



## POLICY UPDATE

SEPTEMBER 5, 2007

### Michigan Home Loan Protection Act

The proposed Home Loan Protection Act (HLP), which amends the Consumer Mortgage Protection Act of 2002, will protect homeowners, provide consumers with a private right of action to enforce compliance, and prohibit particularly abusive and predatory lending practices that often lead to foreclosure.

#### Background

Currently, Michigan has one of the highest foreclosure rates in the country—it ranks third—and, according to Realty Track, Inc. the rate increased 39 percent from June to July and is up 130 percent from July 2006. This high foreclosure rate has devastated neighborhoods and communities and hurt Michigan's economy. Further, according to Fannie Mae and Freddie Mac, 30 to 50 percent of sub-prime borrowers are given more expensive loans than they qualify for. The HLP addresses these issues, going further than federal law and is based on other states' threshold-based approach to anti-predatory lending laws.

#### Homeowner Protection

The HLP provides protections for high cost home loans, which are defined as loans with points and fees more than 5 percent for loans above \$20,000; for smaller loans it is the lesser of \$1,000 in points and fees or 8 percent; and loans with interest rates 8 percent above prime for the first lien and 10 percent for the second lien mortgage. Points and fees are defined to include yield spread premiums, prepayment penalties, single premium credit insurance, and fees paid to affiliates.

To protect homeowners with high cost loans the HLP prohibits:

- financing of any points and fees,
- prepayment penalties,
- balloon payments,
- negative amortization,
- default interest rates, and
- home refinancing to generate fees for the lender unless there is a tangible net benefit to the borrower.

In addition, the HLPA requires that the borrower meet with an independent, HUD certified third-party, nonprofit counselor before a high cost loan can be finalized.

#### Private Right of Action

The HLPA provides means for homeowners to take action and enforce the law. Homeowners have the ability to seek:

- injunctive and declaratory relief,
- actual damages (i.e., consequential and incidental damages, costs, and attorney fees),
- statutory damages equal to two times the finance charge,
- punitive damages, and
- rights through the Truth in Lending Act.

Even more, the HLPA contains criminal penalties for lenders engaging in predatory practices.

#### Prohibited Predatory Lending Practices

Finally, the HLPA bans lenders from taking advantage of consumers through predatory lending practices. It prohibits:

- giving home loans without requiring borrowers to prove their ability to repay the loan,
- encouraging borrowers to default on the loan,
- charging excessive late fees,
- charging fees for a payoff statement, and
- steering consumers to toward high cost loans even though they qualify for a traditional loan.

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