



# BULLETIN

## Colorado Division of Financial Services

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**Issued to: State-Chartered Credit Unions and Savings and Loan Associations**

**Subject: Consumer Equity Protection Act**

**Date Issued: December 20, 2002**

On January 1, 2003 the Colorado “Consumer Protection Act” (“the Act”), enacted by House Bill 02-1259 during the 2002 General Assembly, becomes effective. This legislation adds a new article to the Colorado Revised Statutes, §5-3.5-101 et. al., and is intended to provide for the protection of consumers’ home ownership equity. It applies only to certain loans that are secured by the borrower’s personal residence as outlined below. If your institution engages in the types of loans that are potentially covered by this new legislation, you should obtain the relevant statutes and ensure that you are in compliance with their provisions.

### **Loans Covered**

The Act covers consumer credit mortgage transactions involving property located in the state of Colorado when either:

- (1) The annual percentage rate at origination will exceed by more than 8 percentage points for first-lien loans or 10 percentage points for subordinate-lien loans the yield on Treasury securities having comparable maturities; or
- (2) The total points and fees payable by the consumer at or before loan closing will exceed the greater of six percent of the total loan amount, or \$400.

It is important to note that the Act does not cover residential mortgage transactions, reverse mortgages, and open-ended credit plans secured by real property.

### **Limitations on Covered Loans**

1. No covered loan may contain balloon payments of more than twice as large as earlier scheduled payments until after 120 months.
2. No covered loan may contain a “call” provision except when certain conditions apply, such as borrower default, due-on-sale clauses, borrower fraud, material impairment, or adverse actions by the borrower.
3. No covered loan may provide for “negative amortization” except in restructuring or forbearance situations.
4. No covered loan may be subject to certain mandatory arbitration clauses.
5. No periodic payments may be required to be paid in advance from the proceeds of a covered loan.

6. Prepayment fees on covered loans are limited during the first 36 months, and prohibited thereafter. A lender must also offer the choice of a loan without a prepayment fee if a covered loan is made with prepayment fee provisions.

### **Prohibited Practices**

Certain practices are prohibited in the making of loans covered by the Act. They are summarized as follows:

1. A covered loan may not be made in Colorado without providing the borrower a written notice, containing language specified by the Act, prior to the loan closing.
2. A lender may not make a covered loan without due regard to the borrower's ability to repay the loan.
3. A covered loan may not be refinanced with another covered loan within the first 12 months, unless it is to the advantage of the borrower to do so.
4. A zero or low rate loan cannot be refinanced, with some exceptions, into a covered loan during the first ten years of the low-cost loan.
5. No proceeds from a covered loan may be made directly to a contractor under a home-improvement contract without the borrower having joint control of the proceeds or electing to escrow the proceeds.
6. No covered loan may include financing of premiums for any credit insurance coverage or debt cancellation agreements. Monthly premiums for these types of products are not considered to be "financed" by the proceeds.
7. No lender shall recommend or encourage default on a loan in connection with the closing or planned closing of a covered loan.
8. No lender may charge a fee for providing pay off information in connection with a covered loan and must do so within five business days of receiving a written request for such information.

### **Other Provisions**

The Act also adds a new section, Article 40, of title 38, to the Colorado Revised Statutes that prohibits certain acts of mortgage brokers and originators. These prohibitions focus on deceptive advertisements, false statements or misrepresentations, false information on an application, and the facilitation of unconscionable loans. The law states that commission of these acts will be considered deceptive trade practices.

Please ensure that the appropriate staff members of your institution are apprised of this new Colorado law and its requirements. If you believe that your institution may be engaging in loans that fall under the Act we recommend that you obtain a complete copy of the Act for review. This bulletin is intended to summarize the provisions of the Act for informational purposes only and is not to be considered a substitute for the Act itself.