

What is predatory lending?

Predatory lending refers to abusive lending practices that deceive borrowers about the terms of their loans.

The complex practice may involve realtors, lenders, mortgage brokers, appraisers and home improvement contractors.

Through aggressive sales strategies, the lender may fool borrowers into accepting unfair loan terms. These practices strip borrowers of home equity and may even send them into foreclosure.

Largely publicized as a problem impacting poor, elderly and minority communities, predatory lending has become widespread among more informed consumers, who are becoming victimized at an alarming rate. Without proper information, anyone can be a victim.

Predatory loan practices include, but are not limited to:

- using false appraisals to sell properties for an inflated amount;
- encouraging borrowers to lie about their resources and expenditures to qualify for a loan;
- knowingly lending more than a borrower can afford to repay;
- charging unwarranted high interest rates unrelated to credit history;
- charging and financing excessive fees into the loan for unnecessary or nonexistent products and services, such as discount points, excessive closing costs and credit life insurance;
- pressuring borrowers to accept higher-risk loans: for example, balloon and interest-only loans, and loans with steep prepayment penalties;
- failing to provide full disclosure of the true costs, terms and features of the loan: for example, undisclosed balloon payments, negative amortization and mandatory arbitration clauses;
- targeting vulnerable borrowers in need of cash with cash-out refinance offers;
- convincing homeowners to refinance again and again in order to strip the equity from their homes with no benefit to the borrower (flipping);
- falsely identifying loans as lines of credit or open-end mortgages; and
- using high-pressure sales tactics to sell home improvements and then financing them at high interest rates.

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The Tennessee Home

Loan Protection Act

is designed to prevent predatory lending in the state's mortgage industry and to shield potential home buyers from abusive lenders. This booklet, written for consumers, explains predatory lending and the provisions of the law.



Protect Yourself From Predatory Lenders

This brochure was produced by the Community Affairs Office of the Federal Reserve Bank of St. Louis, Memphis Branch, February 2008.

State of Tennessee Predatory Lending Law

The Tennessee General Assembly passed the Tennessee Home Loan Protection Act (THLPA) in May of 2006 to address the issue of predatory lending. The law, which went into effect on Jan. 1, 2007, typically applies to closed-end consumer loans. There are some exclusions specifically spelled out in the law. (See THLPA, Section 2, [10] [D]).

Generally, the law imposes prohibitions and limitations on high-cost home loans. A high-cost home loan is one with an annual percentage rate that meets or exceeds the rate threshold allowed by the Home Ownership Equity Protection Act of 1994 (HOEPA) or with total points and fees that exceed the greater of 5 percent of the total loan or \$2,400, if the loan is greater than \$30,000, or 8 percent if the total loan is \$30,000 or less (See THLPA, Section 2, [9, 15, 17]).

Under the THLPA, lenders/mortgage brokers are prohibited from:

- encouraging default or payment skipping;
- charging a fee, in excess of the actual recording cost, to provide a release upon repayment of the loan;
- knowingly or intentionally making a high-cost loan to a borrower within 30 months of an existing home loan when there is no reasonable benefit to the borrower, considering all the circumstances;
- financing single-premium credit insurance policies in excess of \$50,000;
- making a loan that a borrower cannot reasonably repay considering the borrower's obligations, other than the borrower's equity in his/her home (borrower is deemed able to repay the loan if his total monthly debt at closing does not exceed 50 percent of his monthly gross income);
- directly or indirectly financing points and fees exceeding 3 percent of the total loan;
- charging points and fees in connection with refinancing when the loan is with the same or affiliate lender;
- charging prepayment penalties that exceed 2 percent during the first 24 months;
- charging prepayment penalties when refinancing is with the same or affiliate lender;
- providing balloon payments;
- providing negative amortization;
- accelerating the debt at the lender's sole discretion;
- requiring more than two payments to be consolidated and paid in advance from loan proceeds;
- increasing the interest rate after the borrower defaults;
- charging late-payment fees exceeding the greater of 5 percent or \$15 and for periods less than 10 days;
- closing a loan in a location other than the offices of a Tennessee-licensed attorney or title agent, lender, closing agent or the commercial office of a mortgage broker;
- presenting a loan at closing with a materially different interest rate, term or type of loan or settlement charges from those previously disclosed without a redisclosure, which must not be less than one day prior to closing; and
- leaving material terms blank on any loan document or modifying a loan document after closing without consent.

To read the law in its entirety, go to www.tennessee.gov/tdfi/THLPA.

In addition, lenders/mortgage brokers are required to:

- provide the borrower, free of charge, with two payoff statements within a 12-month period;
- provide a notice to the borrower, at least three business days before closing, with information on topics such as shopping around for a loan, whether there is a lien on the property, and where they can obtain a list of certified credit counselors;
- report the borrower's payment history on a quarterly basis to a recognized consumer credit reporting agency;
- provide notation on a mortgage or a deed of trust that it is a high-cost home loan; and
- provide the borrower with a list of third-party, nonprofit credit counselors when the good faith estimate is provided.

Other provisions of the law include:

- The lender is required to send a notice to the borrower, at least 30 days prior to publishing a notice of foreclosure, informing the borrower that he/she may cure a default without penalty once in a 12-month period, up until three business days before a foreclosure sale.
- A purchaser/assignee of a high-cost home loan may be liable for any claims or defenses that could be raised against the original lender unless they can show they did due diligence at the time of purchase.
- A borrower may bring a civil action to enforce the law within three years of the date the violation should have reasonably been discovered.

For additional information on predatory lending, including help if you have been victimized, contact:

Center for Responsible Lending
302 W. Main St.
Durham, NC 27701
Telephone: 919-313-8500
Fax: 919-313-8595
www.responsiblelending.org

National Fair Housing Alliance (NFHA)
1212 New York Ave. N.W.
Suite 525
Washington, D.C. 20005
Telephone: 1-866-222-3247 or 202-898-1661
Fax: 202-371-9744
www.nationalfairhousing.org

U.S. Dept. of Housing and Urban Development (HUD)
www.hud.gov/offices/hsg/sfh/pred/predlend.cfm

HUD—Knoxville
John J. Duncan Federal Building
710 Locust St.
Third Floor
Knoxville, TN 37902-2526
Telephone: 865-545-4411
Fax: 865-545-4569

HUD—Memphis
200 Jefferson St.
Suite 300
Memphis, TN 38103
Telephone: 901-544-3367
Fax: 901-544-3697

HUD—Nashville
235 Cumberland Bend
Suite 200
Nashville, TN 37228-1803
Telephone: 615-736-5600
Fax: 615-736-7848

Complaints related to predatory lending should be directed to:

Tennessee Department of Financial Institutions
Consumer Resources Division
Telephone: 1-800-778-4215

Fax: 615-253-7794

E-mail: TDFI.consumerresources@state.tn.us

Web site: www.tennessee.gov/tdfi
(A PDF version of the consumer complaint form is available.)

Federal Reserve Consumer Help
P.O. Box 1200
Minneapolis, MN 55480

Telephone: 1-888-851-1920
(TTY: 1-877-766-8533)

Fax: 1-877-888-2520

E-mail: ConsumerHelp@FederalReserve.gov

Web site: www.federalreserveconsumerhelp.gov
(An online complaint form is available.)