the seasonal or irregular income of a borrower. (Tenn. Code Ann. § 45-20-103 (10)).
- No lender shall make a high-cost home loan that contains a payment schedule with regular periodic payments that cause the principal balance to increase. (Tenn. Code Ann. § 45-20-103 (11)).
- No lender shall make a high-cost home loan that contains a provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition does not apply when repayment of the loan has been accelerated by default in the terms of the note or deed of trust. (Tenn. Code Ann. § 45-20-103 (12)).
- No lender shall make a high-cost home loan that includes terms under which more than 2 periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower. (Tenn. Code Ann. § 45-20-103 (13)).
- No lender shall make a high-cost home loan that contains a provision that increases the interest rate after default. This prohibition does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or acceleration of the indebtedness. (Tenn. Code Ann. § 45-20-103 (14)).
- A lender may not present a borrower with a high-cost home loan at closing with a materially different interest rate, term, type of loan, or settlement charges from the settlement charges disclosed on the last disclosures required by RESPA without re-disclosure not less than 1 day before closing. "Materially different settlement charges" means the total settlement charges disclosed on the final settlement statement would exceed the previously last disclosed settlement charges by an amount equal to more than 15% in the aggregate. (Tenn. Code Ann. § 45-20-103 (17)(A)).
- A high-cost home loan may not be closed in a location other than an office of the lender, at the office of any attorney at law licensed to practice in Tennessee, or at the office of a title insurance company or title insurance agency licensed to do business in Tennessee, the office of a settlement or closing agent, or the commercial office of a mortgage broker. (Tenn. Code Ann. § 45-20-103 (17)(B)).
- No lender, in connection with a high-cost home loan, shall encourage or solicit any person to execute any loan agreement, mortgage, deed, deed of trust, loan application, settlement

statement, or other loan or closing document for a high-cost home loan, if any material terms of the loan or transaction, including but not limited to, the duration, interest rate, or fees, are omitted or incomplete. (Tenn. Code Ann. § 45-20-103 (20)(A)).

- No person, in connection with a high-cost home loan, shall modify (including, but not limited to, any alteration or change) any loan agreement, mortgage, deed, deed of trust, loan application, settlement statement, or other loan or closing document, after the execution of the document, unless the modification is:
  - With the consent of the person or persons affected by the change and the consent is in writing; or
  - The modification is authorized by a valid power of attorney authorizing the modification. (A power of attorney is valid for this purpose if it specifically includes the type or nature of the modification.) (Tenn. Code Ann. § 45-20-103 (20)(B)).
- No person, in connection with a high-cost home loan, shall encourage, solicit, or conspire with any other person to violate the above prohibitions. (Tenn. Code Ann. § 45-20-103 (20)(C)).

**Required Notice:** A deed of trust for a high-cost home loan must state on the face of the instrument the following notice, prominently displayed: "This instrument secures a high-cost home loan as defined in Tennessee Code Annotated, Title 45."

# Texas Loan Act

## Introduction

In Texas, lenders must choose among the following loan acts to ensure that home equity loans are properly documented:

- General Interest Law - Home Equity, Tex. Fin. Code, Chs. 301-306 and Section 50(a)(6), Article XVI of the Texas Constitution.
- Secondary Mortgage Loans - Home Equity, Tex. Fin. Code §342.201, et.seq. and Section 50(a)(6), Article XVI of the Texas Constitution.
- Revolving Credit Account - Open End Home Equity, Section 50(a)(6), Article XVI of the Texas Constitution and either Tex. Fin. Code Ch. 302, Ch. 342 or Ch. 346.

## General Interest Law - Home Equity

### Applicability

This loan act is for use when the collateral property is located in the state of Texas. The General Interest Law-Home Equity loan act primarily applies to closed-end first-lien home equity transactions under Section 50(a)(6), Article XVI, of the Texas Constitution. It may also be used for second lien home equity transactions if the interest rate is below 10%.

**WARNING:** Home equity lending in the state of Texas is unlike home equity lending in any other state. Some, but not all, of the hallmarks of a Texas home equity loan are that it is without personal recourse unless the borrower commits actual fraud, and it has a 3% fee cap and an 80% loan to value ratio limitation. Texas has enacted stringent limitations and qualifying factors for these loans that must be followed exactly. If any limitation or factor is missed or handled incorrectly, penalties include loss of the lien on the homestead property and loss of principal and interest, although cure provisions now exist. Wolters Kluwer strongly recommends that your institution have an attorney well-versed in Texas home equity law scrutinize any Texas home equity transactions for problems.

### Maximum Rate

The General Interest Law - Home Equity provides a number of optional rate ceilings. Under each, interest is expressed in terms of simple interest. The ceilings include:

- The **Weekly Ceiling** fluctuates weekly and is derived from a calculation based on the 26-week Treasury bill rate (Tex. Fin. Code §§303.0025 & 303.003).
- The **Monthly Ceiling** is computed by averaging the weekly ceilings during the preceding calendar month. (Tex. Fin. Code §303.005). The ceiling is effective for one month beginning on the first calendar day of each month. (Tex. Fin. Code §303.005). The monthly ceiling is only available for

variable rate contracts that are not made for personal, family, or household use. (Tex. Fin. Code §303.004). Parties may tie the variable rate to the monthly ceiling. (Tex. Fin. Code §303.005).

- The **Quarterly Ceiling** is computed by averaging the weekly ceilings during the three calendar months preceding the computation date of the ceiling. (Tex. Fin. Code §303.008(b)). The ceilings are effective for fixed three month periods, after which they are subject to change. (Tex. Fin. Code §303.008(2)).
- The **Annualized Ceiling** is a ceiling that is computed by averaging the weekly ceilings during the three calendar months preceding the computation date of the ceiling. (Tex. Fin. Code §303.008(b)). The ceilings are effective for fixed one year periods, after which they are subject to change. (Tex. Fin. Code §303.008(2)). The annualized ceiling is only available for open-end accounts. (Tex. Fin. Code §303.007).

Each of these interest rate ceilings is subject to an interest rate floor and cap. If the rate computed is less than 18% per year, the ceiling is 18%, and if the rate computed is more than 24% per year, the ceiling is 24%. (Tex. Fin. Code §303.9, Tex. Fin. Code §303.009). Under the Texas home equity lending amendment, any fixed or variable rate of interest authorized under statute may be contracted for and received by the Lender. (Section 50(a)(6)(O), Article XVI, Texas Constitution).

The actual value of any of these ceilings at any given time is determined by calculations made by the Texas Office of Consumer Credit Commissioner (OCCC). The Credit Commissioner publishes the values on a weekly basis in what is known as "The Texas Credit Letter." The Texas Credit Letter can be found on the Texas OCCC's website at: <http://www.occc.state.tx.us/pages/publications/index.html> (current as of November 2014).

The following chart summarizes which of these ceilings are available for different types of loans.

Type of loan	Available ceilings
Fixed rate - closed-end	Weekly or quarterly.
Variable rate - closed-end	Weekly and quarterly. Monthly is available only if the contracts is not made for personal, family, or household use.

## Secondary Mortgage Loans - Home Equity

### Applicability

This loan act is for use when the collateral property is located in the state of Texas only. The Secondary Mortgage Loans - Home Equity loan act applies to closed-end consumer purpose loans that are written under the authority of Section 50(a)(6), Article XVI of the Texas Constitution. (Tex. Fin. Code §342.005(4)(b)). Furthermore, the Secondary Mortgage Loans - Home Equity loan act only applies to loans that provide for an interest rate exceeding 10% per year. (Tex. Fin. Code §342.004). Under the Texas home equity lending amendment, any fixed or variable rate of interest authorized under statute may be contracted for and received. (Section 50(a)(6)(O), Article XVI, Texas Constitution).



**WARNING:** Home equity lending in the state of Texas is unlike home equity lending in any other state. Some but not all of the hallmarks of a Texas home equity loan are that it is without personal recourse unless the borrower commits actual fraud, it has a 3% fee cap and an 80% loan to value ratio limitation. Texas has enacted stringent limitations and qualifying factors for these loans that must be followed exactly. If any limitation or factor is missed or handled incorrectly, penalties include loss of the lien on the homestead property and loss of principal and interest, although cure provisions now exist. Wolters Kluwer strongly recommends that your institution have an attorney well-versed in Texas home equity law scrutinize any Texas home equity transactions for problems.

## Definition

“Secondary mortgage loan - home equity” means a loan that is secured in whole or in part by an interest, including a lien or security interest, in real property that is both:

- The homestead of a family or of a single adult person (Tex. Const. Art. XVI, Sec. 50(a)(6)), and
- Subject to one or more liens, security interests, prior mortgages, or deeds of trust. (Tex. Fin. Code § 342.001(4)(A)).

## Maximum Rate

A secondary mortgage loan that is a regular transaction may provide for an interest charge on the cash advance that is precomputed and that does not exceed a rate or amount that would produce the same effective return as allowed under the Installment Loans loan act. (Tex. Fin. Code § 303, Sub. Ch. A).

- The following rules apply to computing the interest rate limitation:
- When the loan is made, an interest charge may be computed for the full term of the loan contract.
- if the period before the first installment due date includes a part of a month that is longer than 15 days, that portion of a month may be considered a full month.
- if a loan contract provides for precomputed interest, the amount of the loan is the total of the following:
  - The cash advance, and
  - The amount of precomputed interest. (Tex. Fin. Code § 342.301(b)(1)-(3)).

Whether regular or irregular, a secondary mortgage loan may provide for a rate or amount of interest (calculated using the “true daily earnings method”) that does not exceed the interest rates allowed under the Installment Loans loan act. (Tex. Fin. Code § 303, Sub. Ch. A). Interest may accrue on the principal balance and amount added to principal after the date of the loan contract from time to time unpaid at the rate provided for by the contract until the date of payment in full, or demand for payment in full. (Tex. Fin. Code § 342.301(c)).

## Revolving Credit Accounts – Open End Home Equity

### Applicability

This loan act applies to open-end transactions written under the authority of Section 50(a)(6), Article XVI of the Texas Constitution and either Tex. Fin. Code Ch. 302, Ch. 342 or Ch. 346. Open-end loans secured by a non-homestead dwelling are not currently supported.

**WARNING:** Home equity lending in the state of Texas is unlike home equity lending in any other state. Some but not all of the hallmarks of a Texas home equity loan are that it is without personal recourse unless the borrower commits actual fraud, it has a 3% fee cap, and both an 80% and 50% loan to value ratio limitation on open-end loans. Texas has enacted stringent limitations and qualifying factors for these loans that must be followed exactly. If any limitation or factor is missed or handled incorrectly, penalties include loss of the lien on the homestead property and loss of principal and interest, although cure provisions now exist. Wolters Kluwer strongly recommends that your institution have an attorney well-versed in Texas home equity law scrutinize any Texas home equity transactions for problems.

### Maximum Rates

For first- or second-lien transactions, Chapter 302 is available as stand-alone authority to lend without regard to Chapter 346 or 342 if the effective interest rate is at or below 10%. Generally, if the effective interest rate is in excess of 10% on a first- or second-lien transaction, Chapter 346 applies. However, for second-lien transactions with interest rates in excess of 10%, the parties may expressly choose to opt out of Chapter 346 and comply with Chapter 342.

### Limitations

The limitations that apply to Texas open-end home equity loans include, but may not be limited to, the following:

- **Payment Rounding:** The rounding method must reflect the rounding method used in the disclosure given at application.
- **Repayment Period:** Texas Const. Art. XVI, Section 50(t)(8) appears to require a home equity line of credit to include a repayment period “beginning not later than two months from the date the extension of credit is established.”
- **Substantially Equal Installments During Repayment Period:** Texas Const. Art. XVI, Section 50(t)(8)(B) provides that after the draw period has expired repayment installments on a home equity line of credit must be “substantially equal.”
- **Rate Change Limitations:** The substantially equal payment requirement should be considered when making rate change limitation determinations. See the annual adjustment example provided in the 1998 Regulatory Commentary on Equity Lending Procedures § 50(a)(6)(O).
- **Minimum Advances:** Texas Const. Art. XVI, Section 50(t)(2) appears to require a home equity line of credit to include a provision that any single debit or advance be “not less than \$4,000.”

- **Advance by Card, etc.:** Texas Const. Art. XVI, Section 50(t)(3) appears to prohibit home equity lines of credit that allow the obtaining of advances by means of “a credit card, debit card, or similar device, or preprinted check unsolicited by the borrower.”

# Utah Loan Act

## Introduction

To ensure that a transaction contains the correct documents and disclosures, lenders must indicate whether the **Consumer Credit Code** applies, Utah Code §§ 70C-1-101 et seq.

## Consumer Credit Code

### Covered Transactions

This act applies to all credit offered or extended by a creditor to an individual person primarily for personal, family or household purposes. (Utah Code § 70C-1-201). In addition, the parties to a transaction that is otherwise exempt from this loan act may explicitly agree in writing that the transaction is subject to this loan act. To make an exempt transaction subject to this loan act, the agreement must specifically reference Title 70C, Utah Consumer Credit Code. (Utah Code § 70C-1-202(1)).

### Exempted Transactions

This loan act does not apply to:

- an extension of credit primarily for business, commercial, or agricultural purposes, or to other than a natural person including government agencies or instrumentalities. (Utah Code § 70C-1-202(2)(a)).
- a closed-end extension of credit secured by a first lien or equivalent security interest on a dwelling or building lot. (Utah Code § 70C-1-202(2)(b)).
- an extension of credit not secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer, in which the amount financed exceeds \$50,000 adjusted annually for inflation, or in which there is an express written commitment to extend credit in excess of the above amount. (Utah Code § 70C-1-202(2)(d)).
- the sale of insurance made by an insurer except as otherwise provided in the chapter on insurance, Sections 70C-6-101 through 70C-6-304. (Utah Code § 70C-1-202(2)(f)).
- a rental purchase agreement as defined in Section 15-8-3. (Utah Code § 70C-1-202(2)(i)).

### Maximum Rate

Except where restricted or otherwise covered by provisions of this loan act, the parties to a consumer credit agreement may contract for payment by the debtor of any finance charge or other charges. (Utah Code § 70C-2-101).

### Additional Fees

For the purposes of determining the interest rate allowed by Utah law under Section 85 of the National Bank Act and Sections 521 and 522 of the Depository Institutions Deregulation and Monetary Control Act of 1980, virtually all finance charges and fees are to be considered as interest. (Utah Code § 70C-1-106). However, as previously noted, except where otherwise restricted, the Utah Consumer Credit

Code permits the parties to a consumer credit agreement to contract for payment by the debtor of any finance charge or other charges. (Utah Code § 70C-2-101). A lender needs to proceed with some caution as there are several fees and charges specifically addressed elsewhere in the code. The additional fees addressed elsewhere in the code include, but may not be limited to:

- A late charge on any installment not paid in full by its scheduled due date in an amount not exceeding the greater of \$30 or 5% of the delinquent unpaid amount of the installment. (Utah Code § 70C-2-102(1)(a)) A depository institution (as defined in Section 7-1-103) may contract for a delinquency charge on an installment not paid in full by its scheduled due date in excess of the limitation imposed by Utah Code § 70C-2-102(1)(a). (Utah Code § 70C-2-102(b)).
- In lieu of a late charge, a deferral charge calculated according to Utah Code § 70C-2-103. (Utah Code § 70C-2-103).
- Amounts paid by the creditor to perform certain covenants of the debtor may be added to the unpaid principal of the debt. (Utah Code § 70C-2-104).
- A consumer credit agreement may provide for the payment of a reasonable attorney's fee in the event of default and referral to an attorney including one who is a salaried employee of the creditor. (Utah Code § 70C-2-105).
- Any prepaid finance charge not exceeding 5% of the original principal amount of the debt that the parties expressly agree is nonrefundable in the event of prepayment shall be fully earned on the date the credit is extended. Any additional prepaid finance charges are deemed to be earned proportionally over the entire term of the agreement, and in the event of prepayment, any unearned portion of such charge, calculated on a pro rata basis according to the remaining term of the agreement, shall be rebated. (Utah Code § 70C-3-101(2)(c)).
- Charges for insurance as permitted in Chapter 6, Title 70C of the Utah Code.
- A prepayment fee is permitted for prepaying a closed end extension of credit secured by a subordinate lien on a dwelling that is not subject to Section 32 of Regulation Z under certain conditions. The creditor must offer the debtor the option of entering into either a contract that does not contain a prepayment fee, or a contract that contains the prepayment fee, and contains a rate of finance charge or fee that is lower than the rate of finance charge or fee under the contract with the prepayment fee. (Utah Code § 70C-3-101(1)(b)).

# West Virginia Loan Acts

## Introduction

To ensure that a transaction contains the correct documents and disclosures, lenders must indicate whether the **West Virginia Consumer Credit and Protection Act** applies, W. Va. Code §§ 46A-1-101 et seq.

## Consumer Credit and Protection Act

### Consumer Loan Defined

A consumer loan is “a loan made by a person regularly engaged in the business of making loans in which:

- The debtor is a person other than an organization;
- The debt is incurred primarily for a personal, family, household or agricultural purpose;
- Either the debt is payable in installments or a loan finance charge is made; and
- Either the principal does not exceed [\$45,000] or the debt is secured by an interest in land or a factory-built home as defined in [W. Va. Code § 37-15-2].” (W. Va. Code § 46A-1-102(15)).

### Maximum Rate

The maximum rate of finance charge for a consumer loan is dependent upon which alternative rate statute the lender chooses. Under West Virginia law, on a non-revolving consumer loan, a bank can charge any finance charge authorized by W. Va. Code §§ 31A-4-30, 31A-4-30a, 47-6-5, 47-6-5a, 47-6-5b or 31C-7-2. (W. Va. Code §§ 46A-3-104 and 46A-3-117). On a revolving consumer loan, a supervised financial organization permitted to establish revolving loan accounts can charge a finance charge of 1.50% on the first \$750 of unpaid principal balance and 1.00% on the unpaid principal balance in excess of \$750. (W. Va. Code §§ 46A-3-106). Note that W. Va. Code § 46A-3-106(2) establishes the permissible methods of calculating the loan finance charge on revolving loan accounts. In addition, W. Va. Code § 47A-1-1(b) authorizes any creditor to use the rate or rates set by the West Virginia Lending and Credit Rate Board as an alternative to the rates they are permitted to charge under any other provision of the code.

This complex system of usury laws is made somewhat easier by the fact that most of the alternative rate statutes have rates that do not currently appeal to lenders. The current West Virginia Lending and Credit Rate Board Order authorizes a finance charge of 18% for all loans regardless of purpose. The board also authorizes a finance charge of 18% for all consumer loans subject to a revolving charge account regardless of dollar amount. (Order, West Virginia Lending and Credit Rate Board, Division Of Banking, *effective* December 1, 1996). The rates established by the West Virginia Lending and Credit

Rate Board have the potential to change every six months at the discretion of the board. (W. Va. Code § 47A-1-1(d)).

Lenders licensed to make regulated consumer loans can obtain an even higher finance charge than the rates mentioned above pursuant to W. Va. Code § 46A-4-107. (W. Va. Code § 46A-3-104(1)).

Essentially, a “regulated consumer loan” is a consumer loan in which the finance charge exceeds 18% per year. A “regulated consumer loan” excludes loans that qualify for federal preemption from state interest rate limitations as well as loans specifically authorized by state law to obtain a higher finance charge. (W. Va. Code § 46A-1-102(38)).

Regulated consumer lenders can receive a finance charge as follows:

- 31% per year on the unpaid balance of the principal amount on a loan of \$2,000 or less that is unsecured by real estate. (W. Va. Code § 46A-4-107(2)).
- 27% per year on the unpaid balance of the principal amount on a loan greater than \$2,000 or that is secured by real estate, provided that the loan does not exceed \$10,000. (W. Va. Code § 46A-4-107(3)).
- 18% per year on the unpaid balance of the principal amount on a loan greater than \$10,000. (W. Va. Code § 46A-4-107(3)).
- Note that, as an alternative to W. Va. Code § 46A-4-107(2)&(4), a lender can charge 31% per year on the unpaid balance of the principal amount on a loan not secured by real estate of \$2,000 or less, together with a non-refundable processing fee of not more than 2% of the amount financed. However, the processing fee must be included in the calculation of the loan finance charge, thus, the maximum rate of loan finance charge is still 31%. (W. Va. Code § 46A-4-107(7))

The maximum rate is an actuarial rate, though the lender may calculate the loan finance charge by the add-on or discount method or some other method as long as the lender does not exceed the maximum rate permitted. (W. Va. Code §§ 46A-4-107 and 46A-3-104(2)). For usury purposes, a rate of finance charge reflects the entire “loan finance charge,” which includes both interest and other charges. See W. Va. Code § 46A-1-102(26).

If a regulated consumer loan is secured by residential real property, terms of repayment that do not result in continuous monthly reduction of the original principal amount of the loan are prohibited. Exceptions to this rule include, but are not limited to, certain reverse mortgages, home equity, open-end lines of credit, bridge loans used in connection with the purchase or construction of another residential dwelling, or commercial loans for multiple residential purchases. (W. Va. § 46A-4-109(5)(E)).

### Additional fees

All charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit must be included in the loan finance charge. (W. Va. Code § 46A-1-102(26)). A creditor may contract for and receive the following additional charges in connection with a consumer loan that are not considered part of the loan finance charge (W. Va. Code §§ 46A-1-102(26) and 46A-3-109). These additional charges may include, but are not limited to:

- Official fees and taxes. (W. Va. Code § 46A-3-109(a)(1))
- Charges for insurance (subject to restrictions). (W. Va. Code § 46A-3-109(a)(2)&(b))

- Annual charges, payable in advance, for the privilege of using a credit card or similar arrangement which entitles the user to purchase goods or services from at least one hundred persons not related to the card issuer, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer. (W. Va. Code § 46A-3-109(a)(3)).
- Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to him or her and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the loan finance charge by rules adopted by the commissioner. (W. Va. Code § 46A-3-109(a)(4)).
- Reasonable closing costs with respect to a debt secured by an interest in land. (W. Va. Code § 46A-3-109(a)(5)).
- Documentary charge or any other similar charge for documentary services in relation to securing a title, so long as such charge is applied equally to cash customers and credit customers alike and so long as such documentary charge does not exceed \$175. (W. Va. Code § 46A-3-109(a)(6)).
- A flood mapping service fee made on a consumer loan secured by a first or subsequent lien on residential property, including a mobile home purchase or refinancing where the home is to be placed on a certain parcel of real estate known to the lender. The lender may charge the consumer the fee incurred in obtaining information from a non-affiliated third party on the flood map location of the property. However, the flood map location information must be required to be ascertained by the lender by federal law or regulation. The fee must be reasonable in relation to the actual service provided. (W. Va. C.S.R. § 106-11-3.1).
- An over-limit charge assessed against the consumer in connection with a revolving line of credit for exceeding his or her credit limit. The over-limit charge may not in any billing period exceed 2% of the credit limit or \$10, whichever is less. This charge is also subject to the monthly periodic finance charge if not paid upon initial billing. (W. Va. C.S.R. § 106-11-4.1).
- Charges for a cash advance obtained by a consumer in connection with use of a lender credit card. The charge may not, per occurrence, exceed 1.5% of the amount of the cash advance or \$5, whichever is less. These charges are also subject to the monthly periodic finance charge if not paid upon initial billing. (W. Va. C.S.R. § 106-11-5.1).
- On a simple interest loan, a late charge of not more than 5% of the unpaid amount of the installment or \$30, whichever is less, on any installment not paid in full within 10 days after its due date. (W. Va. Code § 46A-3-113).
- On a precomputed loan, a late charge of not more than 5% of the unpaid amount of the installment or \$30 whichever is less, on any installment not paid in full within 10 days after it is due date. (W. Va. Code § 46A-3-112).
- In lieu of a late charge, a deferral charge calculated according to W. Va. Code § 46A-3-114. (W. Va. Code § 46A-3-112(1)(b)).
- Upon prepayment within the first three years of a consumer loan secured by an interest in land, the lender may retain a prepayment penalty of up to 1% of the original principal amount. Otherwise, the debtor has the right to prepay a consumer loan in full at any time without penalty. (W. Va. Code § 46A-3-110(1)&(2)).
- "Except for reasonable expenses including costs and fees authorized by statute incurred in realizing on a security interest, the agreement with respect to a consumer credit sale or a consumer loan may not provide for charges as a result of default by the consumer other than those authorized by this chapter." (W. Va. Code § 46A-2-115(a)).



# Wisconsin Loan Act

## Introduction

To ensure that a transaction contains the correct documents and disclosures, lenders must indicate whether the Wisconsin Consumer Act (Wis. Stat. Ann. Chs 421-427) applies to the transaction.

## Wisconsin Consumer Act

The Wisconsin Consumer Act applies when all of the following conditions exist:

- **Individual Customers.** The lender extends credit to an individual or to anyone who agrees that all aspects of the transaction will be governed by Chapters 421 to 427. (Wis. Stat. Ann. § 421.301(17)).
- **Consumer Purposes.** Fifty percent or more of the credit extended is for personal, family, household purposes. (Wis. Stat. Ann. § 421.301(17); Wis. Admin. Code, DFI-WCA § 1.06).
- **Amount Financed of \$25,000 or Less.** The amount financed is \$25,000 or less. (Wis. Stat. Ann. § 421.202(6)). The Wisconsin Consumer Act does not apply to a loan that the lender will refinance, modify, extend, renew or permit someone to assume, when the original principal balance exceeded \$25,000 but the unpaid principal balance is now \$25,000 or less. (Wis. Stat. Ann. § 138.052(9)).
- **Made in Wisconsin.** The lender provided credit or modified it in Wisconsin. When a modification is made in Wisconsin, the Wisconsin Consumer Act applies to the loan even when the credit originated outside of Wisconsin. Modifications include refinancings, consolidations, and deferrals. The credit transaction or modification is made in Wisconsin if:
  - A Wisconsin creditor receives in Wisconsin the borrower's signed writing evidencing the obligation or an offer or the borrower; or
  - The creditor induces a borrower, who resides in Wisconsin, to enter into a transaction by soliciting the borrower face-to-face, by mail or telephone.
 (Wis. Stat. Ann. § 421.201(2)).

An open-end credit plan is also made in Wisconsin when:

- The plan is between an open-end creditor and a borrower who are both residents of Wisconsin;
  - The creditor or merchant who furnishes, mails or delivers goods, services or credit to a Wisconsin resident while the borrower was in Wisconsin; or
  - The creditor receives a writing signed by the borrower and evidencing the transaction in Wisconsin.
- (Wis. Stat. Ann. § 421.201(1), (3)).

Note that the Act does not apply to transactions secured with a first mortgage lien or equivalent security interest on real estate. The lender holds an equivalent security interest when the lender has an interest under a land contract or a first lien deed of trust, or a second mortgage where there are no

intervening liens and the mortgagee holds the first mortgage on the subject property. (Wis. Stat. Ann. § 421.202(7); Wis. Admin. Code, DFI-WCA § 1.261).

## Additional Charges—Origination Fees

The Wisconsin Consumer Act explicitly authorizes certain additional charges that are excluded from finance charges. If the lender assesses a fee as an additional charge that the Act does not explicitly authorize or assesses a fee incorrectly, the lender is subject to penalties. The following fees and charges are explicitly authorized by the Wisconsin Consumer Act:

- **Official Fees.** The lender may assess any fees that the Register of Deeds or Secretary of State actually charges to determine the existence of or to perfect a security interest related to the transaction. As an alternative to a filing fee, the lender may collect a nonfiling insurance premium that does not exceed the actual filing or recording fees (Wis. Stat. Ann. § 421.301(26)(a)-(b); Wis. Admin. Code, DFI-WCA § 1.08).
- **Real Estate Fees.** The lender may provide certain additional charges when securing a consumer credit transaction with a manufactured home, as defined under Wis. Stat. Ann. § 138.056(1)(bg), or when securing a transaction with real estate. These charges are categorized as additional charges, only if they are paid to persons unrelated to the lender are reasonable in amount, bona fide and not intended to circumvent or evade the Wisconsin Consumer Act (Wis. Stat. Ann. § 422.202(1)(c), (2); Wis. Admin. Code, DFI-Bkg., §§ 80.262, 80.263). These charges include:
  - **Title examinations, title insurance or fees or premiums for similar purposes.** Title examination fees include an attorney's fee for examining the real estate collateral's abstract of title and providing a written title opinion. (Wis. Admin. Code, DFI-WCA § 1.262).
  - **Fees for preparation of a deed, settlement statement or other documents.**
  - **Fees for notarizing deeds and other documents.**
  - **Appraisal Costs.** If collecting an appraisal charge, the lender must provide the customer with a copy of the appraisal before any payment is due. (Wis. Admin. Code, DFI-WCA § 1.263).
  - **Survey Costs.** (Wis. Stat. Ann. § 422.202 (2)).
- **Property Insurance.** Property insurance charges or premiums are allowed additional charges, if the lender contracts for terms that the Wisconsin Consumer Act, insurance laws and their regulations permit, and the lender properly discloses the charges or premiums (Wis. Stat. Ann. §§ 422.202(1)(b), 422.302(1), 424.301; Wis. Admin. Code, DFI-WCA § 1.26).

Property insurance premiums, designating the lender as the loss payee, may not exceed any of the following:

- The actual cash value or stated value of any motor vehicle, manufactured home or mobile home used as collateral.
- The cash value or replacement value of any property in which the lender holds a purchase money security interest.
- The maximum credit limit under an open-end credit plan if it is secured with a purchase money security interest.
- The amount financed, if the transaction is 49 months or more. If the transaction is less than 49 months, the total payments.

(Wis. Stat. Ann. § 424.301(1)(b)).

- **Loan Administrative Fee.** The lender may contract for and charge a loan administration fee on a precomputed loan, refinancing or consolidation that is secured primarily by real property, a manufactured home or a mobile home. This fee must not exceed 2 percent of the amount financed. (Wis. Stat. Ann. § 422.209(1)-(1m)).
- **Other Charges Approved by Department of Financial Institution.** The lender may contract for and collect any other additional non-finance charges. The administrator must approve the charge in a written opinion, or the administrator must not disapprove of the charge within the required time after a properly submitted request for its written opinion, interpretation or statement of the administrator. This administrative decision remains in effect until the administrator, judicial, or other authority amends, rescinds or overturns it. (Wis. Stat. Ann. §§ 422.202(2s)(a)5., 426.104(4)(ab)-(b)).

The Wisconsin Consumer Act categorizes all charges that are not specifically authorized as Finance Charges. Finance charges are not authorized under the Wisconsin Consumer Act, even when Truth-in-Lending permits them.

## Additional Charges—Post-Origination Fees

The Wisconsin Consumer Act authorizes post-origination fees which may include, but are not limited to, the following:

- **Return Check Charge.** The lender may contract for a return check charge as an additional charge. The return check charge is made when a check is returned unsatisfied because there is no account or the account has insufficient funds. The charge must not exceed \$15 for each check. (Wis. Stat. Ann. § 422.202(1)(d)).
- **Late Charges.** The lender may contract and collect a late charge on a closed-end and an open-end transaction. Closed-end transactions, however, are subject to restrictions. Under a closed-end transaction, the lender may contract for a late charge when the installment is not fully paid on or before the 10<sup>th</sup> day after its scheduled or deferred due date. The late charge must not exceed \$10 or 5 percent of the unpaid amount, whichever is less. (Wis. Stat. Ann. §§ 422.202(2m)(a), 422.203).
- **Post-Maturity Interest.** The lender may contract for post-maturity interest, except under an open-end credit plan. **Post-maturity interest** is interest that accrues after the final scheduled maturity date. Post-maturity interest must not exceed the greater of 12 percent per year or the annual finance charge assessed on that transaction. The lender must not charge a late charge on the final scheduled payment when it is already subject to post-maturity interest. (Wis. Stat. Ann. § 422.203(4)(c)).
- **Prepayment Charges.** The lender may not collect a prepayment penalty or premium on full or partial prepayments (Wis. Stat. Ann. §§ 422.208, 422.209). **The lender may collect a loan administration fee under certain conditions.** (Wis. Stat. Ann. §§ 422.209 (1m)).
- **Minimum Finance Charge.** The lender may contract for and receive a minimum finance charge for a closed-end consumer credit transaction, but the charge must not exceed \$5 when the amount financed is \$75 or less, or \$7.50 when the amount financed is over \$75. (Wis. Stat. Ann. § 422.201(9)).
- **Additional Open-End Charges.** In addition to the finance charge under an open-end credit plan, the lender may charge the following:

- Periodic membership fees,
- Cash advance fees,
- Charges for exceeding a designated credit limit,
- Charges for late payments,
- Charges for providing copies of documents, and
- Charges for the return of a dishonored check or other payment instrument. (Wis. Stat. Ann. § 422.202(2m)).

The Wisconsin Consumer Act categorizes as Finance Charges all charges that are not specifically authorized as additional charges, even when Truth-in-Lending permits them.

# Wyoming Loan Acts

## Introduction

To ensure that a transaction contains the correct documents and disclosures, lenders must indicate whether the Uniform Consumer Credit Code applies, Wyo. Stat. title. 40, ch. 14.

## Uniform Consumer Credit Code (UCCC)

### Consumer Loan Defined

A consumer loan is “a loan made by a person regularly engaged in the business of making loans in which:

- The debtor is a person other than an organization;
- The debt is incurred primarily for a personal, family or household purpose;
- Either the debt is payable in installments or a loan finance charge is made; and
- Either the principal does not exceed \$75,000 “or the debt is secured by an interest in land or a dwelling, as defined in W.S. 40-14-640(a)(iv), located in Wyoming.” (Wyo. Stat. § 40-14-304(a)).

Excluded from this definition is any loan primarily secured by an interest in land, unless the loan meets the requirements of Wyo. Stat. § 40-14-305. (Wyo. Stat. §§ 40-14-304(a), 305).

### Maximum Rate

The maximum rate of finance charge for a consumer loan is 10 percent per year. (Wyo. Stat. § 40-14-310(a)). “Supervised” lenders (so called because they are either licensed by the state or are supervised by a financial institution regulatory agency) can charge greater than 10 percent per year. (A loan at more than 10 percent per year is known as a “supervised loan”). (Wyo. Stat. §§ 40-14-310(a), 341). The maximum rate for a supervised consumer loan is the greater of either of the following:

- a) The total of:
  - i) 36 percent per year on that part of the unpaid balances of the principal which is \$1000 or less;
  - ii) 21 percent per year on that part of the unpaid balances of the principal which is more than \$1000; or
- b) 21 percent per year on the part of the unpaid balances of the principal. (Wyo. Stat. § 40-14-348(b)(i))

The maximum rate is an actuarial rate, though the lender may calculate the loan finance charge by the add-on or discount method or some other method as long as the lender does not charge more than

what the maximum rate would yield using the actuarial method. (Wyo. Stat. § 40-14-348(c)) For usury purposes, a rate of finance charge reflects the entire "loan finance charge," which includes both interest and other charges. See Wyo. Stat. § 40-14-309(a).

## Additional Fees

For consumer loans other than a supervised loan, the lender may contract for and receive a minimum loan finance charge of not more than \$30. (Wyo. Stat. §§ 40-14-319(b), 310(f)).

On any consumer loan, including revolving loan accounts, the lender may contract for and receive the following:

- a) Official fees and taxes. (Wyo. Stat. § 40-14-311(a)(i)).
- b) Charges for insurance (subject to restrictions). (Wyo. Stat. § 40-14-311(a)(ii)).
- c) Annual fees assessed in connection with using a lender credit card or similar arrangement. (Wyo. Stat. § 40-14-311(a)(iii)).
- d) With respect to a debt secured by an interest in land, the following closing costs, if they are reasonable in amount. (Wyo. Stat. §§ 40-14-140(a)(v), 311(c)).
  - i) Fees or premiums for title examination, title insurance, or similar purposes including surveys;
  - ii) Fees for preparation of a deed, settlement statement, or other documents;
  - iii) Escrows for future payments of taxes and insurance;
  - iv) Fees for notarizing deeds and other documents;
  - v) Appraisal fees; and
  - vi) Credit reports.
- e) Charges excluded from the loan finance charge by the federal Consumer Credit Protection Act or by rule adopted by the administrator. (Wyo. Stat. § 40-14-311(a)(iv)).
- f) With respect to a revolving loan account, if there is an unpaid balance on the date as of which the loan finance charge is applied, the lender may contract for and receive a charge not exceeding \$0.50 if the billing cycle is monthly or longer, or the pro rata part of \$0.50 which bears the same relation to \$0.50 as the number of days in the billing cycle bears to 30 if the billing cycle is shorter than monthly, but no charge may be made if the lender has made an annual charge for the same period as permitted by the provisions on additional charges. (Wyo. Stat. § 40-14-311(a)(iii); § 40-14-310(d)(iii)).
- g) A late charge on any installment due not paid in full within 10 days after its scheduled due date in an amount not exceeding the greater of (i) 5 percent of the unpaid amount of the installment, or (ii) \$10. (Wyo. Stat. § 40-14-312(a)).

h) Reasonable attorney's fees after default and referral to an attorney not a salaried employee of the lender. (Wyo. Stat. § 40-14-335). If the transaction is a "supervised loan" (finance charges at a rate greater than 10 percent per year), the agreement may not provide for attorneys' fees if the principal is \$1,000 or less. (Wyo. Stat. § 40-14-353).

Wyoming Open-End Credit Plans and Required Minimum Balance: Wyo. Stat. § 40-14-318 provides that a debtor may prepay in full the unpaid balance of a consumer loan at any time without penalty. There is no distinction made between closed-end and open-end provisions. According to a Senior UCCC Examiner, a requirement that the debtor must maintain an outstanding balance is not allowed under Wyo. Stat. § 40-14-318.





