

1 **UTAH HIGH COST HOME LOAN ACT**

2 **AMENDMENTS**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Wayne A. Harper**

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Utah High Cost Home Loan Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies definitions;
- 13 ▶ restricts refinancing within a one-year period of loan's origination;
- 14 ▶ prohibits call provisions except in certain circumstances;
- 15 ▶ prohibits increase in interest rate upon default, except for certain periodic interest
- 16 rate changes;
- 17 ▶ prohibits making a high-cost loan without regard to the borrower's ability to repay;
- 18 ▶ addresses payments related to home improvement contracts;
- 19 ▶ addresses disclosures to borrowers; and
- 20 ▶ makes technical changes.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **61-2d-102**, as enacted by Chapter 252, Laws of Utah 2004



28 **61-2d-112**, as enacted by Chapter 252, Laws of Utah 2004

29 ENACTS:

30 **61-2d-114**, Utah Code Annotated 1953

31 **61-2d-115**, Utah Code Annotated 1953

32 **61-2d-116**, Utah Code Annotated 1953

33 **61-2d-117**, Utah Code Annotated 1953

34 **61-2d-118**, Utah Code Annotated 1953



36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **61-2d-102** is amended to read:

38 **61-2d-102. Definitions.**

39 As used in this part:

40 (1) "Accelerate" means a demand for immediate repayment of the entire balance of a
41 residential mortgage loan.

42 (2) "Borrower" means a person that:

43 (a) seeks a high-cost mortgage; or

44 (b) is obligated under a high-cost mortgage.

45 (3) (a) "High-cost mortgage" or "high-cost mortgage loan" means a borrower credit
46 transaction that is secured by the borrower's principal dwelling, if any of the following apply
47 with respect to such borrower credit transaction:

48 [~~(a)~~] (i) (A) the transaction is secured by a first mortgage on the borrower's principal
49 dwelling and the annual percentage rate on the credit, at the consummation of the transaction,
50 will exceed by more than eight percentage points the yield on treasury securities having
51 comparable periods of maturity on the 15th day of the month immediately preceding the month
52 in which the application for the extension of credit is received by the lender;

53 [~~(b)~~] (B) the transaction is secured by a junior or subordinate mortgage on the
54 borrower's principal dwelling and the annual percentage rate on the credit, at the consummation
55 of the transaction, will exceed ten percentage points the yield on treasury securities having
56 comparable periods of maturity on the 15th day of the month immediately preceding the month
57 in which the application for the extension of credit is received by the lender; or

58 [~~(c)~~-(i)] (C) the total points and fees payable at or before the transaction will exceed the

59 greater of 8% of the total loan amount or \$400; and

60 ~~[(ii) the \$400 figure shall be adjusted annually on January 1 to match the adjusted~~
 61 ~~number adopted by the Board of Governors of the Federal Reserve in accordance with Section~~
 62 ~~226.32(a)(1)(ii) of the Code of Federal Regulations. If the Board of Governors of the Federal~~
 63 ~~Reserve System does not announce an adjusted figure, the last adjustment of the \$400 figure~~
 64 ~~shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price~~
 65 ~~Index that was reported on the preceding June 1; and]~~

66 ~~[(d)]~~ (ii) the loan is made by or originated through a person ~~[or business]~~ required to
 67 hold a license as provided in Title 61, Chapter 2c, Utah Residential Mortgage Practices Act.

68 (b) The \$400 figure described in Subsection (3)(a)(i)(C) shall be adjusted annually on
 69 January 1 to match the adjusted number adopted by the Board of Governors of the Federal
 70 Reserve in accordance with Section 226.32(a)(1)(ii) of the Code of Federal Regulations. If the
 71 Board of Governors of the Federal Reserve System does not announce an adjusted figure, the
 72 last adjustment of the \$400 figure shall be adjusted annually on January 1 by the annual
 73 percentage change in the Consumer Price Index that was reported on the preceding June 1.

74 (4) "Home improvement contract" means a contract for any of the following related to
 75 the property that secures a high-cost mortgage loan:

76 (a) construction;

77 (b) alteration;

78 (c) remodeling;

79 (d) repairing;

80 (e) wrecking or demolition;

81 (f) addition to a residence; or

82 (g) improvement to a residence.

83 ~~[(4)]~~ (5) "Lender" means a person that:

84 (a) (i) offers a high-cost mortgage; or

85 ~~[(b)]~~ (ii) extends a high-cost mortgage; and

86 ~~[(c)]~~ (b) is required to have a license as provided in Title 61, Chapter 2c, Utah
 87 Residential Mortgage Practices Act.

88 ~~[(5)]~~ (6) "Prepay" or "prepayment" means to make a payment to a lender that:

89 (a) is more than the amount of the next scheduled payment due;

90 (b) pays more than half of the principal balance of the high-cost mortgage; and
91 (c) is paid more than 24 months before the last scheduled payment according to the
92 terms of the high-cost mortgage when it is made.

93 ~~[(6)]~~ (7) "Residential mortgage transaction" means a transaction in which a mortgage,
94 deed of trust, purchase money security interest arising under an installment sales contract, or
95 equivalent consensual security interest is created or retained in the borrower's principal
96 dwelling to finance the acquisition or initial construction of that dwelling.

97 ~~[(7)]~~ (8) "Reverse mortgage transaction" means a nonrecourse borrower credit
98 obligation in which:

99 (a) a mortgage, deed of trust, or equivalent consensual security interest securing one or
100 more advances is created in the borrower's principal dwelling; and

101 (b) any principal, interest, or shared appreciation or equity is due and payable, other
102 than in the case of default, only after:

- 103 (i) the borrower dies;
- 104 (ii) the dwelling is transferred; or
- 105 (iii) the borrower ceases to occupy the dwelling as a principal dwelling.

106 Section 2. Section **61-2d-112** is amended to read:

107 **61-2d-112. Notice of information available to borrowers -- Required disclosure.**

108 (1) In addition to any other notice or disclosure a lender or title company may provide
109 to a borrower seeking, obtaining, or inquiring about a high-cost mortgage, the lender shall
110 provide the borrower any brochure or other document information prepared by a federal or state
111 authority in a form intended to inform consumers about home loans or consumer credit on
112 financing or educational resources on financing.

113 (2) The requirement set forth in Subsection (1) may include:

114 (a) the posting, in a public area of the office, notice indicating that educational
115 resources are available;

116 (b) a list of educational opportunities or programs offered in the surrounding area
117 including the program name and phone number;

118 (c) a printed brochure or booklet on responsible lending and borrowing available to the
119 borrower at no charge; or

120 (d) information from the Department of Financial Institutions on its responsible

121 consumer financial educational program.

122 (3) At least three business days before making a high-cost mortgage loan to a borrower,
123 a lender shall ensure that the borrower has been given the following notice, in writing and in a
124 clear and conspicuous format:

125 "As a consumer you should shop around and compare loan rates and fees. You should
126 also consider consulting a qualified independent credit counselor or other experienced financial
127 adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed.

128 You are not required to complete this loan agreement merely because you have received
129 these disclosures or have signed a loan application. If you proceed with this mortgage loan,
130 you should also remember that you may face serious financial risks if you use this loan to pay
131 off credit card debts or other debts in connection with this transaction and then subsequently
132 incur significant new debt. If you continue to accumulate debt after this loan is made and then
133 experience financial difficulties, you could lose your home and any equity that you have in it if
134 you do not meet your mortgage loan obligations.

135 Property taxes and homeowner's insurance are your responsibility. Some lenders may
136 require you to escrow money for these payments. However, not all lenders provide escrow
137 services for these payments. You should ask your lender about these services.

138 Your payments on existing debts contribute to your credit ratings. You should not
139 accept any advice to ignore your regular payments to your existing creditors."

140 Section 3. Section **61-2d-114** is enacted to read:

141 **61-2d-114. Refinancing within a one-year period.**

142 (1) Within one year after the day on which a lender extends a high-cost mortgage loan:

143 (a) a lender may not refinance the high-cost mortgage loan to the same borrower into
144 another high-cost mortgage loan unless the refinancing is in the borrower's interest; and

145 (b) an assignee holding or servicing the high-cost mortgage loan may not refinance the
146 high-cost mortgage loan to the same borrower into another high-cost mortgage loan unless the
147 refinancing is in the borrower's interest.

148 (2) A lender or assignee may not engage in an act or practice to evade this section,
149 including:

150 (a) a pattern or practice of arranging for the refinancing of its own loans by an affiliated
151 or unaffiliated creditor; or

152 (b) modifying a high-cost mortgage loan agreement, regardless of whether the existing
153 loan is satisfied and replaced by the new loan, and charging a fee.

154 Section 4. Section **61-2d-115** is enacted to read:

155 **61-2d-115. Call provisions.**

156 (1) Except as provided in Subsection (2), a high-cost mortgage loan may not contain a
157 provision that permits the lender, in the lender's sole discretion, to accelerate the indebtedness.

158 (2) The prohibition provided in Subsection (1) does not apply when:

159 (a) acceleration of repayment of the high-cost mortgage loan is justified:

160 (i) by default in which the borrower fails to meet the repayment terms of the agreement
161 for any outstanding balance; or

162 (ii) pursuant to a due-on-sale provision;

163 (b) there is a fraud or material misrepresentation by a borrower in connection with the
164 high-cost mortgage loan;

165 (c) there is a provision permitting acceleration if the lender, in good faith, believes:

166 (i) itself to be materially insecure; or

167 (ii) that the prospect of further payment has become materially impaired; or

168 (d) there is any action or inaction by the borrower that adversely affects the lender's
169 security for the loan or any rights of the lender in that security.

170 Section 5. Section **61-2d-116** is enacted to read:

171 **61-2d-116. Increased rate after default.**

172 (1) Subject to Subsection (2), a high-cost mortgage loan may not contract for any
173 increase in the interest rate as a result of a default.

174 (2) This section does not apply to periodic interest rate changes in a variable rate loan
175 otherwise consistent with the provisions of the loan agreement provided the change in the
176 interest rate is not occasioned by:

177 (a) the event of default; or

178 (b) permissible acceleration of the indebtedness.

179 Section 6. Section **61-2d-117** is enacted to read:

180 **61-2d-117. Ability to repay.**

181 (1) A lender may not make a high-cost mortgage loan to a borrower based on the
182 borrower's collateral without regard to the borrower's ability to repay, including the borrower's:

183 (a) current or expected income;

184 (b) current obligations; and

185 (c) employment.

186 (2) A lender is presumed to have violated this section if the lender engages in a pattern
187 or practice of making high-cost mortgage loans without verifying and documenting a
188 borrower's repayment ability.

189 Section 7. Section **61-2d-118** is enacted to read:

190 **61-2d-118. Home improvement contracts.**

191 A lender may not pay a contractor under a home improvement contract from the
192 proceeds of a high-cost mortgage loan except by:

193 (1) an instrument payable to the borrower;

194 (2) an instrument payable jointly to the borrower and the contractor under the home
195 improvement contract; or

196 (3) at the election of the borrower, a third-party escrow agent in accordance with terms
197 established in a written agreement signed, before disbursement, by:

198 (a) the borrower;

199 (b) the lender; and

200 (c) the contractor under the home improvement contract.

Legislative Review Note
as of 1-11-05 1:15 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0192

Utah High Cost Home Loan Act Amendments

17-Jan-05

1:35 PM

State Impact

No fiscal impact.

Individual and Business Impact

Any fiscal impact will depend on the degree of compliance currently in place.

Office of the Legislative Fiscal Analyst