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# COUNSELING BORROWERS WITH HIGH COST HOME LOANS

Under the **South Carolina High Cost and Consumer Home Loan Act**, if a lender makes a high cost home loan, the borrower must first receive counseling from a HUD/South Carolina Housing Finance Agency approved counselor. The borrower must receive counseling "on the advisability of the loan transaction" and the appropriateness of the loan for the borrower. The counselor must certify to the lender that the counseling services have been rendered. **The purpose of counseling is to ensure that the borrower fully understands the material terms of the loan, and the amount of fees and costs the borrower will be required to pay.**

- ✓ **The counselor's role should be that of an educator, facilitating the borrower's awareness of the loan's terms and costs.**
- ✓ **The counselor will also provide information on the advisability of the loan transaction.**
- ✓ **It is the borrower's decision as to whether or not to proceed with the loan.**

## COUNSELOR'S CHECKLIST

### Borrower's Individual Circumstances

You should discuss the purpose of the loan. Is it a debt consolidation loan? If so, the borrower should be counseled that refinancing may result in a longer repayment period and higher interest costs since the payments will be spread over a longer period of time; and that, unlike most consumer loans, they will be at risk of losing their home if they fail to make the payments. Discuss with the borrower their ability to repay the loan, whether or not they shopped the loan, their credit history, and the frequency of past financing.

### Documents to Review

You should review the loan's key terms with the borrower. Before you counsel the borrowers, you must first have sufficient information about the terms of the loan. The lender is **required** to provide the following items to the counselor:

- ***A copy of the borrower's credit report and credit score.***

- ***Good Faith Estimate of Closing Costs***
  *The lender (or broker) is required to provide the borrower with a Good Faith Estimate ("GFE") within three business days of the borrower's submission of a loan application. It should list all settlement charges the borrower will be required to pay. In addition, the GFE frequently specifies the loan's interest rate and term (duration). At the loan closing, the lender is not required to charge the exact same amount in fees and charges as those listed on the GFE. The borrowers should be alerted to review these terms at closing to make sure they are consistent with the prior disclosure.*

- ***Truth in Lending Disclosure***
  *Within 3 business days after a borrower submits a loan application, the lender is required to provide the borrower with a preliminary Truth In Lending ("TIL") disclosure. This disclosure will list, among other items, the APR; the amount financed; the monthly payment amount (and if the payment is subject to change); and the duration of the loan.*

  *In addition, the TIL disclosure should indicate whether or not the loan contains a prepayment penalty. If the disclosure indicates that there may be a prepayment penalty, or if the section on prepayment penalties is not completed, you should contact the lender and request the lender to confirm whether or not there is a prepayment penalty, and, if so, the terms of the penalty. Again, alert the borrower to look for changes at the loan closing.*

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# *ADDITIONAL INFORMATION FOR COUNSELORS*

## Flipping

The law bans "flipping" within 42 months of an existing loan without providing the borrower with a net tangible benefit. Each time a loan is flipped, it strips the home of equity wealth in the form of high fees.

## Points and Fees Charged on a High Cost Loan

If refinancing with the same lender, points or fees cannot be charged. If financing or refinancing with a different lender, points or fees over 2.5% cannot be financed.

## Credit Insurance

Financing prepaid, single premium life, disability, or unemployment insurance is prohibited in all home loans beginning **January 1, 2005**. ***Only*** credit insurance paid on a monthly basis will be permitted beginning **January 1, 2005**. This is an important key element, since single premium credit insurance policies, when added into the loan and not disclosed, inflate a mortgage by thousands of dollars.

## Prepayment Penalties

Prepayment penalties are not permitted on loans of $150,000 or less. Prepayment penalties frequently surprise borrowers who attempt to pay off a loan before the scheduled date through refinancing or other means. The prepayment penalty would require the borrower to pay an unexpected fee to refinance or may prevent a borrower who otherwise qualifies from being able to refinance if desirable or needed.

## Balloon Payments

Balloon payments are prohibited under the new law. In this type payment schedule, the borrower would have low monthly payments, but then a large "balloon payment" would come due a few years later. If the borrower did not have the money for the payment (which could be double, or even triple the usual payment), the lender would foreclose on the home.

## Mortgage Broker Responsibility

Under the new law, the mortgage broker must work in the "best interest" of the borrower. The broker must act as an agent of the borrower. If the broker acts as an agent of any other party in the mortgage transaction, it must be disclosed to the borrower.

## Mandatory Counseling on a High Cost Loan

Anyone seeking to borrow money at a higher-than-market interest rate must attend a free credit counseling session to assist the borrower in understanding the material terms of the loan. The counselor will also provide information on the advisability of the loan transaction and its appropriateness for the borrower. Additionally, the borrower's "credit score" is included on the form. The credit score is a number between 300 and 850 that lenders use to give credit and at what cost. A higher credit score—in the 700's or 800's –means that the borrower could get "prime" loans at lower rates; a low score means that the borrower qualifies only for "subprime" loans. Knowing the credit score can help the borrower negotiate a better loan.

## Home Repair Loans

Protects consumers who enter into home repair loans by mandating both the homeowner and contractor are named on any checks issued. The consumer will have the ability to refuse to endorse a check for incomplete work or work that was never started. Note: Does not include money for a new home construction loan or a purchase money loan for a home.

## Special Disclosure Requirements for Manufactured Housing

Disclosures regarding the material terms of the loan must be given 48 hours prior to finalizing the loan closing. If the terms of the loan change, a new disclosure must be given.

## Certification

You *must* be a State Housing and Development Authority approved counselor to provide counseling on predatory lending. Additionally, if the lender does not provide you with the required information, you may want to consider withholding counseling certification until the lender is contacted.