

REFERENCE TITLE: home loan regulations

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1438

Introduced by
Senator McCune Davis; Representatives Ableser, Bradley, Gallardo,
Kirkpatrick, Lujan, Meza, Prezelski, Sinema; Senator Garcia;
Representatives Cajero Bedford, Lopes, Schapira

AN ACT

AMENDING TITLE 6, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 16; RELATING TO
HOME LOANS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 6, Arizona Revised Statutes, is amended by adding
3 chapter 16, to read:

4 CHAPTER 16
5 HOME LOAN PROTECTION ACT
6 ARTICLE 1. GENERAL PROVISIONS

7 6-1601. Definitions

8 A. IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "AFFILIATE" MEANS A PERSON THAT CONTROLS, IS CONTROLLED BY OR IS
10 UNDER COMMON CONTROL WITH ANOTHER PERSON AS SET FORTH IN THE BANK HOLDING
11 COMPANY ACT OF 1956 (MAY 9, 1956, CH. 240; 70 STAT. 133; 12 UNITED STATES
12 CODE SECTIONS 1841 THROUGH 1849).

13 2. "ANNUAL PERCENTAGE RATE" MEANS THE ANNUAL PERCENTAGE RATE FOR THE
14 LOAN CALCULATED ACCORDING TO THE TRUTH IN LENDING ACT (P.L. 90-321, TITLE I;
15 82 STAT. 146; 15 UNITED STATES CODE SECTIONS 1601 THROUGH 1667(f)) AND THE
16 REGULATIONS PROMULGATED BY THE FEDERAL RESERVE BOARD UNDER 12 CODE OF FEDERAL
17 REGULATIONS PART 226.

18 3. "BORROWER" MEANS A NATURAL PERSON OBLIGATED TO REPAY A HOME LOAN,
19 INCLUDING A COBORROWER, COSIGNER OR GUARANTOR.

20 4. "CREDITOR" MEANS A PERSON WHO REGULARLY MAKES OR BROKERS A HOME
21 LOAN.

22 5. "HIGH COST HOME LOAN" MEANS A HOME LOAN IN WHICH THE TERMS OF THE
23 LOAN EXCEED ONE OR MORE OF THE FOLLOWING THRESHOLDS:

24 (a) THE RATES THRESHOLD.

25 (b) THE POINTS AND FEES THRESHOLD.

26 6. "HOME LOAN" MEANS AN EXTENSION OF CREDIT, INCLUDING AN OPEN-END
27 CREDIT PLAN TO WHICH ALL OF THE FOLLOWING APPLY:

28 (a) THE PRINCIPAL AMOUNT DOES NOT EXCEED THE MAXIMUM ORIGINAL
29 PRINCIPAL OBLIGATION AS SET FORTH IN 12 UNITED STATES CODE SECTION
30 1454(a)(2).

31 (b) THE LOAN IS SECURED BY A FIRST OR SUBORDINATE LIEN ON RESIDENTIAL
32 REAL PROPERTY IN THIS STATE ON WHICH EITHER OF THE FOLLOWING APPLIES:

33 (i) THERE IS LOCATED OR, USING PROCEEDS OF THE LOAN, THERE WILL BE
34 LOCATED A STRUCTURE DESIGNED PRINCIPALLY FOR OCCUPANCY BY ONE TO FOUR
35 FAMILIES, INCLUDING INDIVIDUAL UNITS OF CONDOMINIUMS AND COOPERATIVES AND
36 INCLUDING ANY RELATED INTERESTS, SUCH AS A SHARE IN THE COOPERATIVE OR A
37 RIGHT OF OCCUPANCY OF THE UNIT, THAT IS OR WILL BE OCCUPIED BY A BORROWER AS
38 THE BORROWER'S PRINCIPAL RESIDENCE.

39 (ii) THERE IS LOCATED OR, USING THE PROCEEDS OF THE LOAN, THERE WILL
40 BE LOCATED A MANUFACTURED HOME THAT IS OR WILL BE OCCUPIED BY A BORROWER AS
41 THE BORROWER'S PRINCIPAL RESIDENCE.

42 (c) THE LOAN IS NEITHER A REVERSE MORTGAGE TRANSACTION NOR A LOAN
43 PRIMARILY FOR BUSINESS, AGRICULTURAL OR COMMERCIAL PURPOSES.

44 (d) THE BORROWER IS A NATURAL PERSON.

1 (e) THE BORROWER INCURS THE DEBT PRIMARILY FOR PERSONAL, FAMILY OR
2 HOUSEHOLD PURPOSES.

3 7. "MANUFACTURED HOME":

4 (a) MEANS A STRUCTURE THAT IS TRANSPORTABLE IN ONE OR MORE SECTIONS,
5 THAT IN THE TRAVELING MODE IS EIGHT BODY FEET OR MORE IN WIDTH OR FORTY BODY
6 FEET OR MORE IN LENGTH OR WHEN ERECTED ON SITE IS THREE HUNDRED TWENTY OR
7 MORE SQUARE FEET, THAT IS BUILT ON A PERMANENT CHASSIS AND THAT IS DESIGNED
8 TO BE USED AS A DWELLING WITH A PERMANENT FOUNDATION WHEN ERECTED ON LAND
9 SECURED IN CONJUNCTION WITH THE REAL PROPERTY ON WHICH THE MANUFACTURED HOME
10 IS LOCATED AND CONNECTED TO THE REQUIRED UTILITIES AND INCLUDES THE PLUMBING,
11 HEATING, AIR CONDITIONING AND ELECTRICAL SYSTEMS CONTAINED IN THE HOME.

12 (b) INCLUDES ANY STRUCTURE THAT MEETS ALL OF THE REQUIREMENTS OF
13 SUBDIVISION (a) OF THIS PARAGRAPH EXCEPT THE SIZE REQUIREMENTS AND WITH
14 RESPECT TO WHICH THE MANUFACTURER VOLUNTARILY FILES A CERTIFICATION REQUIRED
15 BY THE SECRETARY OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN
16 DEVELOPMENT AND THAT COMPLIES WITH THE STANDARDS ESTABLISHED UNDER THE
17 NATIONAL MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS ACT OF 1974
18 (P.L. 93-383; 88 STAT. 700; 42 UNITED STATES CODE SECTION 5401).

19 (c) DOES NOT INCLUDE RENTAL PROPERTY OR SECOND HOMES OR MANUFACTURED
20 HOMES IF NOT SECURED IN CONJUNCTION WITH THE REAL PROPERTY ON WHICH THE
21 MANUFACTURED HOME IS LOCATED.

22 8. "POINTS AND FEES" MEANS:

23 (a) ALL AMOUNTS PAYABLE BY A BORROWER AT OR BEFORE THE CLOSING OF A
24 HOME LOAN, EXCLUDING ANY INTEREST OR TIME-PRICE DIFFERENTIAL DUE AT CLOSING,
25 THAT ARE REQUIRED TO BE DISCLOSED UNDER 12 CODE OF FEDERAL REGULATIONS
26 SECTIONS 226.4(a) AND (b) (1969). POINTS AND FEES DO NOT INCLUDE FEES OR
27 CHARGES FOR THE FOLLOWING PURPOSES, IF THE AMOUNTS ARE BONA FIDE AND
28 REASONABLE AND PAID TO A PERSON OTHER THAN THE CREDITOR OR AN AFFILIATE OF
29 THE CREDITOR:

30 (i) SERVICE OR CARRYING CHARGES.

31 (ii) CREDIT REPORTS.

32 (iii) A TITLE EXAM, TITLE INSURANCE OR SIMILAR PURPOSES.

33 (iv) ESCROW CHARGES FOR FUTURE PAYMENTS OF TAXES AND INSURANCE.

34 (v) FEES FOR NOTARIZING DEEDS AND OTHER DOCUMENTS.

35 (vi) APPRAISALS, INCLUDING FEES RELATED TO ANY PEST INFESTATION OR
36 FLOOD HAZARD INSPECTIONS CONDUCTED BEFORE CLOSING.

37 (vii) INSPECTIONS PERFORMED BEFORE CLOSING.

38 (viii) ATTORNEY FEES, IF THE BORROWER HAS THE RIGHT TO SELECT THE
39 ATTORNEY FROM AN APPROVED LIST OR OTHERWISE.

40 (ix) FIRE AND HAZARD INSURANCE AND FLOOD INSURANCE PREMIUMS IF THE
41 CONDITIONS IN 12 CODE OF FEDERAL REGULATIONS SECTION 226.4(d)(2) (1981) ARE
42 MET.

43 (x) TAX PAYMENT SERVICES.

44 (xi) SURVEYS.

45 (xii) FLOOD CERTIFICATION.

- 1 (xiii) PEST INFESTATION AND FLOOD DETERMINATION.
- 2 (xiv) FEES PAID TO A FEDERAL OR STATE GOVERNMENT AGENCY TO ENSURE
- 3 PAYMENT OF SOME PORTION OF A HOME LOAN, INCLUDING THE FEDERAL HOUSING
- 4 ADMINISTRATION, THE DEPARTMENT OF VETERAN AFFAIRS OR THE UNITED STATES
- 5 DEPARTMENT OF AGRICULTURE.
- 6 (b) ALL COMPENSATION PAID DIRECTLY OR INDIRECTLY TO A BROKER,
- 7 INCLUDING A BROKER THAT ORIGINATES A LOAN IN ITS OWN NAME IN A TABLE FUNDED
- 8 TRANSACTION.
- 9 (c) ALL PREPAYMENT FEES OR PENALTIES THAT ARE INCURRED BY THE BORROWER
- 10 IF THE HOME LOAN REFINANCES A PREVIOUS HOME LOAN MADE OR CURRENTLY HELD BY
- 11 THE SAME CREDITOR OR AN AFFILIATE OF THE CREDITOR.
- 12 (d) THE COST OF ALL PREMIUMS FINANCED BY THE CREDITOR, DIRECTLY OR
- 13 INDIRECTLY, FOR ANY CREDIT LIFE, CREDIT DISABILITY, CREDIT UNEMPLOYMENT OR
- 14 OTHER LIFE OR HEALTH INSURANCE, OR ANY PAYMENTS FINANCED BY THE CREDITOR,
- 15 DIRECTLY OR INDIRECTLY, FOR ANY DEBT CANCELLATION OR SUSPENSION AGREEMENT OR
- 16 CONTRACT, EXCEPT THAT INSURANCE PREMIUMS CALCULATED AND PAID ON A MONTHLY
- 17 BASIS SHALL NOT BE CONSIDERED FINANCED BY THE CREDITOR.
- 18 (e) FOR OPEN-END LOANS, AS DEFINED IN 12 CODE OF FEDERAL REGULATIONS
- 19 SECTION 226.2(a)(20), THE POINTS AND FEES INCLUDED IN SUBDIVISIONS (a)
- 20 THROUGH (d) OF THIS PARAGRAPH THAT ARE KNOWN AT OR BEFORE CLOSING PLUS THE
- 21 MINIMUM ADDITIONAL FEES THE BORROWER WOULD BE REQUIRED TO PAY TO DRAW DOWN AN
- 22 AMOUNT EQUAL TO THE TOTAL CREDIT LINE.
- 23 9. "POINTS AND FEES THRESHOLD" MEANS:
- 24 (a) FOR A HOME LOAN IN WHICH THE TOTAL PRINCIPAL LOAN AMOUNT IS TWENTY
- 25 THOUSAND DOLLARS OR MORE, AN AMOUNT EQUAL TO FIVE PER CENT OF THE TOTAL
- 26 PRINCIPAL LOAN AMOUNT.
- 27 (b) FOR A HOME LOAN IN WHICH THE TOTAL PRINCIPAL LOAN AMOUNT IS LESS
- 28 THAN TWENTY THOUSAND DOLLARS, AN AMOUNT EQUAL TO THE LESSER OF ONE THOUSAND
- 29 DOLLARS OR EIGHT PER CENT OF THE TOTAL PRINCIPAL LOAN AMOUNT.
- 30 10. "RATES THRESHOLD" MEANS:
- 31 (a) FOR A FIRST LIEN MORTGAGE HOME LOAN, THE ANNUAL PERCENTAGE RATE OF
- 32 THE HOME LOAN AT CONSUMMATION OF THE TRANSACTION EQUALS EIGHT PERCENTAGE
- 33 POINTS OVER THE YIELD ON UNITED STATES TREASURY SECURITIES HAVING COMPARABLE
- 34 PERIODS OF MATURITY, MEASURED ON THE FIFTEENTH DAY OF THE MONTH IMMEDIATELY
- 35 PRECEDING THE MONTH IN WHICH THE LOAN IS MADE.
- 36 (b) FOR A SUBORDINATE LIEN MORTGAGE HOME LOAN, THE ANNUAL PERCENTAGE
- 37 RATE OF THE HOME LOAN AT CONSUMMATION OF THE TRANSACTION EQUALS TEN
- 38 PERCENTAGE POINTS OVER THE YIELD ON UNITED STATES TREASURY SECURITIES HAVING
- 39 COMPARABLE PERIODS OF MATURITY, MEASURED ON THE FIFTEENTH DAY OF THE MONTH
- 40 IMMEDIATELY PRECEDING THE MONTH IN WHICH THE LOAN IS MADE.
- 41 (c) FOR THE PURPOSES OF THIS PARAGRAPH, IF THE TERMS OF THE HOME LOAN
- 42 OFFER ANY INITIAL OR INTRODUCTORY PERIOD AND THE ANNUAL PERCENTAGE RATE IS
- 43 LESS THAN THAT WHICH WILL APPLY AFTER THE END OF THE INITIAL OR INTRODUCTORY
- 44 PERIOD, THE ANNUAL PERCENTAGE RATE THAT SHALL BE TAKEN INTO ACCOUNT FOR

1 PURPOSES OF THIS SECTION SHALL BE THE RATE THAT APPLIES AFTER THE INITIAL OR
2 INTRODUCTORY PERIOD.

3 11. "TOTAL PRINCIPAL LOAN AMOUNT" MEANS THE PRINCIPAL OF THE LOAN MINUS
4 THOSE POINTS AND FEES DESCRIBED IN PARAGRAPH 8 OF THIS SECTION THAT ARE
5 INCLUDED IN THE PRINCIPAL AMOUNT OF THE LOAN. FOR OPEN-END LOANS, THE TOTAL
6 PRINCIPAL LOAN AMOUNT SHALL BE CALCULATED USING THE TOTAL LINE OF CREDIT
7 ALLOWED UNDER THE HOME LOAN AT CLOSING.

8 6-1602. Prohibited practice regarding refinancing of home loan

9 A CREDITOR SHALL NOT MAKE A HOME LOAN TO A BORROWER THAT REFINANCES AN
10 EXISTING HOME LOAN IF THE NEW LOAN DOES NOT HAVE A REASONABLE, TANGIBLE NET
11 BENEFIT TO THE BORROWER CONSIDERING ALL OF THE CIRCUMSTANCES, INCLUDING THE
12 TERMS OF BOTH THE NEW AND REFINANCED LOANS, THE COST OF THE NEW LOAN AND THE
13 BORROWER'S CIRCUMSTANCES.

14 6-1603. Prohibited practices regarding high cost home loans

15 A. IN MAKING A HIGH COST HOME LOAN, A CREDITOR SHALL NOT FINANCE,
16 DIRECTLY OR INDIRECTLY, CREDIT LIFE, CREDIT DISABILITY, CREDIT UNEMPLOYMENT
17 OR CREDIT PROPERTY INSURANCE OR ANY OTHER LIFE OR HEALTH INSURANCE, OR ANY
18 PAYMENTS FOR ANY DEBT CANCELLATION OR SUSPENSION AGREEMENT OR CONTRACT. THIS
19 SUBSECTION DOES NOT PROHIBIT THE PAYMENT OR RECEIPT OF INSURANCE PREMIUMS OR
20 DEBT CANCELLATION OR SUSPENSION FEES CALCULATED ON THE UNPAID BALANCE OF A
21 HOME LOAN AND PAID ON A MONTHLY BASIS OR PROHIBIT BONA FIDE CREDIT PROPERTY
22 INSURANCE REQUIRED BY THE FEDERAL HOUSING ADMINISTRATION OR THE UNITED STATES
23 DEPARTMENT OF AGRICULTURE TO BE PAID IN A SINGLE PREMIUM TO THE RESPECTIVE
24 FEDERAL AGENCY. FOR THE PURPOSES OF THIS SUBSECTION, "CREDIT PROPERTY
25 INSURANCE" MEANS PROPERTY INSURANCE WRITTEN IN CONNECTION WITH CREDIT
26 TRANSACTIONS UNDER WHICH THE CREDITOR IS THE PRIMARY BENEFICIARY.

27 B. A CREDITOR SHALL NOT MAKE A HIGH COST HOME LOAN THAT CONTAINS A
28 PROVISION THAT PERMITS THE CREDITOR, IN ITS SOLE DISCRETION, TO ACCELERATE
29 THE INDEBTEDNESS. THIS SUBSECTION DOES NOT PROHIBIT ACCELERATION OF A LOAN
30 IN GOOD FAITH DUE TO A BORROWER'S FAILURE TO ABIDE BY THE MATERIAL TERMS OF
31 THE LOAN.

32 C. A CREDITOR SHALL NOT RECOMMEND OR ENCOURAGE DEFAULT, INCLUDING NOT
33 MAKING PAYMENTS, ON AN EXISTING LOAN OR OTHER DEBT BEFORE AND IN CONNECTION
34 WITH THE CLOSING OR PLANNED CLOSING OF A HIGH COST HOME LOAN THAT REFINANCES
35 ALL OR ANY PORTION OF THE EXISTING LOAN OR DEBT.

36 D. A CREDITOR SHALL NOT MAKE A HIGH COST HOME LOAN THAT PROVIDES FOR A
37 LATE PAYMENT FEE EXCEPT AS FOLLOWS:

38 1. THE LATE PAYMENT FEE SHALL NOT BE MORE THAN FIVE PER CENT OF THE
39 AMOUNT OF THE PAYMENT PAST DUE.

40 2. THE LATE PAYMENT FEE SHALL BE ASSESSED ONLY FOR A PAYMENT PAST DUE
41 FOR FIFTEEN DAYS OR MORE.

42 3. THE LATE PAYMENT FEE SHALL NOT BE IMPOSED MORE THAN ONCE WITH
43 RESPECT TO A SINGLE LATE PAYMENT AND SHALL NOT BE CHARGED WITH RESPECT TO A
44 SUBSEQUENT PAYMENT THAT WOULD HAVE BEEN A FULL PAYMENT BUT FOR THE PREVIOUS
45 DEFAULT OR THE IMPOSITION OF THE PREVIOUS LATE PAYMENT FEE.

1 E. A LATE PAYMENT FEE SHALL NOT BE CHARGED PURSUANT TO SUBSECTION D
2 UNLESS THE CREDITOR NOTIFIES THE BORROWER WITHIN FORTY-FIVE DAYS FOLLOWING
3 THE DATE THE PAYMENT WAS DUE THAT A LATE PAYMENT FEE HAS BEEN IMPOSED FOR A
4 PARTICULAR LATE PAYMENT. A LATE PAYMENT FEE THAT THE CREDITOR HAS COLLECTED
5 SHALL BE REIMBURSED IF THE BORROWER PRESENTS PROOF OF HAVING MADE A TIMELY
6 PAYMENT.

7 F. A CREDITOR SHALL TREAT EACH PAYMENT AS POSTED ON THE SAME BUSINESS
8 DAY AS IT WAS RECEIVED BY THE CREDITOR, SERVICE OR CREDITOR'S AGENT, OR AT
9 THE ADDRESS PROVIDED TO THE BORROWER BY THE CREDITOR, SERVICE OR CREDITOR'S
10 AGENT FOR MAKING PAYMENTS.

11 G. A CREDITOR MAY NOT CHARGE A FEE FOR INFORMING OR TRANSMITTING TO
12 ANY PERSON THE BALANCE DUE TO PAY OFF A HIGH COST HOME LOAN OR TO PROVIDE A
13 RELEASE ON PREPAYMENT. PAYOFF BALANCES SHALL BE PROVIDED IN A REASONABLE
14 TIME, BUT NOT MORE THAN SEVEN BUSINESS DAYS AFTER THE REQUEST.

15 H. A CREDITOR MAKING A HIGH COST HOME LOAN SHALL NOT DIRECTLY OR
16 INDIRECTLY FINANCE ANY POINTS OR FEES OF MORE THAN TWO PER CENT OF THE
17 PRINCIPAL LOAN AMOUNT.

18 I. A CREDITOR MAKING A HIGH COST HOME LOAN MAY NOT KNOWINGLY REFINANCE
19 AN EXISTING HOME LOAN, BASED ON INFORMATION THAT IS IN THE BORROWER'S CREDIT
20 REPORT OR THAT IS OTHERWISE IN THE POSSESSION OF THE CREDITOR, THAT IS A
21 SPECIAL MORTGAGE ORIGINATED, SUBSIDIZED OR GUARANTEED BY OR THROUGH A STATE,
22 TRIBAL OR LOCAL GOVERNMENT OR NONPROFIT ORGANIZATION THAT EITHER BEARS A
23 BELOW-MARKET INTEREST RATE AT THE TIME OF ORIGINATION OR THAT HAS NONSTANDARD
24 PAYMENT TERMS BENEFICIAL TO THE BORROWER, SUCH AS PAYMENTS THAT VARY WITH
25 INCOME, THAT ARE LIMITED TO A PERCENTAGE OF INCOME OR IN WHICH PAYMENTS ARE
26 NOT REQUIRED UNDER SPECIFIED CONDITIONS AND IN WHICH, AS A RESULT OF THE
27 REFINANCING, THE BORROWER WILL LOSE ONE OR MORE OF THE BENEFITS OF THE
28 SPECIAL MORTGAGE.

29 J. UNLESS THE PAYMENT SCHEDULE IS ADJUSTED TO THE SEASONAL OR
30 IRREGULAR INCOME OF A BORROWER, A CREDITOR SHALL NOT MAKE A HIGH COST HOME
31 LOAN THAT CONTAINS A SCHEDULED PAYMENT THAT IS MORE THAN TWICE AS LARGE AS
32 THE AVERAGE OF EARLIER SCHEDULED PAYMENTS.

33 K. A CREDITOR SHALL NOT MAKE A HIGH COST HOME LOAN THAT INCLUDES
34 PAYMENT TERMS UNDER WHICH THE OUTSTANDING PRINCIPAL BALANCE WILL INCREASE AT
35 ANY TIME OVER THE COURSE OF THE LOAN BECAUSE THE REGULAR PERIODIC PAYMENTS DO
36 NOT COVER THE FULL AMOUNT OF INTEREST DUE, UNLESS THE NEGATIVE AMORTIZATION
37 IS THE CONSEQUENCE OF A TEMPORARY FORBEARANCE SOUGHT BY THE BORROWER.

38 L. A CREDITOR SHALL NOT MAKE A HIGH COST HOME LOAN THAT CONTAINS A
39 PROVISION THAT INCREASES THE INTEREST RATE AFTER DEFAULT. THIS SUBSECTION
40 DOES NOT APPLY TO INTEREST RATE CHANGES IN A VARIABLE RATE LOAN OTHERWISE
41 CONSISTENT WITH THE PROVISIONS OF THE LOAN DOCUMENTS, IF THE CHANGE IN THE
42 INTEREST RATE IS NOT TRIGGERED BY THE EVENT OF DEFAULT OR THE ACCELERATION OF
43 THE INDEBTEDNESS.

1 M. A CREDITOR SHALL NOT MAKE A HIGH COST HOME LOAN THAT INCLUDES TERMS
2 UNDER WHICH MORE THAN TWO PERIODIC PAYMENTS REQUIRED UNDER THE LOAN ARE PAID
3 IN ADVANCE FROM THE LOAN PROCEEDS PROVIDED TO THE BORROWER.

4 N. A HIGH COST HOME LOAN MAY NOT CONTAIN A MANDATORY ARBITRATION OR
5 SIMILAR PROVISION THAT DOES ANY OF THE FOLLOWING:

6 1. REQUIRES A BORROWER TO PAY FOR ANY PART OF THE COSTS OF THE
7 ARBITRATION PROCEEDING.

8 2. REQUIRES THE BORROWER TO ARBITRATE, SUE OR DEFEND OUTSIDE OF THE
9 COUNTY IN WHICH THE BORROWER RESIDES.

10 3. PREVENTS THE BORROWER FROM BECOMING A CLASS REPRESENTATIVE OR CLASS
11 MEMBER IN A CLASS ACTION.

12 O. A CREDITOR SHALL NOT MAKE OR ARRANGE A HIGH COST HOME LOAN UNLESS
13 THE CREDITOR HAS GIVEN, WITHIN THREE DAYS AFTER DETERMINING THAT THE LOAN IS
14 A HIGH COST HOME LOAN, BUT AT LEAST TEN DAYS BEFORE CLOSING, THE FOLLOWING
15 WRITTEN NOTICE, IN BOTH ENGLISH AND SPANISH, TO THE BORROWER IN AT LEAST
16 TWELVE-POINT TYPE:

17 CONSUMER CAUTION AND LOAN COUNSELING NOTICE

18 IF YOU OBTAIN THIS LOAN, WHICH PURSUANT TO ARIZONA LAW IS
19 A HIGH COST HOME LOAN, THE CREDITOR WILL HAVE A MORTGAGE ON YOUR
20 HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU HAVE PUT INTO
21 IT IF YOU DO NOT MEET YOUR OBLIGATIONS UNDER THE LOAN. YOU
22 SHOULD NOT MAKE THIS LOAN IF YOU DO NOT UNDERSTAND ALL OF THE
23 TERMS OF THE LOAN OR IF YOU DO NOT BELIEVE THAT YOU CAN MAKE
24 YOUR MONTHLY PAYMENTS FOR THIS LOAN AS WELL AS ALL OTHER
25 PAYMENTS, SUCH AS CREDIT CARD DEBT OR CAR LOANS THAT YOU WILL
26 ALSO HAVE TO MAKE. YOU ARE NOT REQUIRED TO COMPLETE ANY LOAN
27 AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THESE DISCLOSURES OR
28 HAVE SIGNED A LOAN APPLICATION.

29 YOU SHOULD SHOP AROUND AND COMPARE LOAN RATES AND FEES.
30 MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON
31 MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL
32 CIRCUMSTANCES, YOUR EARNINGS HISTORY AND THE CREDITOR OR BROKER
33 YOU SELECT.

34 YOU HAVE THE RIGHT TO CONSULT A QUALIFIED INDEPENDENT
35 CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR
36 REGARDING THE RATE, FEES AND PROVISIONS OF THIS MORTGAGE LOAN
37 BEFORE YOU PROCEED. THE LOCATION OF A HUD CERTIFIED HOUSING
38 COUNSELOR IN YOUR AREA MAY BE OBTAINED BY CALLING THE FOLLOWING
39 TOLL FREE NUMBER: 1-800-569-4287.

40 PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR
41 RESPONSIBILITY. PROPERTY TAXES AND HOMEOWNER'S INSURANCE
42 WILL/WILL NOT (CIRCLE AS APPROPRIATE) BE PAID INTO ESCROW AS
43 PART OF YOUR MONTHLY PAYMENTS TO THIS LENDER.

1 P. A HIGH COST HOME LOAN SHALL NOT BE EXTENDED TO A BORROWER UNLESS A
2 REASONABLE CREDITOR WOULD BELIEVE AT THE TIME THE LOAN IS CLOSED THAT THE
3 BORROWER WILL BE ABLE TO MAKE THE SCHEDULED PAYMENTS ASSOCIATED WITH THE LOAN
4 BASED ON A CONSIDERATION OF THE BORROWER'S CURRENT AND EXPECTED INCOME,
5 CURRENT OBLIGATIONS, EMPLOYMENT STATUS AND OTHER FINANCIAL RESOURCES OTHER
6 THAN EQUITY IN THE COLLATERAL THAT SECURES REPAYMENT OF THE LOAN, AS VERIFIED
7 BY DETAILED DOCUMENTATION OF ALL SOURCES OF INCOME AND CORROBORATED BY
8 INDEPENDENT VERIFICATION. THERE IS A REBUTTABLE PRESUMPTION THAT THE
9 BORROWER WILL BE ABLE TO MAKE THE SCHEDULED PAYMENTS TO REPAY THE OBLIGATION
10 IF, AT THE TIME THE LOAN IS CONSUMMATED, THE BORROWER'S TOTAL MONTHLY DEBTS,
11 INCLUDING AMOUNTS OWED UNDER THE LOAN, DO NOT EXCEED FIFTY PER CENT OF THE
12 BORROWER'S MONTHLY GROSS INCOME, AND THE CREDITOR FOLLOWS THE RESIDUAL INCOME
13 GUIDELINES ESTABLISHED IN 38 CODE OF FEDERAL REGULATIONS SECTION 36.4337(e)
14 (1994) AND VA FORM 26-6393.

15 Q. A CREDITOR SHALL NOT PAY A CONTRACTOR UNDER A HOME IMPROVEMENT
16 CONTRACT FROM THE PROCEEDS OF A HIGH COST HOME LOAN UNLESS BOTH OF THE
17 FOLLOWING APPLY:

18 1. THE CREDITOR IS PRESENTED WITH A SIGNED AND DATED COMPLETION
19 CERTIFICATE SHOWING THAT THE HOME IMPROVEMENTS HAVE BEEN COMPLETED.

20 2. THE INSTRUMENT IS PAYABLE JOINTLY TO THE BORROWER AND THE
21 CONTRACTOR OR, AT THE ELECTION OF THE BORROWER, THROUGH A THIRD-PARTY ESCROW
22 AGENT IN ACCORDANCE WITH TERMS ESTABLISHED IN A WRITTEN AGREEMENT SIGNED BY
23 THE BORROWER, THE CREDITOR AND THE CONTRACTOR BEFORE THE DISBURSEMENT.

24 R. A CREDITOR SHALL NOT CHARGE A BORROWER ANY FEES OR OTHER CHARGES TO
25 MODIFY, RENEW, EXTEND OR AMEND A HIGH COST HOME LOAN OTHER THAN THOSE THAT
26 ARE BONA FIDE, REASONABLE AND ACTUAL.

27 S. A CREDITOR SHALL NOT CHARGE A BORROWER POINTS OR FEES OR PREPAYMENT
28 PENALTIES IN CONNECTION WITH A HIGH COST HOME LOAN IF THE PROCEEDS OF THE
29 HIGH COST HOME LOAN ARE USED TO REFINANCE AN EXISTING HIGH COST HOME LOAN
30 HELD BY THE CREDITOR OR AN AFFILIATE OF THE CREDITOR, EXCEPT COSTS FOR
31 REVERIFICATION OF DOCUMENTS, PROVIDED THAT THE AMOUNTS ARE BONA FIDE AND
32 REASONABLE AND PAID TO A PERSON OTHER THAN THE CREDITOR OR AN AFFILIATE OF
33 THE CREDITOR. THE FACT THAT THE SAME PERSON HAS ACTED AS THE BROKER FOR BOTH
34 THE EXISTING AND REFINANCING HIGH COST HOME LOANS DOES NOT, ALONE, MAKE THIS
35 SUBSECTION APPLICABLE.

36 T. A CREDITOR THAT PRIMARILY USES A LANGUAGE OTHER THAN ENGLISH TO
37 COMMUNICATE WITH THE BORROWER ABOUT THE TERMS OF A HIGH COST HOME LOAN THAT
38 THE CREDITOR IS MAKING OR ARRANGING FOR THE BORROWER SHALL DELIVER TO THE
39 BORROWER AN UNEXECUTED TRANSLATION OF THE LOAN DOCUMENTS IN THE LANGUAGE THE
40 CREDITOR PRIMARILY USED IN ITS COMMUNICATIONS WITH THE BORROWER. DELIVERY OF
41 THE NON-ENGLISH LOAN DOCUMENTS SHALL BE MADE TO THE BORROWER BEFORE THE
42 BORROWER EXECUTES ANY DOCUMENTS AT THE LOAN CLOSING. THE BORROWER SHALL
43 EXECUTE THE ENGLISH LANGUAGE LOAN DOCUMENTS.

1 U. A CREDITOR SHALL NOT MAKE A HIGH COST HOME LOAN THAT CONTAINS A
2 PROVISION THAT REQUIRES A PENALTY OR PREMIUM FOR PREPAYMENT OF ANY PART OF
3 THE BALANCE OF THE INDEBTEDNESS.

4 6-1604. Disclosure; applicability

5 A. HIGH COST HOME LOAN MORTGAGES SHALL INCLUDE A LEGEND ON TOP OF THE
6 MORTGAGE DOCUMENT IN TWELVE-POINT TYPE STATING THAT THE MORTGAGE IS A HIGH
7 COST HOME LOAN SUBJECT TO THIS CHAPTER.

8 B. THIS CHAPTER APPLIES TO ANY PERSON WHO IN BAD FAITH ATTEMPTS TO
9 AVOID THE APPLICATION OF THIS CHAPTER BY ANY SUBTERFUGE, INCLUDING SPLITTING
10 OR DIVIDING ANY LOAN TRANSACTION INTO SEPARATE PARTS FOR THE PURPOSE OF
11 EVADING THIS CHAPTER.

12 6-1605. Enforcement

13 A. AN ACT OR PRACTICE IN VIOLATION OF THIS CHAPTER IS AN UNLAWFUL
14 PRACTICE UNDER SECTION 44-1522 AND IS SUBJECT TO ENFORCEMENT THROUGH PRIVATE
15 ACTION AND BY THE SUPERINTENDENT OF THE DEPARTMENT OF FINANCIAL INSTITUTIONS
16 AND THE ATTORNEY GENERAL. THE ATTORNEY GENERAL MAY INVESTIGATE AND TAKE
17 APPROPRIATE ACTION AS PRESCRIBED BY TITLE 44, CHAPTER 10, ARTICLE 7. THE
18 SUPERINTENDENT MAY BRING AN ACTION IN SUPERIOR COURT.

19 B. IF ANY PROVISION OF AN AGREEMENT FOR A HIGH COST HOME LOAN VIOLATES
20 THIS CHAPTER, THAT PROVISION IS UNENFORCEABLE AGAINST THE BORROWER.

21 C. EXCEPT AS PROVIDED IN SECTIONS 6-1607 AND 6-1608, THE COURT MAY
22 ORDER THE FOLLOWING RELIEF AGAINST ANY PERSON FOUND BY A PREPONDERANCE OF THE
23 EVIDENCE TO HAVE VIOLATED THIS CHAPTER:

24 1. THE BORROWER'S ACTUAL DAMAGES, INCLUDING CONSEQUENTIAL AND
25 INCIDENTAL DAMAGES. THE BORROWER SHALL NOT BE REQUIRED TO DEMONSTRATE
26 RELIANCE IN ORDER TO RECEIVE ACTUAL DAMAGES.

27 2. FORFEITURE OF ALL INTEREST EARNED OR UNEARNED, POINTS AND FEES AND
28 CLOSING COSTS CHARGED ON THE LOAN. ANY AMOUNTS PAID FOR INTEREST, POINTS AND
29 FEES AND CLOSING COSTS SHALL BE CREDITED AGAINST LOAN PRINCIPAL OR REFUNDED
30 TO THE EXTENT THAT THOSE AMOUNTS ARE IN EXCESS OF PRINCIPAL.

31 3. ON A FINDING OF THE COURT OF AN INTENTIONAL VIOLATION OF THIS
32 CHAPTER, THE HOME LOAN AGREEMENT SHALL BE RENDERED VOID AND THE CREDITOR
33 SHALL HAVE NO RIGHT TO COLLECT, RECEIVE OR RETAIN ANY PRINCIPAL, INTEREST OR
34 OTHER CHARGES WHATSOEVER WITH RESPECT TO THE LOAN AND THE BORROWER MAY
35 RECOVER ANY PAYMENTS MADE UNDER THE AGREEMENT.

36 4. COSTS, INCLUDING REASONABLE ATTORNEY FEES.

37 D. IN AN ACTION BROUGHT UNDER THIS CHAPTER, THE SUPERIOR COURT MAY
38 GRANT INJUNCTIVE, DECLARATORY AND SUCH OTHER EQUITABLE RELIEF AS THE SUPERIOR
39 COURT DEEMS APPROPRIATE.

40 E. A PRIVATE ACTION AGAINST A CREDITOR SHALL BE COMMENCED WITHIN SIX
41 YEARS OF THE CLOSING OF THE HOME LOAN.

42 F. THE REMEDIES PROVIDED IN THIS CHAPTER ARE NOT INTENDED TO BE THE
43 EXCLUSIVE REMEDIES AVAILABLE TO A BORROWER. THE BORROWER DOES NOT HAVE TO
44 PURSUE EVERY ADMINISTRATIVE REMEDY PROVIDED UNDER THIS CHAPTER OR ANY OTHER
45 APPLICABLE LAW BEFORE PROCEEDING UNDER THIS CHAPTER.

1 6-1606. Claims and defenses against purchasers and assignees

2 A. ANY PERSON WHO PURCHASES OR IS OTHERWISE ASSIGNED A HIGH COST HOME
3 LOAN SHALL BE SUBJECT TO ALL AFFIRMATIVE CLAIMS AND ANY DEFENSES WITH RESPECT
4 TO THE LOAN THAT THE BORROWER COULD ASSERT AGAINST A CREDITOR OR BROKER OF
5 THE LOAN UNLESS THE PURCHASER OR ASSIGNEE DEMONSTRATES BY A PREPONDERANCE OF
6 THE EVIDENCE THAT ALL OF THE FOLLOWING APPLY:

7 1. THE PURCHASER OR ASSIGNEE HAS IN PLACE AT THE TIME OF THE PURCHASE
8 OR ASSIGNMENT OF THE SUBJECT LOAN POLICIES THAT EXPRESSLY PROHIBIT ITS
9 PURCHASE OR ACCEPTANCE OF ASSIGNMENT OF ANY HIGH COST HOME LOANS.

10 2. THE PURCHASER OR ASSIGNEE REQUIRES BY CONTRACT THAT A SELLER OR
11 ASSIGNOR OF HOME LOANS TO THE PURCHASER OR ASSIGNEE REPRESENT AND WARRANT TO
12 THE PURCHASER OR ASSIGNEE THAT EITHER:

13 (a) THE SELLER OR ASSIGNOR WILL NOT SELL OR ASSIGN HIGH COST HOME
14 LOANS TO THE PURCHASER OR ASSIGNEE.

15 (b) THE SELLER OR ASSIGNOR IS A BENEFICIARY OF A REPRESENTATION AND
16 WARRANTY FROM A PREVIOUS SELLER OR ASSIGNOR TO THAT EFFECT.

17 3. THE PURCHASER OR ASSIGNEE EXERCISES REASONABLE DUE DILIGENCE AT THE
18 TIME OF PURCHASE OR ASSIGNMENT OF HOME LOANS OR WITHIN A REASONABLE PERIOD OF
19 TIME AFTER THE PURCHASE OR ASSIGNMENT OF SUCH HOME LOANS, INTENDED BY THE
20 PURCHASER OR ASSIGNEE TO PREVENT THE PURCHASER OR ASSIGNEE FROM PURCHASING OR
21 TAKING ASSIGNMENT OF ANY HIGH COST HOME LOANS. REASONABLE DUE DILIGENCE
22 SHALL PROVIDE FOR SAMPLING AND SHALL NOT REQUIRE LOAN-BY-LOAN REVIEW.

23 B. LIMITED TO AMOUNTS REQUIRED TO REDUCE OR EXTINGUISH THE BORROWER'S
24 LIABILITY UNDER THE HIGH COST HOME LOAN, PLUS AMOUNTS REQUIRED TO RECOVER
25 COSTS, INCLUDING REASONABLE ATTORNEY FEES, A BORROWER WHO IS ACTING ONLY IN
26 AN INDIVIDUAL CAPACITY MAY ASSERT AGAINST ANY SUBSEQUENT HOLDER OR ASSIGNEE
27 OF THE HOME LOAN WHO SATISFIES THE REQUIREMENTS OF SUBSECTION A ANY CLAIMS OR
28 DEFENSES THAT THE BORROWER COULD ASSERT AGAINST A CREDITOR OF THE HIGH COST
29 HOME LOAN, AS FOLLOWS:

30 1. WITHIN SIX YEARS OF THE CLOSING OF A HIGH COST HOME LOAN, A
31 VIOLATION OF THIS CHAPTER IN CONNECTION WITH THE LOAN AS AN ORIGINAL ACTION.

32 2. AT ANY TIME DURING THE TERM OF A HIGH COST HOME LOAN, AFTER AN
33 ACTION TO COLLECT ON THE HOME LOAN OR TO FORECLOSE ON THE COLLATERAL SECURING
34 THE HOME LOAN HAS BEEN INITIATED OR THE DEBT ARISING FROM THE HOME LOAN HAS
35 BEEN ACCELERATED OR THE HOME LOAN HAS BECOME SIXTY DAYS IN DEFAULT, ANY
36 DEFENSE, CLAIM OR COUNTERCLAIM OR ACTION TO ENJOIN FORECLOSURE OR PRESERVE OR
37 OBTAIN POSSESSION OF THE HOME THAT SECURES THE LOAN.

38 3. THIS SECTION SHALL BE EFFECTIVE NOTWITHSTANDING ANY OTHER LAW.
39 THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT THE SUBSTANTIVE RIGHTS, REMEDIES
40 OR PROCEDURAL RIGHTS AVAILABLE TO A BORROWER AGAINST ANY CREDITOR, ASSIGNEE
41 OR HOLDER UNDER ANY OTHER LAW. THE RIGHTS CONFERRED ON BORROWERS BY
42 SUBSECTION A AND THIS SUBSECTION ARE INDEPENDENT OF EACH OTHER AND DO NOT
43 LIMIT EACH OTHER.

1 6-1607. Opportunity to cure

2 A CREDITOR OF A HOME LOAN WHO, IF ACTING IN GOOD FAITH, FAILS TO COMPLY
3 WITH THIS CHAPTER WILL NOT BE DEEMED TO HAVE VIOLATED THIS CHAPTER IF THE
4 CREDITOR ESTABLISHES THAT, WITHIN TEN DAYS OF THE DISCOVERY OF A VIOLATION OF
5 THIS CHAPTER AND BEFORE RECEIVING ANY NOTICE OF VIOLATION FROM THE BORROWER,
6 THE CREDITOR MADE APPROPRIATE RESTITUTION TO THE BORROWER AND MADE
7 APPROPRIATE ADJUSTMENTS TO THE LOAN.

8 6-1608. Preemption

9 COUNTIES AND MUNICIPALITIES ARE PROHIBITED FROM ENACTING AND ENFORCING
10 ORDINANCES, RESOLUTIONS OR RULES REGULATING FINANCIAL OR LENDING ACTIVITIES
11 OR IMPOSING REPORTING REQUIREMENTS OR ANY OTHER OBLIGATIONS ON CREDITORS
12 REGARDING HOME LOANS THAT ARE SUBJECT TO THIS CHAPTER.

13 6-1609. Rulemaking

14 THE SUPERINTENDENT MAY ADOPT REASONABLE RULES TO IMPLEMENT AND
15 ADMINISTER THIS CHAPTER.

16 6-1610. No waiver

17 THERE SHALL BE NO WAIVER OF ANY PROVISION OF THIS CHAPTER.

18 6-1611. Independent effect

19 THE RIGHTS CONFERRED BY THIS CHAPTER ARE CUMULATIVE WITH, INDEPENDENT
20 OF AND IN ADDITION TO ANY OTHER RIGHTS UNDER OTHER LAWS.

21 Sec. 2. Severability

22 If a provision of this act or its application to any person or
23 circumstance is held invalid, the invalidity does not affect other provisions
24 or applications of the act that can be given effect without the invalid
25 provision or application, and to this end the provisions of this act are
26 severable.

27 Sec. 3. Applicability

28 A. The law of the state in which the property is located shall be
29 applied to all transactions governed by this act. This act shall apply to
30 all home loans made or entered into after the effective date of this act.

31 B. If any provision of this act is declared to be inapplicable to any
32 specific category, type or kind of loan or points and fees, the provisions of
33 this act shall continue to apply with respect to all other loans and points
34 and fees.