

Hard Money Lending

The Definitive Guide for
Private Lenders Making Asset-Based Loans

A Confidential Lender Program

Taught By

Dyches Boddiford with Robert Witcher, Atty

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TABLE OF CONTENTS

I. INTRODUCTION

How to Become a Hard Money Lender – Introduction.....	I-1-1
What is a Hard Money Loan?.....	I-1-1
Hard Money Loan Terms.....	I-1-3
Usury and Bankruptcy Remote Entities.....	I-1-4
Usury Rates by State.....	I-1-5
Foreclosure Laws and Procedures by State.....	I-1-9
General Summary of Lender Laws for Georgia.....	I-1-11
Georgia Residential Mortgage Act.....	I-2-1
Attorney’s Summary of the Georgia Fair Lending Act (Consumer).....	I-3-1
Georgia Fair Lending Act (Predatory Lending Act - Consumer).....	I-3-2
Georgia Criminal Usury Statute.....	I-4-1
Expanded Scope of High-Cost Mortgages Under Dodd-Frank (Consumer).....	I-5-1
FTC Final Rule to Protect Struggling Homeowners from Mortgage Scams.....	I-5-5
Where Do You Find Commercial Borrowers.....	I-6-1
Lending Glossary.....	I-7-1
FAQ for Introduction.....	I-8-1

II. EVALUATING THE LOAN

Criteria for Your Hard Money Loans.....	E-1-1
Fix-Up Costs & Construction Draw.....	E-1-7
Investment Loan Guidelines.....	E-1-10
Rental Investment Worksheet.....	E-1-11
DANGER: Loans to Friends and Family.....	E-1-12
Develop a Good Underwriting Discipline & My Loan Terms.....	E-1-14
Entity to Use for Your Hard Money Lending.....	E-1-15
Business Loans.....	E-1-16
Procedure for Making Hard Money Loan.....	E-2-1
Preliminary Loan Worksheet.....	E-3-1
Loan Applications.....	E-4-1
Pre-Application Disclosure (Consumer).....	E-5-1
Credit Reports.....	E-6-1
Appraisal Sample.....	E-7-1
Evaluating the Neighborhood.....	E-8-1
DON’T MAKE THE LOAN!.....	E-8-3
Earnest Money Deposit.....	E-9-1
Final Commitment Letter.....	E-9-3
Additional Funding for Loans.....	E-9-4
Loan Information Forms to Complete at or Before Closing.....	E-10-1
FAQ for Evaluating the Loan.....	E-11-1

III. CLOSING THE LOAN

Points on Private Loans.....	C-1-1
Property Insurance	C-1-2
Considerations when Lending from an IRA or Solo 401K.....	C-1-4
Letter to Borrower – Closing Information	C-2-1
Closing Instructions to Attorney	C-2-3
Annotated Instructions to Closing Attorney.....	C-2-5
Checklist for Closing.....	C-2-9
Title Notes.....	C-3-1
Certificate of Title	C-3-2
Title Insurance.....	C-4-1
Title Commitment	C-4-3
Short Form Residential Loan Policy	C-4-9
Insured Closing Letter or Closing Protection Letter	C-5-1
Owner’s Affidavit	C-6-1
Various Notes & Deeds to Secure Debt.....	C-7-1
Multi-State Fixed Rate Note (FMNA 3200)	C-7-2
Georgia Security Deed (FMNA 3011)	C-7-5
1-4 Family Rider (FMNA 3170)	C-7-16
Note & Deed to Secure Debt (Witcher).....	C-7-18
Note & Deed to Secure Debt with Annotations – Weighted to Lender (DB)....	C-8-1
Special Purpose Loan Structures.....	C-9-1
Transactional Funding.....	C-9-1
WRAP Loans.....	C-9-2
First Payment Notification.....	C-9-6
WRAP Clauses.....	C-9-7
Equity Line of Credit (DB)	C-9-9
Split-Capitalization Loan Program (DB)	C-9-12
Participating Loans (DB)	C-9-15
Participating Investment Agreement (DB).....	C-9-21
Loans Collateralized by Personal Property	C-9-22
Personal Property Security Agreement (DB).....	C-9-24
UCC Financing Statement.....	C-9-26
Mobile Home Financing.....	C-9-28
Clauses for the Note & Security Instrument	C-10-1
Who Signs the Note & Mortgage.....	C-11-1
Settlement Statement – HUD-1.....	C-12-1
Settlement Statement – HUD-1A.....	C-12-3
ALTA Settlement Statement.....	C-12-4
Initial Escrow Account Disclosure Statement.....	C-12-7
Rescission Form – Refinancing Loan (Consumer)	C-12-8
Construction Draw Agreements.....	C-13-1
Contractor Release and Waiver of Lien	C-13-8
Affidavit of Residency	C-14-1

Notice of Junior Lien & Request for Notification of Default/Foreclosure	C-15-1
GA Code Section 44-14-2 Rights of Lien Holder to Pay Certain Items ..	C-15-2
Limited Power of Attorney to Deal with Underlying Mortgage	C-16-1
Subordination Agreements	C-17-1
Holder in Due Course	C-18-1
Types of Deeds	C-19-1
Fast Track Action Plan	C-20-1
FAQ for Closing the Loan	C-21-1
IV. LOAN SERVICING	
Loan Spreadsheet	S-1-1
Deposit Register Form	S-1-4
Interest Computation Methods	S-2-1
NoteSmith Features & Sample Reports	S-3-1
End of Year Reporting – 1098s	S-4-1
Sample Late & Default Letters	S-5-1
Payoff Statements	S-6-1
Satisfaction of Deed to Secure Debt	S-7-1
FAQ for Loan Servicing	S-8-1
V. DEFAULT/COLLECTION/FORECLOSURE	
Mutual Departure from the Terms of the Contract (Strict Compliance)	D-1-1
Modification Agreement	D-2-1
Novation of Contracts	D-2-2
Forbearance Agreement	D-3-1
Deed in Lieu of Foreclosure Language	D-4-1
Article - 'Deed-in-lieu' can spare troubled borrower from foreclosure	D-4-2
Deficiency Judgments	D-5-1
Abandoning the Collateral & Suing on the Note	D-5-1
Attorney Demand Letter (Witcher)	D-6-1
Acceleration Instructions	D-7-1
Simple Calculation of Usury under Current GA Law	D-7-2
Foreclosure Notice to IRS (Witcher)	D-8-1
Deed After Foreclosure Under Power of Sale	D-9-1
Foreclosure Registries	D-9-3
Proceeding Against Tenant Holding Over	D-10-1
Current Status the Bankruptcy Stay Order	D-11-1
Disclosures on Sale or Rental	D-12-1
FAQ for Loan Default & Collection	D-13-1

“Rule No.1: Never lose money. Rule No.2: Never forget rule one.” – Warren Buffett

“The most money losing attitude is Greed.” – Robert P. Witcher

HOW TO BECOME A HARD MONEY LENDER

The Definitive Guide for Private Lenders Making Asset-Based Loans

Introduction

Welcome to your guide to Hard Money Lending. This manual is intended to accompany the class on this topic and is not intended to be used by anyone who has not attended such class. After class this manual will be a valuable reference in doing your own lending.

Interspersed throughout this manual you will find pages marked as “Consumer Loans.” Consumer loans are those loans made to homeowner’s who are using their primary residence as collateral for the loan. These are typically not the borrowers we would seek for our hard money loans. These consumer loan forms and discussions are included to give you an idea of some of the additional laws and documents required for these types of loans. Be aware that this is NOT a course on consumer lending and this information is included simply to show you the complex nature of consumer lending.

The documents provided will need to be conformed to the laws of any state where you will be making loans. When making a loan in a new state, I seek out closing attorneys with extensive real estate closing experience and offer to pay for them to review my documents before the closing. Often, this is the same attorney doing the closing. When an attorney says I cannot use a clause, I always request a citation of the statute or court case that supports his/her position. This forces them to justify their opinion and I often find that rather than being 'against the law,' their real objection often is that it is just not common to use certain clauses in their state.

What is a Hard Money Loan?

A hard money loan is a type of asset-based financing where the loan is secured by the value of specific real property and little or no underwriting consideration is given to the borrower’s credit. Commercial banks and other financial institutions rarely, if ever, deal with this type of lending mainly due to banking and financial regulations requiring a credit based approach.

Most hard money loans are made by private investors or small companies of individuals, generally in their local areas, so that they are aware of the market and are close by to keep an eye on their investment. Due to the nature of the lenders for these loans, this is also often referred to as “private lending.”

For the uninitiated, hard money loans are viewed as the loan of last resort. Though this may be true in a few cases, there are borrowers who regularly use hard money for projects for a variety of reasons. Not the least of which is the ability to negotiate the structure of the loan so repayment coincides with the cash flows of the project and ability to get funded quickly due to less “red tape” in approval and closing.

Though hard money loans can be made on owner/occupant properties, because of brokerage and predatory lending acts including HOEPA, SAFE Act and Dodd-Frank Act, most hard money loans are made on non-owner occupied residential and commercial properties. In most states, such commercial hard money loans are not subject to the same consumer loan safeguards as an owner/occupant residential mortgage. In this way, hard money lenders have remained largely unregulated in most states except for the usury statutes.

Borrowers are often willing to pay the higher interest rates typical for these loans for a relatively short time (up to a year or so) for commercial property or investment property that does not yet qualify for traditional financing due to the borrower’s credit, condition of the property, seasoning, etc. These are often referred to as “bridge loans” used by the borrower until whatever issue is taken care of and conventional financing can be obtained.

But there are other reasons for borrowers to use asset-based, hard money loans. Some examples are: being able to act quickly on a deal without waiting for bank approval, having too many institutional loans to qualify for more, a distressed financial situation, buying and reselling a quick-turn property as well as other reasons.

Typically, the largest hard money loan a borrower can expect is between 60% and 70% of the current quick-sale property value. Property value is defined as what the property would sell for within one to four months on the market should the lender have to take and resale the property. This value may be less than a market value appraisal which assumes an arms-length transaction in which neither buyer nor seller is acting under duress. Sometimes cross-collateralization is done with additional properties to obtain the lower loan-to-value (LTV) required by the lender. Even with variations in market value, a 60% LTV will usually provide enough equity to cover any expenses incurred in the event of a default.

Some hard money lenders have loaned on higher LTV ratios, but most of those who did so have lost money in these transactions at one time or the other and have not been able to protect themselves from market volatility. A low LTV provides the lender his primary security should the borrower not pay and the lender must foreclose and possibly complete a rehab on the property.

The credit of the borrower is not often considered by the lender in making the loan, only the value of the collateral property. However, the experienced hard money lender will often check a new borrower's credit to see how he or she pays and potential for bankruptcy which could delay the lender in getting paid. Once a borrower has proven himself or herself with a lender, credit is rarely checked again on future loans.

Most hard money lenders will only make loans in a first mortgage position. This means they are first in line to be paid from any proceeds on the property and do not have to worry about what another lender on the property may do. On occasion, a hard money lender may take a second mortgage position if he is able to satisfy himself he is well secured (such as with a wrap mortgage at a good LTV) and is earning a significantly higher return for doing so. Being in a second position carries more risk and requires much more diligence.

Low LTVs and high interest rates are what protects and compensates the hard money lender for the risk that they undertake. What makes hard money lending so great for the educated is that this risk is significantly reduced by a lender's knowledge of the market and how to deal with the property should the buyer default.

Hard money loans can be a very lucrative investment for experienced real estate investors who have capital they want to invest.

Be aware that the term "asset-based lending" is often used when assets other than real estate are involved, such as accounts receivable, equipment, patents, stock or other business assets. Such assets may be used by a company as collateral to get capital for growth, but are unable or unwilling to apply for bank or institutional financing.

Hard Money Loan Terms

Hard money loan rates do not generally move with bank rates as most conventional loans do. Most hard money loans are in the 12% to 18% range, but can be higher or lower. Remember, the higher rates are often associated with these types of loans, but hard money basically means that lending is based on hard assets, not the buyer's credit. Rates are instead more dependent on the real estate market, the inflation rate and availability of capital. These factors can vary widely between local markets and local investors' available capital.

Also, many hard money loans provide for a higher “default interest rate” should the borrower default. Such rate may be as high as allowed by law in that state or be a specified percentage rate, often at least 5% greater than the regular note rate.

Most private lenders will charge a prepayment penalty, though some will not. While the borrower may view this as a penalty, the lender does not. When the lender originally made the loan, he had to plan for it to go the full term. Thus, during the loan term, he may have turned down other opportunities that required funds in excess of what he still had on hand. The prepayment penalty just allows the lender a return for the time it takes to find another loan to continue his investment.

Points on a hard money loan are typically 3 to 6 points, but can run in excess of 10 points. Institutional lenders collect points at time of closing and thus quickly accumulate enough points from several closings to make a new loan. The small lender does not have this advantage. Therefore, many smart hard money lenders finance the points into the loan. This way, the lender has put a relatively small amount of money back to work immediately and most borrowers appreciate being able to keep the extra money for the loan term.

The loan period for most hard money loans is between six and 12 months, though they can run shorter or go out to five years or more.

Usury and Bankruptcy Remote Entities

Some states have an exemption from lower usury limits when the loan is to a corporation or LLC. This is one reason why in some states lenders require a borrower to set up an entity to hold the property and be the primary borrower with the owner of the entity co-signing.

This provides not only the possibility of a higher interest rate, but also provides for a “bankruptcy remote” entity. Thus, if the individual owner files bankruptcy, it does not affect the entity and the property used as collateral. If for some reason, the entity holding the property does file bankruptcy, since the only asset is the one property, it is usually a quick in and out.

Check with your local attorney as to whether requiring borrower to use an entity will afford any benefits to you and your borrower in your state.

State Interest Rates and Usury Limits

by – Upcounsel.com (formerly The 'Lectric Law Library')

<https://www.upcounsel.com/lectl-state-interest-rates-and-usury-limits>

Many state's laws provide that you cannot lend money at an interest rate in excess of a certain statutory maximum, which is called "usury limit."

As shown August 14, 2020

Limits on Interest Rates for Loans

Unless otherwise stated, rates are simple and are not based on compound interest. Furthermore, the usury limits listed below are based on present limits, meaning the ones applicable at the time that this research was completed. Many states have had lower limits in the past. Additionally, in most states, a late charge or other fee exacted from someone who owes another debt is also counted as interest.

It's also important to understand that banks have separate rules, which is why the rate you pay for your car loan or credit card may be higher than the rates listed below. In 1980, due to high inflation, the federal government passed a special law that allowed national banks to ignore state usury limits and pegged the rate of interest at a certain number of points above the Federal Reserve discount rate. In addition, specially chartered organizations like small loan companies and installment plan sellers, such as car financing companies, have their own rules.

Different Rates We've Listed

The stated general usury limit is the rate that can be charged by one person or corporation to another. In other words, if you lend your next door neighbor \$100.00, the rate stated is the limit. If you want to charge more than the listed rate, you would need a special license such as a banking or pawn brokering license. This also means that special kinds of loans, like those from pawnbrokers or small loan companies, are not stated.

For some states, we also listed a "legal rate." In these states, if you have a contractual obligation that provides simply for interest without a specific term, or "interest at the highest legal rate," then the "legal rate" listed is what applies.

In other instances, we have stated a "judgment rate," which is the rate that final judgments bear. In states without a usury limit, there still may be a federally imposed limit. The reason for this is that astronomically high interest rates indicate to the federal government that "loan sharking" is happening.

State by State Usury Limits

Usury is a very complicated legal area. Transactions that a person would not consider to be affected by usury, such as repurchase agreements, are often subject to these limits. A word of caution: Before trying to lend someone money or attempting to invest with a guaranteed return, consult an attorney to make sure that you don't run afoul of the usury laws.

In states that specify one limit for consumers and one limit for non-consumers, you cannot avoid the usury limit by creating a sham business deal. In a supplement that is now being prepared and will be available soon, we will review the penalties for usury in each state and point out special circumstances in each state.

ALABAMA: The legal rate of interest is 6%; the general usury limit is 8%. The judgment rate is 12%.

ALASKA: The legal rate of interest is 10.5%; the general usury limit is more than 5% above the Federal Reserve interest rate on the day the loan was made.

ARIZONA: The legal rate of interest is 10%.

ARKANSAS: The legal rate of interest is 6%; for non-consumers the usury limit is 5% above the Federal Reserve's interest rate; for consumers the general usury limit is 17%. Judgments bear interest at the rate of 10% per annum, or the lawful agreed-upon rate, whichever is greater.

CALIFORNIA: The legal rate of interest is 10% for consumers; the general usury limit for non-consumers is more than 5% greater than the Federal Reserve Bank of San Francisco's rate.

COLORADO: The legal rate of interest is 8%; the general usury limit is 45%. The maximum rate to consumers is 12% per annum.

CONNECTICUT: The legal rate of interest is 8%; the general usury rate is 12%. In civil suits where interest is allowed, it is allowed at 10%.

DELAWARE: The legal rate of interest is 5% over the Federal Reserve rate.

DISTRICT OF COLUMBIA: The legal rate of interest is 6%; the general usury limit is in excess of 24%.

FLORIDA: The legal rate of interest is 12%; the general usury limit is 18%. On loans above \$500,000 the maximum rate is 25%.

GEORGIA: The legal rate of interest is 7%. On loans below \$3,000 the usury limit is 16%. On loans above \$3,000, the limit appears to be 5% per month. As to loans below \$250,000 the interest rate must be specified in simple interest and in writing.

HAWAII: The legal rate of interest is 10%. The usury limit for consumer transactions is 12%.

IDAHO: The legal rate of interest is 12%. Judgments bear interest at the rate of 5% above the U.S. Treasury securities rate.

ILLINOIS: The legal rate of interest is 5%. The general usury limit is 9%. The judgment rate is 9%.

INDIANA: The legal rate of interest is 10%. Presently there is no usury limit; however, legislation is pending to establish limits. The judgment rate is also 10%.

IOWA: The legal rate of interest is 10%. In general consumer transactions are governed at a maximum rate of 12%.

KANSAS: The legal rate of interest is 10%; the general usury limit is 15%. Judgments bear interest at 4% above the federal discount rate. On consumer transactions, the maximum rate of interest for the first \$1,000 is 18%, above \$1,000, 14.45%.

KENTUCKY: The legal rate of interest is 8%; the general usury limit is more than 4% greater than the Federal Reserve rate or 19%, whichever is less. On loans above \$15,000 there is no limit. Judgments bear interest at the rate of 12% compounded yearly, or at such rate as is set by the Court.

LOUISIANA: The legal rate of interest is one point over the average prime rate, not to exceed 14% nor be less than 7%. Usury limit for individuals is 12%, there is no limit for corporations. (As warned, you cannot evade the limit by forming a corporation when the loan is actually to an individual.)

MAINE: The legal rate of interest is 6%. Judgments below \$30,000 bear 15%, otherwise they bear interest at the 52 week average discount rate for T-Bills, plus 4%.

MARYLAND: The legal rate of interest is 6%; the general usury limit is 24%. There are many nuances and exceptions to this law. Judgments bear interest at the rate of 10%.

MASSACHUSETTS: The legal rate of interest is 6%; the general usury rate is 20%. Judgments bear interest at either 12% or 18% depending on whether the court finds that a defense was frivolous.

MICHIGAN: The legal rate of interest is 5%; the general usury limit is 7%. Judgments bear interest at the rate of 1% above the five year T-note rate.

MINNESOTA: The legal rate of interest is 6%. The judgment rate is the "secondary market yield" for one year T-Bills. Usury limit is 8%.

MISSISSIPPI: The legal rate of interest is 9%; the general usury limit is more than 10%, or more than 5% above the Federal Reserve rate. There is no usury limit on commercial loans above \$5,000. The judgment rate is 9% or a rate legally agreed upon in the underlying obligation.

MISSOURI: The legal and judgment rate of interest is 9%. Corporations do not have a usury defense. (Remember that a corporation set up for the purpose of loaning money to an individual will violate the usury laws.)

MONTANA: The legal rate of interest is 10%; the general usury limit is above 6% greater than New York City banks' prime rate. Judgments bear interest at the rate of 10% per annum.

NEBRASKA: The legal rate of interest is 6%; the general usury limit is 12%. Accounts bear interest at the rate of 12%. Judgments bear interest at the rate of 1% above a bond yield equivalent to T-bill auction price.

NEVADA: The legal rate of interest is 12%; there is no usury limit.

NEW HAMPSHIRE: The legal rate of interest is 10%; there is no general usury rate.

NEW JERSEY: The legal rate of interest is 6%; the general usury limit is 30% for individuals and 50% for corporations. There are a number of exceptions to this law.

NEW MEXICO: The legal rate of interest is 12%. Judgment rate is fixed by the Court.

NEW YORK: The legal rate of interest is 9%; the general usury limit is 16%.

NORTH CAROLINA: The legal interest rate and the general usury limit is 8%. However, there is a provision for a variable rate, which is 16% or the T-Bill rate for non-competitive T-Bills. Above \$25,000 there is no express limit. However, the law providing for 8% is still on the books.

NORTH DAKOTA: The legal rate of interest is 6%; the general usury limit is 5.5% above the six-month Treasury bill interest rate. The judgment rate is the contract rate or 12%, whichever is less. A late payment charge of 1.75% per month may be charged to commercial accounts that are overdue provided that the charge is revealed prior to the account being opened and that the terms were less than 30 days, that is, that the account terms were net 30 or less.

OKLAHOMA: The legal rate of interest is 6%. Consumer loans may not exceed 10% unless the person is licensed to make consumer loans. Maximum rate on non-consumer loans is 45%. The judgment rate is the T-Bill rate plus 4%.

OHIO: The general usury rate for personal loans is 21% per annum. {*Not shown on website*}

OREGON: The legal rate is 9%, the judgment rate is 9% or the contract rate, if lawful, whichever is higher. The general usury rate for loans below \$50,000 is 12% or 5% above the discount rate for commercial paper.

PENNSYLVANIA: The legal rate of interest is 6%, and this is the general usury limit for loans below \$50,000, except for: loans with a lien on non-residential real estate; loans to corporations; loans that have no collateral above \$35,000. Judgments bear interest at the legal rate. It is criminal usury to charge more than 25%.

PUERTO RICO: The legal rate of interest is 6%; all other rates are set by the Finance Board of Office of Commissioner of Financial Institutions. Judgments bear interest at the same rate as the underlying debt.

RHODE ISLAND: The legal rate of interest and judgment rate is 12%. The general usury limit is 21% or the interest rate charged for T- Bills plus 9%.

SOUTH CAROLINA: The legal rate of interest is 8.75%, and judgments bear interest at the rate of 14%. Subject to federal criminal laws against loan sharking there is no general usury limit for non-consumer transactions. The South Carolina Consumer Protection Code provides regulations for maximum rates of interest for consumer transactions. Please consult with counsel for the latest rates.

SOUTH DAKOTA: The legal rate of interest is 15%; judgments bear interest at the rate of 12%. There is no other usury limit. There are certain limitations on consumer loans below \$5,000.00.

TENNESSEE: The legal rate and judgment rate of interest is 10%. The general usury limit is 24%, or four points above the average prime loan rate, whichever is less.

TEXAS: The legal rate of interest is 6%. Interest does not begin until 30 days after an account was due. The judgment rate of interest is 18% or the rate in the contract, whichever is less. There are a number of specific ceilings for different types of loans, so please see counsel for information.

UTAH: The legal rate of interest is 10%. Judgments bear interest at the rate of 12% or a lawfully agreed upon rate. There are floating rates prescribed for consumer transactions. Please see counsel for information.

VERMONT: The legal rate of interest and judgment rate of interest is 12%. On retail installment contracts the maximum rate is 18% on the first \$500, 15% above \$500. The general usury limit is 12%.

VIRGINIA: The legal rate of interest is 8%. Judgments bear interest at the rate of 8% or the lawful contract rate. Corporations and business loans do not have a usury limit, and loans over \$5,000 for "business" or "investment" purposes are also exempt from usury laws. Consumer loans are regulated and have multiple rates.

WASHINGTON: The legal rate is 12%. The general usury limit is 12%, or four points above the average T-Bill rate for the past 26 weeks, whichever is greater. (The maximum rate is announced by the State Treasurer.) Judgments bear interest at the rate of 12% or the lawful contract rate, whichever is higher.

WEST VIRGINIA: The legal rate of interest is 6%. The maximum "contractual" rate is 8%; Commissioner of Banking issues rates for real estate loans, and, may establish maximum general usury limit based on market rates.

WISCONSIN: The legal rate of interest is 5%. There are a myriad of rates for different types of loans. There is no general usury limit for corporations. Note that a loan to an individual, even if a corporation is formed, will violate the law. The judgment rate of interest is 12%, except for mortgage foreclosures, where the rate will be the lawful contract rate.

WYOMING: The legal rate and judgment rate of interest is 10%. If a contract provides for a lesser rate, the judgment rate is the lesser of 10% and the contract rate.

Note: This chart is provided to give you an idea of the foreclosure procedures in different states. Keep in mind that this is a general information. There may be other provisions not shown and some of the information may be out of date. We recommend having a lawyer do any foreclosures because the lawyer should have malpractice insurance. So if a mistake is made, the lawyer should be liable.

FORECLOSURE LAWS AND PROCEDURES BY STATE

RealtyTrac as of August 31, 2020 – <https://www.realtytrac.com/real-estate-guides/foreclosure-laws/>

The foreclosure process varies somewhat from state to state, and depends primarily on whether the state uses mortgages or deeds of trust for the purchase of real property. Generally, states that use mortgages conduct judicial foreclosures; states that use deeds of trust conduct non-judicial foreclosures. The principal difference between the two is that the judicial procedure requires court action on a foreclosed home.

The below table represents our current knowledge of which states use mortgages (judicial) or deeds of trust (non-judicial) or both. The table also includes estimated foreclosure timelines for each state. Please check with your local county government to verify this information. Inform us of any errors at info@realtytrac.com.

Compare all state foreclosure timelines on this simple one-page chart and click on any state name to read about detailed foreclosure procedures for that state.

State	Judicial	Non-Judicial	Comment	Process Period**	Publish Sale**	Redemption Period**	Sale/NTS
Alabama	•	•	Judicial rarely	49-74	21	365	Trustee
Alaska	•	•	Judicial rarely	105	65	365*	Trustee
Arizona	•	•	Judicial rarely	90+	41	30-180*	Trustee
Arkansas	•	•	Both	70	30	365*	Trustee
California	•	•	Judicial rarely	117	21	365*	Trustee
Colorado	•	•	Judicial rarely	145	60	None	Trustee
Connecticut	•		Judicial only	62	NA	Court Decides	Court
Delaware	•		Judicial only	170-210	60-90	None	Sheriff
Florida	•		Judicial only	135	NA	None	Court
Georgia	•	•	Judicial rarely	37	32	None	Trustee
Hawaii	•	•	Both	220	60	None	Trustee
Idaho	•	•	Trustee Sale	150	45	365	Trustee
Illinois	•		Judicial only	300	NA	90	Court
Indiana	•		Judicial only	261	120	None	Sheriff
Iowa	•	•	Trustee Sale Voluntary	160	30	20	Sheriff
Kansas	•		Judicial only	130	21	365	Sheriff
Kentucky	•		Judicial only	147	NA	365	Court
Louisiana	•		Judicial only	180	NA	None	Sheriff

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Maine	•	Judicial only	240	30	90	Court	
Maryland	•	Judicial only	46	30	Court Decides	Court	
Massachusetts	•	Judicial only	75	41	None	Court	
Michigan	•	Non-Judicial only	60	30	30-365	Sheriff	
Minnesota	•	•	Non-Judicial mostly	90-100	7	180	Sheriff
Mississippi	•	•	Non-Judicial mostly	90	30	None	Trustee
Missouri	•	•	Non-Judicial mostly	60	10	365	Trustee
Montana	•	•	Trustee Sale mostly	150	50	None	Trustee
Nebraska	•		Judicial only	142	NA	None	Sheriff
Nevada	•	•	Trustee Sale mostly	116	80	None	Trustee
New Hampshire	•		Non-Judicial only	59	24	None	Trustee
New Jersey	•		Judicial only	270	NA	10	Sheriff
New Mexico	•		Judicial only	180	NA	30-270	Court
New York	•		Judicial only	445	NA	None	Court
North Carolina	•	•	Non-Judicial mostly	110	25	None	Sheriff
North Dakota	•		Judicial only	150	NA	180-365	Sheriff
Ohio	•		Judicial only	217	NA	None	Sheriff
Oklahoma	•	•	Judicial mostly	186	NA	None	Sheriff
Oregon	•	•	Trustee Sale mostly	150	30	180	Trustee
Pennsylvania	•		Judicial only	270	NA	None	Sheriff
Rhode Island	•	•	Non-judicial mostly	62	21	None	Trustee
South Carolina	•		Judicial only	150	NA	None	Court
South Dakota	•	•	Judicial mostly	150	23	30-365	Sheriff
Tennessee	•		Non-judicial only	40-45	20-25	730	Trustee
Texas	•	•	Non-Judicial mostly	27	NA	None	Trustee
Utah	•		Non-Judicial Only	142	NA	Court Decides	Trustee
Vermont	•		Judicial only	95	NA	180-365	Court
Virginia	•	•	Trustee Sale mostly	45	14-28	None	Trustee
Washington	•	•	Trustee Sale mostly	135	90	None	Trustee
Washington D.C.	•		Trustee Sale only	47	18	None	Trustee
West Virginia	•		Trustee Sale only	60-90	30-60	None	Trustee
Wisconsin	•	•	Judicial mostly	290	NA	365	Sheriff
Wyoming	•	•	Non-judicial mostly	60	25	90-365	Sheriff

* Judicial Foreclosures Only

** In days

A GENERAL SUMMARY OF LENDER LAWS FOR GEORGIA

NOTE: THIS SUMMARY IS OFFERED AS A GENERAL GUIDE ONLY TO SHOW THE TYPES OF ISSUES TO INVESTIGATE IN YOUR OWN STATE'S LAWS. CHECK WITH YOUR OWN ATTORNEY FOR UP-TO-DATE, DETAILED, SPECIFIC STATE LAWS OF YOUR STATE AS YOU NEED TO KNOW IN A SPECIFIC SITUATION.

This section of the manual was researched as of date indicated on each statute. The Georgia legislature has a 40 day session each year beginning in the middle of January and concluding in March. Any changes in the laws are then sent to the Governor's for signature. Changes are often set to take effect in July of that year or later. These excerpts do not cover many of the details of the statutes and is not intended to instruct a layman how to do a successful foreclosure, obtain a lending license, or apply interest rates and charge limitations to loan documents. Rather the summary is intended to give each reader a general familiarity with certain laws and procedures sufficient to allow the reader to discuss these matters with a qualified attorney. Remember that every time the legislature is in session, laws may change.

Georgia

A. INTEREST:

Maximum Rate. - Any rate higher than 7 must be in writing; maximum is 16 per annum simple interest where principal amount involved is \$ 3,000 or less. Subject to criminal usury limit of 5 per month (not applicable to licensed pawnbrokers) (7-4-18), no limit on interest rate that may be agreed upon where principal exceeds \$3,000; however, if above \$3,000 but below \$250,000, must be expressed in simple interest terms in written contract. No prohibition is thereby created on variable rate or other basis for interest. Foregoing is inapplicable to matters governed by specified statutes. (7-4-2).

Usury. - Any higher rate than those above specified or failure to disclose interest rates in simple interest per annum terms where principal amount of loan is greater than \$3,000 but less than \$250,000 (7-4-1) results in forfeiture of entire interest but no further penalty (7-4-10), except in case of small industrial loans (see subhead Small Industrial Loans, supra) or loans on which interest exceeds 5 per month, for which violations constitute misdemeanor (not applicable to licensed pawnbrokers) (7-4-18). Definition of "interest" under criminal usury statute (7-4-18) is different from definition setting legal rate of interest (7-4-2; 260 Ga. 271, 392 S.E.2d 242). Usurious interest paid may be recovered by suit brought within one year of payment. (7-4-10). While plea of usury is personal, creditor cannot collect usurious interest from insolvent debtor to prejudice of other creditors. (7-4-11). Except for small industrial loans, loan not rendered usurious by brokers fees paid to persons other than lender. (7-4-8, 7-3-5). To prove usury, must show intent to charge usurious interest rate at time of making loan. (160 Ga. App. 359, 287 S.E.2d 75).

Bonds issued by housing authority may bear interest pursuant to terms of resolution, trust indenture or mortgage of such authority. (8-3-73). Bonds, notes and certificates of county, municipality, authority or public corporation (other than general obligation bonds) not governed by state usury laws. (36-82-122).

Revenue bonds and certificates may bear interest not exceeding 9 per year. (36-82-64).

B. FORECLOSURE:

Both mortgages and deeds to secure debt (also referred to as security deeds or loan deeds) are recognized in Georgia, although latter are used almost exclusively. Mortgage creates lien only; security deed is conveyance of title. (44-14-30, -60). Persons transacting business in state as mortgage brokers or mortgage lenders must be licensed pursuant to Code §7-1-1000 et seq.

Customarily, foreclosure is pursuant to powers of sale provided in instrument, authorizing private, nonjudicial sale. However, judicial foreclosure may be used by petition to superior court describing debt and mortgage. Rule granted requiring payment before next term of court which is published twice a month for two months or served on mortgagor 30 days before return. (44-14-180). Defenses may be filed at return term. (44-14-184). If no defense or payment, rule made absolute and judgment given for amount due and costs. Sale is as in all judicial sales by sheriff. (44-14-187).

Foreclosure may be had also in equity by petition to the superior court, which proceeds as in all other suits. (44-14-49).

There is no moratorium on mortgage foreclosures.

Nonjudicial Foreclosure Sales. - Powers of sale in deeds of trust, security deeds, mortgages, and other instruments must be strictly construed and fairly exercised. (23-2-114). Unless instrument creating such power specifically provides to contrary, personal representative, heir, legatee, devisee or successor of grantee in mortgage, deed of trust, loan, deed, bill of sale to secure debt or other like instrument, or assignee thereof, or his or her personal representative, heir, legatee, devisee or successor, may exercise any power therein contained, and such powers may be exercised by transferees. (23-2-114). Power of sale not revocable by death of grantor or donor and may be exercised after his or her death in same manner and to same extent as though such

grantor or donor were in life; and it is not necessary, in exercise of such power, to advertise or sell as property of estate of deceased, nor to make any mention of or reference to such death. (23-2-114).

Under statutory procedure, sales of real estate under powers contained in mortgages, security deeds and other lien contracts must be preceded by advertisement once a week for four weeks immediately preceding day sale is to take place in newspaper in which sheriff's sales are advertised in county in which land lies. (44-14-162; 9-13-140; 9-13-141). Sale shall be made at public outcry at courthouse on first Tues. of month between 10 A.M. and 4 P.M. E.S.T. or E.D.S.T., whichever is applicable; but if first Tues. of month should fall on New Year's Day or Independence Day, such sale must take place on immediately following Wed. (9-13-160, -161). Notice must be given to debtor by certified mail or statutory overnight delivery (9-10-12[b]) at least 30 days before sale if residential property. (44-14-162.2). Actual receipt of properly addressed notice is immaterial. (261 Ga. 835, 411 S.E.2d 874). Power of sale must be created by contract. Statutory procedure merely limiting in effect and does not create power of sale by itself. Statutory procedure is constitutional, but contractual agreement containing power of sale is constitutionally enforceable only if voluntarily, intelligently and knowingly made. (230 Ga. 426, 197 S.E.2d 376). Statutory procedure does not involve necessary state action for claim of denial of due process rights. (376 F. Supp. 1379).

RECENT CHANGES IN GEORGIA FORECLOSURE LAW

In May, 2008, several changes occurred in Georgia foreclosure law and procedures. They are as follows:

1. Transfers of security deeds must be recorded prior to conducting a foreclosure sale. Of course, this sounds logical but, in recent years, the recordable transfers have not been delivered to the foreclosure attorneys until after the date of foreclosure sale. This can raise some title issues, so the Georgia legislature took care of it with this new statute. If you have an assigned security deed, make sure you have sent it to record or send the assignment to your foreclosure attorney with your foreclosure information so it can be sent to record immediately.
2. In the past, notice of a foreclosure sale on a property used as a principal dwelling by the debtor had to be sent to the debtor by certified mail at least 15 days prior to the scheduled sale. In May, 2008, this law was amended to make the time period at least 30 days prior to the foreclosure sale.
3. Also, the new law requires the notice to include the name, address, and telephone number of the entity or individual who has authority to negotiate, amend, and modify all terms of the mortgage with the debtor. Many attorneys are now putting this information in the foreclosure advertisements which have to be sent to these types of debtors prior to the 30-day period. Therefore, mortgage holders of these types of mortgages need to be prepared to provide public contact information to their attorneys and to send foreclosure requests to their attorneys in time to meet the 30-day notice requirement.

C. LICENSE:

Persons transacting business in state as mortgage brokers or mortgage lenders must be licensed pursuant to Code §7-1-1000 et seq.

GEORGIA RESIDENTIAL MORTGAGE ACT

TITLE 7. BANKING AND FINANCE CHAPTER 1. FINANCIAL INSTITUTIONS

ARTICLE 13. LICENSING OF MORTGAGE LENDERS AND MORTGAGE BROKERS

*** Current through the 2020 Regular Session ***

§ 7-1-1000. Definitions

As used in this article, the term:

- (1) "Affiliate" or "person affiliated with" means, when used with reference to a specified person, a person who directly, indirectly, or through one or more intermediaries controls, is controlled by, or is under common control with the person specified. Any beneficial owner of 10 percent or more of the securities of a person or any executive officer, director, trustee, joint venturer, or general partner of a person is an affiliate of such person unless the shareholder, executive officer, director, trustee, joint venturer, or general partner shall prove that he or she in fact does not control, is not controlled by, or is not under common control with such person.
- (2) "Audited financial statement" means the product of the examination of financial statements in accordance with generally accepted auditing standards by an independent certified public accountant, which product consists of an opinion on the financial statements indicating their conformity with generally accepted accounting principles.
- (3) "Commissioner" means the commissioner of banking and finance.
- (4) "Commitment" or "commitment agreement" means a statement by a lender required to be licensed or registered under this article that sets forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower.
- (5) "Control," including "controlling," "controlled by," and "under common control with," means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting or nonvoting securities, by contract, or otherwise.
- (6) "Department" means the Department of Banking and Finance.
- (7) "Depository institution" has the same meaning as in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(c), and includes any credit union.
- (8) "Dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property pursuant to Regulation Z Section 226.2(a)(19). The term includes an individual condominium unit, cooperative unit, mobile home, and trailer if it is used as a residence.
- (9) "Executive officer" means the chief executive officer, the president, the principal financial officer, the principal operating officer, each vice president with responsibility involving policy-making functions for a significant aspect of a person's business, the secretary, the treasurer, or any other person performing similar managerial or supervisory functions with respect to any organization whether incorporated or unincorporated.
- (10) "Extortionate means" means the use or the threat of violence or other criminal means to cause harm to the person, reputation of the person, or property of the person.
- (11) "Federal banking agencies" means the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation. Such term shall also include the Board of Governors of the Federal Reserve System.
- (12) "Georgia Residential Mortgage Act" means this article, which also includes certain provisions in order to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.
- (13) "Individual" means a natural person.
- (14) "License" means a license issued by the department under this article to act as a mortgage loan originator, mortgage lender, or mortgage broker.
- (15) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing. For purposes of this paragraph, "clerical or support duties" may include, subsequent to the receipt of an application, the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms. An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

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(16) "Lock-in agreement" means a written agreement whereby a lender or a broker required to be licensed or registered under this article guarantees for a specified number of days or until a specified date the availability of a specified rate of interest for a mortgage loan, a specified formula by which the rate of interest will be determined, or a specific number of discount points if the mortgage loan is approved and closed within the stated period of time.

(17) "Makes a mortgage loan" means to advance funds, offer to advance funds, or make a commitment to advance funds to an applicant for a mortgage loan.

(18) "Misrepresent" means to make a false statement of a substantive fact. Misrepresent may also mean to intentionally engage in any conduct which leads to a false belief which is material to the transaction.

(19) (A) "Mortgage broker" means any person who directly or indirectly solicits, processes, places, or negotiates mortgage loans for others; offers to solicit, process, place, or negotiate mortgage loans for others; or closes mortgage loans which may be in the mortgage broker's own name with funds provided by others, and which loans are assigned to the mortgage lenders providing the funding of such loans within 24 hours of the funding.

(B) The term does not include a retailer or retail broker of a manufactured or mobile home as defined in Code Section 8-2-131 or a residential industrialized building as defined in Code Section 8-2-111:

(i) Whose residential mortgage loan activities are limited to compiling and transmitting residential mortgage loan applications along with related supporting documentation to mortgage lenders who are licensed or exempt from the licensing provisions of this article or communicating with residential mortgage loan applicants as necessary to obtain additional documents that complete the residential mortgage loan application to those licensed or exempt mortgage lenders; and

(ii) Who does not receive any payment or fee from any person for assisting the applicant to apply for or obtain financing to purchase the manufactured home, mobile home, or residential industrialized building.

(C) The term does not include an employee of a retailer or retail broker of a manufactured or mobile home as defined in Code Section 8-2-131 or a residential industrialized building as defined in Code Section 8-2-111 who:

(i) Satisfies the requirements set forth in paragraph (B) of this paragraph;

(ii) Is acting within the scope of employment and under the supervision of the retailer or retail broker as an employee and not as an independent contractor;

(iii) Is employed by only one such retailer or retail broker and shall be at all times eligible for employment in compliance with the provisions and prohibitions of Code Section 7-1-1004;

(iv) Has not been issued a cease and desist order in the past five years if such order was based on a violation of Code Section 7-1-1002 or 7-1-1013; and

(v) Has not had a mortgage lender, mortgage broker, or mortgage loan originator license revoked within the past five years.

(20) "Mortgage lender" means any person who directly or indirectly makes, originates, underwrites, holds, or purchases mortgage loans or who services mortgage loans.

(21) "Mortgage loan" means a loan or agreement to extend credit made to a natural person, which loan is secured by a deed to secure debt, security deed, mortgage, security instrument, deed of trust, or other document representing a security interest or lien upon any interest in one-to-four family residential property located in Georgia, regardless of where made, including the renewal or refinancing of any such loan.

(22) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. Generally, this does not include an individual engaged solely as a loan processor or underwriter except as otherwise provided in subsection (a.1) of Code Section 7-1-1002; a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Georgia law unless the person or entity is compensated by a mortgage lender, mortgage broker, or other mortgage loan originator or by any agent of such mortgage lender, mortgage broker, or other mortgage loan originator; and does not include a person or entity solely involved in extensions of credit relating to time-share plans, as that term is defined in 11 U.S.C. Section 101(53D).

(23) "Nation-wide Multistate Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators, mortgage loan brokers, and mortgage loan lenders, or its successor.

(24) "Nontraditional mortgage product" means any mortgage product other than a 30 year fixed rate mortgage.

(25) "Person" means any individual, sole proprietorship, corporation, limited liability company, partnership, trust, or any other group of individuals, however organized.

(26) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee

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of real property; bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction; engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and offering to engage in any activity or act in any capacity described herein.

(27) "Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator, is registered with and maintains a unique identifier through the Nation-wide Multistate Licensing System and Registry, and is an employee of:

- (A) A depository institution;
- (B) A subsidiary that is:
 - (i) Owned and controlled by a depository institution; and
 - (ii) Regulated by a federal banking agency; or
- (C) An institution regulated by the Farm Credit Administration.

(28) "Registrant" means any person required to register pursuant to Code Sections 7-1-1001 and 7-1-1003.2.

(29) "Residential property" means improved real property used or occupied, or intended to be used or occupied, as the primary residence of a natural person. Such term does not include rental property or second homes. A natural person can have only one primary residence.

(30) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in 15 U.S.C. Section 1602 of the Truth in Lending Act, or residential real estate upon which is constructed or intended to be constructed a dwelling.

(31) "Residential real estate" means any real property located in Georgia upon which is constructed or intended to be constructed a dwelling.

(32) "Service a mortgage loan" means the collection or remittance or the right to collect or remit payments of principal, interest, trust items such as insurance and taxes, and any other payments pursuant to a mortgage loan.

(33) "Ultimate equitable owner" means a natural person who, directly or indirectly, owns or controls an ownership interest in a corporation or any other form of business organization, regardless of whether such natural person owns or controls such ownership interest through one or more natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, limited liability companies, partnerships, trusts, joint-stock companies, other entities or devices, or any combination thereof.

(34) "Unique identifier" means a number or other identifier assigned by protocols established by the Nation-wide Multistate Licensing System and Registry.

§ 7-1-1001. Exemption for certain persons and entities; registration requirements; authorized actions of licensed mortgage lenders

(a) The following persons shall not be required to obtain a mortgage loan originator, mortgage broker, or mortgage lender license and shall not be subject to the provisions of this article but may be subject to registration requirements, if registration of such persons is required by this article:

(1) Any lender authorized to engage in business as a bank, credit card bank, savings institution, or credit union under the laws of the United States, any state or territory of the United States, or the District of Columbia, the deposits of which are federally insured;

(2) Any wholly owned subsidiary of any lender described in paragraph (1) of this subsection. Any subsidiary that violates any applicable law of this article may be subject to a cease and desist order as provided for in Code Section 7-1-1018;

(2.1) Any wholly owned subsidiary of any bank holding company; provided, however, that such subsidiary shall be subject to registration requirements in order to facilitate the department's handling of consumer inquiries. Such requirements are contained in Code Section 7-1-1003.3;

(3) Registered mortgage loan originators, when acting for an entity described in paragraph (1) or (2) of this subsection. To qualify for this exemption, an individual shall be registered with and maintain a unique identifier through registration with the Nation-wide Multistate Licensing System and Registry;

(4) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of such individual. For purposes of this exemption, the term "immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. Immediate family members shall include stepparents, stepchildren, stepsiblings, and adoptive relationships;

Hard Money Lending Course

(5) An attorney licensed to practice law in Georgia who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;

(6) A Georgia licensed real estate broker or real estate salesperson not actively engaged in the business of negotiating mortgage loans; or a Georgia licensed real estate salesperson providing information to a lender or its agent related to an existing or potential short sale transaction in which a separate fee is not received by such real estate broker or real estate salesperson; however, such real estate broker or real estate salesperson who directly or indirectly negotiates, places, or finds a mortgage for others shall not be exempt from the provisions of this article;

(7) Any person performing any act relating to mortgage loans under order of any court;

(8) Any natural person or the estate of or trust created by a natural person making a mortgage loan with his or her own funds for his or her own investment, including those natural persons or the estates of or trusts created by such natural persons who make a purchase money mortgage for financing sales of their own property;

(9) The United States of America, the State of Georgia or any other state, and any agency, division, or corporate instrumentality of any governmental entity, including without limitation: the Georgia Housing and Finance Authority, the Georgia Development Authority, the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Government National Mortgage Association (GNMA), the United States Department of Housing and Urban Development (HUD), the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), the Farmers Home Administration (FmHA), and the Farm Credit Administration and its chartered agricultural credit associations;

(10) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence;

(11) Any person who makes a mortgage loan to an employee of such person as an employment benefit;

(12) Any licensee under Chapter 3 of this title, the "Georgia Industrial Loan Act," provided that any mortgage loan made by such licensee is for \$3,000.00 or less;

(13) Nonprofit corporations making mortgage loans to promote home ownership or improvements for the disadvantaged;

(14) A natural person employed by a licensed or registered mortgage broker, a licensed or registered mortgage lender, or any person exempted from the mortgage broker or mortgage lender licensing requirements of this article when acting within the scope of employment and under the supervision of the mortgage broker or mortgage lender or exempted person as an employee and not as an independent contractor, except those natural persons exempt from licensure as a mortgage broker or mortgage lender under paragraph (17) of this subsection. To be exempt from licensure as a mortgage broker or mortgage lender, a natural person shall be employed by only one such employer and shall be at all times eligible for employment in compliance with the provisions and prohibitions of Code Section 7-1-1004. Such natural person, who meets the definition of mortgage loan originator provided in paragraph (22) of Code Section 7-1-1000, shall be subject to mortgage loan originator licensing requirements. A natural person against whom a cease and desist order has become final shall not qualify for this exemption while under the employment time restrictions of subsection (b) of Code Section 7-1-1004 if such order was based on a violation of Code Section 7-1-1002 or 7-1-1013 or whose license was revoked within five years of the date such person was hired;

(15) Any person who purchases mortgage loans from a mortgage broker or mortgage lender solely as an investment and who is not in the business of brokering, making, purchasing, or servicing mortgage loans;

(16) Any natural person who makes five or fewer mortgage loans in any one calendar year. A person other than a natural person who makes five or fewer mortgage loans in any one calendar year shall not be exempt from the licensing requirements of this article;

(17) (A) A natural person otherwise required to be licensed as a mortgage lender or mortgage broker, who is under an exclusive written independent contractor agreement with any person that is a wholly owned subsidiary of a financial holding company or bank holding company, savings bank holding company, or thrift holding company, which subsidiary also meets the following requirements, subject to the review and approval of the department:

(i) The subsidiary has provided an undertaking of accountability supported by a surety bond equal to the lesser of \$1 million or \$50,000.00 per exempt person, to cover all of its persons exempted by this paragraph, that includes full and direct financial responsibility for the mortgage broker activities of each such exempted person, and also provides for the education of the exempt persons, the handling of consumer complaints related to the exempt persons, and the supervision of the mortgage broker activities of the exempt persons;

(ii) The subsidiary has applied for and been granted a mortgage broker or mortgage lender license, consistent with the provisions of this article and renewable annually; and

Hard Money Lending Course

(iii) The subsidiary has paid applicable fees for this license, which license fees shall be the lesser of one-half of the sum of the cost of the individual licenses or \$100,000.00.

(B) To maintain the exemption, a natural person shall:

(i) Solicit, process, place, or negotiate a mortgage loan to be made only by the licensed subsidiary or its affiliate; and

(ii) Be at all times in compliance with the provisions and prohibitions of Code Section 7-1-1013 and the provisions and prohibitions applicable to employees under Code Section 7-1-1004.

(C) For purposes of this paragraph, the term "financial holding company" means a financial holding company as defined in the Bank Holding Company Act of 1956, as amended.

(D) The commissioner shall provide by rule or regulation for the implementation of this paragraph; or

(18) (A) An employee of a bona fide nonprofit corporation who acts as a mortgage loan originator only with respect to his or her work duties with the bona fide nonprofit corporation and who acts as a mortgage loan originator only with respect to mortgage loans with terms that are favorable to the borrower shall be exempt from obtaining a mortgage loan originator license. In order for a corporation to be considered a bona fide nonprofit corporation under this paragraph, the department shall determine, under criteria and pursuant to processes established by the department, that the nonprofit corporation:

(i) Has the status of a tax-exempt organization under Section 501(c) (3) of the Internal Revenue Code of 1986;

(ii) Promotes affordable housing;

(iii) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;

(iv) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;

(v) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients;

(vi) Provides or identifies for the borrower mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs. In order for mortgage loans to have terms that are favorable to the borrower, the department shall determine that the terms are consistent with loan origination in a public or charitable context, rather than in a commercial context; and

(vii) Satisfies the exemption from licensure set forth in paragraph (13) of this subsection.

(B) The department shall periodically examine the books and activities of an organization it has previously identified as a bona fide nonprofit corporation for purposes of this paragraph in order to determine if it continues to meet the criteria for such status under subparagraph (A) of this paragraph. In conducting such an examination, the department shall have all of the powers set forth in Code Section 7-1-1009. In the event the nonprofit corporation no longer qualifies for such status, then the employee exemption from having a mortgage loan originator license shall no longer be applicable.

(b) Exemptions enumerated in paragraphs (1), (2), (2.1), (7), (8), (9), (11), (12), (13), (14), (15), (16), and (17) of subsection (a) of this Code section shall be exemptions from licensure as a mortgage broker or mortgage lender only. Nothing in paragraphs (1), (2), (2.1), (7), (8), (9), (11), (12), (13), (14), (15), (16), and (17) of subsection (a) of this Code section shall be intended to exempt natural persons from compliance with mortgage loan originator licensing requirements as set forth in this article and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008. Individuals that transact business as a mortgage loan originator, unless specifically exempted by paragraph (3), (4), (5), (6), (10), or (18) of subsection (a) of this Code section shall obtain a mortgage loan originator license as required by Code Section 7-1-1002 whether they are employed by a mortgage broker, mortgage lender, or person exempted as a mortgage broker or lender as set forth in this subsection.

(c) A licensed mortgage lender is authorized to engage in all activities that are authorized for a mortgage broker and, as a result, shall not be required to obtain a mortgage broker license.

§ 7-1-1001.1. Requirement for mortgage loan originator license; application to sellers of mobile homes.

(a) It shall be prohibited for any person to engage in the activities of a mortgage loan originator without first obtaining and maintaining a mortgage loan originator license as set forth in this article.

(b) The department shall have the broad administrative authority to administer, interpret, and enforce this article and the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, and promulgate rules or regulations implementing it, in order to carry out the intentions of the federal legislation. Such administrative authority of the department shall include, but shall not be limited to, the authority to promulgate rules and regulations to implement the provisions of such federal legislation related to the temporary authority of mortgage loan originators.

Hard Money Lending Course

(c) The provisions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 shall apply to the activities of retail sellers of manufactured homes to the extent determined by the United States Department of Housing and Urban Development through written guidelines, rules, regulations, or interpretive letters.

§ 7-1-1002. Transaction of business without a license, registration, or exemption prohibited; knowing purchase of mortgage loan from unlicensed or nonexempt broker or lender prohibited; liability of persons controlling violators.

(a) It shall be prohibited for any person to transact business in this state directly or indirectly as a mortgage broker, a mortgage lender, or a mortgage loan originator unless such person:

(1) Is licensed or registered as such by the department utilizing the Nation-wide Multistate Licensing System and Registry;

(2) Is exempted from the licensing or registration requirements pursuant to Code Section 7-1-1001;

(3) In the case of an employee of a mortgage broker or mortgage lender, has qualified to be relieved of the necessity for a license under the employee exemption in paragraph (14) of subsection (a) of Code Section 7-1-1001; or

(4) In the case of a mortgage loan originator, is supervised by a mortgage broker, mortgage lender, or exemptee on a daily basis while performing mortgage functions; is employed by and works exclusively for only one mortgage broker, mortgage lender, or exemptee; and is paid on a W-2 basis by the employing mortgage broker, mortgage lender, or exemptee, except those natural persons exempt from licensure as a mortgage broker or mortgage lender under paragraph (17) of subsection (a) of Code Section 7-1-1001. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the Nation-wide Multistate Licensing System and Registry. For the purposes of implementing an orderly and efficient mortgage loan originator process, the department may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications.

(a.1) A loan processor or underwriter who is an independent contractor shall not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a mortgage broker or mortgage lender license. Each independent contractor loan processor or underwriter licensed as a mortgage broker or mortgage lender shall have and maintain a valid unique identifier issued by the Nation-wide Multistate Licensing System and Registry.

(b) It shall be prohibited for any person, as defined in Code Section 7-1-1000, to purchase, sell, or transfer one or more mortgage loans or loan applications from or to a mortgage loan originator, mortgage broker, or mortgage lender who is neither licensed nor exempt from the licensing or registration provisions of this article. Such a purchase shall not affect the obligation of the borrower under the terms of the mortgage loan. The department shall provide for distribution or availability of information regarding approved or revoked licenses.

(c) Every person who directly or indirectly controls a person who violates subsection (a), (a.1), or (b) of this Code section, every general partner, executive officer, joint venturer, or director of such person, and every person occupying a similar status or performing similar functions as such person violates with and to the same extent as such person, unless the person whose violation arises under this subsection sustains the burden of proof that he or she did not know and, in the exercise of reasonable care, could not have known of the existence of the facts by reason of which the original violation is alleged to exist.

§ 7-1-1003. Applications for licenses.

(a) An application for a license under this article shall be made in writing, under oath, and in such form as the department may prescribe. Each such form shall contain content as set forth by rule, regulation, instruction, or procedure of the department and may be changed or updated as necessary by the department in order to carry out the purposes of this article. The department, by regulation, may prescribe different classes of licenses for mortgage loan originators, mortgage brokers, and mortgage lenders.

(b) The application shall include the following:

(1) The legal name and address of the applicant and, if the applicant is a partnership, association, corporation, or other business entity, of every member, officer, and director thereof;

(2) All names, including, but not limited to, website domain names (URLs), under which the applicant will conduct business in Georgia;

(3) For mortgage brokers and mortgage lenders, the address of the main office or principal place of business where books and records are located and any other locations at which the applicant will engage in any business activity covered by the provisions of this article, together with the mailing address where the department shall send all correspondence, orders, or notices. Any changes in this mailing address shall be delivered in writing to the department before the change is effective;

(4) For mortgage brokers and mortgage lenders, the complete name and address of the applicant's initial registered agent and registered office for service of process in Georgia. If the applicant is a Georgia corporation, this registered

Hard Money Lending Course

agent shall be the same as the agent recorded with the Secretary of State. Any changes in the registered agent or registered office shall be delivered in writing to the department and the Secretary of State, if applicable, before the change is effective. The registered agent may, but is not required to, be an officer of the applicant, and the registered office shall be a Georgia location where the registered agent may be served;

(5) For mortgage brokers and mortgage lenders, the general plan and character of the business;

(6) For mortgage brokers and mortgage lenders, a financial statement of the applicant;

(7) For mortgage brokers and mortgage lenders, such other data, financial statements, and pertinent information as the department may require with respect to the applicant, its directors, trustees, officers, members, agents, or ultimate equitable owners of 10 percent or more of the applicant; and

(8) For mortgage brokers and mortgage loan originators, evidence of satisfaction of experience or education requirements, as required by regulations of the department.

(c) All applications filed under this Code section shall be filed together with:

(1) Investigation and supervision fees established by regulation;

(2) The items required by Code Section 7-1-1003.2; and

(3) Other information as may be required by the department.

§ 7-1-1003.1. Physical place of business.

If the applicant for a mortgage broker license or a renewal of such license does not have a physical place of business in Georgia, a license or renewal shall only be issued if the applicant's home state does not require that in order to be licensed a mortgage broker shall have a physical place of business in such home state. In either case, an applicant shall have a registered agent and a registered office in this state.

§ 7-1-1003.2. Financial requirements for licensing and registration bond requirements.

(a) Each licensed or registered mortgage broker shall provide the department with a bond. The bond for a mortgage broker shall be in the principal sum of \$150,000.00 or such greater sum as the department may require as set forth by regulation based on an amount that reflects the dollar amount of loans originated, and the bond shall meet the other requirements of subsection (d) of this Code section.

(b) Except as otherwise provided in subsection (d) of this Code section, the department shall not license or register any mortgage lender unless the applicant or registrant provides the department with a bond. The bond for a mortgage lender shall be in the principal sum of \$250,000.00 or such greater sum as the department may require as set forth by regulation based on an amount that reflects the dollar amount of loans originated, and which bond shall meet the other requirements of subsection (d) of this Code section.

(c) Each mortgage loan originator shall be covered by the surety bond of his or her sponsoring licensed or registered mortgage broker or lender. In the event that the mortgage loan originator is an employee of a licensed or registered mortgage broker or lender or under an exclusive written independent contractor agreement as described in paragraph (17) of Code Section 7-1-1001, the surety bond of such licensed or registered mortgage broker or lender may be used in lieu of the mortgage loan originator's surety bond requirement.

(d) General bond requirements:

(1) The bond requirements for mortgage loan originators, mortgage brokers, and mortgage lenders are continuous in nature and shall be maintained at all times as a condition of licensure;

(2) The corporate surety bond shall be for a term and in a form satisfactory to the department, shall be issued by a bonding company or insurance company authorized to do business in this state and approved by the department, and shall run to the State of Georgia for the benefit of any person damaged by noncompliance of a licensee with this article, the "Georgia Residential Mortgage Act," or with any condition of such bond. Damages under the bond shall include moneys owed to the department for fees, fines, or penalties. Such bond shall be continuously maintained thereafter in full force. Such bond shall be conditioned upon the applicant or the licensee conducting his or her licensed business in conformity with this article and all applicable laws;

(3) When an action is commenced on a licensee's bond, the department may require the filing of a new bond; and

(4) Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.

(e) Any person including the department who may be damaged by noncompliance of a licensee with any condition of a bond or this article, the "Georgia Residential Mortgage Act," may proceed on such bond against the principal or surety thereon, or both, to recover damages.

§ 7-1-1003.3. Application for registration.

An application to register as a mortgage lender or broker under this article shall be made annually in writing, under oath, on a form provided by the department, subject to requirements specified by rules and regulations of the department.

(continued through § 7-1-1021)

ATTORNEY'S SUMMARY OF THE GEORGIA FAIR LENDING ACT

Robert Witcher

I have been requested by a number of people to give my opinion on the Georgia Fair Lending Act and, on several occasions, have been requested to prepare documents to comply with the act. In each instance, this request has been made by a private investor who was simply doing the occasional loan taking a borrower's principal dwelling as collateral for the loan. In each occasion I have declined the offer to prepare the documents and close the loan transaction, for a very simple reason.

The Georgia Fair Lending Act was designed primarily to prevent certain categories of institutional lenders who regularly engaged in smaller mortgage loans from continually encouraging borrowers to refinance their properties with the same lenders or to refinance their properties when they were financially somewhat distressed. To counter these activities, which have been referred to as "predatory lending" by various consumer protection groups, Georgia passed, under Title 7, its own version of the Predatory Lending Act. The Act requires a substantial amount of very meticulous documentation whenever a high-interest home loan is made. This is defined, in the Act, as a "high-cost home loan". The detailed documentation which would be required and the procedures which a lender would have to engage each time such a loan is made simply do not warrant the work involved to set up one individual or small company for the very occasional loan.

Basically, under the Act, a "high-cost home loan" is a home loan in which the annual percentage rate equals or exceeds rates which are defined under a provision of the Truth-In-Lending Act known as the Home Ownership and Equity Protection Act ("HOEPA") or, even if the APR does not equal or exceed such amount, the total points and fees exceed a certain amount as defined in paragraph 17 of O.C.G.A. 7-6A-2 (one of the principal provisions of the Act). Most of my clients only reluctantly make loans secured by a debtor with a principal home anyway, and certainly want fees and costs and interest which would probably exceed or equal the definitions under HOEPA. Once this situation occurs, then the documents have to be drafted very carefully so that they do not violate any of the provisions of the Georgia Act. Further, there are limitations on many of these provisions and the penalties for violation of this Act are severe.

Please note that the Georgia Fair Lending Act does apply only to "home loans" which means a loan within a certain principal amount which is secured by a debtor's principal dwelling or property on which there will be located a principal dwelling to be occupied by the debtor. Certain categories of loans are excluded even if the debtor's principal dwelling is given as collateral. One of these exclusions is a loan primarily for business, agricultural, or commercial purposes. Unfortunately, once the borrower has the check, it is difficult to control whether the proceeds of the loan are really being used by the borrower strictly and solely for business, agricultural, or commercial purposes.

The definitions section of the Act appear, at first, to protect the occasional investor creditor by indicating that "creditor" is defined to mean a person who both regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments and is a person to whom the debt arising from the home loan transaction is initially payable. However, it also includes a loan broker. My problem is the definition of a person who regularly extends consumer credit. The definition section of the Act does not define the phrase "regularly extends" or the phrase "consumer credit".

I hope this summary gives the reader certain food for thought regarding this Act.

GEORGIA FAIR LENDING ACT

FYI Only –
Consumer Loans

TITLE 7. BANKING AND FINANCE CHAPTER 6A. GEORGIA FAIR LENDING ACT

*** Current through the 2020 Regular Session ***

§ 7-6A-1. Short title

This chapter shall be known and may be cited as the "Georgia Fair Lending Act."

§ 7-6A-2. Definitions

As used in this chapter, the term:

(1) "Acceleration" means a demand for immediate repayment of the entire balance of a home loan.

(2) "Affiliate" means any company that controls, is controlled by, or is under common control with another company, as set forth in 12 U.S.C. Section 1841, et seq.

(3) "Annual percentage rate" means the annual percentage rate for the loan calculated at closing according to the provisions of 15 U.S.C. Section 1606, the regulations promulgated thereunder by the Board of Governors of the Federal Reserve System, and the Official Staff Commentary on Regulation Z published by the Board of Governors of the Federal Reserve System.

(4) "Bona fide discount points" means loan discount points knowingly paid by the borrower for the express purpose of reducing, and which in fact do result in a bona fide reduction of, the interest rate applicable to the home loan; provided, however, that the undiscounted interest rate for the home loan does not exceed by more than one percentage point the required net yield for a 90 day standard mandatory delivery commitment for a home loan with a reasonably comparable term from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater.

(5) "Borrower" means any natural person obligated to repay the loan including a coborrower or cosigner.

(6) "Creditor" means a person who both regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments and is a person to whom the debt arising from the home loan transaction is initially payable. Creditor shall also mean any person brokering a home loan, which shall include any person who directly or indirectly for compensation solicits, processes, places, or negotiates home loans for others or offers to solicit, process, place, or negotiate home loans for others or who closes home loans which may be in the person's own name with funds provided by others and which loans are thereafter assigned to the person providing the funding of such loans, provided that creditor shall not include a person who is an attorney providing legal services in association with the closing of a home loan. A creditor shall not include: (A) a servicer; (B) an assignee; (C) a purchaser; or (D) any state or local housing finance agency or any other state or local governmental or quasi-governmental entity.

(7) "High-cost home loan" means a home loan in which the terms of the loan meet or exceed one or more of the thresholds as defined in paragraph (17) of this Code section.

(8) "Home loan" means a loan, including an open-end credit plan where the principal amount does not exceed the conforming loan size limit for a single-family dwelling as established by the Federal National Mortgage Association and the loan is secured by a mortgage, security deed, or deed to secure debt on real estate located in this state upon which there is located or there is to be located a structure or structures, including a manufactured home, designed principally for occupancy of from one to four families and which is or will be occupied by a borrower as the borrower's principal dwelling, except that home loan shall not include:

(A) A reverse mortgage transaction;

(B) A loan that provides temporary financing for the acquisition of land by the borrower and initial construction of a borrower's dwelling thereon or the initial construction of a borrower's dwelling on land owned by the borrower;

(C) A bridge loan made to a borrower pending the sale of the borrower's principal dwelling or a temporary loan made to a borrower and secured by the borrower's principal dwelling pending the borrower's obtaining permanent financing for such principal dwelling;

(D) A loan secured by personal property including, but not limited to, a motor vehicle, motor home, boat, or watercraft and also secured by the borrower's principal dwelling to provide the borrower with potential income tax advantages when such personal property is the primary collateral for such loan;

Hard Money Lending Course

(E) A new loan secured by a borrower's principal dwelling as a result of a lien taken in connection with a debt previously contracted or incurred when the loan documents for such new loan do not include a mortgage, security deed, or deed to secure debt expressly securing such new loan; or

(F) A loan primarily for business, agricultural, or commercial purposes.

(9) "Make" or "makes" means to originate a loan or to engage in brokering of a home loan including the soliciting, processing, placing, or negotiating of a home loan made or offered by a person brokering a home loan.

(10) "Manufactured home" means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length or, when erected on site is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with a permanent foundation when erected on land secured in conjunction with the real property on which the manufactured home is located and connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq. Such term does not include rental property or second homes or manufactured homes when not secured in conjunction with the real property on which the manufactured home is located.

(11) "Open-end credit plan" or "open-end loan" means a loan in which (A) a creditor reasonably contemplates repeated transactions; (B) the creditor may impose a finance charge from time to time on an outstanding balance; and (C) the amount of credit that may be extended to the borrower during the term of the loan, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid.

(12) "Points and fees" means:

(A) All items included in the definition of finance charge in 12 C.F.R. 226.4(a) and 12 C.F.R. 226.4(b) except interest or the time price differential. All items excluded under 12 C.F.R. 226.4(c) are excluded from points and fees, provided that for items under 12 C.F.R. 226.4(c)(7) the creditor does not receive direct or indirect compensation in connection with the charge and the charge is not paid to an affiliate of the creditor;

(B) All compensation paid directly or indirectly to a mortgage broker from any source, including a broker that originates a loan in its own name in a table funded transaction, including but not limited to yield spread premiums, yield differentials, and service release fees, provided that the portion of any yield spread premium that is both disclosed to the borrower in writing and used to pay bona fide and reasonable fees to a person other than the creditor or an affiliate of the creditor for the following purposes is exempt from inclusion in points and fees: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determination; appraisal fees; fees for inspection performed prior to closing; credit reports; surveys; attorneys' fees, if the borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow charges, so long as not otherwise included under subparagraph (A) of this paragraph; title insurance premiums; and fire and hazard insurance and flood insurance premiums, provided that the conditions set forth in 12 C.F.R. 226.4(d)(2) are met;

(C) Premiums or other charges for credit life, credit accident, credit health, credit personal property, or credit loss-of-income insurance, debt suspension coverage or debt cancellation coverage, whether or not such coverage is insurance under applicable law, that provides for cancellation of all or part of a borrower's liability in the event of loss of life, health, personal property, or income or in the case of accident written in connection with a home loan and premiums or other charges for life, accident, health, or loss-of-income insurance without regard to the identity of the ultimate beneficiary of such insurance. In determining points and fees for the purposes of this paragraph, premiums or other charges shall only include those payable at or before loan closing and are included whether they are paid in cash or financed and whether the amount represents the entire premium for the coverage or an initial payment;

(D) The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents. Mortgage interest that may accrue in advance of payment in full of a loan made under a local, state, or federal government sponsored mortgage insurance or guaranty program, including a Federal Housing Administration program, shall not be considered to be a prepayment fee or penalty;

(E) All prepayment fees or penalties that are charged to the borrower if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor;

(F) For open-end loans, points and fees are calculated in the same manner as for loans other than open-end loans, based on the minimum points and fees that a borrower would be required to pay in order to draw on the open-end loan an amount equal to the total credit line; and

(G) Points and fees shall not include:

(i) Taxes, filing fees, recording, and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest;

(ii) Bona fide and reasonable fees paid to a person other than the creditor or an affiliate of the creditor for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determination; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys' fees, if the borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow charges, so long as not otherwise included under subparagraph (A) of this paragraph; title insurance premiums; and fire and hazard insurance and flood insurance premiums, provided that the conditions in 12 C.F.R. 226.4(d)(2) are met;

(iii) Bona fide fees paid to a federal or state government agency that insures payment of some portion of a home loan, including, but not limited to, the Federal Housing Administration, the Department of Veterans Affairs, the United States Department of Agriculture for rural development loans, or the Georgia Housing and Finance Authority; and

(iv) Notwithstanding any provision to the contrary in this chapter, compensation in the form of premiums, commissions, or similar charges paid to a creditor or any affiliate of a creditor for the sale of: (I) title insurance; or (II) insurance against loss of or damage to property or against liability arising out of the ownership or use of property, provided that the conditions in 12 C.F.R. 226.4(d)(2) are met.

(13) "Process," "processes," or "processing" means to act as a processor.

(14) "Processor" means any person that prepares paperwork necessary for or associated with the closing of a home loan, including but not limited to promissory notes, disclosures, deeds, and closing statements, provided that processor shall not include persons on the grounds that they are engaged in data processing or statement generation services for home loans.

(15) "Servicer" means the same as set forth in 24 C.F.R. 3500.2.

(16) "Servicing" means the same as set forth in 24 C.F.R. 3500.2.

(17) "Threshold" means:

(A) Without regard to whether the loan transaction is or may be a "residential mortgage transaction" as that term is defined in 12 C.F.R. 226.2(a)(24), the annual percentage rate of the loan is such that it equals or exceeds that set out in Section 152 of the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. Section 1602(aa), and the regulations adopted pursuant thereto by the Federal Reserve Board, including Section 12 C.F.R. 226.32; or

(B) The total points and fees payable in connection with the loan, excluding not more than two bona fide discount points, exceed: (i) 5 percent of the total loan amount if the total loan amount is \$20,000.00 or more or (ii) the lesser of 8 percent of the total loan amount or \$1,000.00 if the total loan amount is less than \$20,000.00.

(18) "Total loan amount" means the amount calculated as set forth in 12 C.F.R. 226.32(a) and under the Official Staff Commentary of the Board of Governors of the Federal Reserve System. For open-end loans, the total loan amount shall be calculated using the total credit line available under the terms of the home loan as the amount financed.

§ 7-6A-3. Limitations of home loans

All home loans shall be subject to the following limitations and prohibited practices:

(1) No creditor shall make a home loan that finances, directly or indirectly:

(A) Any credit life, credit accident, credit health, credit personal property, or credit loss-of-income insurance, debt suspension coverage, or debt cancellation coverage, whether or not such coverage is insurance under applicable law, that provides for cancellation of all or part of a borrower's liability in the event of loss of life, health, personal property, or income or in the case of accident written in connection with a home loan; or

(B) Any life, accident, health, or loss-of-income insurance without regard to the identity of the ultimate beneficiary of such insurance;

provided, however, that for the purposes of this Code section, any premiums or charges calculated and paid on a monthly basis shall not be considered financed directly or indirectly by the creditor;

(2) No creditor or servicer shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a home loan that refinances all or any portion of such existing loan or debt;

(3) No creditor or servicer may charge a borrower a late payment charge unless the loan documents specifically authorize the charge, the charge is not imposed unless the payment is past due for ten days or more, and the charge does not exceed 5 percent of the amount of the late payment. A late payment charge may not be imposed more than once with respect to a particular late payment. If a late payment charge is deducted from a payment made on the home loan and such deduction results in a subsequent default on a subsequent payment, no late payment charge may be imposed for such default. A lender may apply any payment made in the order of maturity to a prior period's payment due even if the result is late payment charges accruing on subsequent payments due; and

(4) No creditor or servicer may charge a fee for informing or transmitting to any person the balance due to pay off a home loan or to provide a release upon prepayment. When such information is provided by facsimile or if it is provided upon request within 60 days of the fulfillment of a previous request, a creditor or servicer may charge a processing fee up to \$10.00. Payoff balances shall be provided within a reasonable time but in any event no more than five business days after the request.

§ 7-6A-4. "Flipping" a home loan; costs and fees

(a) No creditor may knowingly or intentionally engage in the unfair act or practice of "flipping" a home loan. Flipping a home loan is the consummating of a high-cost home loan to a borrower that refinances an existing home loan that was consummated within the prior five years when the new loan does not provide reasonable, tangible net benefit to the borrower considering all of the circumstances including, but not limited to, the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances.

(b) The home loan refinancing transaction shall be presumed to be a flipping where a high-cost home loan refinances an existing home loan that was consummated within the prior five years and that is a special mortgage originated, subsidized, or guaranteed by or through a state, tribal, or local government or a nonprofit organization, which either bears a below-market interest rate at the time the loan was originated or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions and where, as a result of the refinancing, the borrower will lose one or more of the benefits of the special mortgage. Notwithstanding any provision to the contrary contained in this chapter, home loan refinancing transactions of first mortgage loans originated by, purchased by, or assigned to the Georgia Housing and Finance Authority shall not be presumed to be a flipping under this subsection.

(c) Notwithstanding any provision to the contrary contained in this chapter regarding costs and attorneys' fees, in any action instituted by a borrower who alleges that the defendant violated this Code section, the borrower shall be entitled to costs and attorneys' fees only if the presiding judge, in the judge's discretion, allows reasonable attorneys' fees and costs to the borrower as prevailing party, such fees and costs to be taxed as a part of the court costs and payable by the losing party upon a finding by the presiding judge that the party charged with the violation has willfully engaged in the act or practice and there was unwarranted expense by such party to fully resolve the matter which constitutes the basis of such action.

§ 7-6A-5. Limitations of high-cost home loans

High-cost home loans shall be subject to the following limitations and prohibited practices:

(1) No prepayment fees or penalties shall be provided for in the loan documents for a high-cost home loan or charged the borrower after the last day of the twenty-fourth month following the loan closing or which exceed in the aggregate:

- (A) In the first 12 months after the loan closing, more than 2 percent of the loan amount prepaid; or
- (B) In the second 12 months after the loan closing, more than 1 percent of the amount prepaid;

(2) A high-cost home loan shall not contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower,

(3) A high-cost home loan shall not include payment terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due;

(4) A high-cost home loan shall not contain a provision that increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided that the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness;

(5) A high-cost home loan shall not include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower;

(6) Without regard to whether a borrower is acting individually or on behalf of others similarly situated, any provision of a high-cost home loan agreement that allows a party to require a borrower to assert any claim or defense in a forum that is less convenient, more costly, or more dilatory for the resolution of a dispute than a judicial forum established in this state where the borrower may otherwise properly bring the claim or defense or limits in any way any claim or defense the borrower may have is unconscionable and void;

(7) A creditor shall not make a high-cost home loan without first receiving certification from a counselor with a third-party nonprofit organization approved by the United States Department of Housing and Urban Development or the Georgia Housing and Finance Authority that the borrower has received counseling on the advisability of the loan

transaction. No creditor, servicer, or its institution shall be required to contribute to the funding of any nonprofit organization that provides counseling required pursuant to this paragraph;

(8) A creditor shall not make a high-cost home loan unless a reasonable creditor would believe at the time the loan is consummated that the borrower residing in the home will be able to make the scheduled payments associated with the loan based upon a consideration of his or her current and expected income, current obligations, employment status, and other financial resources, other than the borrower's equity in the collateral that secures repayment of the loan. There is a rebuttable presumption that the borrower residing in the home is able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, said borrower's total monthly debts, including amounts under the loan, do not exceed 50 percent of said borrower's monthly gross income as verified by tax returns, payroll receipts, and other third-party income verification;

(9) A creditor or servicer shall not pay a contractor under a home improvement contract from the proceeds of a high-cost home loan unless:

(A) The creditor or servicer is presented with an affidavit of the contractor that the work has been completed, which affidavit meets the requirements of Code Section 44-14-361.2; and

(B) The proceeds are disbursed in an instrument payable to the borrower or jointly to the borrower and the contractor or, at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the drafter of the instrument, and the contractor prior to the disbursement;

(10) A creditor or servicer shall not charge a borrower any fees or other charges to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan;

(11) A creditor who makes a high-cost home loan and who has the legal right to foreclose shall provide notice of the intent to foreclose to the borrower in writing by certified mail, return receipt requested, to the address of the borrower last known to the creditor. Such notice shall be sent to the borrower at least 14 days prior to the publication of the legal advertisement required by Code Section 44-14-162;

(12) If a creditor or servicer asserts that grounds for acceleration of a high-cost home loan exist and requires the payment in full of all sums secured by the security instrument, the borrower or anyone authorized to act on the borrower's behalf shall have the right at any time, up to the time title is transferred by means of foreclosure by judicial proceeding and sale or otherwise, to cure the default and reinstate the high-cost home loan by tendering the total amount of principal, interest, late fees, and escrow deposits in arrears, not including any acceleration. Cure of default as provided in this paragraph shall reinstate the borrower to the same position as if the default had not occurred and shall nullify as of the date of the cure any acceleration of any obligation under the security instrument or note arising from the default;

(13)(A) To cure a default under this Code section, a borrower shall not be required to pay any charge, fee, or penalty attributable to the exercise of the right to cure a default as provided for in this Code section, other than the fees specifically allowed by this Code section. The borrower shall not be liable for any attorneys' fees relating to the borrower's default that are incurred by the creditor or servicer prior to or during the 30 day period set forth in this paragraph, nor for any such fees in excess of \$100.00 that are incurred by the creditor or servicer after the expiration of the 30 day period but prior to the time the creditor or servicer files a foreclosure action or takes other action to seize or transfer ownership of the home. After the creditor or servicer files a foreclosure action or takes other action to seize or transfer ownership of the home, the borrower shall only be liable for attorneys' fees that are reasonable and actually incurred by the creditor or servicer based on a reasonable hourly rate and a reasonable number of hours plus any other reasonable and necessary expenses incurred by the creditor or servicer.

(B) If a default is cured prior to the initiation of any action to foreclose or to seize or transfer a home, the creditor or servicer shall not institute the foreclosure proceeding or other action for that default. If a default is cured after the initiation of any action to foreclose, the creditor or servicer shall take such steps as are necessary to terminate the foreclosure proceeding or other action.

(C) Before any action is filed to foreclose upon the home or other action is taken to seize or transfer ownership of a home, a notice of the right to cure the default must be delivered to the borrower informing the borrower of the following:

(i) The nature of the default claimed on the high-cost home loan and of the borrower's right to cure the default by paying the sum of money required to cure the default. If the amount necessary to cure the default will change during the 30 day period after the effective date of the notice due to the application of a daily interest rate or the addition of late fees as allowed by this chapter, the notice shall give sufficient information to enable the borrower to calculate the amount at any point during the 30 day period;

(ii) The date by which the borrower shall cure the default to avoid acceleration and initiation of foreclosure or other action to seize the home which date shall not be less than 30 days after the date the notice is effective and the name and address and phone number of a person to whom the payment or tender shall be made;

(iii) That, if the borrower does not cure the default by the date specified, the creditor or servicer may take steps to terminate the borrower's ownership in the property by commencing a foreclosure proceeding or other action to seize the home; and

(iv) The name and address of the creditor or servicer and the telephone number of a representative of the creditor or servicer whom the borrower may contact if the borrower disagrees with the creditor's or servicer's assertion that a default has occurred or the correctness of the creditor's or servicer's calculation of the amount required to cure the default;

(14) A high-cost home loan shall not contain nor shall a creditor or servicer enforce a provision that permits a creditor or servicer, in its sole discretion, to accelerate the indebtedness. This paragraph does not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan; and

(15) All high-cost home loan documents that create a debt or pledge property as collateral shall contain the following notice on the first page in a conspicuous manner: "Notice: This is a mortgage subject to special rules under the 'Georgia Fair Lending Act.' Purchasers or assignees of this mortgage may be liable for all claims and defenses by the borrower with respect to the mortgage."

§ 7-6A-6. Affirmative claims and defenses against creditors; conditions for relief; actions intended to evade chapter prohibited

(a) Notwithstanding any other provision of law, where a home loan was made, arranged, or assigned by a person selling home improvements to the dwelling of a borrower, the borrower may assert against the creditor all affirmative claims and any defenses that the borrower may have against the seller or home improvement contractor, provided that this subsection shall not apply to loans other than high-cost home loans unless applicable law requires a certificate of occupancy, inspection, or completion to be obtained and said certificate is not obtained.

(b) Notwithstanding any other provision of law, any person who purchases, is assigned, or otherwise becomes a holder of a high-cost home loan shall be subject to all affirmative claims and any defenses with respect to the high-cost home loan that the borrower could assert against the creditor of the high-cost home loan, unless the purchaser or holder demonstrates, by a preponderance of the evidence, that the purchaser or holder exercised reasonable due diligence at the time of purchase of the home loans, or within a reasonable time thereafter, intended to prevent the purchaser or holder from purchasing or taking assignment of high-cost home loans.

(c) The relief granted in an action pursuant to subsection (b) of this Code section:

(1) May be asserted by the borrower only in an individual action and shall not exceed the sum of the amount of all remaining indebtedness of the borrower under such loan and reasonable attorneys' fees in such individual action;

(2) May be sought by the borrower of a high-cost home loan after notice of acceleration or foreclosure of the high-cost home loan, asserting a violation of Code Section 7-6A-4 or 7-6A-5 in an individual action to enjoin foreclosure or to preserve or obtain possession of the home secured by the high-cost home loan; and

(3) Must be brought within one year from the date of the occurrence of the violation; provided, however, a borrower shall not be barred from asserting a violation of Code Section 7-6A-5 in an action to collect the debt which was brought more than one year from the date of the occurrence of such a violation as a matter of defense by recoupment or set-off in such action except as otherwise provided by law.

(d) It shall be a violation of this chapter for any person to attempt in bad faith to avoid the application of this chapter by dividing any loan transaction into separate parts or structuring a home loan transaction as an open-end loan for the purpose of evading the provisions of this chapter when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan or engaging in any other subterfuge with the intent of evading any provision of this chapter.

§ 7-6A-7. Violation of chapter

(a) Any creditor found by a preponderance of the evidence to have violated this chapter shall be liable to the borrower for the following:

(1) Actual damages, including consequential and incidental damages;

(2) Statutory damages equal to the recovery of two times the interest paid under the loan and forfeiture of interest under the loan for any violation of paragraph (1) or (2) of Code Section 7-6A-3, any violation of Code Section 7-6A-4, or any violation of Code Section 7-6A-5;

(3) Punitive damages subject to Code Section 51-12-5.1; and

(4) Costs and reasonable attorneys' fees.

(b) A borrower may be granted injunctive, declaratory, and such other equitable relief as the court deems appropriate in an action to enforce compliance with this chapter including, but not limited to, the following:

(1) Notwithstanding any other provision of law, a court shall have the discretion not to require a borrower of a high-cost home loan seeking injunctive or other equitable relief under the provisions of this chapter to make a tender upon a showing that the borrower has a reasonable likelihood of being successful on the merits. When tender is not required by the court, upon application to the court by the creditor, the court shall require the borrower to pay into the registry of the court all regularly scheduled home loan payments including property taxes and homeowners hazard insurance premiums if required by escrow agreement which are the responsibility of the borrower payable to the creditor or servicer under the terms of the home loan agreement which become due after the filing of the legal action, said home loan payments to be paid as such become due, and such other expenses provided under the home loan agreement as the court may deem just, provided that regularly scheduled payments shall not include any payments allegedly due under any acceleration provision of the home loan. If the creditor or servicer and the borrower disagree as to the amount of the home loan payments due, either or both of them may submit to the court any written home loan agreement for the purpose of establishing the amount of home loan payments to be paid into the registry of the court;

(2) If the borrower should fail to make any regularly scheduled payment under a high-cost home loan as it becomes due after the filing of this action, upon application to the court by the creditor or servicer, the court may issue an order denying the borrower's petition for injunctive or other equitable relief, and vacating any decree for injunctive or equitable relief previously entered by the court; and

(3) The court shall order the clerk of the court to pay to the creditor or any person the creditor may designate the payments claimed under the high-cost home loan agreement paid into the registry of the court as said payments are made; provided, however, that, if the borrower claims that he or she is entitled to all or any part of the funds and such claim is an issue of controversy in the litigation, the court shall order the clerk to pay to the creditor or any person the creditor may designate without delay only that portion of the funds for which the borrower has made no claim in the proceedings or may make such other order as is appropriate under the circumstances. That part of the funds which is a matter of controversy in the litigation shall remain in the registry of the court until a determination of the issues by the trial court. If either party appeals the decision of the trial court, that part of the funds equal to any sums found by the trial court to be due from the creditor or servicer to the borrower shall remain in the registry of the court until a final determination of the issues. The court shall order the clerk to pay to the creditor or any person the creditor may designate without delay the remaining funds in court and all payments of future home loan payments made into court pursuant to paragraph (1) of this subsection unless the borrower can show good cause that some or all of such payments should remain in court pending a final determination of the issues.

(c) The remedies provided in this chapter shall be cumulative.

(d) Any violation of this chapter may be enforced pursuant to Code Section 9-11-23.

(e) The right of rescission granted and defined under 15 U.S.C. Section 1601, et seq., and a right of rescission for any violation of paragraph (1) or (2) of Code Section 7-6A-3, any violation of Code Section 7-6A-4, or any violation of Code Section 7-6A-5 shall be available to a borrower of a high-cost home loan at any time during the term of the loan not to exceed a period of five years after the consummation of the loan.

(f) The brokering of a home loan by a broker registered or licensed or required to be registered or licensed as a broker under the laws of this state or any other jurisdiction that violates the provisions of this chapter shall constitute a violation of such provisions.

(g) Without regard to whether a borrower is acting individually or on behalf of others similarly situated, any provision of a home loan agreement that allows a party to require a borrower to assert any claim or defense in a forum that is less convenient, more costly, or more dilatory for the resolution of a dispute than a judicial forum established in this state where the borrower may otherwise properly bring the claim or defense or limits in any way any claim or defense the borrower may have is unconscionable and void.

(h) An action under this chapter may be brought within five years after the date of the first scheduled payment by the borrower under the home loan.

(i) The remedies provided in this chapter are not intended to be the exclusive remedies available to a borrower nor must the borrower exhaust any administrative remedies provided under this chapter or any other applicable law before proceeding under this Code section.

§ 7-6A-8. Enforcement of chapter; penalties for violations

(a) The Attorney General, the district attorneys of this state, and the commissioner of banking and finance shall have jurisdiction to enforce this chapter through their general regulatory powers and through civil process. The Commissioner of Insurance shall have like authority to enforce paragraph (1) of Code Section 7-6A-3.

(b) Any person, including members, officers, and directors of a creditor, who knowingly violates this chapter is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$1,000.00 for each violation or to imprisonment not exceeding six months, or both.

§ 7-6A-9. Terms of insurer providing insurance through financed premiums

A creditor or servicer or an insurer providing insurance through premiums financed by a creditor of a home loan who, when acting in good faith, fails to comply with the provisions of this chapter will not be deemed to have violated this chapter if the creditor or servicer or insurer providing insurance through premiums financed by a creditor establishes that either:

(1) Within 90 days of the loan closing and prior to receiving any notice from the borrower of the compliance failure, (A) the creditor or servicer has offered appropriate restitution to the borrower and appropriate adjustments are made to the loan or (B) to correct a compliance failure of paragraph (1) of Code Section 7-6A-3, an insurer providing insurance through premiums financed by a creditor may provide appropriate restitution to the borrower by returning premiums paid plus interest charged on the premiums to the borrower upon receipt of notice of the compliance failure; or

(2) Within 90 days of discovering a compliance failure and prior to receiving any notice of the compliance failure and the compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, the borrower is notified of the compliance failure, appropriate restitution is offered to the borrower, and appropriate adjustments are made to the loan. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this chapter is not a bona fide error.

§ 7-6A-10. Severability of chapter

The provisions of this chapter shall be severable and, if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this chapter shall not be affected thereby. If any provision of this chapter is declared to be inapplicable to any category of persons or any specific category, type, or kind of loan or portions thereof, the provisions of this chapter shall nonetheless continue to apply with respect to all other persons and all other loans or portions thereof.

§ 7-6A-11. Municipality or county not able to regulate terms of home loans

No municipality or county shall enact any ordinance or law that regulates the terms of home loans or that makes the eligibility of any person or entity to do business with the municipality or county dependent upon the terms of home loans originated or serviced by such person or entity.

§ 7-6A-12. Application; preemption by federal law

The provisions of this chapter shall not apply to any bank, trust company, savings and loan, savings bank, credit union, or subsidiary thereof, respectively, that is chartered under the laws of this state or any other state only to the extent federal law precludes or preempts or has been determined to preclude or preempt the application of the provisions of this chapter to any federally chartered bank, trust company, savings and loan, savings bank, or credit union, respectively, and such federal preclusion or preemption shall apply only to the same type of state chartered entity as the federally chartered entity affected; provided, however, the provisions of this chapter, including subsection (f) of Code Section 7-6A-7, shall be applicable to an independent mortgage broker for any loan originated or brokered by the broker that is initially funded by any state or federally chartered bank, trust company, savings and loan, savings bank, or credit union.

§ 7-6A-13. Promulgation of rules and regulations; creditor's good faith reliance on guidance from department constituting prima facie evidence of compliance

Without limitations on the power conferred by Chapter 1 of this title, the Department of Banking and Finance shall have the authority to promulgate rules and regulations not inconsistent with law for the enforcement of this chapter to effectuate the purposes of this chapter and to clarify the meaning of terms. In complying with this chapter, a creditor's good faith reliance on any formal or informal written guidance of the Department of Banking and Finance previously made available to the general public shall constitute prima-facie evidence of compliance with this chapter. The provisions of this Code section shall apply even if, following the reliance, such guidance is amended, rescinded, or determined by any judicial or other authority to be invalid.

GEORGIA CRIMINAL USURY STATUTE

TITLE 7. BANKING AND FINANCE CHAPTER 4. INTEREST AND USURY

[Excerpts from Chapter]

*** Current through the 2020 Regular Session ***

§ 7-4-1. "Usury" defined

The term "usury" means reserving and taking or contracting to reserve and take, either directly or indirectly, a greater sum for the use of money than the lawful interest.

§ 7-4-2. Legal rate of interest; maximum rate of interest generally; certain items not considered interest

(a) (1) (A) The legal rate of interest shall be 7 percent per annum simple interest where the rate percent is not established by written contract. Notwithstanding the provisions of other laws to the contrary, except Code Section 7-4-18, the parties may establish by written contract any rate of interest, expressed in simple interest terms as of the date of the evidence of the indebtedness, and charges and any manner of repayment, prepayment, or, subject to the provisions of paragraph (1) of subsection (b) of this Code section, acceleration, where the principal amount involved is more than \$3,000.00 but less than \$250,000.00 or where the lender or creditor has committed to lend, advance, or forbear with respect to any loan, advance, or forbearance to enforce the collection of more than \$3,000.00 but less than \$250,000.00.

(B) Where the principal amount is \$250,000.00 or more, or the lender or creditor has committed to lend, advance, or forbear with respect to any loan, advance, or forbearance to enforce the collection of \$250,000.00 or more, the parties may establish by written contract any rate of interest, expressed in simple interest terms or otherwise, and charges to be paid by the borrower or debtor.

(C) Nothing contained in this subsection shall be construed to prohibit the computation and collection of interest at a variable rate or on a negative amortization basis or on an equity participation basis or on an appreciation basis.

(2) Where the principal amount involved is \$3,000.00 or less, such rate shall not exceed 16 percent per annum simple interest on any loan, advance, or forbearance to enforce the collection of any sum of money unless the loan, advance, or forbearance to enforce the collection of any sum of money is made pursuant to another law.

(3) As used in this Code section, the term "interest" means a charge for the use of money computed over the term of the contract at the rate stated in the contract or precomputed at a stated rate on the scheduled principal balance or computed in any other way or any other form. Principal includes such charges to which the parties may agree under paragraph (1) of this subsection. Amounts paid or contracted to be paid as either an origination fee or discount points, or both, on any loan secured by an interest in real estate shall not be considered interest and shall not be taken into consideration in the calculation of interest and shall not be subject to rebate as provided in paragraph (1) of subsection (b) of this Code section.

(b) (1) Upon acceleration of the maturity of any loan, advance of money, or forbearance to enforce the collection of any sum of money upon which interest has been precomputed, unearned interest shall be rebated to the debtor in such amount as would result in the rate of interest earned being no greater than the rate of interest established by the original contract. In the case of a loan in which the principal and the interest for the entire term of the loan are included in the face amount of the loan and the loan is to be paid back in weekly, monthly, quarterly, semiannual, or yearly installments, with the interest and principal portions of each installment determined under the pro rata method, any such rebate shall be determined on the pro rata method.

(2) Unless stipulated in the contract, there shall be no prepayment penalty.

(c) Nothing contained in this Code section shall be construed to amend or modify the provisions of Chapter 3 of this title, the "Georgia Industrial Loan Act," Article 1 of Chapter 1 of Title 10, the "Retail Installment and Home Solicitation Sales Act," Chapter 5 of this title, "The Credit Card and Credit Card Bank Act," Chapter 22

of Title 33, the "Insurance Premium Finance Company Act," Part 5 of Article 3 of Chapter 12 of Title 44, relating to pawnbrokers, and, except as provided in Code Section 7-4-3, Article 2 of Chapter 1 of Title 10, the "Motor Vehicle Sales Finance Act."

(d) Notwithstanding the foregoing, fees and other charges agreed upon by a financial institution and depositor, as defined in Code Section 7-1-4, in a written agreement governing a deposit, share, or other account, including, but not limited to, overdraft and nonsufficient funds, delinquency or default charges, returned payment charges, stop payment charges, or automated teller machine charges, shall not be considered interest.

...

§ 7-4-10. Usury forfeits entire interest; right of setoff; how forfeiture discharged; when time bars action or defense

(a) Any person, company, or corporation violating the provisions of Code Section 7-4-2 shall forfeit the entire interest so charged or taken or contracted to be reserved, charged, or taken. No further penalty or forfeiture shall be occasioned, suffered, or allowed.

(b) The amount forfeited as provided in subsection (a) of this Code section may be pleaded as a setoff in any action for the recovery of the principal sum loaned or advanced by the defendant in said action.

(c) No contrivance or arrangement between the parties to any such unlawful transaction or their privies, except an actual and full payment of the amount forfeited as provided in subsection (a) of this Code section, shall have the effect of discharging such forfeiture.

(d) No plea or action for the recovery of such forfeiture shall be barred by lapse of time shorter than one year.

§ 7-4-11. Usury is personal defense; no collection from insolvent to prejudice of others

Usury is a personal defense; but a creditor may not collect usurious interest from an insolvent debtor to the prejudice of other creditors.

...

§ 7-4-18. Criminal penalty for excessive interest

(a) Any person, company, or corporation who shall reserve, charge, or take for any loan or advance of money, or forbearance to enforce the collection of any sum of money, any rate of interest greater than 5 percent per month, either directly or indirectly, by way of commission for advances, discount, exchange, or the purchase of salary or wages; by noarial or other fees; or by any contract, contrivance, or device whatsoever shall be guilty of a misdemeanor; provided, however, that regularly licensed pawnbrokers, as defined in Code Section 44-12-130, are limited in the amount of interest they may charge only by the limitations set forth in Code Section 44-12-131.

(b) This Code section shall not be construed as repealing or impairing the usury laws now existing but shall be construed as being cumulative thereof.

(c) Nothing contained in Code Section 7-4-2 or 7-4-3 shall be construed to amend or modify the provisions of this Code section.

(d) Notwithstanding the foregoing, fees and other charges agreed upon by a financial institution and depositor, as defined in Code Section 7-1-4, in a written agreement governing a deposit, share, or other account, including, but not limited to, overdraft and nonsufficient funds, delinquency or default charges, returned payment charges, stop payment charges, or automated teller machine charges, shall not be considered interest.

The Expanded Scope of High-Cost Mortgages Under the Dodd-Frank Wall Street Reform and Consumer Protection Act

By Rachel Leary, Examiner, Federal Reserve Bank of Kansas City

The Home Ownership and Equity Protection Act (HOEPA)¹ was enacted in 1994 as an amendment to the Truth in Lending Act (TILA) to address abusive lending practices for mortgages with high annual percentage rates (APRs) and/or high points and fees (known as high-cost mortgages) by restricting loan terms and features. The law also provides enhanced remedies for violations in a private civil action.²

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the HOEPA to enhance its protections. The amendments:

- expand the types of loans covered by the HOEPA to include home-purchase loans and open-end, home-secured credit transactions (such as home equity lines of credit (HELOCs)), which were previously exempt;
- add a new HOEPA threshold for what is considered a high-cost mortgage based on prepayment penalties;
- lower the two existing thresholds based on a loan's rate and points and fees so more loans will qualify as high-cost mortgages; and
- impose additional restrictions on high-cost mortgages, such as prohibiting balloon payment features (with specified exceptions) regardless of the term.

In January 2013, the Consumer Financial Protection Bureau (CFPB) issued implementing regulations for the HOEPA amendments, which became effective on January 10, 2014.³

The purpose of this article is to remind bankers that more residential loans may qualify as high-cost mortgages subject to the HOEPA's enhanced protections and remedies as a result of the Dodd-Frank Act amendments. This article also discusses the history of HOEPA, its expanded coverage under the amendments, the remedies available to borrowers for violations, the new substantive restrictions for high-cost mortgages, and suggestions for compliance programs.

HOEPA History

Congress enacted the HOEPA in 1994 to respond to abusive mortgage lending practices in the subprime mortgage market, particularly the issue of equity stripping loans (loans that erode a borrower's equity in his or her home through high interest rates and/or high points and fees). The HOEPA addressed this problem by creating a regulatory category for residential loans known as high-cost mortgages based on the loan's APR and/or its points and fees. The HOEPA restricted loan features on these mortgages, required disclosures to the applicant, and provided enhanced remedies to borrowers for violations in a civil action.⁴

The HOEPA excluded residential mortgage transactions (defined as a mortgage to finance the acquisition or construction of a principal dwelling, commonly known as a purchase-money mortgage);⁵ reverse mortgages; and open-end, home-secured credit transactions (e.g., HELOCs) from its coverage. Thus, as originally enacted, the HOEPA focused on closed-end refinance, home-equity, and home-improvement loans with high APRs and/or high points and fees.

Dodd-Frank Act HOEPA Changes

Expanded Product Coverage

The amended HOEPA now applies to purchase-money mortgages and open-end, dwelling-secured credit transactions such as HELOCs. Reverse mortgages and construction loans remain exempt. The CFPB also added a new exemption for loans originated and financed by housing finance agencies, and loans originated through the U.S. Department of Agriculture’s Rural Housing Service Section 502 Direct Loan Program.⁶

Threshold Changes

APR Threshold Test

The prior APR test was based on a margin added to the rate for a Treasury security of comparable duration. The revised test is based on a lower margin added to the average prime offer rate (APOR)⁷ for a comparable transaction.

Previous HOEPA APR Test	Revised HOEPA APR Test⁸
Treasury rate + 8.5 percentage points for first-lien loan	APOR + 6.5 percentage points for first-lien loan (except as described below)
Treasury rate + 10 percentage points for subordinate-lien loan	APOR + 8.5 percentage points for subordinate-lien loan
	APOR + 8.5 percentage points for a first-lien loan if the dwelling is personal property and the loan amount is less than \$50,000

As a result of the changes to this test, the APR threshold for a high-cost mortgage has been lowered so more loans will qualify.

Points and Fees Threshold Test

The previous and revised points and fees test are listed below.

Previous Points and Fees Test	Revised Points and Fees Test
Equals or exceeds 8 percent of the total loan amount ⁹	Equals or exceeds 5 percent of the total loan amount for loans either equal to or greater than \$20,000 (adjusted for inflation annually)
	Exceeds the lesser of either 8 percent of the total loan amount or \$1,000 ¹⁰ (adjusted for inflation annually) for total loan amounts less than \$20,000

The major change here is that the points and fees threshold was lowered from 8 percent to 5 percent of the total loan amount, except for loans of less than \$20,000, for which points and fees cannot exceed \$1,000 or 8 percent of the total loan amount, whichever is lower.

Prepayment Penalties Threshold Test

Under the new prepayment penalty threshold, a consumer credit transaction secured by the consumer's principal dwelling is a high-cost mortgage if:

- the creditor can impose prepayment penalties, as defined in [12 C.F.R. §1026.32\(b\)\(6\)](#), more than 36 months after consummation or account opening; or
- the prepayment penalties can exceed 2 percent of the prepaid amount.¹¹

One complexity of this provision is that Regulation Z also prohibits prepayment penalties for high-cost mortgages.¹² Thus, the new threshold creates an anomaly: If a loan has a prepayment penalty that crosses the threshold, it is a high-cost mortgage under [§1026.32\(a\)\(1\)\(iii\)](#), yet a high-cost mortgage cannot have a prepayment penalty under [§1026.32\(d\)\(6\)](#).

The CFPB discussed this issue in the preamble to the January 2013 final rule, explaining that the new prepayment penalty test “effectively establish[es] a maximum period during which a prepayment penalty may be imposed, and a maximum prepayment penalty amount that may be imposed, on a transaction secured by a consumer’s principal dwelling, other than a mortgage that is exempt from high-cost mortgage coverage under §1026.32(a)(2).”¹³ In other words, creditors offering loans secured by a consumer’s principal dwelling (except construction loans, reverse mortgages, and certain government guaranteed loans¹⁴) cannot impose prepayment penalties that cross the thresholds discussed previously.

Creditors should also recognize that another section of the regulation restricts prepayment penalties for certain dwelling-secured credit transactions. In particular, [12 C.F.R. §1026.43\(g\)](#) limits prepayment penalties on a “covered transaction,” which is defined as a consumer credit transaction secured by a dwelling, with certain exclusions (including HELOCs).¹⁵ For a covered transaction, a prepayment penalty is only allowed if the transaction is a qualified mortgage and if the penalty is otherwise permitted by law.¹⁶ Even then, additional restrictions apply: The APR cannot change after consummation; a penalty can only be imposed during the first 36 months after consummation; the penalty cannot exceed 2 percent if incurred during the first two years following consummation and cannot exceed 1 percent if incurred during the third year following consummation; and the loan cannot be a higher-priced mortgage loan.¹⁷

Thus, creditors considering prepayment penalties for dwelling-secured consumer credit transactions should consider these limitations during the product development stage for new loan products and should review their existing products for compliance with these changes.

New Restrictions on High-Cost Mortgages

Determining if a loan is subject to the HOEPA is only the first step in originating a high-cost mortgage loan. If the HOEPA applies, creditors must ensure they are complying with the HOEPA’s disclosure requirements and substantive restrictions. The Dodd-Frank Act added the following new substantive restrictions on HOEPA loans, as implemented in Regulation Z:

- Creditors and mortgage brokers cannot encourage a consumer to default on an existing loan that will be refinanced with a high-cost mortgage.¹⁸
- Creditors cannot charge a fee to modify, defer, renew, extend, or amend a high-cost mortgage.¹⁹
- Late fees cannot exceed 4 percent of the overdue payment, and the fee cannot be imposed more than once for a single late payment.²⁰
- Creditors or servicers generally cannot charge fees for a payoff statement.²¹
- Creditors cannot finance charges included in the points and fees test.²²
- Loans cannot be structured to evade HOEPA coverage.²³
- A high-cost mortgage cannot be originated without mandatory preloan counseling.²⁴

To facilitate compliance with these requirements, the CFPB offers several resources on its website, including an updated small entity compliance guide²⁵ and a web page focused solely on the HOEPA rule.²⁶

Effect of HOEPA Restrictions and Remedies on HOEPA Originations

According to recent mortgage lending data, most lenders do not extend HOEPA loans. For example, the 2013 HMDA data indicate that 428 lenders (out of a total of 7,190 HMDA reporters) extended 1,873 HOEPA loans, which accounts for less than 2 percent of all refinance and home-improvement loans. The data also indicate that only 203 of these loans were sold to secondary market participants.²⁷

Lenders' reluctance to originate HOEPA loans since the statute's enactment likely reflects several concerns: HOEPA's significant restrictions on loan terms,²⁸ enhanced damages for violations in a civil action, assignee liability, and an extended statute of limitations. For example, the TILA's remedies in a civil action for a HOEPA violation include refund of the sum of all finance charges and fees paid, statutory damages, court costs, and attorney's fees.²⁹ In addition, the statute of limitations for a HOEPA violation is three years, compared with one year for most other violations of the TILA.³⁰ Finally, the TILA generally limits the liability of loan assignees to violations that are clear on the face of the disclosure statement;³¹ however, for HOEPA loans, the assignee is subject to all claims and defense of the original creditor — unless the assignee can demonstrate that it was not apparent the mortgage purchased was subject to the HOEPA.³² The creditor must also provide a notice to the assignee regarding the assignee's potential liability for violations.

Compliance Management Considerations

The HOEPA amendments expand the scope of loans qualifying as high-cost mortgages and impose new substantive restrictions. Lenders must ensure that their systems, policies, procedures, training, and controls have been updated to account for the new rules and expanded scope. Lenders should also ensure that they have systems in place to determine whether their existing loan products are high-cost mortgages under the amendments. If so, they need to ensure that those loans comply with HOEPA's restrictions, disclosures, and counseling requirements.

Specific issues and questions should be raised with your primary regulator.

Footnotes to Code References can be found at <https://consumercomplianceoutlook.org/2015/first-quarter/expanded-scope-of-high-cost-mortgages-under-dodd-frank-wall-street-reform-consumer-protection-act-2/>

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FTC Issues Final Rule to Protect Struggling Homeowners from Mortgage Relief Scams

Rule Outlaws Advance Fees and False Claims, Requires Clear Disclosures

Homeowners will be protected by a new Federal Trade Commission rule that bans providers of mortgage foreclosure rescue and loan modification services from collecting fees until homeowners have a written offer from their lender or servicer that they decide is acceptable.

“At a time when many Americans are struggling to pay their mortgages, peddlers of so-called mortgage relief services have taken hundreds of millions of dollars from hundreds of thousands of homeowners without ever delivering results,” FTC Chairman Jon Leibowitz said. “By banning providers of these services from collecting fees until the customer is satisfied with the results, this rule will protect consumers from being victimized by these scams.”

The FTC is issuing the Mortgage Assistance Relief Services (MARS) Rule to protect distressed homeowners from mortgage relief scams that have sprung up during the mortgage crisis. Bogus operations falsely claim that, for a fee, they will negotiate with the consumer’s mortgage lender or servicer to obtain a loan modification, a short sale, or other relief from foreclosure. Many of these operations pretend to be affiliated with the government and government housing assistance programs. The FTC has brought more than 30 cases against operations like these, and state and federal law enforcement partners have brought hundreds more.

Advance fee ban

The most significant consumer protection under the FTC’s new rule is the advance fee ban. Under this provision, mortgage relief companies may not collect any fees until they have provided consumers with a written offer from their lender or servicer that the consumer decides is acceptable, and a written document from the lender or servicer describing the key changes to the mortgage that would result if the consumer accepts the offer. The companies also must remind consumers of their right to reject the offer without any charge.

Disclosures

The Rule requires mortgage relief companies to disclose key information to consumers to protect them from being misled and to help them make better informed purchasing decisions. In their advertising and in communications directed at individual consumers (such as telemarketing calls), the companies must disclose that:

- they are not associated with the government, and their services have not been approved by the government or the consumer’s lender;
- the lender may not agree to change the consumer’s loan; and
- if companies tell consumers to stop paying their mortgage, they must also tell them that they could lose their home and damage their credit rating.

Companies also must explain in their communications to consumers that they can stop doing business with the company at any time, can accept or reject any offer the company obtains from the lender or servicer, and, if they reject the offer, they don’t have to pay the company’s fee. The companies also must disclose the amount of the fee.

Prohibited claims

The MARS Rule prohibits mortgage relief companies from making any false or misleading claims about their services, including claims about:

- the likelihood of consumers getting the results they seek;
- the company’s affiliation with government or private entities;
- the consumer’s payment and other mortgage obligations;
- the company’s refund and cancellation policies;
- whether the company has performed the services it promised;
- whether the company will provide legal representation to consumers;
- the availability or cost of any alternative to for-profit mortgage assistance relief services;
- the amount of money a consumer will save by using their services; or
- the cost of the services.

In addition, the rule bars mortgage relief companies from telling consumers to stop communicating with their lenders or servicers. Companies also must have reliable evidence to back up any claims they make about the benefits, performance, or effectiveness of the services they provide.

Attorney exemption

Attorneys are generally exempt from the rule if they meet three conditions: they are engaged in the practice of law, they are licensed in the state where the consumer or the dwelling is located, and they are complying with state laws and regulations governing attorney conduct related to the rule. To be exempt from the advance fee ban, attorneys must meet a fourth requirement – they must place any fees they collect in a client trust account and abide by state laws and regulations covering such accounts.

All provisions of the rule except the advance-fee ban will become effective December 29, 2010. The advance-fee ban provisions will become effective January 31, 2011.

The FTC rulemaking proceeding was conducted pursuant to Congressional legislation sponsored in 2009 by Senators Jay Rockefeller and Byron Dorgan. The Final Rule applies only to entities within the FTC’s jurisdiction under the Federal Trade Commission Act, which excludes, among others, banks, savings and loans, federal credit unions, common carriers, and entities engaged in the business of insurance. In June 2009, the FTC issued an Advance Notice of Proposed Rulemaking seeking comment on the practices of for-profit mortgage relief companies. In February 2010, the FTC announced a Notice of Proposed Rulemaking and sought comments from interested persons, including advocates for consumers, the business community, and the legal profession.

The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and unfair business practices and to provide information to help spot, stop, and avoid them. To file a complaint in English or Spanish, visit the FTC’s online [Complaint Assistant](#) or call 1-877-FTC-HELP (1-877-382-4357). The FTC enters complaints into Consumer Sentinel, a secure, online database available to more than 1,800 civil and criminal law enforcement agencies in the U.S. and abroad. The FTC’s website provides free information on a variety of [consumer topics](#).

(MARS)
(FTC File No. R911003)

Where Do You Find Commercial Borrowers

- A. **Mortgage Brokers**

- B. **Local Investor Club ★**

- C. **Referrals – Pass out cards/flyers**
 - **Satisfied Customers ★★**
 - **Other Private Lenders ★**
 - **Wholesalers and their buyers**
 - **Bird Dogs**
 - **Real Estate Attorneys ★**
 - **Title Companies** (in states where title companies are used for closings)
 - **Accountants**
 - **Contractors**
 - **Real Estate Agents**
 - **Community Banks**
 - **Foreclosure Sales** (hand out flyers/business cards)

- D. **Classified/Display Advertising** (Use care from a legal/securities standpoint)
 - **Newspaper**
 - **Internet**
 - **Trade Publications**
 - **Legal Papers**
 - **Foreclosure Reports**
 - **Yard Signs** ("This Project Financed by _____")

LENDING GLOSSARY

The glossary that follows has been extracted from many sources over the years. Many of the definitions are directed to the borrower, but are quite instructive. Spend some time reading over them now as well as using this glossary for reference in the future.

Abstract of Title – A written history of the title to a property including every owner and every claim since its original owner. It is the result of a title search (see **Title Search**) and shows if someone else has a legal claim on the property.

Acceleration Clause – A common feature of mortgages protecting the lender. If a borrower does not comply with all the requirements of the mortgage, for example, he fails to make the monthly payments, the lender can accelerate the maturity date and require full and immediate payment of the loan.

Accommodation Maker – A person who, without any direct or indirect benefit, compensation, or consideration, co-signs a negotiable instrument as a favor to the person who owes the money and thus becomes liable on it to all parties

Accrued Interest – The interest that has accumulated over the time elapsed since the borrower, made his or her last interest payment. (see **Interest**)

Add On Interest – Interest that is calculated on the original principal for the full term of the loan and then added to the original amount borrowed. This sum is then divided into a number of equal payments. Some states do not allow the disclosure of the add on rate, but do allow the computation. (see **Interest**)

Adjustable Rate Mortgage (ARM) – A general term for any mortgage in which the interest rate, and possibly payments, change over the life of the loan. The interest rate will be adjusted to match the rise or fall of a preselected interest rate index and regular payments normally increase or decrease accordingly. Different types of ARM's have different frequencies for these adjustments. Some ARM's have limits on payment and interest rate changes and the maximum interest rate over the life of the loan. An advantage to borrower is the initial rate of an ARM is usually low, permitting the borrower to buy real estate that would be unaffordable with a fixed rate mortgage. But the borrower risks higher payments later on. (see **Index, Initial Interest Rate, Floating Rate of Interest**)

Adjustment Interval – A term used in adjustable rate mortgages. It is the period of time specified in the loan documents between changes in the interest rate and/or monthly payment. Common adjustments on ARMs may be made every 3 months, 6 months, 1 year, 3 years or 5 years. (see **Adjustable Rate Mortgage**)

Affidavit – A sworn statement in writing, made before a public official, usually a notary.

Agent – One who is legally authorized by another to represent him/her or act in his/her behalf. For example, you may hire a broker to act as an agent in selling your property.

Agreement for Deed – A kind of agreement of sale in which the deed is delivered at closing (see **Closing**) to an escrow agent (see **Escrow Agent**) and not placed immediately in the public land records. The escrow agent holds the deed, for an agreed period of time, until the specified payments are made and only then places the deed in the public records. (see **Agreement of Sale, Deed**)

Agreement of Sale – A contract in which the buyer agrees to purchase specific property and the seller agrees to sell under the stated conditions. This is also called a binder, a sales contract and an earnest money contract.

Alienation Clause – A special type of acceleration clause. (see **Due-On-Sale Clause**)

Amenity – Any non-monetary benefits enjoyed by the owner of a particular piece of property. A prestigious address, access to a private parking space and reliable transportation are all amenities.

American Land Title Association (ALTA) – A national association of title insurance companies, title abstractors and attorneys who specialize in real estate law. ALTA establishes standard procedures and uniform title abstract and insurance policy forms.

Amortization – A plan for gradually repaying the money borrowed in periodic payments. Generally each payment made consists of part of the money originally borrowed (the principal) plus interest on the declining balance of the principal. The amount of the periodic payments depends, in part, on the principal, the interest rate and the length of time allowed for repayment. The word “amortization” is derived from the Latin word for “death.”

Amortization Schedule – A table that outlines the schedule for loan repayment. It shows the amount of principal and interest due at regular intervals. It also shows the unpaid balance of the loan remaining after each payment.

Annual Mortgage Statement – A report prepared by the lender or servicing agent for the borrower (mortgagor), at the start of each year of the loan. It states which portions of payments for the previous year were applied to principal, interest, taxes and insurance. (see **PITI**) It also states how much of the principal balance remains to be paid.

Annual Percentage Rate (APR) – The total cost or finance charge for a loan per year, expressed as a percentage. It is the sum of the interest and any other fees, such as discount points, compared to the amount of the loan. Lenders on consumer loans are required by the Truth-In-Lending Act to disclose the APR using a procedure prescribed by the federal government. (see **Interest, Point**)

Annuity – An amount paid at regular intervals for a set period of time. Mortgage payments are a form of annuity paid to the lender. Mathematically referred to as a standard annuity.

Apportionment – The division of property expenses and income between the buyer and the seller, at the time of sale. Expenses may include taxes and insurance premiums; income may include rents. The buyer only assumes the portions of expenses and incomes that apply after closing day.

Appraisal – A report made by a qualified person (or appraiser), which states his opinion of the estimated value and quality of the property

Appraised Value – An estimate of property value, made by a qualified expert. The expert, called an appraiser, is qualified by his education, training and experience to evaluate the property based on available facts. (see **Designated Appraiser**)

Appreciation – An increase in the value of a property. Appreciation may be the result of an increased demand for the property; any improvements or additions made; improvements to the neighborhood, etc.

Appurtenance – Anything that becomes your property because it is attached or closely related to land upon purchase. It may be a structure, such as a well, barn or garage; or it might be a right or interest enjoyed by the previous owner, such as an easement. (see **Easement**)

Assessed Valuation – The value of a property according to an official tax assessor. Real property tax will be based on the assessed valuation.

Assessment – The **Assessed Valuation**. Also refers to a tax on property for a specific purpose. For example, a sewer assessment is levied on your property to help pay for the installation of a sewer line.

Asset-Based Lending – Lending based on value of asset collateralizing loan rather than credit of borrower.

Assignee – A person or party to whom an assignment or transfer is made. When an agreement, contract or interest is transferred to you, you become the assignee. The assignee might also be a corporation or partnership.

Assignor – The person or party who assigns or transfers an agreement, contract or interest to another person or party.

Assumption Fee – Money paid to a lender, usually by the buyer to assume a mortgage already on the property being purchased by buyer. Sometimes, the owner of the property will pay this fee to the lender. (see **Assumption of Mortgage**)

Assumption of Mortgage – Sometimes to help a buyer of a property, such buyer can take responsibility for the seller's mortgage: agreeing to all the terms, making the monthly payments on the existing mortgage, after obtaining the lender's consent. (see **Non-Assumption Clause, Assumption Fee**)

Attorney-In-Fact – A type of agent who has been granted a written power of attorney by the grantor (also referred to as 'principal'). This authorizes him/her to sign, seal and deliver documents on behalf of the grantor. (see **Power of Attorney**)

Balloon Mortgage – With this mortgage, monthly payments are too small to pay off the loan within the set period. The remaining unpaid amount becomes due in a lump sum at the end of the term.

Binder, Real Estate – See Agreement of Sale.

Breach – To violate or default on any legal agreement or obligation. For example, you breach your mortgage when you fail to make a monthly payment on time.

Buydown – 1. Occurs when the person selling real estate pays the buyer's lender a certain fee in order to reduce the rate of interest or monthly payments on buyer's mortgage. The reduced interest rate may hold for all or part of the loan term. 2. A loan that has been bought down by the seller for the benefit of the buyer.

Call Provision – A clause in a loan that gives the lender the right to demand payments sooner than originally agreed upon, at their discretion or upon occurrence of certain specified conditions. For instance, the call provision might allow the lender to collect the full debt remaining after a certain time elapses or if the borrower, sells or transfers the property.

Cap – A term used in adjustable rate mortgages. Caps limit the increase or decrease allowed in interest rate or monthly payments from one adjustment period to the next. Caps also may limit the interest rate over the entire term of the loan. For example, if your mortgage has an adjustment cap of 2% per year and 16% for its life, your interest rate can never be increased or decreased by more than 2% per year or exceed 16% even though the market or fully indexed rate may go much higher. (see **Adjustable Rate Mortgage, Interest**)

Certificate of Eligibility – Veterans are eligible for a Veterans Administration (VA) mortgage loan guarantee. The federal government will issue a document, called a Certificate of Eligibility, to certify that a veteran is eligible. (see **VA, Guaranteed Loan, Certificate of Reasonable Value**)

Certificate of Occupancy – In some areas, before anyone can move into a newly constructed building, the local government must first issue this public document. It authorizes occupancy of the building and certifies compliance with local building codes.

Certificate of Reasonable Value – Issued by the Veterans Administration (VA) to qualifying veterans, this document states the maximum amount of principal it will guarantee for a mortgage loan.

Certificate of Title – A document that assures the buyer that the person selling property is indeed the legal owner and that no one else has any legal claim to the property. This certificate does not protect against loss if a hidden claim emerges after the purchase, only a title insurance policy can do that. (See **Title Insurance Policy**)

Clear Title – When the seller holds the only legal claim to the property and no one holds any demands on that seller for the property, (i.e. there are no defects or encumbrances) he has a clear title. In contrast, a marketable title and an insurable title may include some minor claims on the property, but they are insignificant to the transfer of the property. (See **Title Search, Title Defect, Marketable Title, Insurable Title, Encumbrance**)

Closing – The final step of a sale transaction, in which the title to, or ownership of real estate is transferred from the owner to the buyer. In closing, any mortgage notes will be signed by the buyer, and both buyer and the seller will pay any costs that were agreed to previously. Any financial adjustments will be made at this time, and the buyer or the escrow agent will be given the deed. (Also referred to as “settlement.”)

Closing Costs – Costs, in addition to the price of the property itself, that are due at closing. They normally include origination fees, discount points (see **Point**), attorney’s fees, costs for title insurance, surveys, recording documents and prepayments of real estate taxes and insurance premiums held by the lender. Sometimes seller will help buyer pay some of these costs. (See **Closing, Transfer Tax, RESPA**)

Closing Day – The formal exchange of property from the owner to the buyer, is performed on closing day. The seller will sign the Deed to Property and buyer will sign the mortgage and both buyer and the seller will share in the closing costs as agreed. (See **Closing Costs**)

Closing Statement – A statement of the funds received and spent at the closing of a real estate sale. It is furnished by the real estate closing agent to the buyer and seller separately. The standardized federal form HUD-1 is used in most residential transactions.

Cloud on Title – An outstanding claim on the property that, if valid, would affect the owner’s rights to the property. It could be a lease or some legal restriction on the title such as an easement or deed restriction. A cloud can be removed from the title by a court action, a release or a quitclaim deed. (see **Easement, Quitclaim Deed**)

Cognovit – An acknowledgment or confession by a defendant that the plaintiff’s cause, or part of it, is just, wherefore the defendant, to save expense, permits judgment to be entered without trial.

Collateral – Property pledged as security for a debt, such as your home as security for your mortgage loan.

Commitment – A written agreement, in which the lender agrees to loan money if the borrower meets certain conditions.

Compliance Inspection Report – A report prepared by a compliance inspector for a mortgage lender. It states whether construction or repair work on a property meets the conditions of a previous inspection.

Compound Interest – A method of computing interest charges in which interest is computed at regular intervals or at payment dates. Interest so computed is added to principal and payments are deducted in full from this total. If the payment does not pay all the interest that was added, the principal increases by the interest not paid (referred to as negative amortization). It is this balance that is used as the principal for future computations. Some states do not allow charging interest on interest in this manner.

Compound Period – The period (from one day to one year) after which interest is computed and added to principal. This is done for actuarial (normal) and Rule of 78 interest. Interest under US Rule does not compound, but at each payment date is computed and any portion of the computed interest not paid is added to a special non-interest-bearing account.

Conditional Sales Contract – A contract for the sale of property in which the seller remains the owner until the buyer has fulfilled certain conditions. One example is a land contract. Under the terms of this contract, the buyer would not receive a deed until buyer has paid all or part of the sale price. Also called an Agreement for Deed or Contract for Deed.

Condominium – A form of housing where a specified portion of a piece of real estate (usually of an apartment house) is individually owned while use of and access to common facilities such as hallways, heating system, elevators, exterior areas are owned and controlled by the association of owners that jointly represent ownership of the whole piece. (Often referred to as a ‘condo’)

Condominium Declaration – Also called a Master Deed, it is a document which the developer of an entire condominium complex must place in the public records before the first unit is transferred to a buyer. It states the terms of ownership of each private unit in detail, as well as any areas, such as a porch or lobby, that will be shared by the residents. It is just one of several condominium documents. (see **Condominium Documents**)

Condominium Documents – A set of legal papers provided to the buyer of a condominium. They usually include the condominium declaration, the plat and plans, and the by-laws of the complex. (see **Condominium Declaration, Plat**)

Consumer – when used as an adjective with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal family, or household purposes. (Truth-In-Lending Act, Section 1602(h))

Conventional Loan – A mortgage loan that is neither insured by the Federal Housing Administration or the Farm Home Administration, nor guaranteed by the Veterans Administration.

Convertibility – A feature sometimes found in adjustable rate mortgages. It allows borrower to change (“convert”) the loan type from an ARM to a fixed rate mortgage. Usually a borrower can only change their mortgage type at certain designated times during the early years of the ARM. A fee may be required at the time borrower wants to change loan type. (see **Adjustable Rate Mortgage, Fixed-Rate Mortgage**)

Convey – To transfer an interest in real estate to another party. Usually the conveyance involves a transfer of property ownership.

Cooperative – Ownership of a multi-unit building by a type of corporation. If you wish to own or invest in a unit in a cooperative building, you must buy stock in the corporation that will assign a particular unit to you. As an occupant, you’re allowed to deduct a portion of the interest and property taxes paid by the corporation from your income tax.

Cosigner – A person who signs a promissory note in such a capacity that he or she has equal and primary liability with another. Contrast with a guarantor, who is liable only if the original obligor defaults. A cosigner must list the promissory note as a liability on financial statements; a guarantor has only contingent liability which may never ripen into full liability.

Coupon Rate – The annual interest rate stated or specified on the face of a mortgage note. Also known as the **Nominal Interest Rate**.

Covenant – A promise. For instance, a covenant may require you to insure your property against fire loss. When a covenant is breached, your mortgage is said to be in default. This could result in the loss of your property. (see **Breach**)

Credit Life – A life insurance policy that pays off borrower’s mortgage in the event of borrower’s death. Credit life may be required by a lender as additional assurance that the debt will be repaid.

Credit Rating – An evaluation of borrower’s ability to pay back a loan. It is based on borrower’s current financial situation and past performance in debt repayment. It takes into account any defaults (see **Breach**) and slow repayments.

Credit Report – A report from a credit reporting agency issued to a lender which discloses the credit rating and any other pertinent financial information about a prospective borrower. (see **Credit Rating**)

Cul de Sac – A street with a dead end, usually with space at the end for vehicles to turn around.

Custodial Account – A bank account for the deposit of another person’s funds. One example is a real estate tax escrow account. (see **Escrow Account**)

Deed – This is the formal written document that transfers the rights of ownership and possession (i.e. the Title) from the seller to the buyer: Sometimes the deed is also called a title document. It contains an accurate, specific and legal description of the property and it is delivered at closing.

Deed Restriction – An agreement in a deed that forbids certain activities on a property. For example, a deed might contain a covenant restricting you from selling alcohol on your property. If you breach (see **Breach**) this covenant, you could risk the loss of your property. (see **Deed**)

Deed of Trust – In some states, this is used in place of a mortgage or a deed to secure debt. While there are only two people involved in a mortgage, the borrower and the lender; there are three people involved in a deed of trust: the borrower, the lender and the trustee. Here, the borrower transfers the legal title for the property to the trustee who holds the property as a security for the debt. If the borrower pays the mortgage as agreed, the trustee gives the legal title back to the owner. If the borrower does not pay the mortgage as agreed, the trustee can sell the property. (see **Mortgage**)

Deed to Secure Debt – Similar to the deed of trust (see **Deed of Trust**), but no third-party trustee is involved. Rather, the borrower transfers the legal title for the property to the lender as his/her attorney-in-fact and the lender holds the property as a security for the debt. If the borrower pays the debt as agreed, the lender gives the legal title back to the owner. If the borrower does not pay the debt as agreed, the lender can sell the property. (see **Mortgage**)

Default – See **Breach**.

Deferred Interest – A term used in Adjustable Rate Mortgages. When the monthly payments do not cover the interest cost, the interest left unpaid is deferred to later years by adding it to your unpaid principal balance. In subsequent months borrower is charged interest on this unpaid interest. Many lenders place a limit to deferred interest, (e.g. not allowing it to go above 125% of the original mortgage loan balance.) If the unpaid balance exceeds the limit placed by the lender, borrower can no longer defer interest and must begin making payments large enough to fully pay what is due over the remaining term. In this case, payments can increase suddenly and significantly. Deferred interest can occur when a graduated payment option is chosen, (see **Graduated Payment Mortgage**) where the loan starts out below current rates but borrower agrees to pay the difference (the Deferred Interest) in later years. Deferred Interest can also occur when a monthly payment cap is chosen. (see **Cap**)

Demand Note – A note, such as a mortgage note, that gives a lender the right to demand payment from the borrower, at any time without prior notice.

Designated Appraiser – Someone who determines the value of property and whose expertise is recognized and licensed by a professional association such as the Society of Real Estate Appraisers. Many lenders accept only those appraisals performed by a designated appraiser.

Direct Reduction Loan – A loan to be repaid in installments, in which each installment is treated as a separate loan and at its due date is repaid at its face amount plus simple interest on that installment only.

Discount Point – See **Point**.

Downpayment – The difference between the sale price of real estate and the amount of the mortgage loan. The downpayment is usually paid in full at the closing of a sale. For example, if you buy a house for \$70,000, and your mortgage loan is for \$50,000, you must make a downpayment of \$20,000 at the closing. Your earnest money deposit will be credited to the downpayment. (see **Earnest Money**)

Due-On-Sale Clause – A kind of acceleration clause in a mortgage which allows the lender to demand payment of the full remaining balance of a loan when the borrower, sells or transfers the property. (see **Acceleration Clause**)

Earnest Money – This is a deposit that is given to the seller proving to him that the buyer are serious about buying his house. If the sale goes through, the earnest money becomes part of buyer's downpayment (see **Downpayment**) on the house. If the sale does not go through, buyer loses the earnest money, unless the seller agrees from the beginning to refund it to buyer.

Easement – The right to make limited use of another person's land. It is usually granted in writing by the owner and becomes an interest in the land and an encumbrance (see **Encumbrance**) on the title. For example, as the owner, you may wish to grant an easement for the installation of a utility line through your property. (see **Cloud on Title**)

Effective Age – The age, given in years, of a property, figured solely on the basis of its physical condition. Usually figured for the purpose of appraisal (see **Appraisal**) it may differ from the chronological age of the property. For instance, if you own a 10-year-old house which has been carefully maintained, it may be assigned an effective age of 5 years; whereas a 10-year-old house that has been neglected may have an effective age of 15 years.

Effective Annual Rate – Calculated as $(1+i)^m - 1$, where i is the periodic rate and m is the number of compounding periods per year. The effective annual rate would show, for example, the cost of borrowing one dollar for one year where compounding is more frequent than annual.

Effective Gross Income (Personal) – A person's normal yearly income, including overtime that is regular or guaranteed. Usually, it is from one source, normally a salary. But any other income which is regular, significant and verifiable will qualify to be included.

Encroachment – Any physical condition or improvement belonging to another person that intrudes upon a part of a property; or any physical condition or improvement that intrudes upon the property of another person. An encroachment may be the result of survey error or negligence. A common example is a neighbor's fence that is built on your property by mistake.

Encumbrance – Any previously established right or interest to property that would restrict ownership rights upon purchase. Zoning ordinances, leases, easements, unpaid taxes, existing mortgages and restrictive covenants are all examples of encumbrances. A title search will show whether such encumbrances exist. If so, they will not prevent a purchase the property. Rather, they will complicate the terms of ownership, and in some cases may diminish the property's value. You must decide how an encumbrance will affect the value of the property before purchase; or determine how the encumbrance can be removed. (see **Title Search**)

End Loan – The final mortgage loan that is made to the borrower. It is called the "end loan" in order to distinguish it from construction loans, or other previous loans that have been made for the purchase, development and construction of the same property.

Endorsement – 1. When you sign your name on the back of a check, note or other negotiable instrument, your signature becomes the endorsement. Your endorsement transfers ownership or payment to a specified party. 2. An addition made to a document, such as a title policy, in order to alter or clarify it.

Equal Credit Opportunity Act (ECOA) – Enacted in 1974 and since amended, this federal statute prohibits lenders from discrimination on the basis of a prospective borrower's sex, marital status, age, race, color, income, national origin or receipt of public assistance income.

Equity – The owner's interest. It is the interest in the property after all loans have been subtracted from the market value of the property. When all mortgages are paid off, the equity in the property will be 100%.

Equivalent Daily Rate – The nominal annual rate divided by the year length in days. This length is either 365 or 360, depending on the computation method.

Escrow Account – A special bank account maintained by the lender or an escrow agent used to set aside money so that the lender can pay the taxes, hazard and mortgage insurance, ground rents and other special costs on a mortgage or property as they come due. Each month, a certain portion, called the escrow payment, of the monthly mortgage payment goes into this account. (see **Ground Rent**)

Escrow Agent – (Usually the escrow company.) A third party who acts for both the seller and buyer in closing the sale of property. He holds any pertinent documents and/or funds for safekeeping, and sees that the terms of the sale agreement are carried out. The escrow agent may be an individual trusted by both buyer and the seller, a law firm, bank or other financial institution.

Escrow Analysis – A regular examination of an escrow account to make certain that the amount of money in the account is sufficient to pay for taxes, insurance and other expenses when they become due. (see **Escrow Account**)

Escrow Contract – An agreement that establishes an escrow and states the specific obligations of the escrow agent. (see **Escrow Account**)

Escrow Overage or Shortage – The difference between the amount of funds in borrower's escrow account and the amount of escrow funds needed to cover certain expenses. This difference is determined through an escrow analysis. (see **Escrow Analysis, Escrow Account**)

Escrow Payment – Each month, a portion of borrower's monthly payment is set aside by the lender in an escrow account to pay the taxes, hazard insurance, mortgage insurance, ground rents (see **Ground Rent**) and other special items as they come due.

Examination of Title – A review that reveals the previous owners of, and encumbrances on a piece of real estate. To conduct this review, a search is made of the public records or an examination of an abstract of title. (see **Abstract of Title**)

Execute – A legal term meaning "to complete". To execute a deed (see **Deed**) means to sign, seal and deliver it.

Extended Coverage Endorsement – An endorsement that may be added to a fire insurance policy, so that the home will be more fully protected. It may include coverage against loss or damages due to windstorm, hail, smoke, explosion, riot, civil commotion and colliding aircraft or vehicles.

Fair Market Value – An appraisal term (see **Appraisal**). It is the price that the buyer, is willing to pay and that the seller is willing to accept for a piece of property. In arriving at this price, both the buyer and the seller must be reasonably aware of the pertinent facts and under no obligation to buy or sell.

Federal Home Loan Mortgage Corporation – FHLMC or "Freddie Mac". An organization that buys already existing loans in packages from mortgage bankers and financial institutions. It sells shares of these mortgage packages to finance the purchase of more loan packages. (see **Mortgage Banker**)

Federal Housing Administration – FHA. A federal agency within the U.S. Department of Housing and Urban Development (HUD). Using loan insurance programs to insure mortgages for lenders, the FHA stimulates the availability of housing for low and moderate income families.

Federal National Mortgage Association – FNMA or "Fannie Mae". A corporation created by Congress but privately owned by stockholders. It buys pools or packages of mortgages and sells them or shares of them for profit.

Fee Simple – The largest possible interest in real estate. When you own property in fee simple, you enjoy substantial rights to it, and may dispose of it as you see fit. This includes selling it, using it for any lawful purpose or leaving it to your heirs.

Financial Management Rate of Return – The rate of return on a project, after providing for setting aside funds needed for later investments in the project at a "safe" rate and assuming that positive cash flows are reinvested at a specified (presumably readily available) standby investment rate.

First Mortgage – The loan that has the primary claim on all proceeds from the sale or other disposition of the property. (see **Second Mortgage**)

Fixed-Rate Mortgage – The basic type of loan where the interest rate can never change for the entire term of the loan. For example, if the interest on a 30-year mortgage is set at 10%, it will stay at 10% until the mortgage is paid off. (compare with **Adjustable Rate Mortgage**)

Floating Rate of Interest – An interest rate that varies throughout the term of the loan instead of being fixed. The degree to which the interest rate may vary is governed by changes in a selected index and by

interest rate caps (see Cap). For example, if your initial interest rate is 14% and after the first year the index has increased by one percentage point, then your interest rate generally would be raised to 15% if interest rate caps were not reached. Used in ARM's. (see **Adjustable Rate Mortgage**)

Flood Plain – Areas of land that are subject to periodic flooding by a neighboring river, stream or other body of water. Flood plains are classified according to the anticipated frequency of flooding.

Front Foot – A measurement of land along its border with a street.

Front Foot Benefit Charge – A tax that some counties charge for providing utilities or other services to a property. It is based on the measurement of the property's border along a road or street.

Fully Indexed Rate – A term used in adjustable rate mortgages. It reflects the true market interest rate or going market rate without interest rate caps of any kind. It is calculated by adding the margin to the index. (see **Cap, Margin, Index**)

Future value – The value of the last cash flow in a problem.

Gap Period – Period between where the title records end and the deed is filed.

General Warranty Deed – A deed of conveyance, in which the person conveying his interest in a property guarantees to protect the buyer against all claims to the title arising from events that occurred at any time before or during his period of ownership. (compare with **Special Warranty Deed, Quitclaim Deed**)

Government National Mortgage Association – GNMA or "Ginnie Mae", a government organization that is responsible for the Special Assistance Loan Program, which provides those in need with low-interest rate mortgage loans. It also administers and guarantees a mortgage-based securities program backed by FHA and VA mortgages that channels new sources of funds from the national capital markets into residential mortgages.

Graduated Payment Mortgage (GPM) – A mortgage where monthly payments will generally increase for a set period of time and then level off. This increasing payment feature can be incorporated into fixed-rate or floating-rate loans. For example, a borrower may agree to make initial monthly payments of \$700 that will rise gradually to \$900 by the fifth year, where they will stay for the remainder of the loan.

Grantee – When an interest in property is conveyed to you, you become the grantee. The grantee might also be a corporation, partnership, LLC or trust.

Grantor – When an interest in property is conveyed by you to another person, you become the grantor.

Gross Income – A person's total stable and verifiable income before expenses, such as mortgage payments, utility expenses, insurance premiums, other loan payments, taxes, etc. are deducted.

Ground Rent – The payment for use of land in accordance with a ground lease.

Guaranteed Loan – When a government agency or other party guarantees a loan, it agrees to reimburse the lender if the borrower fails to pay back the loan as promised. A loan can be guaranteed for all or a portion of the unpaid principal. An example, is the Veterans Administration loan to a veteran. (see **VA**)

Guarantor – One who agrees to be secondarily liable for another's debt or performance.

Hard Money Loan – A type of asset-based financing where the loans are secured by the value of specific real property and little or no underwriting consideration is given to the borrower's credit.

Hidden Defect – Any claim on a property that does not appear in the public records; for example, an unknown heir. If such a claim is valid, the value of the property may be diminished. Also, a hidden defect is any physical problem with the property that is not easily seen.

Homeowners Association – An organization made up of homeowners who reside within a particular area or development, such as a subdivision or a condominium. The members of such an association enforce any restrictions on the use of property and both provide and manage community facilities.

Homeowner's Policy – An insurance policy intended for owner occupied private dwellings. It covers the dwelling and its contents against common disasters, such as fire, wind damage and theft. In most cases, it also protects the owner, against the legal claims of anyone who is injured on the property.

Homeowner's Warranty Program – A program to guarantee the workmanship and materials of a home, and to warrant against any major structural defects.

Impound – A part of monthly mortgage payments that is set aside by the lender to cover the cost of taxes, insurance, ground rents and other items. Also known as reserves or escrow. (see **Escrow Account**)

Index – A term used in Adjustable Rate Mortgages. (see **Adjustable Rate Mortgage**) It is a measure of prevailing market interest rates. The index is used with the margin to determine new interest rate at the time of adjustment. If the index increases, the interest rate increases unless an interest rate cap (see **Cap**) is reached. If the index decreases, the interest rate decreases, unless a cap is reached. Often, these interest rates are the rates for U.S. treasury securities or prime rate. Both are popular as indexes because they are easy to monitor and reflect economic conditions accurately.

Initial Interest Rate – A term used in adjustable rate mortgages. It is the beginning interest rate on an ARM. It may be lower than the fully indexed rate or “going market rate.” It will remain constant until it is adjusted up or down on the adjustment date. (see **Fully Indexed Rate, Introductory Rate, Teaser Rate**)

Installment – A monthly mortgage payment.

Insurable Title – A title to a property which a title insurance company will insure and will issue a title insurance policy as evidence of its insurance. (compare with **Marketable Title** and **Clear Title**)

Insurance Binder – A written document proving insured has temporary hazard or title insurance coverage (see **Title Insurance Policy**) on property. This must be replaced with a permanent policy.

Insured Closing Letter – A letter issued by a title insurance company to protect you against improper use of the funds you forward to the company's agent or approved attorney. It also protects you against failure on the part of the parties involved to follow specific closing instructions. Your closing agent should be able to provide you with this letter. (see **Title Insurance Policy**)

Intangible Tax – A tax charged in some states and counties for lending money secured by real estate.

Interest – 1. A charge for borrowing money. It is usually expressed as an annual rate, or percentage, of the money the borrower still owes. For example, your interest rate might be 14%. If you've borrowed \$10,000 and you've agreed to pay in full at the end of one year; your interest will be \$1,400. 2. A general term meaning partial or total right to a property. An interest in real estate might be a right, such as an easement (see **Easement**), a lease, partial ownership, or full ownership.

Interest Reduction Programs – Programs that lower the cost of housing for the benefit of the homebuyer. Such programs use subsidies generally paid to lenders (by property sellers) at closing, to reduce the interest rate for mortgage loans.

Introductory Rate – A term used in adjustable rate mortgages. It is an initial interest rate that is usually below the “going market rate” which is set by the index plus the margin. (see **Adjustable Rate Mortgage, Index, Margin**)

Joint and Several Note – A signed promise that obligates borrowers to a lender both collectively (jointly) and individually (severally). Each borrower is liable to the lender for the full amount of the debt, not just his individual share. For instance, if you and a partner borrow \$10,000 and your partner fails to make payments in time, the lender can collect the remaining balance from either one of you.

Joint Tenancy – Occurs when two or more people are legally granted at the same time, equal interests and equal rights to a property. If one of them dies, the others share his interest equally so that the remaining people still have equal interests. (see **Right of Survivorship; compare with Tenancy in Common and Tenancy by the Entirety**)

Junior Mortgage – A mortgage that is subordinate to any of the previous mortgages on the same property. If the borrower defaults (see **Breach**) on the mortgage and his property is sold, the proceeds of the sale would go to the first mortgage lender to reimburse him for the unpaid mortgage debt interest, and any legal expenses. The junior mortgage lender would receive the remainder, if any, of the proceeds. A second mortgage is a junior mortgage. (see **Second Mortgage**)

Kick-Out Clause – A clause in a sales contract that permits a seller to cancel the contract and return buyer's deposit if buyer does not remove a contingency within a certain period of time.

Late Charge – A fee that the borrower must pay for failing to make a payment when it is due.

Lease – A written agreement stating the conditions for the possession and use of real estate (and/or personal property) given by the owner to another person (the tenant) for a specified period of time and rent.

Legal Description – A description of a property that is recognized by law. It must be exact and sufficient in itself for the purposes of identifying and locating the property

Level Payment Mortgage – Periodic payments for this type of mortgage will be the same throughout the term of the loan. Part of each payment will be applied toward the interest; the remainder will be used to reduce the principal. (see **Interest, Principal**)

Leverage – The use of borrowed money to increase both the amount of property that a person can purchase and the amount of profit this property generates. For example, if you have \$100,000 in cash you could purchase one house costing \$100,000. But if you use leverage you could buy the same property, using only \$20,000 in cash and borrowing \$80,000. You could then use the remaining \$80,000 in cash to buy more properties or make other investments.

Lien – A legal claim on the property of a borrower pledged as a security for the payment of a debt. If the debt is not repaid as promised, the lender or the lien holder can enforce his/her claim on the property and compel the sale of the property to pay off the debt. (e.g., see **Mechanic's Lien**)

Life of Loan – The number of years borrower has to repay a mortgage. For example, if you have a 30-year mortgage, the life of your loan is 30 years.

Limited Warranty Deed – see **Special Warranty Deed**

Liquidity – The degree of ease with which a person's assets, such as stocks, real estate and U.S. Savings Bonds, may be converted into cash. Because real estate is not easily converted into cash, it is said to have poor liquidity or to be illiquid.

Listing – 1. A written agreement which authorizes an agent, called a broker, to sell or lease real estate of owner. 2. The record of real estate for sale, which is kept by a broker who has been authorized by the owner. 3. The listed real estate for sale.

Loan Administration – The department of a lender that receives and keeps records of borrower's monthly payments and pays real estate taxes and insurance premiums.

Loan Balance Cap – Most commonly applicable to ARM's (see **Adjustable Rate Mortgage**) with deferred interest or negative amortization (see **Deferred Interest**). Because the loan balance may increase with these types of loans, many lenders place limits on how much deferred interest may be added to the original loan balance. If, during the life of the loan, the unpaid principal (see **Principal**) owed, exceeds this limit, interest can no longer be deferred. The monthly payment must be increased (perhaps significantly, resulting in "payment shock") to pay all interest due monthly and enough of the principal monthly to fully pay off the loan within its remaining life.

Loan Fee – In addition to points (see **Point**), many lenders charge fees to cover costs of services provided, such as application charges, inspections and preparation of documents.

Loan Guaranty Certificate – If the Veterans Administration (VA) guarantees a loan, it will issue a loan guaranty certificate. This certificate states exactly how much of the amount borrowed is guaranteed. If borrower fails to make payments as promised, the VA will reimburse lender for the guaranteed amount. (see **Guaranteed Loan, Certificate of Reasonable Value**)

Loan Submission – Before a lender agrees to grant a mortgage loan, he considers a package of documents that describe and value the property pledged by the borrower, as security for the loan and his or her history of paying off past debts and ability to repay this debt.

Loan-To-Value (LTV) Ratio – The amount borrowed to purchase property compared to the sale price or the appraised value (whichever is lower) of that property. It is expressed as a percentage. For example, if you're buying a house for \$100,000, and you arrange for a \$90,000 loan, the LTV ratio is 90%.

Lock-In Period – A time period during the term of a mortgage loan during which borrower cannot pay off the debt before the due date. (see **Prepayment**)

Loss Payable Clause – A clause in an insurance policy that provides payment (in the event of a loss) first to the lender on the property covered, in order to pay off or reduce the loan.

Margin – Used with ARM's (see **Adjustable Rate Mortgage**). The margin is the amount the lender adds to the index (see **Index**) value to determine the new interest rate at the time of adjustment for the loan. Margins do not normally change over the life of the loan. The margin reflects the lender's cost of doing business and an allowance for profit.

Market Approach To Value – A method of estimating the value of a property. With this approach, recent sale prices of property comparable to the subject property are analyzed. The estimate of property value is then based on this analysis by an appraiser (compare with **Fair Market Value**)

Market Value – See **Fair Market Value**.

Marketable Title – When the title, or rights to a property has only minor problems that any well-informed and prudent buyer will accept, that property is said to have a marketable title.

Mechanic's Lien – If a property owner fails to pay someone for his/her labor and materials used in construction, repair or rehabilitation of the property, he can file a legal claim or lien against the property for the amount due. If the property owner does not pay him, he can enforce his lien by compelling the sale of your property to recover the amount owed him.

Metes and Bounds – A method of describing land boundaries in terms of directions and distances. The metes and bounds of a property generally appear in real estate documents when the property has not been legally subdivided into lots, but remains as a large parcel of land with no interior streets.

Mortgage – A formal document which proves the legal claim or lien (see **Lien**) on property that lender holds as a security for the money borrowed. There are two people involved in a mortgage, the borrower and the lender. The borrower pledges the property as security for the repayment of the money borrowed, but title does not transfer to the lender. However, if borrower does not pay the debt as agreed, the lender, through a court proceeding, can compel the sale of the property to pay off the debt. (see **Deed of Trust**)

Mortgage Banker – A person or firm that originates mortgage loans, collects and manages payments and sells loans in packages to outside investors. The mortgage banker is not really a "banker," but a middleman who arranges and sells loans. The mortgage banker negotiates the terms of loans and prepares the loan documents. Usually a mortgage banker will also service mortgages for the life of the mortgage. (see **Servicing**)

Mortgage Broker – An individual or firm that acts as an agent for both the borrower and the lender of a mortgage loan. The broker places the borrower and lender in contact with each other, and receives a commission from the borrower if a loan results. Unlike the mortgage banker, he does not negotiate the term of loan, issue a loan commitment, prepare the loan documents or service the loan.

Mortgage Commitment – An agreement between the borrower and the lender to disburse a mortgage loan at a future date if specified conditions are satisfied. For example, a lender may be willing to disburse a mortgage loan only if a borrower pays off your current mortgage loan.

Mortgage Discount – See **Point**.

Mortgage Insurance Premium (MIP) – The amount that the borrower is required by the lender to pay for mortgage insurance. It helps to protect the lender if borrower defaults. It is required by lenders when downpayment is less than 20% (or some other specified percentage) for conventional loans and for all FHA loans. The premium is paid periodically either to a private mortgage insurance company or to the Federal Housing Administration, which insures residential mortgage loans.

Mortgage Life and Disability Insurance – An insurance policy that guarantees repayment of a mortgage in the event of the borrower's death or, in some cases disability. In case the survivors are unable to continue loan payments, it protects them against loss of the property by paying off the loan. This insurance is different from mortgage insurance that a lender may require the borrower to pay for because it will pay the lender if the borrower defaults.

Mortgage Note – A promissory note that is secured by a mortgage. (see **Promissory Note, Mortgage**)

Mortgagee – The lender of money which is to be used by the borrower, for the purchase of property. The lender holds the property as security for the borrower's debt. (see **Mortgage, Security**)

Mortgagee Clause – A clause that may be attached to borrower's fire or hazard insurance policy. In the event of a covered fire loss to borrower's property, it stipulates that the mortgage lender (mortgagee) receives enough of the insurance proceeds to pay off the remaining debt.

Mortgagor – The borrower of money which is to be used for the purchase of property pledged as a security for the loan. (see **Mortgage, Security**)

Negative Amortization – Happens when the interest due at a payment date is more than the amortization amount of the payment. Under actuarial (normal) amortization, the excess interest is added to principal and is subject to interest in succeeding periods. Under US Rule amortization, the excess interest is held in a separate non-interest bearing account. In either case, the overall balance due increases. (see also **Deferred Interest**)

Net Worth – The value of all of a person's assets: property, investments and cash, less the person's total liabilities: debts, etc. Net worth is often used to calculate a person's worthiness for credit.

Nominal Annual Rate (also referred to as **Nominal Interest Rate**) – The stated charge for a loan. The nominal annual rate is the rate typically quoted when talking about interest rates. If compounding is annual, the nominal annual rate is equal to the effective annual rate, which is also equal to the rate per compounding period. No complications. If compounding is monthly, the nominal annual rate will be equal to twelve times the periodic rate. (See **Coupon Rate**)

Nonassumption Clause – Built into many loans, it states that borrower cannot allow anyone to assume the loan, unless the lender gives special written approval. (See **Assumption of Mortgage**)

Nonrecourse Loan – A type of mortgage loan in which the lender cannot hold the borrower personally liable if borrower fails to repay the debt as promised. Lender can, using a legal procedure, take the property pledged as security for the loan; but he cannot claim any other assets or money from the borrower on default. (See **Breach**)

Notice of Dishonor – notice given by holder of promissory note to endorser showing that payment has been refused.

Odd Days – The number of days before the normal starting date for loan payments. For example, monthly payments on a loan taken out on January 10 would normally start on February 10 - one payment period after the loan date. If payments are to start on February 15, there are five odd days from January 10 to January 15.

Option – An agreement allowing (but not requiring) the optionee (holder of option) to buy or sell property for a stated price within a specified period of time. For example, if you are given a 90-day option to buy a piece of land for \$5,000 per acre, you may purchase it within 90 days at that price, but you have no obligation to purchase.

Origination Fee – The fee that the lender charges the borrower to cover the cost of issuing a loan. It pays for processing the loan which includes collecting information about borrower's credit worthiness and the property being purchased. This information is analyzed to determine whether borrower will be able to pay the loan back as agreed, and, whether the property provides sufficient collateral in case borrower fails to repay the loan. The fee is usually computed as a percentage (e.g. 1%) of the mortgage loan. It usually does not include fees for appraisals, credit reports, inspections and loan document preparation.

Overimprovement – An improvement to land, such as a building, that is inappropriate due to excessive size, excessive cost or inadequate financial returns. For example, if a house costs \$200,000 in a neighborhood of \$100,000 homes, the market value of the house (see Fair Market Value) may only be \$150,000. Because the original value of the house is too great for the value of the site, it is said to be an overimprovement.

Par – A period in time where the face amount of a mortgage or other loan equals the current market value of the mortgage or loan. The loan is said to be at par in this case.

Partial Payment – In loan collection, a loan payment that is less than the amount due. Often, it will not be credited to borrower's account until the rest of the full amount due is paid.

Party Wall – A wall built along a boundary line between two properties, occupying a narrow strip of each. Both property owners may use the party wall.

Payment Period – The time period between scheduled successive payments. The payment period is usually, but not always, the same as the compounding period.

Percolation Test – A test that determines how fast water seeps through soil. It is required when a septic tank is being considered for a property. Often referred to as a 'perc test.'

Perfecting Title – The process of eliminating any and all claims, other than the owner's, to the title of a property. (see **Title**)

Periodic Rate – The periodic rate (rate per compounding period) is the rate that is multiplied times the balance at the beginning of a compounding period in order to find the interest for the period. This rate, times the number of compounding periods per year, gives the nominal annual rate. For example, if compounding is monthly and the periodic rate is 1 %, the nominal annual rate is 12%.

Permanent Loan – Also called permanent financing. This mortgage loan covers most costs of a building project: development costs, interim loans, construction loans, financing expenses, marketing, administrative and legal costs. It differs from construction or interim loans because the money from the loan is not received by the borrower until the project is constructed and ready for occupancy. It is a longer term loan of at least 5 years and generally 30 years for residential property. (see **End Loan**)

Personal Liability – When a borrower pledges all of his or her own assets and property as a security for a mortgage debt, borrower is agreeing to personal liability. It is a borrower's unconditional and absolute promise to pay the debt using all of borrower's assets. This is in addition to the primary security of the real estate pledged to the lender. (compare with **Nonrecourse Loan**)

Personal Property – Any property that doesn't fall under the category of real property. It includes all movable possessions, such as furniture, automobiles and clothing and other investments such as stocks and bonds, LLC or limited partnership interests. (see **Real Property**)

PITI – This stands for the principal, interest, taxes (real estate) and insurance (fire): the 4 costs normally included in a monthly mortgage payment. The monthly payment for the principal and interest go to the lender to repay the debt while the real estate taxes and fire insurance go into the escrow or custodial account (see **Escrow Account**) to pay these amounts when due.

PITI Ratio – Also called an “income-to-debt” ratio. It is used by lenders in deciding whether to give the borrower a loan. It compares the amount of borrower's monthly income to the amount borrower will owe each month in principal, interest, real estate tax and insurance on that mortgage. (compare to **Qualifying Income Ratio**)

Plat – A map generally showing the ownership interests in a piece of land. For example, if you own urban or suburban real estate, the plat will show streets, easements (see **Easement**) and lots with their boundaries and dimensions. It will not show mortgage or mechanics' liens (see **Mechanic's Lien**) or deviations and contours of the land.

Pledged Account Mortgage – A type of mortgage in which part of buyer's/borrower's cash downpayment (see **Downpayment**) is put aside in a special savings account. The lender will draw from this account in order to supplement borrower's mortgage payments. This makes smaller payments possible during the first few years of the loan term.

Point – Also called discount point. It is a one-time charge normally due at closing (see **Closing**) but may be financed into the loan. One point is one percent of the loan. For example, if the loan is for \$100,000, two points is \$2,000. By paying points, borrower increases his or her initial costs in order to decrease (discount) their interest rate. Sometimes the seller will credit the cost of the points with buyer.

Power of Attorney – 1. The authority to act in another person's behalf, at his request. If you are granted such authority you are called the attorney-in-fact. If you are the grantor (see **Grantor**), you may revoke a power of attorney at any time. If you, as grantor die, relocate or are judged legally incompetent, the power of attorney will automatically terminate. 2. A document granting the power of attorney.

Preclosing – A rehearsal of the closing day for the sale of property. Preclosings are often used when the closing is complicated by many buyers and sellers, or by multiple loans. Often during a preclosing, legal documents, such as the deed (see **Deed**) and mortgage, are prepared and signed by some or all of the parties involved. (see **Closing**)

Preliminary Title Search – A title search (see **Title Search**) conducted by a title insurance company, before it commits itself to insure a buyer's rights in the ownership of a property.

Prepaid Interest – Interest that the borrower pays the lender before it becomes due.

Prepayment – Paying off a mortgage loan, or part of it, before the due date. Many fixed rate loans forbid prepayment, charge a penalty for it, or limit the amount that can be prepaid in any one year. Adjustable Rate Mortgages (see **Adjustable Rate Mortgage**) usually allow prepayment without penalty.

Present Value – The value of the first cash flow in a problem. In loan or lease situations the present value would normally be the first loan event. In investment analysis situations, the present value would normally be the first deposit event.

Prime Rate – The interest rate that commercial banks set as their base lending rate. This rate is not determined by the financial markets, but is established separately by each bank. It is a closely watched indicator of general trends in interest rates. The Wall Street Journal Prime Rate is often used as reference in many adjustable rate loans.

Principal – At the beginning of a loan, it is the amount borrowed: when amount borrowed is \$100,000, the principal is \$100,000. During the term of a loan it is the amount owed exclusive of interest, late charges and other fees. The principal is always the amount on which interest (see **Interest**) is paid. With most loans, early mortgage payments pay mostly the interest, with very little from each payment going to pay off the principal. Only later will a larger portion of the payments begin to pay off the principal.

Private Mortgage Insurance (PMI) – Insurance provided by a private company helping to protect the mortgage lender against a mortgage default (see **Breach**). Generally this insurance is required by the lender when buyer's/borrower's downpayment is less than 20% of the purchased property value. The lender requires the borrower to pay the insurance premiums. (see **Mortgage Insurance Premium**)

Processing – Gathering borrower's loan application and all of the required supporting documents (including the property appraisal, credit report, credit history and borrower's income and expense situation) so that a lender can consider borrower for a loan.

Promissory Note – A document in which the borrower promises to pay a stated amount on a specific date(s). The note normally states the name of the lender to be paid, as well as the terms for payment and interest rate.

Pro Rate – To divide expenses and income between a buyer and a seller in proportionate shares. For example, you purchase property at mid-year after the seller has already paid taxes on the property for the whole year. You reimburse him one half of those taxes, your pro-rata share, for your share of that year.

PUD – Planned Unit Development. 1. It is the comprehensive development plan for a large area. Usually indicating where roads, schools, recreational, office, commercial or industrial and residential areas will be. 2. It also refers to a subdivision that has common areas reserved for the use of and commonly owned by the separate lot owners.

Punch List – A list of flaws in the construction of property that must be corrected by the seller. An example of such a flaw is a leaky roof.

Purchase Agreement – A contract to buy. (see **Agreement of Sale**)

Purchase-Money Mortgage – A mortgage loan given by the buyer directly to the seller as partial payment of the purchase price of his real estate. For example, you purchase a home for \$50,000 that has an already existing mortgage of \$30,000. You may make a cash payment of \$10,000 and, if the lender agrees, assume the existing mortgage (see **Assumption of Mortgage**). To close the sale, you'd give the seller a purchase-money mortgage of \$10,000 which would be junior to or subordinate to the existing mortgage.

Qualifying Income Ratio – Used by lenders in deciding whether to offer a borrower a loan. One type compares only the amount of borrower's proposed monthly mortgage payment to his or her monthly income (see **PITI Ratio**). Another compares the amount of borrower's total monthly payments (e.g. car, credit card and proposed mortgage payments) to his or her monthly income.

Quiet Title Action – A legal proceeding initiated in order to remove another person's claim to property. If anyone claims an interest in your property that you have reason to contest, you might bring this action. The court's judgment will establish whether the other person's claim is valid.

Quitclaim Deed – A legal document which transfers to the buyer or owner, whatever interests in the property are held by the maker of the deed. It does not guarantee that those interests are valid. By accepting such a deed, you accept the risk that someone may later appear with a valid claim to your property. (compare with **General Warranty Deed**)

Real Property – A general term meaning land, buildings and other improvements on the land and certain rights arising from its ownership. Your real property includes any land you own, the structures built on it, the crops growing from it and the water and mineral under it. It also includes the right to enjoy the scenic view, sunlight, wind and easements (see **Easement**) that arise from the terms of ownership or lease. Real property is commonly known as real estate.

Realtor® – Anyone who is both licensed to buy and sell real estate in an area and who is an active member in the local real estate board affiliated with the National Association of Realtors.

Realty – Real property. (see **Real Property**)

Recording – Any legal document that affects the ownership of real property is recorded in a book of public records. For example, when property is sold, the deed (see **Deed**) is recorded by the registrar or county clerk. This gives notice of the new owner to all other interested parties.

Recourse Loan – A type of loan in which a lender can hold the borrower personally liable if he or she fails to meet all the requirements of the loan. By signing a recourse note borrower pledges all of his or her assets to repay the note. Through legal action, the lender can force the sale of any of borrower's assets to pay off the loan. Examples of possible actions include a lawsuit and wage garnishing to collect the judgment. (compare with **Nonrecourse Loan**)

Refinancing – Occurs when a borrower pays off one loan with the proceeds from another loan using the same property as security.

Reinstatement – Happens when a borrower corrects a mortgage default. A mortgage is reinstated if it is brought back up to date by paying all charges that had become overdue. Not all mortgages allow reinstatement.

Release Clause – A clause in a mortgage that grants the owner or borrower the privilege of releasing a portion of the property from the mortgage by paying off a portion of the mortgage loan. That portion released can no longer be considered by the lender as direct security for the loan.

Renegotiable Rate Mortgage (RRM) – A type of Adjustable Rate Mortgage (ARM). The interest rate and the terms of the mortgage are completely renegotiated at regular intervals. Unlike other ARM's where fluctuations in the interest are controlled by a preselected index, changes in an RRM are totally at the lender's discretion. (see **Adjustable Rate Mortgage**)

Rent – Payment, usually of an amount fixed by contract, made by a tenant at specified intervals in return for the right to occupy or use the property of another.

Rescission – Cancellation of a contract or a transaction. A rescission can occur when all involved parties agree to make the transaction invalid or when some law or rule makes the transaction void.

RESPA – Real Estate Settlement Procedures Act. A federal law protecting home buyers, by requiring lenders to provide borrowers with estimates and information about closing costs before closing day. (see **Closing Costs**)

Reverse Annuity Mortgage (RAM) – An unusual mortgage where someone who owns their home free and clear (i.e. has paid off all mortgages on the property) receives monthly payments from a lender for a short period of time, usually less than ten years. At the end of the mortgage, the owner agrees to refinance the loan or sell the property to pay off the loan. Such payments from the lender are often beneficial for retired people who know they won't be in a house for more than 5 or 10 years, because such mortgages can help them make tax and insurance payments.

Right of First Refusal – A provision or agreement given by a property owner so that you have the first opportunity to buy or lease a property before it is offered to others. For example, if you are renting an apartment that is converted to a condominium, you may be given a right of first refusal to buy the unit before it is offered for sale to another party.

Right of Survivorship – In certain types of joint ownership, surviving co-owners legally inherit the interest of a deceased co-owner. This is called the right of survivorship. You are granted this right if you hold either a joint tenancy or a tenancy by the entirety; but not if you hold a tenancy in common. (see **Joint Tenancy, Tenancy by the Entirety, Tenancy in Common**)

Right of Way – The privilege to pass over another person's land, as granted by the owner of that land. Right of way falls under the general category of easement. (see **Easement**)

Riparian Rights – The right of owners to the water and land below the high water mark.

Rollover Mortgage – A type of ARM (see **Adjustable Rate Mortgage**). With this mortgage, borrower can renegotiate their interest rate and payment terms, usually every five years.

RTV – "Record Title Vests," name that title on public record shows on its face.

SAM – A Shared Appreciation Mortgage. In exchange for receiving a below-market interest rate on the mortgage, borrower promises to give lender a certain portion of the value that the property will gain.

Satisfaction of Mortgage – Also known as a release deed. It is the legal document which proves that a mortgage has been completely paid off. It is given to borrower by the lender.

Second Mortgage – A junior mortgage. A second mortgage loan can be used to reduce the cash downpayment (see **Downpayment**) on the purchase of property. For example, if you're buying a house for \$100,000 and your downpayment is \$20,000, you can reduce that downpayment to \$10,000 by getting another mortgage for \$10,000. Usually the second mortgage will have a higher interest rate because it involves greater risk to the lender since any proceeds from the property must first to pay off the first mortgage.

Secured Party – Usually the lender who holds the security interest in, or lien on, a property. Also known as the mortgagee. (see **Security Interest, Lien**)

Security – The collateral or property given, deposited or pledged to insure the fulfillment of an obligation or to pay off a debt. When a borrower signs a mortgage, borrower pledges a property as the security for the money borrowed.

Security Deed – See **Deed of Trust**.

Security Instrument – A legal document (that is recorded) given by the borrower, to the lender. It pledges the title of the property as insurance to the lender for the full payment of the mortgage. Mortgages, deeds of trust, trust deeds and deeds to secure debt (see **Mortgage**, and **Deed of Trust**) are considered security instruments. The security instrument contains the description of the property.

Security Interest – The legal right or share that mortgage lender holds in borrower's property.

Servicing – All the management and operational procedures that mortgage company does for borrower for the life of the mortgage, including: collecting the mortgage payments, making sure that taxes and insurance charges are paid promptly, and sending borrower an annual report of his or her mortgage and escrow accounts. (See **Escrow Account**)

Setback Lines – Usually, any structure must be built a certain distance from the edges of a property. To learn how far you must set a building back from your property's border, consult your building codes, deed restrictions and area zoning requirements. (see **Zoning**)

Settlement Costs – A term sometimes used interchangeably with closing costs. These actually include the closing costs plus the down-payment and pre-paid expenses such as the escrows for insurance and taxes. (see **Closing Costs**)

Simple Interest – An interest computation in which interest is equal to the principal balance times the interest rate per period times the number of periods. Both U.S. rule and direct-reduction loans are commonly thought of as simple-interest loans, although the results differ. See **Direct-Reduction Loan** and **US Rule** for further discussion.

Special Warranty Deed – With this deed of conveyance, the grantor (seller) agrees to protect the grantee (buyer), from any claims to the title of the property only while seller owned it.

Spot Loans – What most homebuyers receive. It is a loan secured by residential real estate and received on an individual basis.

Standing Loan – A loan where there are no payments of principal until the end of the loan's life (see Principal). Interest payments are made periodically and then the entire amount of the loan comes due on a specified date. (e.g., see **Balloon Mortgage**)

Statute of Frauds – A law that protects both the buyer and the seller. It requires certain contracts to be in writing, including the contracts for the sale of real estate so that misunderstandings will be minimized.

Subordination – Allowing a debt or claim which has priority to take second position behind another debt, particularly a new loan. A property owner with a loan secured by the property who applies for another loan to make additions or repairs often must get a subordination of the original loan so the new obligation is in first place. A declaration of homestead must always be subordinated to a loan.

Subsidy – Money given (usually by the seller in a lump sum at settlement) to lower the buyer's share of housing costs. A subsidy is generally given for a limited number of years by a seller to a buyer to pay a portion of the buyer's monthly mortgage payments.

Survey – A measurement of land, performed by a registered land surveyor. The surveyor will draw up a plat (see **Plat**), or map, to show the land's location in relation to known points of reference, as well as its dimensions and features. The plat often will also include the locations and dimensions of any structures on the land.

Surety – An insurer of a debt or obligation.

Tax Basis – The cost of a property, used for tax purposes. The tax basis includes any cash paid and the principal amount of any mortgage loan at purchase. As more is invested in the property, the tax basis will increase. It decreases as owner takes the tax deductions (such as depreciation).

Tax Lien – A claim on property by government (local, state or federal) for the amount of due and unpaid taxes.

Teaser Rate – A term used in adjustable rate mortgage. It is an initial interest rate that is considerably below the "going market rate" which is determined by the index plus the margin. The teaser rate may result in a large increase in the interest rate and/or in borrower's monthly payment at the first adjustment date. (see **Adjustable Rate Mortgage, Index, Margin**)

Tenancy by the Entirety – The co-ownership of real estate by a married couple. Upon the death of one spouse, the other automatically owns the entire property. (see **Right of Survivorship**)

Tenancy in Common – When two or more people are legally granted interest in the same property, they hold a tenancy in common. The interests need not be equal nor created at the same time as in joint tenancy. If one of them dies, the others do *not* automatically own his interest, as they would in a joint tenancy. His interest passes to his heirs. (see **Joint Tenancy, Tenancy by the Entirety, and Right of Survivorship**)

Tenant – One who is not the owner but occupies real property (see **Real Property**) with the consent of the owner. The tenant is entitled to exclusive possession and enjoyment of the property for a specified period of time and payment of rent as specified in a lease.

Term Mortgage – A mortgage that allows borrower to pay interest on the loan over a specified time period before borrower begins paying back the original amount borrowed.

Time is of the Essence – A phrase often used in legal contracts. It means that the transaction, such as closing on a mortgage, must be performed within the specified period of time that cannot be extended.

Title – Title can refer to two things: 1. The rights of ownership and possession of a particular property. 2. The documents that prove those rights. The rights of ownership and possession (title), can be purchased, inherited or accepted as a gift.

Title Binder – A temporary title insurance policy. The title binder insures buyer's right to property ownership for an interim period only. It must be replaced by a permanent title insurance policy. (see **Title Insurance Policy**)

Title Defect – Any legal right to a property claimed by a person other than the owner. Examples include unpaid real estate taxes or claims to the property such as those of an unknown heir.

Title Exception – An encumbrance or potential encumbrance (see **Encumbrance**) on a title against which an insurance company will not insure. If a current survey is not provided at a property settlement (see **Closing**), the title insurance policy will not cover any encumbrance revealed by a later survey.

Title Insurance Policy – Protects owner and/or lender, the insured, up to a specified amount against losses arising from claims against the insured property due to a defect in the title (see **Title Defect, Encumbrance, Cloud on Title, Clear Title**). The owner is insured from loss up to a specific amount only when owner has their own policy, listing the owner as the beneficiary. A mortgagee's (e.g. lender's) title insurance policy does not protect the owner's equity in the property.

Title Search – An examination of public records, laws and court actions to make sure that the seller is the legal owner and to disclose all other claims or encumbrances on the property affecting its ownership. (see **Encumbrance**)

Total Payments – The total of all payments after the inception of the loan. Total payments includes finance charges after the start of the loan, but does not include points, prepaid interest, and other finance charges deducted from the loan amount to calculate the amount financed.

Town House – A residential unit on a small lot that shares at least one exterior wall with other similar units. The title to the entire lot (see **Title**) belongs to an individual buyer and, in some cases, the buyer also receives a fractional interest in the common areas.

Transfer Fees – The cost of changing the public records when ownership of property is transferred from one person to another. Either the buyer or the seller will pay the transfer fees to the city or county government.

Transfer Tax – State and local taxes charged on the price of the property for transferring property from one person to another. Either the buyer or the seller will pay this tax.

Trust Deed – See **Deed of Trust**.

Trustee – Someone who holds the legal title to a property, either as a favor to the beneficial owner or as security for a debt owed to a lender.

Underwriting – In mortgage lending, the process of approving or denying a loan based on an evaluation of the property and the applicant's ability to repay the loan. The underwriter analyzes the risks involved and selects an appropriate loan term, interest rate and loan and mortgage clauses for the particular situation.

Unencumbered Property – Property whose title is free of clouds and encumbrances. Owner is said to have a free and clear title. (see **Cloud, Encumbrance, Title**)

US Rule – A method of computing interest. When payments are made, interest is computed and the payment is applied first to interest and then to principal. If the payment is less than the current interest, the unpaid portion of the interest is held in a non-interest-bearing account. The US Rule differs from a direct-reduction loan in that under US Rule, interest is scheduled for payment on the entire unpaid balance at each payment date, while on a direct-reduction loan interest is due currently only on the principal currently being paid. This makes a difference because applying payments first to interest on the entire balance leaves more principal unpaid and hence drawing interest. Both methods are called "simple interest," but for given multi-payment loans with the same interest rate, the direct reduction loan will have a lower interest cost.

Usury – Practice of charging more for a loan than law permits. In committing usury, the lender contracts for an interest rate or actually collects interest (see **Interest**) above the maximum rate allowed by law.

Usury Ceiling – The maximum legal rate for a loan that is permitted by applicable laws for interest, discounts or other fees in a particular state. The ceiling may vary depending on the state and type of loan. For some loans there is no usury ceiling.

VA – Veterans Administration. An independent agency of the federal government which helps a veteran get long-term, low-downpayment mortgage. The agency normally does this by guaranteeing a portion of a lender's loans against loss. In return for this guarantee lenders must follow prescribed procedures for loans established by the VA.

Variable Rate Mortgage (VRM) – A long-term mortgage loan in which the interest rate may vary, or float periodically throughout the term of the loan. The rate fluctuations generally are based on an interest rate index, and are restricted under the terms of the mortgage. For example, the rate increase may be restricted to no more than 1 percentage point per year. (see **Floating Rate of Interest**) To the borrower's advantage, the initial interest rate on a VRM is usually low making it easier to obtain this type of loan, but rate increases may make future monthly payments higher. (see **Adjustable Rate Mortgage, Index**)

Vendee – Someone who buys something. For example, you're the vendee when you buy someone's house.

Vendor – Someone who sells something. For example, the seller is the vendor when selling you his house.

Waiver of Lien – Normally, someone who supplies labor or materials, such as a contractor, holds his legal claim to the value of those materials until he is paid for them. When a supplier signs a waiver of lien, he surrenders that claim against the property, and coincidentally, his right to force payment through it. (see **Mechanic's Lien**)

Water Table – The depth, usually expressed in feet, from the surface of the land at a specific location to the level at which natural ground water is found.

Without Recourse – In real estate financing, this term means that the lender cannot hold borrower personally liable if borrower fails to pay his or her mortgage loan as promised. The lender has recourse, or claim, to the mortgaged property only and not to borrower's personal assets or funds — even if the property has decreased in value since purchase. (see **Nonrecourse Loan**)

Wraparound Mortgage – Where a junior mortgage wraps (includes) a senior mortgage. Payments are made to the wrap holder who is responsible for using a portion for payments to the senior loan holder.

Yield – In real estate, it is the effective amount of income from an investment. It is expressed as a percentage of the initial amount of the investment. (see **Effective Annual Rate**)

Zero Lot Line – The positioning of a structure so that one side of it sits directly on the lot's boundary line. Although usually prohibited by setback ordinances (see **Setback Lines**), such positioning can be part of special planned unit developments. (see **PUD**)

Zoning – Local governments establish and can sometimes change the types of land usage that affect any property in their area. The basic zoning categories are: residential, commercial and industrial. To build a business on property zoned for residences, you must request and wait until the property is rezoned for business use.

FAQ for Introduction

Q: What is difference between hard money Lending and private lending?

A: Hard money lending just refers to the fact that the “hard” asset is used in qualifying for the loan rather than credit of the borrower. Private lending indicates that an individual or small company is making the loan from their own resources. So, they describe different aspects of a loan, not different kinds of loans.

Q: As a private lender, am I subject to licensing and registration requirements in my State?

A: Each State has laws regulating lenders and loan brokers. In many States (including Georgia) there are specific exemptions from licensing or registration laws for occasional private lenders who are making loans for their own personal investments. Further, many States have specific requirements for brokers and lenders in the consumer credit area, but may have little or no requirements for licensing or registration for the private lender who is making strictly business or investment loans. The biggest problem with private lenders is that they may begin making loans under a specific exemption but then, over time, will change the types of loans they make or will start making enough loans to bring them outside the exemption at a later date. The important thing for the private lender to remember is to, prior to commencing business, determine the licensing and registration laws of their respective States in which they do business, determine the applicable exemptions (if any) and then stay within the guidelines of the exemptions.

Q: As a mortgage holder, what liability do I have pertaining to the property which I hold as collateral?

A: In general, a person who is strictly a mortgage holder or some other security interest holder should not be subject to any direct liability for things which happen on or about the property. In certain States, including Georgia, the creditor will hold a trust deed or a security deed which may, under the laws of that State, actually pass full legal title to the property subject only to the debtor's right to redeem the property once the debt is paid in full. So long as this type of security instrument does not grant the lender the right of possession to the property, the courts have held that the lender is not responsible for anything concerning the condition of the property which might incur liability. This potential liability remains the obligation of the person we commonly call the true property owner.

However, if the lender gets too involved in activities concerning the property, it is possible that the lender could step over the line from being simply a passive mortgage holder to the point of having some direct responsibility concerning the condition of the property. For example, if the lender is managing a construction loan, and the lender starts insisting on certain construction activities being done in a particular way, and these activities result in a dangerous situation, then the lender may be incurring potential liability. In such a situation, it is best that the lender simply have an objective standard to follow when making advances on construction loans and not be directing exactly how things should be done. Of course, this would not prevent the lender from withholding advances if the lender believes that the construction is being done in a dangerous manner.

Q: How do I advertise for loan customers?

A: The private lender needs to be very careful about public advertising for consumer credit loan customers. Public advertising may immediately bring the lender under one of the licensing and regulation requirements of the various States and destroy any exemption which the lender might otherwise have as a private lender.

Advertising for business or investment loans may not pose this danger, depending on the laws of a particular State. Prior to engaging in public advertising, it is recommended that the private lender make a very careful review of the statutes, regulations, and other provisions of the State law in which such lender is proposing to advertise. For obvious reasons, old-fashioned networking may have substantial advantages over public advertising for the private investment lender.

Q: How much should I put in each loan of the funds I have available?

A: Obviously you should not use all of your funds on one loan. If you do and there is trouble with that loan, you can lose a lot of sleep until the problem is resolved. If you have enough funds to fund ten or more loans, your exposure to any one is greatly reduced. If you do not have enough funds to do this, you may consider partnering with another trustworthy lender to lessen your exposure.

Q: Should you loan outside your state?

A: The best advice is to loan locally. You can better keep an eye on the market and the project when it is in your own backyard. To loan anywhere else, you need to know the market and have someone locally to keep an eye on the project and help with any problems. Also, you need to know that State's lending laws and foreclosure procedures.

Q: Should my loan terms be influenced by foreclosure procedures in the State when I am lending?

A: Yes, if the state has a long notice period and judicial foreclosure you will accrue more expense should you have to foreclose. Therefore, your LTV should be lower, interest rate higher and/or more points to compensate for the risk. Remember, large institutional lenders can afford to be more consistent with loan terms across states because their risks are spread over many loans over several states. You do not have that advantage.

Q: Is interest earned on loans considered subject to payroll and tax earned income?

A: If you loan in our own name, an LLC or paper trust, interest is reported on Form 1040, schedule B, just like interest on savings accounts, CDs or bonds. This income is not considered earned income subject to FICA and Medicare taxes. If loans are made from a "C" or "S" corp., a portion may add to the "reasonable salary" required and thus be subject to payroll taxes. Now, if additional services are provided as part of the loan, the interest may be considered earned income. See your accountant on your situation!

Q: Do you need to use your "real" i.e. Home address or is your business (PO Box) sufficient?

A: You should not use your home address. By doing so, you may have a borrower show up unannounced to make a payment. And if they ever get upset, they definitely know where to find you. Make it harder by using a PO Box. If you get a call to make a payment, send them to the Post Office telling them to have the payment postmarked at the counter and you will consider it received as of that date.

“The time to worry about a loan is before it is made” – Boddiford

“Risk comes from not knowing what you're doing.” – Warren Buffett

Criteria for Your Hard Money Loans

You should have some criteria for the loans you will make. These will change over time as you gain experience, but you need to begin with some specific terms. Will you loan on just single-family houses or condos as well? Will you do second mortgages? Your criteria will be largely determined by your experience, risk tolerance and the amount you have available to lend.

Even if you decide to let someone else broker the loans, you need to control the lending criteria. On the day you make the loan, you should always feel that you would rather have bought the property for the money you are loaning (plus any underlying liens) than just getting your money back with interest. This will make you better at collecting if you should ever need to do so.

What will you finance?

What types of real estate are you familiar with already? Being comfortable with the type of property and what it will take to prepare it for resale or refinance will assure you make a safer loan. Plus, if necessary, you can advise your borrower to help them succeed.

Most investors that begin hard money lending find that a good single-family house in a good neighborhood is the easiest and safest place to start. This is also where you should start lending from your self-directed IRA or other pension plan. If you have expertise in other areas, you may quickly move on to making loans to other investors skilled in handling these property types.

I would advise staying away from owner-occupied property. The federal and state consumer protection laws often prevent the returns we are seeking. And the laws and penalties are against you should you do something wrong. Stick with non-owner occupied property.

The key to remember is that you or someone whom you can pay (other than the borrower) should understand the real estate you are accepting as collateral. You must feel comfortable that you can solve any problems that come up.

Equity-Based Loan Ratios

The primary way we protect ourselves in hard money lending is by using a low loan ratio to the value of the property. If the borrower has a good deal, your loan will cover most of what he or she needs. At the same time, you can rest easier knowing that there is plenty of equity should you have to take over and complete the project.

If the borrower needs more than you are loaning, they will need to come up with additional money to do the deal. By doing so, they have a greater vested interest to assure the project is completed and you are paid. Since you will owe them nothing should you have to foreclose, you are protected if you have to take and complete it.

“You should always get paid for handling problems!”

LTV refers the ratio of the Loan to Value. Thus if a house is appraised to sell quickly at \$100,000, a 60% LTV loan would be \$60,000. **ITV** means the Investment to Value. This is calculated the same as LTV, but the actual amount the lender has invested in the loan is used rather than the face amount of the note. So if lender is paid back 5 points (\$3,000) at closing, his LTV is still 60%, but his ITV is 57%.

If your loan is in second position, add the balance of the first in calculating the ratio. So, in the preceding example, if there was a \$27,000 loan already on the property and you agreed to take a second mortgage, you could only loan \$33,000 to stay within a 60% LTV.

Will you make second mortgage loans?

Before you even consider making a second mortgage, investigate whether the first mortgage lender will subordinate to your new loan. Banks and institutional lenders will not, but sellers carrying back financing and private lenders will sometimes agree to this. This will put your new loan in first position.

Warning: You should not make a second mortgage loan unless you are prepared to pay off or make the payments on the first should you have to foreclose. You will also need to set up a procedure to check that first mortgage payments are being made as they become due.

Sometimes you will be approached by borrowers who have a deal with partial owner financing or they can take a loan subject-to. In either case, you need to be sure you can handle the first mortgage should the borrower default. That means having a plan. The first may need to be paid off or at least payments made while you solve the problem. The safest approach is to have a plan to pay off the first if need be.

If I am unable to get the loan subordinated, my next approach is to Wrap the first mortgage. That way I can assure the first mortgage is paid in a timely manner to protect my second position. If the borrower will not accept this, I often decline to do the loan. Note that this is not the way seconds are normally done, so you may run into some resistance from the attorney or title company.

If you are a detailed person and can financially handle the first mortgage in case of default, you may decide to do straight second mortgage loans. But, you need a system to confirm the first is being paid and not in default. Get set up to access the loan account either online or by automated phone system to monitor payments. Otherwise, you might contact the first mortgage holder every couple of months for the status of the loan. Remember, if the first begins foreclose and you do not actively protect your position as a second, your collateral position is wiped out upon foreclosure.

Sure, the borrower is still obligated on the note and you can sue on the note. But then you will need to collect on the judgment. And if they had the kind of money to pay you on a judgment, why didn't they use that money to pay you in the first place? In other words, there is a high probability that you will not get paid. In many states the foreclosing lender has no obligation to notify junior mortgage holders that a foreclosure has started.

Another consideration is that you do not want to have a second mortgage behind an individual who holds the first mortgage. If they have the right mindset, they will act quickly when there is a default and may foreclose you out. They have no incentive to work with you. Some may purposely try to foreclose you out to realize more profit.

If you are going to hold a second, being behind an institutional first is preferred. These lenders are in the business of loans and, in most cases, will do what they can to try not to get the property. That is why institutional lenders often go for months with no payments before they even begin the foreclosure process. This gives you plenty of time to begin your own foreclosure if necessary to protect your interest and possibly to take the institutional loan subject-to. However, you will have to pay any arrearage.

There is more paperwork required in closing second mortgages. You should get all the information, including copies of first mortgage loan documents, as you can. Be sure to get a Power of Attorney from the appropriate party (the person(s) who is listed as the borrower on that loan) allowing you to contact and receive information on the first mortgage from the lender.

Will you allow a second mortgage or higher on the collateral?

Why do you need to concern yourself with this? Well, you should know the true cash flow picture for the project. Does the borrower have the resources to pay all debts on the property? Many hard money lenders do not worry about junior debt since it will be wiped off in foreclosure.

However, should you decide to allow a second mortgage, you should obtain detail information on it. On the positive side, a junior lienholder may be an additional source of repayment, to protect their interest, for you if the borrower defaults. You may decide to not allow a second where you see a drawdown in cash flow and no potential benefit to your loan. If you want to disallow junior mortgages, you must insert the proper preventative clause in your security instrument and specifically inform your borrower to inform

How long a term will your loans be?

Back in the 1980's, I often made five year hard money loans. They were typically much smaller loans than we do today and we always made sure that the borrower could pay. Being smaller loans, the cash flows on the property would easily cover the payments.

Today with loans amounts much higher and cash flows tighter, I typically only go out a year. With borrowers who have been with me a while, I will go longer, but have a *call* or demand provision written in the loan so that I can get my money if I need it or feel the equity securing my loan is diminishing.

Many hard money lenders will only loan for six months. I see over-confident borrowers take these loans only to run into problems that prevent the repayment within that time. I ask borrowers how long they need the money and often get six months as the answer. I then offer to loan the money at the agreed rate and points for the initial six month term.

But because I know the loan could go longer, I tell them I will setup the loan for one year. If they payoff at the end of six months, there is no penalty, but after that point the interest rate increases by 3% and/or an additional point or two extension fee is added to the loan. I present this

as an automatic extension should they need to take advantage of it and point out this would be better than being in default.

I have never had anyone refuse this and historically, between 30% and 40% have gone beyond the six months. When the real estate market has gotten tighter, more borrowers have needed the extra time.

What interest rates will you charge and how many points?

The going rate in the 1980's was 18% and 10 points. This was driven mainly by the conventional mortgage interest rates and capital availability of that time. We got this up until about 1994 when the going rate dropped to 15% and 5 points. Again, these rates were mainly driven by available credit and the lower conventional interest rates of the time.

As money has gotten easier and more real estate investors have started making loans with their accumulated profits, we see rates as low as 8% and 2 points. As a matter of course, these terms are too low for the type of loans you will make. Somewhere around 8% to 9% above conventional home mortgage rates should be your objective. Yes, with borrowers who have proven themselves, you may offer a lower rate, but don't reduce your rate too much.

Points are a way to increase your return. The IRS considers them as additional interest which is an accurate depiction. Points can be viewed as partial payment for all the initial work you do in evaluating and setting up the loan. Most successful hard money lenders charge between 3 and 6 points.

Will you charge a prepayment penalty?

Almost all hard money lenders charge a prepayment penalty, sometimes referred to as a "minimum term clause." The lender has obligated his or her money to this loan for an agreed time period. This may mean that the lender must turn down other borrowers because the lender's funds are committed. In return for this commitment, the lender is expecting the agreed return over the stated loan period.

If a loan is paid off early, the lender will need time to place the money again at a similar rate. The prepayment penalty compensates the lender during this reinvestment period. How fast can you put the money back out earning the previous return? The answer should help you determine what prepayment penalty you charge. When I have a borrower specifically ask for no prepayment penalty, I have offered to eliminate the penalty for 1-2 additional points up front. Or you may consider a higher interest rate in return.

Often, the prepayment penalty is based on time, such as “four months of interest.” Other times it is based on a percentage of the balance, such as “5% of the then balance.” Either can also be structured to reduce on certain time frames. Such as “four months of interest on any prepayment during the first six months and two months of interest on any prepayment after six months.” The penalty may also be abated after a certain time.

For long time borrowers I often provide that with a written notice of a payoff, I will only charge 30 days interest. This is softer terms for them and it gives me 30 days to place the money again.

Postponing the Beginning Date for Payments

Borrowers always want to put off payments as long as possible. Often they will ask for a single balloon payment at the end of the loan term. This is NOT to your advantage. Letting them have significant time before payment is due is asking for trouble. Even with borrowers who have performed as agreed in the past, this can still be risky, especially in a changing market.

If they stop work and abandon the project, how will you know? After all, they have not missed a payment yet since there are none. Even a small monthly payment of a portion of the interest with the rest accruing is better than no payment at all. If they miss a payment, even a small one, it will clue you in to a problem that needs to be addressed.

Remember, you want them to: 1) remember they owe you money, 2) feel the need to complete the project in a timely manner, and 3) let you know they haven't left town or abandoned the project. When payments are required and there is a problem, you will find out about it sooner rather than later.

After considering the above, if you still agree to postpone payments, do so only for a period of time at the beginning of the loan. I suggest not going over three months from the closing date (skipping only two payments). Start regular monthly payments at that point. This makes for an easy discussion if the borrower tells you they can quick-turn or otherwise realize the profits in less than 90 days. It is then hard for them to argue against monthly payments starting at a point just beyond their projected profit date.

At times, a borrower may ask for payments to be quarterly. You will have to determine if this payment schedule works for you. I find it more difficult to keep up with and sometimes the borrower forgets as well. Plus, a lot can happen in three months. I still like monthly payments.

Fix-Up Costs & Construction Draws

Often we receive loan requests from borrowers who have the fix-up money but need the purchase money. If the fix-up is a fluff job, typically less than \$8,000, or it is a borrower with whom I have a history, this works fine. But what if the fix-up will take \$15,000 or even more?

A lot can happen to a house in the process of being rehabbed when the price of fix-up is significant. Of utmost importance is to make sure that the borrower has experience in large rehabs before agreeing that you will fund the project. This requires extra effort in due diligence to view jobs they have already done and talk to those in the properties. Be very careful if the borrower says that he does not have the experience, but his contractor does.

If you have to take over a property in the middle of a botched fix-up, the value could be even less than the day the loan was made.

This situation can be prevented, or at least mitigated, by requiring the borrower to use the money they were planning to use for fix-up as their down payment on the property. You still loan the full amount, but you escrow the repair costs from your loan to be paid as work is completed. This way you will have less actually invested if the rehab goes awry. The remainder is in your repair escrow account and can be used if you have to take over the property.

I don't like to do more than three (3), or at most four (4), draws. Before the loan is made, the borrower and I agree what is to be done for each draw. I don't want to get down to individual fixtures; a line item might be all light fixtures, or all plumbing fixtures, installed, is sufficient.

Using a contractor's estimate (more than one is best if you don't feel you know costs), we agree on the work to be included in each draw and value of that work. I don't use exact figures, but round them. We then add the items in each draw to get the total amount of that draw.

Here you have another decision to make. If an inspection is done and not all the items in that draw are completed, will you pay on just completed items or make no draw payment until all items are completed? Personally, I require all items to be completed to get a draw payment. The reason is simple; a borrower will sometimes call you for an inspection knowing they are not ready simply to get some money for the completed line items. I don't feel this gives them the proper incentive to get the work done in a timely manner. Also, I don't want to drag out the number of inspections as they take time away from other productive activities.

Once we have agreed to a draw amount, I pay no attention to the individual item amounts. If all line items for the draw are done, they get the draw. If not, they don't get the draw until the remaining line items are completed. This is irrespective of what it actually cost them to complete all line items in the draw.

If you decide to pay partial draws if all items are not complete, I would stick with the values agreed upon in the original draw agreement for each line item. You don't want to be arguing with the borrower because an item cost him twice as much because he decided to upgrade or the contractor charged more. Likewise, if the borrower can save money on a line item, he gets the benefit.

Contingency funds should always be built into a rehab estimate. I find that spreading these funds over the number of anticipated draws eases the borrower's concern somewhat.

You should certainly charge an inspection fee when you are approving draws. The exception is when it is your IRA or Solo 401K making the loan. In that case, you would commit a prohibited transaction if you got paid for inspecting the property.

\$150 is reasonable for scheduled draw inspections. Re-inspections where all items were not completed for a draw should be at least another \$150 and maybe even more, say \$200 or even \$250. The idea is to make the borrower think twice before requesting a draw inspection if he is not ready. You may go so far as to require the draw request be in writing, enumerating the items completed and signing the request stating these items are done.

Inspections take time. Time you could use more productively somewhere else. You may consider hiring someone who is knowledgeable and trust worthy to do the inspections. This will also effectively stop on-site negotiations by the borrower to release extra funds before the work is done.

Even if you don't have someone you totally trust to do inspections, you could still hire someone to do "pre-inspections". Their pre-inspection report would tell you if the property is ready for your draw inspection or not. In this case, you may pay the inspector \$75 to \$100 or so of the inspection fee for this service, but it could certainly save you valuable time.

'Must-Takes'

Funny how this section title rhymes with “mistakes.” Well, maybe it is not so odd, considering the issues. From time to time, you will end up with a problem property. This could be a rental you had for many years or a property on which you foreclosed. Anyway, you now have a dog property. Probably a story will illustrate this technique the best.

I had a dog property in a poor area of town which in the 1980's pretty much required that I do owner financing to sell it. I referred to it as my 'yo-yo' property because three times I sold it and three times I got it back. Of course, it needed fix-up each time to be put on the market again. So, when an investor that I loaned money to on a regular basis called me for a hard money loan, I offered to make it for 11% rather than the 18% hard money rate typical in the late 1980's.

He immediately wanted to know what the catch was. I told him that he was going to be buying a house from me that after some minor fix-up and would retail for probably \$40,000. He was to buy it from me for \$30,000 so he would have a profit after the re-sale. I would finance the \$30,000 purchase price at 8% until he resold, but I would not finance his buyer.

He fixed up the property very nicely and was able to get a buyer who qualified for a bank loan. This was truly a win-win situation where I got rid of a dog with little effort and, because the loans were short term, low cost as well. The investor made a good profit between the two properties.

For Your Use Only

Investment Loan Guidelines

D. Boddiford
PO Box 505, Marietta GA 30061 | 678-438-6553

We often provide this sheet to a potential Borrower to evaluate the deal themselves.

We are private investors who loan to other real estate investors on investment property only. We do not lend on property where the borrower will be living in the home. The following are our investment loan guidelines. This is our criteria.

1. **Property address** should be in the Atlanta/North Georgia area. We visit each property before funding the deal.
2. Prospective borrower must have **control of the deal**. This means they already own or have an accepted contract on the property.
3. We typically lend up to **60% to 65% Loan to Value**. Repair funds where approved, will be distributed through multiple construction draws. This depends on the amount of work involved on the property.

For example: If a house has an ARV of \$100,000 we will normally lend up to \$65,000. If this means that the borrower can purchase and repair/rehab the property within this amount, we can provide all the funds to do the deal. In this case it is considered that their skin in the game is the equity in the property and they will not have to come to the closing table with any of their own funds.

4. Though we only loan 60% to 65% of ARV, the Deal must be considered a **“good deal”** for the investor borrower. We define “good deal” as:
 - o **Flip Deals:** The property can be purchased and renovated/repared for no more than 70% of the after retail value. Typically, this means the investor will make a 20% profit after sales and holding expenses.

Flip Deal	(Purchase \$ + Renovation \$) ≤ 70% ARV
------------------	--

For example: A house with an ARV of \$100,000 must have a purchase and renovation budget of no more than \$70,000. This figures in (after commissions, holding, closing costs, etc.) about a \$20,000 profit for the borrower.

- o **Rental Deals:** The property can be rented out with a monthly rent of at least 1% of the total funds invested in the property.

Rental Deal	1 month’s rent ≥ 1% of (Purchase \$ + Renovation \$)
--------------------	---

For example: A house than can be rented for \$1,000/mo. must have a purchase and renovation budget of no more than \$100,000.

5. Our prospective borrowers know their numbers and have **budgeted estimated expenses** for most every aspect of the project. This includes dollar amounts for:
 - o Purchase price of the property and any closing costs covered by borrower.
 - o An ARV based on at least 3 to 6 comparable sales. Comparable sales are properties that are sold within the last 6 (best) to 12 months within a 1 mile radius of the property. The best comps are sales are within the same neighborhood. But they must be comparable to the deal property (similar square footage, beds/baths, lot size, type of house, etc).
 - o An itemized repair list with costs.
 - o Holding costs and surprise contingency for unknown expenses that may arise.

We loan to investors who have a clear vision on how their deal will play out. We do our own due diligence based on the above guidelines and we expect that our prospective borrowers have already done their own due diligence on the deal prior to contacting us.

Rental Investment Worksheet

D. Boddiford
PO Box 505, Marietta GA 30061 | 678-438-6553

We often provide this sheet to a potential Borrower to evaluate the deal themselves.

PROPERTY ADDRESS: _____ Date: _____

PROPERTY VALUE

Purchase Price	
Renovation/ Repair Cost to Rent-Ready	
Fair Market Value	
(Loan Amount)	
Equity	

Fair Market Value
minus Loan Amount
equals Equity

MONTHLY RENTAL BUDGET

Rent <i>The monthly rent you actually collect including discounts.</i>		Rent
(Mortgage Payment) <input type="checkbox"/> PI [<i>includes only principal & Interest</i>] <input type="checkbox"/> PITI [<i>also includes Taxes & Insurance</i>]		minus Mortgage
(Taxes) <i>All city, county, etc. taxes paid calculated per month [unless included above].</i>		minus Taxes
(Insurance) <i>All insurance paid for property calculated per month [unless included above].</i>		minus Insurance
(Maintenance Escrow) <i>Calculate for at least 15% of rent, or more for older homes.</i>		minus Maintenance
(Vacancy) <i>Calculate at least 8.5% of rent [conservative] to 4.2% [aggressive]</i>		minus Vacancy
(Management) <i>Calculate for at least 10% of rent or more, even if self-managing.</i>		minus Management
(Other Expenses) <i>Monthly expenses that you pay for the property including HOA fees, utilities, garbage pickup, landscaping, etc.</i>		minus Other Expenses
Cash Flow <i>Rent minus all above expenses equals your cash flow on investment.</i>		equals Cash Flow

For Your Use Only

Notes: _____

Cash-on-Cash Return

$$\frac{[\text{Net Annual Cash Flow}] \$}{[\text{Total Cash in Deal}] \$} = \underline{\hspace{2cm}} \%$$

Equity in Deal

$$\frac{[\text{FMV} - \text{Loan Balance}] \$}{[\text{FMV}] \$} = \underline{\hspace{2cm}} \%$$

DANGER: Loans to Friends and Family

“Creditors have better memories than debtors.” – Benjamin Franklin

“Neither a borrower nor a lender be, for loan oft loses both itself and friend.”

– Polonius advises his son Laertes in William Shakespeare’s “Hamlet”

“Before borrowing money from a friend, decide which you need most.” – Old Proverb

“When you loan money to a friend, two things will happen...

You’ll lose the money and you’ll lose the friendship.

Loaning to family is even worse since you don’t

have the benefit of losing the family member.” – Unknown

And we could go on with admonitions against making loans to friends and family. Of course, much of this is anecdotal evidence that these loans often do not work out. However, a study published in 2012 titled “Lenders’ blind trust and borrowers’ blind spots: A descriptive investigation of personal loans”, appearing in the Journal of Economic Psychology, found these experiences to be largely true.

The study arrived at two main conclusions. First, recall and evaluation of loans are subject to a self-serving bias. For example, borrowers recall having paid back a larger proportion of the loan than was actually paid. Secondly, loans, and particularly those not paid off by the agreed maturity date, had an extremely harmful effect on the personal relationship between lender and borrower. In addition, it was found that borrowers routinely do not recognize that delinquent loan repayment creates negative feelings and perceptions in lenders.

Damage to relationship begins when a personal loan becomes delinquent, the study found. Lenders feel that their trust has been violated while borrowers then become resentful of being under the yoke of the loan. The study authors note that friction between the parties is then made worse by the tendency of both to project their own feelings on the other. Lenders project their alienation on borrowers, while borrowers seem to have a blind spot about how their behavior affects lenders.

In short, **you should not make loans to family or friends, period.** But some of you reading this will ignore my warning, often assuming your borrower is different. If you are going to do the loan anyway, add these cautions to your due diligence list:

- Don’t give in to the pressure to make a loan immediately. Think about the potential negative consequences and do all the regular due diligence you would normally do.
- Make sure to have a Note signed outlining the loan terms so there is no misunderstanding later. It can also get pretty ugly if you don’t detail the terms of the loan in writing up front.

- Document payments. Provide your borrower with a receipt. Even though you both think you have a mutual understanding of the loan agreement, memories fade. And that's when feelings get hurt.
- Provide an end-of-year statement on what was paid down during the year with balance, interest paid and any other pertinent information.

Any loan to family or friends should only be made with money you can afford to lose. So as not to lose sleep, you should immediately write off the loan in your mind. Then if you get repaid, that is wonderful. But approach such loans with the assumption that you are not going to be repaid.

Often, to avoid a potentially strained relationship, consider just gifting the money to the person in need.

OK, here are other approaches you may use if you are still determined to make the loan.

I had a business partner once that wanted to loan money to a nephew, but was afraid the borrower may be lax in paying them back. Therefore, my partner asked me to act as the lender using my partner's money to make the loan. I would be the bad guy should the loan go awry and I had to collect.

In discussing your lending activities, always represent that you have partners and they have to approve any loans. Make it clear they expect everyone to pay as agreed and you will have to go along with any collection action they require.

It is still best to have someone else as the "front person" even when it is your money. Also, it is a must in this case to use a single-member LLC or paper trust to act as lender, so the loan is not just in your name which would imply you had total control.

Then if collection becomes necessary, the front person can handle while you commiserate with the borrower as to their misfortune. This is also an opportunity, should you choose, to make a gift to them to pay down or pay off the loan. Why not? You would just be paying yourself back while gaining the thanks of the debtor.

"If I owe you a pound, I have a problem. If I owe you a million [pounds], the problem is yours." – John Maynard Keynes

Develop a Good Underwriting Discipline

You need to maintain a good underwriting discipline to control loan risk. You do this by deciding up front what your lending criteria will be. Then sticking to it. Do not let a great story or temptation of bigger profits cloud your judgement. This easily happens to many novice lenders. Don't let it happen to you.

Just as religious and moral individuals almost subconsciously choose not to expose themselves to certain situations, you should have your "code" for lending and stick to it. Such a discipline includes much more than just the loan terms below. It includes criteria covered in other discussions found in this manual. From that, you should determine your own criteria to lend by.

Begin by deciding your loan terms well before you begin looking at deals. You may modify them over time, but you need criteria to properly evaluate the loan.

My Terms

Loans I will make: Minimum – \$ _____ Maximum – \$ _____

<u>Acceptable Collateral</u>	<u>Second Mortgage?</u>	<u>Collateral</u>	<u>Typical ITV Ratios</u>	<u>Your Ratio</u>	<u>Your Rate & Points</u>	<u>Loan Term</u>
<input type="checkbox"/>	Y N	Single Family House	60% - 80%	____%	____% ____ Pts	_____
<input type="checkbox"/>	Y N	Condominium	55% - 75%	____%	____% ____ Pts	_____
<input type="checkbox"/>	Y N	Mobile Homes w/o Land	40% - 60%	____%	____% ____ Pts	_____
<input type="checkbox"/>	Y N	Mobile Homes w/Land	60% - 70%	____%	____% ____ Pts	_____
<input type="checkbox"/>	Y N	2-4 Unit Multi-Family	60% - 75%	____%	____% ____ Pts	_____
<input type="checkbox"/>	Y N	Apartment Building	60% - 70%	____%	____% ____ Pts	_____
<input type="checkbox"/>	Y N	Commercial Building	55% - 70%	____%	____% ____ Pts	_____
<input type="checkbox"/>	Y N	Vacant land	40% - 60%	____%	____% ____ Pts	_____
<input type="checkbox"/>	Y N	Business Loan w/o R.E. Collateral ? _____	??%?	____%	____% ____ Pts	_____

Entity to Use for Your Hard Money Lending

Hard Money lending is not usually considered an earned income activity and carries very little liability. However, you may have a concern about your name showing up so many times in the public records, indicating significant monetary assets should an asset search be done. You may wish to have a lower profile.

From an income tax viewpoint, interest is considered portfolio income taxed at your ordinary tax rate. This is the same treatment as interest on certificates of deposit or bonds.

So, what entities could be used if you don't want the loans in your name? Let's look at each possibility below.

Corporation: Normally, neither a "C" or "S" corporation should be used as a lender unless the funds loaned are those of the entity itself. The S corporation may also be considered if you are putting together a group to do lending as a business (remember, this activity will normally require a brokerage license and securities exemption). With the S corporation you will be expected to pay yourself a reasonable salary and that salary will be subject to FICA & Medicare taxes.

The salary issue with the corporation may be mitigated somewhat if it is your personal funds being loaned. You could loan to the corporation which in turn loans out the funds to the borrower. This means the corporation is considered earning the interest, from which it repays you personally. Still, the corporation is providing a service and should be paid a reasonable fee, increasing the taxable income of the corporation. In both the "C" or "S" corporation, greater income may necessitate an increase of officer's salaries to be considered "reasonable", thus increasing payroll taxes (FICA, Medicare & FUTA).

Single-Member LLC: If you simply desire to keep your name off the public record, the LLC is a good choice. A single-member LLC in particular would be a good entity to use since it is disregarded for income tax purposes.

Multi-Member LLC or Partnership: A multi-member LLC or partnership could be used, but it would require income tax reporting each year even though actual taxes are paid on the member's/partner's personal tax returns.

Remember, for the LLC or corporation, a natural person must eventually sign the loan satisfaction document. Thus someone's name will eventually go on public record.

Personal Property Trust (Paper Trust): These are the entities I use for much of my lending. Since they are revocable grantor trusts, the beneficiary shows all income and expenses on his or her tax return. These trusts still need a trustee's name on public record, but that can be anyone willing, and you trust, to be your trustee.

A trust can also allow for a more advanced strategy, such as bringing in another investor and specifying the relationship in the trust agreement. For example, items to be covered may include – funds contributed by each, unequal interest rates, a wrap structure and who is to service the loan. Only use a trust if you, and anyone else involved in the trust, are well versed in trust concepts.

Other: If the lender is an IRA, many custodians will allow the use of the account number in titling without also including the account holder's name. For example,

ABC, Inc. as Custodian FBO Roth IRA Account #12345

or, if the lender is a Solo 401K,

Jackson Bowers as Trustee for Acme Corporation 401K Plan

“If a borrower defaults, you want something that you can reach out and grab.”

BUSINESS LOANS

Though this course is about using real estate as collateral for a hard money loan, you may at some point be tempted to make a business loan. A “business loan” is defined as a loan which is made for the purpose of providing funds to the borrower for the primary purpose of assisting an active business of the borrower rather than assisting solely in investments by the borrower, and in which the lender is relying, in whole or in part, on the success and proper management of the borrower’s business. It still should be secured by real estate if at all possible.

First, business loans require a certain expertise by the lender. In a pure vehicle or real estate loan, there are “blue books” and professional real estate appraisers to assist the lender of the value of the lender’s collateral. If the lender has no actual experience in the jewelry or antique businesses, as examples, it becomes more complicated to obtain a proper evaluation of the business’s ability to repay the loan, and the value of the business assets as collateral. However, set forth below are some of the procedures and practices followed by banks and other financial institutions when making business loans of the type described in this material.

ONE: EVALUATION OF THE BUSINESS. If the loan is big enough, lenders will use business appraisers to evaluate the actual business as it is operating and determine the sale-of-business value. This is an extensive process which often involves several thousand dollars in costs and takes several weeks. The borrower has to agree to disclose various records to the appraiser and the appraiser may be on the business premises a number of times.

This evaluation can be obtained for professional practices as well as other sales and service businesses. Also, there are certain “rules of thumb” to evaluate the value of both professional practices and other businesses. As an example, accounting practices which have been operating over 10 years usually sell to other accountants for a certain multiple of net revenues based on the past 2 to 5 years. Insurance businesses follow a similar method.

TWO: REVIEW OF BOOKS AND RECORDS. Professional business lenders almost always require two (2) to four (4) years of tax returns and supporting documents, and may require an accountant’s formal certification.

THREE: OTHER ASSETS. Professional lenders want to review other assets of the principal owners of the business. SBA insured loans generally require this. After a review of the business evaluation, the books and records, and the other assets, which are supported by the financial statements of both the business and the principal owners of the business, then the lender will make a determination whether to make the loan and under what conditions.

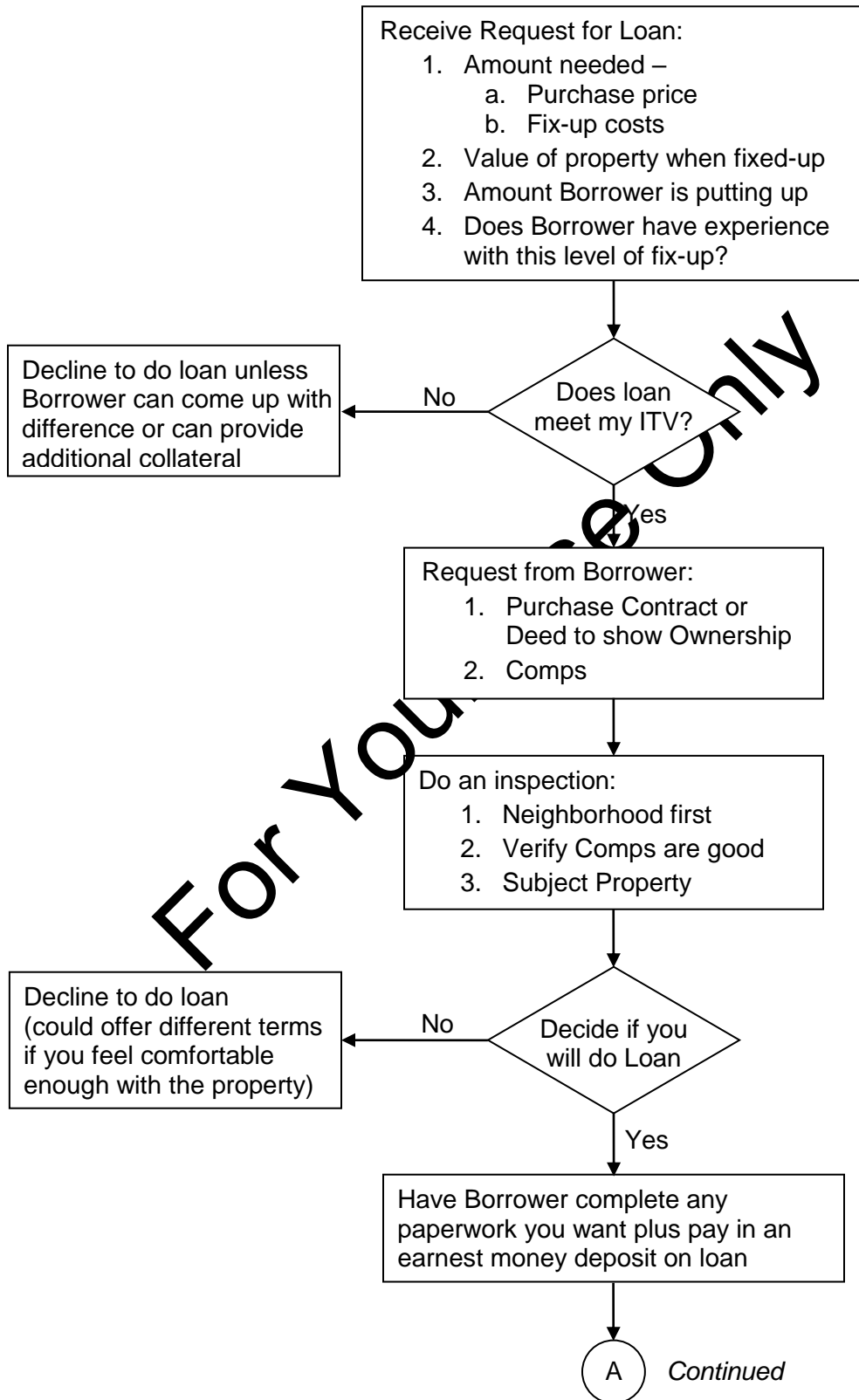
FOUR: LOAN COLLATERAL. For most of the professional-lender business loans that Bob Witcher has closed in his law practice, the lender wants collateral in every possible asset of the business, including inventory, accounts receivable, office equipment, furniture, vehicles, and real estate. The lender may also require an agreement from a landlord of the business location to allow the lender to occupy the premises as a tenant should the business be “taken over” after the borrower’s default. This is usually in the form of the borrower’s assignment of its rights as a tenant under a lease with the landlord consenting to such assignment. Should the loan be made from an IRA, it should have the right to assign the lease rights since an IRA running a business would be subject to Unrelated Business Income Tax (UBIT).

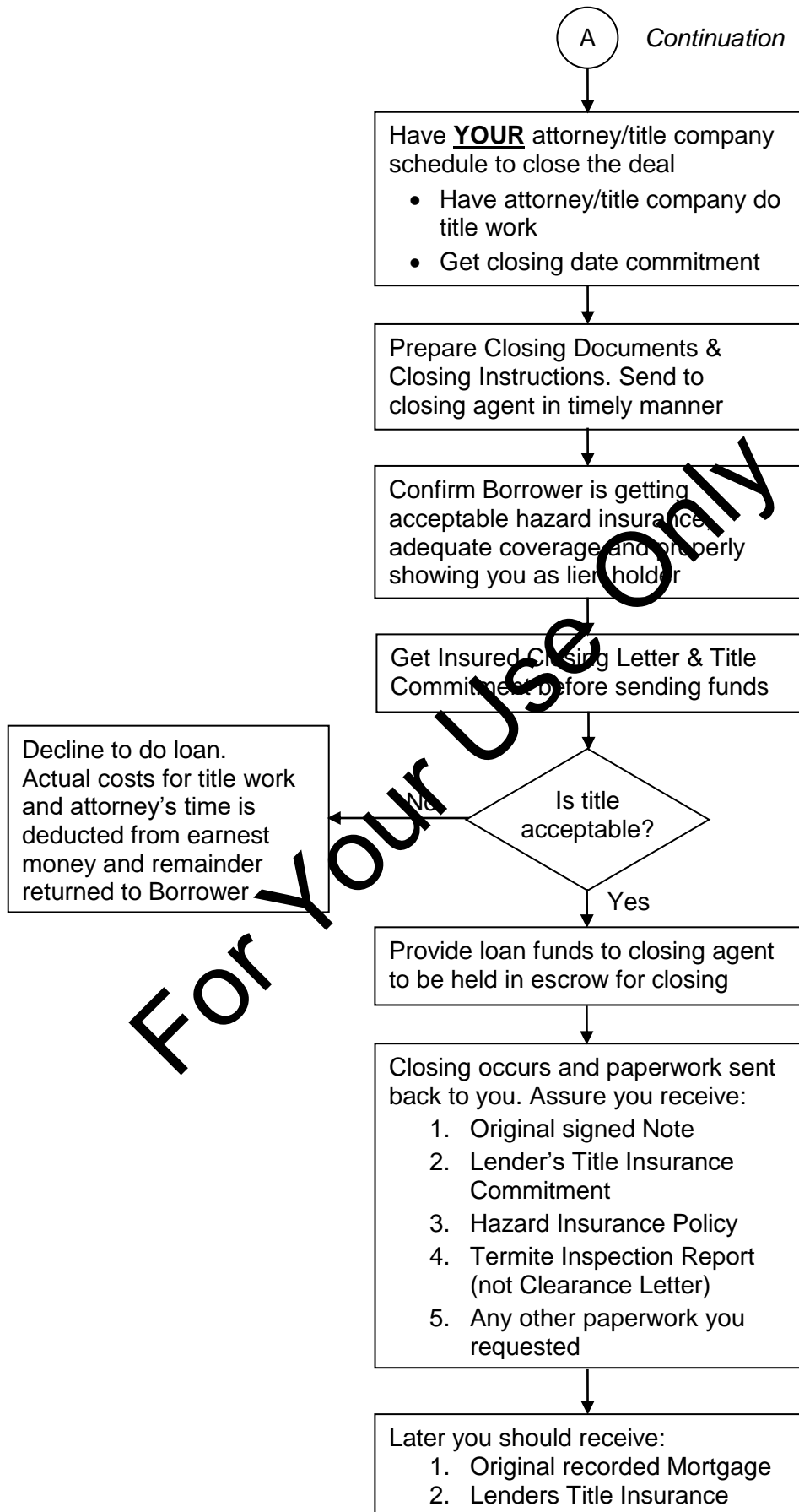
Further, based on the conditions of the loan approval, the principal owners of the business usually have to personally guarantee the notes representing the loan. If the principal owners have other assets, the lender may also require a pledge of these assets, including stocks, bonds, accounts and real property (often their personal residence). In certain cases, especially where the business owner has no back-up business or profession and the spouse has regular income, then the spouse may be required to guarantee the notes.

FIVE: CLOSING DOCUMENTS. A professional business lender will have an extensive list of closing documents which can include security agreements, promissory notes, personal guarantees, affidavits and certificates, titles to vehicles, title insurance on real property, security deeds to real property, financing statements, specific loan agreements, draw agreements, pledge agreements, and various collateral assignments of life insurance policies, accounts, stocks, and bonds. In some cases, especially when the success of the business depends on one or more particular individuals, such individuals may also have to list the lender as a beneficiary under life insurance policies.

Summary: You, as a private lender, can pick and choose among the various things professional lenders may require. The point of this discussion is to demonstrate what the “big boys” often use to protect the repayment of their loans. Because of the complexity to assure a good business loan, you may not want your IRA or pension plan to engage in these.

Procedure for Making Hard Money Loan with Real Estate as Collateral





PRELIMINARY LOAN WORKSHEET

Date _____

BORROWER NEEDS

Borrower Name _____ Phone _____

Loan Needed \$ _____ = Purchase _____ + Rehab* _____

Term _____ Is this a 1st or 2nd

If money is not for Purchase and/or Rehab, what will be done with money? _____

Who have you approached for this loan and what was their offer? _____

If I do not do this loan, where will you get the money? _____

Comments: _____

PROPERTY INFORMATION

Street Address _____

City _____ County _____ State _____ Zip _____

Current Estimated Value \$ _____ Based on _____

Residential Single Family Multi-Family - Units _____

Owner Occupied Rental Quick-Turn

Commercial Description _____

Owner Occupied Rental Quick-Turn

Vacant Land Description _____

* Description of Work Needed: _____

Any existing mortgage? Yes No Lender _____

Balance \$ _____ Interest Rate _____ % Mo. Pmt \$ _____

Remaining Term _____ Pmts Current? Yes No

LOAN QUOTED

1st or 2nd Amount \$ _____ Interest Rate _____ %

Points _____ Finance Pts in Loan - Yes No Term _____

Monthly Pmts Interest Only Amortized with Balloon Amortization Period _____

Should we proceed with our due-diligence? No , he/she wants to check other lenders.

----- Internal -----
Calculated ITV _____ %

Yes -- GO FORWARD WITH LOAN

- Purchase Contract - If purchase, have Borrower fax/email Purchase Contract
 Contractor Quotes - If rehab and Borrower has written quotes on work, have faxed/emailed in
 Appraisal - If Borrower has a recent appraisal, have it faxed/emailed
 Comparable Sales - Have Borrower fax/email any information he/she has on comparable properties
 Existing Loan Docs - If loan is to be in second position, fax/email Note and Mortgage on first
Other Info (Survey, plat, etc.) _____

Comments: _____

LOAN APPLICATIONS

Note: It is not the attorney or title company's job to get personal information for you.

You should be getting this when evaluating the loan!

However, if you are missing some information, request as part of the closing instructions that the closing attorney obtain the missing information at the closing.

AUTHORIZATION TO PULL CREDIT

Even if you decide to not have your borrower complete a credit application, you should still get authorization from them to pull credit. This should be gotten for each loan.

FINANCING APPLICATION

There are many forms of credit applications. The one that follows collects the pertinent information without being overly complex. There is nothing magic about this form. Use it or another to collect the information necessary and gain permission to pull credit.

Other Versions

In the Document Files, you will find two other versions of Hard Money Loan applications provided by previous attendees. They are included to give you some additional ideas as to information to gather and language to use. One is even simpler than mine that follows.

Another application found in the Document Files is much more involved, forcing the borrower to think through the project as well as provide credit information. Sometimes the borrower will come to their own conclusion that the profits are not good enough to justify going forward. This can save the lender a significant amount of time.

Authorization to pull credit: This is a good form to have signed no matter whether you get a credit application or not. This is easy to fax to get a credit report rather than the whole application.

Date: _____

Name of Borrower: _____

I acknowledge that I, either for myself or for a company I represent, have applied for a loan from _____.

Therefore, I authorize _____ or any person or company designated by _____ to make a full and complete inquiry into my credit standing and rating, and obtain credit information on me from my creditors and any credit reporting company or organization.

I understand _____ is a private lender and may not be a member of a credit reporting organization; and may need to use a financial company or institution to obtain this information. Therefore, this authority extends to any financial company or institution designated by _____.

All of the authority I have given in any of the above paragraphs applies both to me and my company which is _____.

Loan Applicant

FINANCING CREDIT APPLICATION

This application must be completed in ink and all sections answered

APPLICANT PHONE	DATE	APPLICATION TAKEN BY
-----------------	------	----------------------

PART 1 - APPLICANT INFORMATION

LAST NAME	FIRST NAME	MIDDLE NAME	DATE OF BIRTH	SOCIAL SECURITY NUMBER	DRIVERS LIC. NO.	<input type="checkbox"/> MARRIED <input type="checkbox"/> UNMARRIED <input type="checkbox"/> SEPARATED
						STATE

PLEASE GIVE 3 PREVIOUS ADDRESSES AND EMPLOYERS

CURRENT ADDRESS	LANDLORD PHONE	HOW LONG?	<input type="checkbox"/> RENT <input type="checkbox"/> OWN
FORMER ADDRESS	LANDLORD PHONE	HOW LONG?	<input type="checkbox"/> RENT <input type="checkbox"/> OWN
FORMER ADDRESS	LANDLORD PHONE	HOW LONG?	<input type="checkbox"/> RENT <input type="checkbox"/> OWN
NAME & ADDRESS OF CURRENT EMPLOYER	SUPERVISOR PHONE POSITION	DATES EMPLOYED (MTH/YR) TO (MTH/YR)	GROSS SALARY _____ SELF-EMP. - ADJ. GROSS INCOME (MOST RECENT TAX FORMS)
NAME & ADDRESS OF CURRENT/FORMER EMPLOYER	SUPERVISOR PHONE POSITION	DATES EMPLOYED (MTH/YR) TO (MTH/YR)	GROSS SALARY _____ SELF-EMP. - ADJ. GROSS INCOME (MOST RECENT TAX FORMS)
NAME & ADDRESS OF FORMER EMPLOYER	SUPERVISOR PHONE POSITION	DATES EMPLOYED (MTH/YR) TO (MTH/YR)	NUMBER OF DEPENDENTS BY AGE 0-5 _____ 6-12 _____ 13-17 _____ 18+ _____ NUMBER LIVING WITH YOU _____
NEAREST RELATIVE NOT LIVING WITH YOU NAME	ADDRESS	PHONE	RELATIONSHIP

PART 2 - INFORMATION ABOUT CO-APPLICANT NON-APPLICANT SPOUSE

LAST NAME	FIRST NAME	MIDDLE NAME	DATE OF BIRTH	SOCIAL SECURITY NUMBER	DRIVERS LIC. NO.	<input type="checkbox"/> MARRIED <input type="checkbox"/> UNMARRIED <input type="checkbox"/> SEPARATED
						STATE

PLEASE GIVE 3 PREVIOUS ADDRESSES AND EMPLOYERS

CURRENT ADDRESS	LANDLORD PHONE	HOW LONG?	<input type="checkbox"/> RENT <input type="checkbox"/> OWN
FORMER ADDRESS	LANDLORD PHONE	HOW LONG?	<input type="checkbox"/> RENT <input type="checkbox"/> OWN
FORMER ADDRESS	LANDLORD PHONE	HOW LONG?	<input type="checkbox"/> RENT <input type="checkbox"/> OWN
NAME & ADDRESS OF CURRENT EMPLOYER	SUPERVISOR PHONE POSITION	DATES EMPLOYED (MTH/YR) TO (MTH/YR)	GROSS SALARY _____ SELF-EMP. - ADJ. GROSS INCOME (MOST RECENT TAX FORMS)
NAME & ADDRESS OF CURRENT/FORMER EMPLOYER	SUPERVISOR PHONE POSITION	DATES EMPLOYED (MTH/YR) TO (MTH/YR)	GROSS SALARY _____ SELF-EMP. - ADJ. GROSS INCOME (MOST RECENT TAX FORMS)
NAME & ADDRESS OF FORMER EMPLOYER	SUPERVISOR PHONE POSITION	DATES EMPLOYED (MTH/YR) TO (MTH/YR)	NUMBER OF DEPENDENTS BY AGE 0-5 _____ 6-12 _____ 13-17 _____ 18+ _____ NUMBER LIVING WITH YOU _____
NEAREST RELATIVE NOT LIVING WITH YOU NAME	ADDRESS	PHONE	RELATIONSHIP

FYI Only - Consumer Loans:
Required for loan on principal residence in GA. Other states may have similar requirement.

PRE-APPLICATION DISCLOSURE

THE FOLLOWING FEES SHALL BE ASSESSED BY _____ AT THE TIME OF YOUR APPLICATION FOR A LOAN. THESE FEES ARE NON-REFUNDABLE. IF YOU SHOULD NOT QUALIFY FOR THE LOAN YOU HAVE APPLIED FOR, OR IF YOU SHOULD DECIDE TO WITHDRAW YOUR APPLICATION, THESE FEES ARE NON-REFUNDABLE.

PROCESSING FEE: \$ _____ A fee by the lender/broker for accepting or processing your mortgage loan application.

APPRAISAL FEE: \$ _____ A fee which shall be paid to an independent appraiser or an appraiser on lender's staff to determine the value of your property to assure that such value is sufficient to secure the loan.

CREDIT REPORT FEE: \$ _____ This fee is to pay for a credit report, which shows how you have handled other credit transactions.

Other terms and conditions of refunds.

You may contact the individual named below with any questions, comments or complaints which you may have concerning the application.

This disclosure is given in compliance with the Georgia Residential Mortgage Act.

ACKNOWLEDGEMENT

I/We hereby acknowledge receipt of the above Georgia Application Disclosure prior to paying a processing fee, appraisal fee, credit report fee, or any other fee listed above.

PRE-APPLICATION DISCLOSURE

Georgia law (GA Code Ann. §7-1-1014(3)) requires you to be informed of the following:

FAILURE TO MEET EVERY CONDITION OF YOUR MORTGAGE LOAN MAY RESULT IN THE LOSS OF YOUR PROPERTY THROUGH FORECLOSURE.

I/We acknowledge receipt of this Foreclosure Disclosure and further acknowledge that I/we understand its terms.

Date: _____ Applicant: _____

Date: _____ Applicant: _____

*"It takes 20 years to build a reputation and five minutes to ruin it.
If you think about that, you'll do things differently." – Warren Buffett*

CREDIT REPORTS

As a matter of course, many hard money lenders don't usually pull credit reports. That is because they are basing their loan on the collateral, not the credit of the borrower as most banks and conventional lenders do. Especially if your loan ratios are above 60%, you may want to consider getting a credit report as you are depending somewhat on your borrower's credit to be profitable, rather than just strictly depending on the equity in the property. A credit report will give you a good indication of how the borrower will pay you and potential for bankruptcy.

The following sample merged credit report is for all three credit reporting agencies on one form. This report is from

Credit Plus, Inc.

31550 Winterplace Parway

Salisbury, MD 21804

Toll Free: 800-258-3488 Fax: 800-258-3287

Other credit report providers:

- National Tenant Network – www.ntnonline.com/ (has several resource articles on its web site)
- Tenant Tracker – www.tenanttracker.com/ (800) 658-9369
- www.evictionsplus.com/ provides background checks for \$35 (803) 839-3343
- www.mrlandlord.com/html/creditfaq.html Credit reports \$9.95
(800) 777-5180

MERGED INFILE CREDIT REPORT

FILE #	46463	FNMA #	DATE COMPLETED	1/1/2002	RQD' BY	BOB TESTER
PREPARED FOR	ABC MORTGAGE 123 MAIN STREET SOMEWHERE, MD 21801		DATE ORDERED	1/1/2002	PRPD' BY	
			REPOSITORIES	XP/TU/EF	LOAN TYPE	
			PRICE	\$0.00		
			REF. #	DEMO		

PROPERTY ADDRESS

APPLICANT			CO-APPLICANT		
APPLICANT	CONSUMER, JOHN		CO-APPLICANT		
SOC SEC #	548-60-9988	DOB	SOC SEC #	DOB	
MARITAL STATUS			DEPENDENTS		
CURRENT ADDRESS	10520 BIRCH ST, BURBANK, CA 91205			LENGTH	
PREVIOUS ADDRESS				LENGTH	

EMPLOYMENT

EMPLOYER	EMPLOYER
POSITION	POSITION
SINCE	SINCE
INCOME	INCOME
VERIFIED BY	VERIFIED BY

SCORE MODELS

EQUIFAX/BEACON - JOHN CONSUMER - 548609988
 SCORE: 646
 00010 - PROPORTION OF BALANCES TO CREDIT LIMITS IS TOO HIGH ON BANK REVOLVING OR OTHER REVOLVING ACCOUNTS
 00013 - TIME SINCE DELINQUENCY IS TOO RECENT OR UNKNOWN
 00004 - TOO MANY BANK OR NATIONAL REVOLVING ACCOUNTS
 00018 - NUMBER OF ACCOUNTS WITH DELINQUENCY

TRANSUNION/EMPIRICA 98 - JOHN CONSUMER - 548609988
 SCORE: 648
 010 - PROPORTION OF BALANCES TO CREDIT LIMITS IS TOO HIGH ON BANK REVOLVING OR OTHER REVOLVING ACCOUNTS
 002 - LEVEL OF DELINQUENCY ON ACCOUNTS
 005 - TOO MANY ACCOUNTS WITH BALANCES
 018 - NUMBER OF ACCOUNTS WITH DELINQUENCY

EXPERIAN/FAIR, ISAAC (VER. 2) - JOHN CONSUMER - 548609988
 SCORE: 682
 13 - LENGTH OF TIME (OR UNKNOWN TIME) SINCE ACCOUNT DELINQUENT
 10 - PROPORTION OF BALANCE TO HIGH CREDIT ON BANK REVOLVING OR ALL REVOLVING ACCOUNTS
 08 - NUMBER OF RECENT INQUIRIES
 18 - NUMBER OF ACCOUNTS DELINQUENT

CREDIT

E C O S A	W H O S E	CREDITOR	DATE REPORTED	DATE OPENED		HIGH CREDIT	BALANCE	PAST DUE	MO REV	30	60	90+	STATUS
				DLA	ACCT TYPE								
J	B	WASHINGTON MUTUAL FA 9086166666666	12/01	11/00 11/01		\$208550 MTG	\$206997 360\$1907	\$0	13	0	0	0	AS AGREED XP/TU
B	B	MBNA AMERICA BANK NA 5490966666666 Late Dates: 10/01-30 *** CREDIT CARD.;	12/01	05/97 10/01		\$25000 REV	\$18017 MINS\$210	\$0	75	1	0	0	CUR WAS 30 XP/TU/EF
B	B	BANK OF AMERICA 488860666666666 Late Dates: 10/01-30, 1/01-30 *** CREDIT CARD.;	12/01	05/00 10/01		\$12000 REV	\$4956 MINS\$106	\$175	20	2	0	0	CUR WAS 30 XP/TU/EF
J	B	NORDSTROM 10056666666 *** CHARGE.;	12/01	12/88 12/01		\$4000 REV	\$233 \$10	\$0	29	0	0	0	AS AGREED XP/TU/EF
B	B	AMEX 6666666666666 *** CREDIT LINE CLOSED-CONSUMER REQUEST-REPORTED BY SUBSCRIBER	10/01	03/90 04/99		\$4100 REV	\$0 \$0	\$0	27	0	0	0	CLOSED XP/TU/EF
B	B	AMEX 6767666666666 *** CREDIT CARD.;	10/01	01/00 07/00		\$14300 REV	\$0 \$0	\$0	22	0	0	0	AS AGREED XP/TU/EF
B	B	AMEX 1879666666666	05/96	06/89 07/95		\$104 REV	\$0 \$0	\$0	85	0	0	0	INACTIVE XP/TU/EF
B	B	AMEX 4825566666666 *** ACCOUNT CLOSED BY CONSUMER	01/94	02/89 -/-		\$0 -	\$0 \$0	\$0	-	-	-	-	PAID TU
B	B	BANK OF AMERICA 502431666666666 *** PAID ACCOUNT/ZERO BALANCE.;	11/96	08/94 11/96		\$9375 INST	\$0 049\$0	\$0	28	0	0	0	PAID XP/TU/EF

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Hard Money Lending Course

FILE #	46463	FNMA #	DATE COMPLETED	1/1/2002	RQD' BY	BOB TESTER						
PREPARED FOR	ABC MORTGAGE		DATE ORDERED	1/1/2002	PRPD' BY							
			REPOSITORIES	XP/TU/EF	LOAN TYPE							
			PRICE	\$0.00								
			REF. #	DEMO								
PROPERTY ADDRESS												
APPLICANT			CO-APPLICANT									
APPLICANT	CONSUMER, JOHN		CO-APPLICANT									
SOC SEC #	548-60-9988	DOB	SOC SEC #	DOB								
MARITAL STATUS			DEPENDENTS									
CREDIT												
E C O A	W H O S E	CREDITOR	DATE REPORTED	DATE OPENED	HIGH CREDIT	BALANCE	PAST DUE	MO REV	30	60	90+	STATUS
				DLA	ACCT TYPE	TERMS						SOURCE
B	B	BANK OF AMERICA 1000836666666	03/96	11/88 12/92	\$2500 REV	\$0 \$0	\$0	89	0	0	0	PAID XP/TU/EF
*** CREDIT LINE CLOSED-CONSUMER REQUEST-REPORTED BY SUBSCRIBER												
J	B	BANK UNITED MORTGAGE 2000666666666	09/00	12/98 08/00	\$308700 MTG	\$0 360\$0	\$0	21	0	0	0	PAID XP/TU/EF
*** PAID ACCOUNT/ZERO BALANCE.												
J	B	BANKAMERICA 4070666666666	06/98	05/95 06/96	\$3000 REV	\$0 \$0	\$0	37	0	0	0	PAID XP/TU/EF
*** ACCOUNT CLOSED BY CONSUMER												
B	B	COUNTRYWIDE HOME LOA 7708666666666	08/95	03/93 07/95	\$79200 MTG	\$0 360\$0	\$0	30	0	0	0	PAID XP/TU/EF
*** PAID ACCOUNT/ZERO BALANCE.; REAL ESTATE MORTGAGE.												
B	B	FIRST SECURITY BANK 475880166666666	03/96	09/89 03/91	\$500 REV	\$0 \$0	\$0	80	0	0	0	INACTIVE XP
B	B	FORD MOTOR CREDIT CO FLN30666666	02/95	12/93 02/95	\$25309 LEAS	\$0 024\$0	\$0	15	0	0	0	PAID XP/TU/EF
*** PAID ACCOUNT/ZERO BALANCE.; AUTO.												
B	B	HOME DEPOT/MBGA CG76666666666	12/01	11/00 01/01	\$2250 REV	\$0 \$0	\$0	25	0	0	0	AS AGREED XP/TU/EF
*** CHARGE.;												
B	B	NORDSTROM ESB 9046666666666	05/96	12/88 12/92	\$1019 REV	\$0 \$0	\$0	89	0	0	0	INACTIVE XP/EF
B	B	PACIFIC 1ST 2990666666666	07/93	08/91 01/93	\$3242 INST	\$0 36\$0	\$0	22	0	0	0	AS AGREED TU/EF
B	B	SMITHS/GECAP CC9M666666666	05/96	01/91 10/91	\$520 REV	\$0 \$0	\$0	65	0	0	0	INACTIVE XP
M	B	U.S. BANK 304001666666666	03/99	03/97 12/98	\$40800 MTG	\$0 180\$0	\$0	25	0	0	0	PAID XP/TU/EF
*** CREDIT LINE CLOSED-CONSUMER REQUEST-REPORTED BY SUBSCRIBER												
S	B	U.S. BANK OREGON 2001666666666	03/97	08/95 08/95	\$20200 AUTO	\$0 060\$0	\$0	20	0	0	0	PAID XP/TU/EF
*** PAID ACCOUNT/ZERO BALANCE.; AUTO.												
S	B	U.S. BANK OREGON 2001766666666	03/97	09/96 09/96	\$12928 AUTO	\$0 060\$0	\$0	07	0	0	0	PAID XP/TU/EF
*** PAID ACCOUNT/ZERO BALANCE.; AUTO.												
J	B	US BANK 4833666666666	09/97	08/95 08/97	\$11000 REV	\$0 \$0	\$0	25	0	0	0	AS AGREED EE
*** CREDIT CARD.;												
P	B	US BANK 471923032564	10/97	08/95 08/97	\$11000 REV	\$0 \$0	\$0	12	0	0	0	PAID EE
*** ACCOUNT TRANSFERRED OR SOLD.;												
J	B	US BANK 4719666666666	11/01	08/95 05/00	\$18000 REV	\$0 \$0	\$0	36	0	0	0	PAID XP/TU/EF
*** ACCOUNT CLOSED BY CONSUMER.; PAID ACCOUNT/ZERO BALANCE.												
B	B	VERIZON WIRE 3123666666666	03/98	10/96 12/97	\$492 OPEN	\$0 UNK\$0	\$0	15	0	0	0	PAID XP/TU/EF
*** ACCOUNT CLOSED BY CONSUMER												
J	B	WASHMUHOM 2146666666666	01/99	06/95 11/98	\$153600 MTG	\$0 360\$0	\$0	42	0	0	0	PAID TU/EF
*** FANNIE MAE ACCOUNT; PAID ACCOUNT/ZERO BALANCE.												
B	B	WELLS FARGO BANK 477738166666666	09/94	12/91 -/-	\$1061 REV	\$0 \$0	\$0	35	0	0	0	PAID XP
*** CREDIT LINE CLOSED-CONSUMER REQUEST-REPORTED BY SUBSCRIBER												

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Hard Money Lending Course

FILE #	46463	FNMA #	DATE COMPLETED	1/1/2002	RQD' BY	BOB TESTER
PREPARED FOR	ABC MORTGAGE		DATE ORDERED	1/1/2002	PRPD' BY	
			REPOSITORIES	XP/TU/EF	LOAN TYPE	
			PRICE	\$0.00		
			REF. #	DEMO		

PROPERTY ADDRESS

APPLICANT			CO-APPLICANT		
APPLICANT	CONSUMER, JOHN		CO-APPLICANT		
SOC SEC #	548-60-9988	DOB	SOC SEC #	DOB	
MARITAL STATUS			DEPENDENTS		

E C C A	W H O S E	CREDITOR	DATE REPORTED	DATE OPENED	HIGH CREDIT	BALANCE	PAST DUE	MO REV	30	60	90+	STATUS
				DLA	ACCT TYPE	TERMS						
B	B	WFB CD SVC	08/96	12/91	\$1000	\$0	\$0	56	0	0	0	PAID
		4777381666666666		09/94	REV	\$0						XP/TU/EE
*** PAID ACCOUNT/ZERO BALANCE.; CLOSED ACCOUNT.												

COLLECTION ACCOUNTS

*** NONE ***

INQUIRIES

*** NONE ***

PUBLIC RECORDS

*** NONE ***

SOURCE OF INFORMATION

- EQUIFAX - PULLED ON: 01/01/02 - INFILE DATE: 10/20/85
 NM: JON W CONSUMER SSN: 548609988 DOB: 02/01/43
 AD: 3453 MAIN TE FAD, DIVAS, ID 56789
 AD: 3425 1300 WEST ST, LA KUNTA, AL 20413
 AD: 43242 RAIN PI 234, FALLON, UT 83414
 EM: IDLE HANDS/MONKEY TRAINER/1024 WARM ST/-/-
- TRANSUNION - PULLED ON: 01/01/02 - INFILE DATE: 10/01/85
 NM: JONATHON CONSUMER
 SS: 548609988
 AD: 234234 PATAGONIA RD, ARGENTINA, FL 08454
 AD: 234 TURNER BLVD, GRANDE MALO, PA 012345
 AD: 12 ELPENO DR, CALIFORNIA CITY, CA 90210
- EXPERIAN - PULLED ON: 01/01/02
 NM: JONATHON CONSUMER YOB: 19666
 NM: CONSUMER JONATHON
 SS: 548609988
 AD: 23423 FADDACEIHN GRAEJGA SQ, FADDACEIHN GRAEJGA CITY, RI 01357
 AD: 7367 OPPORTUNITY LP, KNOCKING, ID 83425
 AD: 456 SUNRISE WAY, PAWTLIN, OR 97205
 EM: HELLS BELLS/BELL RINGER//06/66
 EM: HELLS BELLS///06/66

REMARKS

CONSUMER REPORTS CASE OF IDENTITY THEFT 08/2001- VERIFY IDENTITY WITH 2 FORMS OF PICTURE IDENTIFICATION.

CREDITORS

AMERICAN EXPRESS		954-503-3787
AMEX	PO BOX 7871 FORT LAUDERDAL, FL 33329	305-473-3361
BANK OF AMERICA	P O BOX 2462 SPOKANE, WA 99210-2462	800-233-8181
BANK UNITED	10333 HARWIN HOUSTON, TX 77036-1501	800-288-3223
BANKAMERICA	1825 E BUCKEYE RD PHOENIX, AZ 85034	800-638-2282
BK UNITED MT	3800 BUFFALO SPEED WAY, SUITE 520 HOUSTON, TX 77098	
COUNTRYWIDE	400 COUNTRYWIDE WY SIMI VALLEY, CA 93065	818-304-8400
CREDCO	5626 RUFFIN ROAD SUITE #200 SAN DIEGO, CA 92123	
FAC/EXEC RPT	10920 SW BARBUR BV SUITE #220 PORTLAND, OR 97219	503-244-6660
FLEET MTG	2210 ENTERPRISE D FLORENCE, SC 29501	843-673-3700
FRD MOTOR CR	10220 SW GREENBURG SUITE 415 PORTLAND, OR 97223	
HMEDPT/MBGA	POB 103047 ROSWELL, GA 30076	800-967-1533
MBNA AMERICA	400 CHRISTIANA RD NEWARK, DE 19713	
NORDSTROM FSB	PO BOX 6555 ENGLEWOOD, CO 80155	800-964-1800
NORDSTROMFSB	PO BOX 6566 ENGLEWOOD, CO 80155	
PAC FST FED	11TH & PACIFIC 5TH FLOOR TACOMA, WA 98444	
U S BANK OREGON	PO BOX 279 BEAVERTON, OR 97075	800-526-0277
U.S. BANK	601 2ND AVE SOUTH MINNEAPOLIS, MN 55402	800-285-8585
US BANCORP		513-639-2660
US BANK/MERCHANT		503-813-8424
US BK OREGON	POB 17143 DENVER, CO 80217	612-973-3727
VERIZON WIRE	3350 161ST AVE SE BELLEVUE, WA 98008	800-445-8161
WA MUTUAL HL	POB 37560 LOUISVILLE, KY 40233	502-581-2100
WELLS FARGO	PO BOX 5445 PORTLAND, OR 97228	
WELLS FARGO BANK	PO BOX 54110 LOS ANGELES, CA 90054	800-642-4720

MISCELLANEOUS INFORMATION

Instant View Password: 12R544

DISCLAIMER

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Hard Money Lending Course

FILE #	46463	FNMA #	DATE COMPLETED 1/1/2002	RQD' BY	BOB TESTER
PREPARED FOR	ABC MORTGAGE		DATE ORDERED 1/1/2002		
			REPOSITORIES	XP/TU/EF	PRPD' BY
			PRICE	\$0.00	LOAN TYPE
			REF. #	DEMO	
PROPERTY ADDRESS					
APPLICANT			CO-APPLICANT		
APPLICANT	CONSUMER, JOHN		CO-APPLICANT		
SOC SEC #	548-60-9988	DOB	SOC SEC #	DOB	
MARITAL STATUS			DEPENDENTS		
DISCLAIMER					

This is a report containing information supplied by the repositories listed above. The merge process is automated and the report may include some duplications and/or omissions. Inquiries regarding any disputed items should be directed to the creditor reporting the item, or to the appropriate repository service center(s) listed below.

EXPERIAN (XP)	TRANS UNION (TU)	EQUIFAX (EF)
P.O. Box 2002	P.O. Box 4000	P.O. Box 740241
Allen, TX 75013	Chester, PA 19016	Atlanta, GA 30374
888-397-3742	866-887-2673	800-685-1111

*** END OF REPORT 6/4/2002 1:14:12 PM ***

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Credit Plus, Inc.

31550 Winterplace Parkway
Salisbury, MD 21804

Toll Free: 800-258-3488 Fax: 800-258-3287

<http://www.creditplus.com>

Summary Appraisal Report

Uniform Residential Appraisal Report

301274
File # 08-5238PZ

DB Comment:

The next few pages are the core of a detailed 28 page appraisal that can be found on the Documents CD.

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

Property Address [REDACTED] City ATLANTA State GA Zip Code 30315-1222
 Borrower [REDACTED] Owner of Public Record FREDDIE MAC County FULTON
 Legal Description DIST 14; LL 54
 Assessor's Parcel # 14 0054 0001 142 Tax Year 2007 R.E. Taxes \$ 1,315
 Neighborhood Name ATLANTA Map Reference 845E05 Census Tract 0055.01
 Occupant Owner Tenant Vacant Special Assessments \$ N/A PUD HOA \$ per year per month
 Property Rights Appraised Fee Simple Leasehold Other (describe)
 Assignment Type Purchase Transaction Refinance Transaction Other (describe)
 Lender/Client MEDICI FINANCIAL Address 320 ORMOND ST SE, ATLANTA, GA 30315
 Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? Yes No
 Report data source(s) used, offering price(s), and date(s). THE DATA SOURCES USED WERE MLS, FMLS, AND DEED RECORDS. THE SUBJECT IS UNDER CONTRACT. IT IS LISTED ON MLS/FMLS FOR 84,000.
 I did did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed. THE APPRAISER REVIEWED THE CONTRACT.
 Contract Price \$ 85,000 Date of Contract 11/13/08 Is the property seller the owner of public record? Yes No Data Source(s) PUBLIC RECORDS
 Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? Yes No
 If Yes, report the total dollar amount and describe the items to be paid. NONE NO SELLER PAID CLOSING COST
Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood Characteristics		One-Unit Housing Trends		One-Unit Housing		Present Land Use %	
Location <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban <input type="checkbox"/> Rural	Property Values <input type="checkbox"/> Increasing <input type="checkbox"/> Stable <input checked="" type="checkbox"/> Declining	PRICE	AGE	One-Unit	75 %		
Built-Up <input checked="" type="checkbox"/> Over 75% <input type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%	Demand/Supply <input type="checkbox"/> Shortage <input type="checkbox"/> In Balance <input checked="" type="checkbox"/> Over Supply	\$ (000)	(yrs)	2-4 Unit	4 %		
Growth <input type="checkbox"/> Rapid <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Slow	Marketing Time <input type="checkbox"/> Under 3 mths <input type="checkbox"/> 3-6 mths <input checked="" type="checkbox"/> Over 6 mths	50	Low 0	Multi-Family	6 %		
Neighborhood Boundaries NORTH BY I-20, EAST BY CHEROKEE AVE, SOUTH BY ATLANTA AVE, AND WEST BY 75/85 CONNECTOR		250	High 100	Commercial	10 %		
		125	Pred. 45	Other	5 %		

 Neighborhood Description THE SUBJECT PROPERTY IS LOCATED IN A SUBURBAN RESIDENTIAL AREA OF THE COUNTY, APPROXIMATELY 8 RADIAL MILES FROM THE CBD OF ATLANTA. MAJOR ACCESS TO THE SUBJECT VIA I-20. REASONABLE DISTANCE TO ALL SUPPORTING FACILITIES. APPEAL TO THE MARKET IS AVERAGE.
 Market Conditions (including support for the above conclusions) MARKET CONDITIONS WITHIN THIS MARKETING AREA ARE CONSIDERED TO BE ABNORMAL. THERE APPEARS TO BE AN OVER SUPPLY. SALES ACTIVITY IN COUNTY IS ACTIVE WITH AVERAGE MARKETING EXPOSURE OF 6 MONTHS. CONCESSIONS OF 3-10% WITHIN THIS MARKET ARE CONSIDERED TYPICAL. SEE COMMENTS PG 3
 Dimensions 0.11 AC PER PUBLIC RECORDS Area 0.11+/- AC/TYP Shape IRREGULAR View TYPICAL
 Specific Zoning Classification R5 Zoning Description SINGLE FAMILY RESIDENTIAL
 Zoning Compliance Legal Legal Nonconforming (Grandfathered Use) No Zoning Illegal (describe)
 Is the highest and best use of subject property as improved (or as proposed per plans and specifications) the present use? Yes No If No, describe

Utilities	Public	Other (describe)	Public	Other (describe)	Off-site Improvements - Type	Public	Private
Electricity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Water	<input checked="" type="checkbox"/>	Street ASPHALT	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Sanitary Sewer	<input checked="" type="checkbox"/>	Alley NONE	<input type="checkbox"/>	<input type="checkbox"/>

 FEMA Special Flood Hazard Area Yes No FEMA Flood Zone X FEMA Map # 13121C0357E FEMA Map Date 5/7/2001
 Are the utilities and off-site improvements typical for the market area? Yes No If No, describe
 Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? Yes No If Yes, describe
 ALL ZONING APPEARS TO BE LEGAL AND CONFORMING. NO SURVEY WAS PROVIDED. I HAVE NOT CHECKED THE LAND RECORDS FOR RECORDED EASEMENTS AND HAVE REPORTED ONLY APPARENT EASEMENTS, ENCROACHMENTS AND OTHER APPARENT ADVERSE CONDITIONS.

General Description		Foundation		Exterior Description		materials/condition		Interior		materials/condition	
Units <input checked="" type="checkbox"/> One <input type="checkbox"/> One with Accessory Unit	Concrete Slab <input type="checkbox"/> Crawl Space <input checked="" type="checkbox"/>	Foundation Walls	CONC/AVG	Floors	CARP/WD/CT/AVG						
# of Stories TWO+	Full Basement <input type="checkbox"/> Partial Basement <input type="checkbox"/>	Exterior Walls	FRAME/AVG	Walls	DW/AVG						
Type <input checked="" type="checkbox"/> Det. <input type="checkbox"/> Att. <input type="checkbox"/> S-Det./End Unit	Basement Area CRAWL sq.ft.	Roof Surface	COMPOSITE/AVG	Trim/Finish	WOOD/PAINT/AVG						
<input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Under Const.	Basement Finish N/A %	Gutters & Downspouts	ALUM/AVG	Bath Floor	CT/AVG						
Design (Style) 2+ TRAD	Outside Entry/Exit <input type="checkbox"/> Sump Pump <input type="checkbox"/>	Window Type	MET/AVG	Bath Wainscot	FG/CT/AVG						
Year Built 2007	Evidence of <input type="checkbox"/> Infestation	Storm Sash/Insulated	NO/NONE	Car Storage	<input checked="" type="checkbox"/> None						
Effective Age (Yrs) 1	Dampness <input type="checkbox"/> Settlement <input type="checkbox"/>	Screens	NO	Driveway	# of Cars 2						
Attic <input type="checkbox"/> None	Heating <input checked="" type="checkbox"/> FWA <input type="checkbox"/> HWBB <input type="checkbox"/> Radiant	Amenities	Woodstove(s) #	Driveway Surface	CONCRETE						
<input checked="" type="checkbox"/> Drop Stair <input type="checkbox"/> Stairs	Other Fuel ELEC	Fireplace(s) # 1	Fence	Garage	# of Cars						
<input type="checkbox"/> Floor <input type="checkbox"/> Scuttle	Cooling <input checked="" type="checkbox"/> Central Air Conditioning	Patio/Deck DK	Porch PCH	Carport	# of Cars						
<input type="checkbox"/> Finished <input type="checkbox"/> Heated	Individual <input type="checkbox"/> Other <input type="checkbox"/>	Pool	Other	Att.	<input type="checkbox"/> Det. <input type="checkbox"/> Built-in						

 Appliances Refrigerator Range/Oven Dishwasher Disposal Microwave Washer/Dryer Other (describe)
 Finished area above grade contains: 7 Rooms 4 Bedrooms 3.5 Bath(s) 2,366 Square Feet of Gross Living Area Above Grade
 Additional features (special energy efficient items, etc.). A FIREPLACE, A DECK, AND A FRONT PORCH; NO OTHER ITEMS WERE NOTED.
 Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.). THE SUBJECT PROPERTY WILL BE REPAIRED. THE BUYER WILL CONVERT 3RD FLOOR BONUS ROOM TO BEDROOM AND 3RD FLOOR HALF BATH TO FULL BATH. SEE ADDENDUM FOR REPAIRS.
 Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? Yes No If Yes, describe
 THERE WERE NO CONDITIONS NOTED THAT WOULD AFFECT LIVABILITY, SOUNDNES, OR STRUCTURAL INTEGRITY OF THE PROPERTY AFTER REPAIRS. THIS REPORT WAS COMPLETED "SUBJECT TO". SEE REPAIR ADDENDUM.
 Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? Yes No If No, describe
 THE PROPERTY GENERALLY CONFORMS TO THE NEIGHBORHOOD.

Uniform Residential Appraisal Report

301274
File # 08-5238PZ

There are 8 comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ 133,000 to \$ 186,100					
There are 6 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ 125,000 to \$ 165,000					
FEATURE	SUBJECT	COMPARABLE SALE # 1	COMPARABLE SALE # 2	COMPARABLE SALE # 3	
Address		801 GRANT TER SE ATLANTA, GA 30315	523 CONNALLY ST SE ATLANTA, GA 30312	149 SOUTH AVE SE ATLANTA, GA 30315	
Proximity to Subject		0.36 miles SE	0.36 miles NE	0.29 miles SE	
Sale Price	\$ 85,000	\$ 147,440	\$ 165,000	\$ 125,000	
Sale Price/Gross Liv. Area	\$ 35.93 sq.ft.	\$ 56.88 sq.ft.	\$ 99.88 sq.ft.	\$ 77.11 sq.ft.	
Data Source(s)		FMLS,REDI,DEED REC	FMLS,REDI,DEED REC	FMLS,REDI,DEED REC	
Verification Source(s)		DOM 87	DOM 8	DOM 47	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) \$ Adjustment	DESCRIPTION	+(-) \$ Adjustment
Sales or Financing		FHA/TYP		CONV/TYP	
Concessions		SLR PD \$ 5000		SLR PD \$ 3000	
Date of Sale/Time		06/30/08	-10,300	08/15/08	-7,700
Location	ATLANTA	ATLANTA		ATLANTA	
Leasehold/Fee Simple	FEE SIMPLE	FEE SIMPLE		FEE SIMPLE	
Site	0.11+/- AC/TYP	0.21+-A/TYP		0.15+-A/TYP	
View	TYPICAL	TYPICAL		TYPICAL	
Design (Style)	2+ TRAD	2 TRAD		2 TRAD	
Quality of Construction	FRM/AVG	FRM/AVG		FRM/GD	-10,000
Actual Age	2007	2007		2005	
Condition	AVG	AVG-	+7,500	GOOD	-15,000
Above Grade	Total Bdrms. Baths	Total Bdrms. Baths		Total Bdrms. Baths	
Room Count	7 4 3.5	8 4 3	+1,500	6 3 2.5	+3,000
Gross Living Area	2,366 sq.ft.	2,592 sq.ft.	-3,400	1,652 sq.ft.	+10,700
Basement & Finished Rooms Below Grade	CRAWL N/A	SLAB N/A		CRAWL N/A	
Functional Utility	AVERAGE	AVERAGE		AVERAGE	
Heating/Cooling	FWA/CAC	FWA/CAC		FWA/CAC	
Energy Efficient Items	STANDARD	STANDARD		STANDARD	
Garage/Carport	NONE	1 ATT	-2,000	NONE	
Porch/Patio/Deck	PCH,DK	PCH,PAT		PCH,DK,BALC	-2,000
AMENITIES, ETC.	1 FP	1 FP		1 FP	
AMENITIES, ETC.	NONE	FENCE	-1,500	NONE	
Net Adjustment (Total)		<input type="checkbox"/> + <input checked="" type="checkbox"/> - \$ -8,200	<input type="checkbox"/> + <input checked="" type="checkbox"/> - \$ -21,000	<input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ 9,300	
Adjusted Sale Price of Comparables		Net Adj. 5.6 % Gross Adj. 17.8 % \$ 139,240	Net Adj. 12.7 % Gross Adj. 29.3 % \$ 144,000	Net Adj. 7.4 % Gross Adj. 15.3 % \$ 134,300	
I <input checked="" type="checkbox"/> did <input type="checkbox"/> did not research the sale or transfer history of the subject property and comparable sales. If not, explain SALE/TRANSFER HISTORY WAS RESEARCHED.					
My research <input checked="" type="checkbox"/> did <input type="checkbox"/> did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.					
Data Source(s) TAX RECORDS, FMLS, MLS AND DEED TRANSFERS					
My research <input checked="" type="checkbox"/> did <input type="checkbox"/> did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.					
Data Source(s) TAX RECORDS, FMLS, MLS AND DEED TRANSFERS					
Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).					
ITEM	SUBJECT	COMPARABLE SALE #1	COMPARABLE SALE #2	COMPARABLE SALE #3	
Date of Prior Sale/Transfer	SEE COMMENTS BELOW	12/04/07;370,559; DEEDS	02/05/2008	NO	
Price of Prior Sale/Transfer		12/04/07; 0; DEEDS	309,179	PRIOR	
Data Source(s)			DEED RECORDS	SALE	
Effective Date of Data Source(s)	12/08/2008	12/08/2008	12/08/2008	12/08/2008	
Analysis of prior sale or transfer history of the subject property and comparable sales THE SUBJECT TRANSFERED ON 07/01/08 FOR 0 TO FEDERAL HOME LOAN MTG CORP(FREDDIE MAC) FROM PROVIDENT FUNDING ASSOCS. THE SUBJECT TRANSFERED ON 07/01/08 FOR 341,100 TO PROVIDENT FUNDING ASSOCS. FROM OLADAPO AYoola THE SUBJECT TRANSFERED ON 11/16/07 FOR 375,000 TO OLADAPO AYoola FROM FOXONE LLC. THE SUBJECT TRANSFERED ON 05/11/07 FOR 75,000 TO FOXONE LLC. FROM BONNEAU DICKSON.					
Summary of Sales Comparison Approach ALL COMPARABLES SELECTED OFFER GOOD OVERALL SIMILARITIES TO THE SUBJECT AND ARE REPRESENTATIVE OF BOTH THE SUBJECT'S NEIGHBORHOOD AND NEARBY COMPETING NEIGHBORHOODS OF SIMILAR AGE, SIZE AND STYLE HOMES OFFERING SIMILAR BUYER APPEAL. ALL ADJUSTMENTS ARE DEEMED REASONABLE AND APPROPRIATE AND AFTER ALL SUCH ADJUSTMENTS ARE MADE, ALL SALES OFFER A REASONABLE AND ACCEPTABLE RANGE OF VALUES.					
Indicated Value by Sales Comparison Approach \$ 140,000					
Indicated Value by: Sales Comparison Approach \$ 140,000 Cost Approach (if developed) \$ Income Approach (if developed) \$					
THE SALES COMPARISON APPROACH BEST REFLECTS THE MARKET VALUE OF THE SUBJECT. WEIGHT WAS GIVEN TO ALL "SUBJECT TO" COMPS ON THE MARKET GRID.					
This appraisal is made <input type="checkbox"/> "as is", <input type="checkbox"/> subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, <input checked="" type="checkbox"/> subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or <input type="checkbox"/> subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair: SEE ADDENDUM FOR REPAIRS					
Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$ 140,000, as of 12/08/2008, which is the date of inspection and the effective date of this appraisal.					

Uniform Residential Appraisal Report

301274
File # 08-5238PZ

COMMENTS ON COMPARABLES- SEE ADDENDUM FOR ADDITIONAL COMMENTS	
THE APPRAISER DID NOT EXPAND THE SEARCH AND COMPARABLE SELECTION BEYOND THE SUBJECT'S MARKET AREA.	
FORECLOSURE COMMENTS:	
ACCORDING TO MLS, THERE ARE 269 HOMES FOR SALE OR HAVE SOLD IN A HALF MILE RADIUS FROM THE SUBJECT AND 129 OF THE HOMES ARE FORECLOSURES. THIS IS APPROXIMATELY 48%. IN THE OPINION OF THE APPRAISER, THE INCREASE IN THE FORECLOSURES CAN BE ATTRIBUTED TO A VARIETY OF CIRCUMSTANCES THAT INCLUDE A DOWNTURN IN THE ECONOMY, MORTGAGE FRAUD, AND A MORE AGGRESSIVE PUSH TO PROVIDE FIRST TIME HOMEOWNERS THE OPPORTUNITY TO PURCHASE HOMES THROUGH ASSISTANCE PROGRAMS. IT APPEARS THAT PROPERTIES WITHIN THE SUBJECTS' MARKETING AREA WHICH ARE GIVEN PROPER EXPOSURE TO THE MARKET VIA TRADITIONAL LISTING SERVICES ARE SELLING AT MARKET VALUE.	
THERE IS A NUMBER OF HOMES IN THE AREA THAT HAVE BEEN SOLD AT A 25% INCREASE IN SALES PRICE WITHIN SIX MONTHS OF THE ORIGINAL PURCHASE. THIS IS DUE TO "FLIPPING", MORTGAGE FRAUD, OR THE HOMES WERE RENOVATED FOR RESALE. IT APPEARS THAT TRANSACTIONS WITH VERIFIED EXPOSURE TO THE OPEN MARKET OR THIRD PARTY BROKER PARTICIPATION ARE SELLING AT MARKET VALUE.	
ADDITIONAL COMMENTS	MARKET CONDITIONS:
	IN THE OPINION OF THE APPRAISER, THE DECLINING PROPERTY VALUES CAN BE ATTRIBUTED TO THE INCREASE IN FORECLOSURES, DOWNTURN IN THE ECONOMY, MORTGAGE FRAUD, AND/OR A MORE AGGRESSIVE PUSH TO PROVIDE FIRST TIME HOMEBUYERS THE OPPORTUNITY TO PURCHASE HOMES THROUGH ASSISTANCE PROGRAMS.
	FOR THE TIME PERIOD BETWEEN 12/08/07 AND 06/08/08 THE AVERAGE SALES PRICE WAS 158,767.
	FOR THE TIME PERIOD BETWEEN 06/08/08 AND 12/08/08 THE AVERAGE SALES PRICE WAS 129,280.
	FOR THE TIME PERIOD BETWEEN 06/08/08 AND 09/08/08 THE AVERAGE SALES PRICE WAS 137,157.
	FOR THE TIME PERIOD BETWEEN 09/08/08 AND 12/08/08 THE AVERAGE SALES PRICE WAS 119,612.
	SIMILAR COMPARABLES:
	FOR THE TIME PERIOD BETWEEN 12/08/07 AND 06/08/08 THE AVERAGE SALES PRICE WAS 164,170.
	FOR THE TIME PERIOD BETWEEN 06/08/08 AND 12/08/08 THE AVERAGE SALES PRICE WAS 141,137.
	THE AVERAGE SALES PRICE HAS DECLINED 18% FROM THE PREVIOUS SIX MONTHS PER MLS. THE AVERAGE SALES PRICE HAS DECLINED 13% FROM THE PREVIOUS THREE MONTHS PER MLS. THE AVERAGE SALES PRICE FOR SIMILAR COMPARABLES FOR THE SUBJECT HAS DECLINED 14% FROM THE PREVIOUS SIX MONTHS PER MLS. THE TIME ADJUSTMENT WAS DETERMINED FROM SIMILAR COMPARABLES TO THE SUBJECT AND IS DIFFERENT FROM THE OVER ALL MARKET DELINE FOR THE YEAR.
DATE OF SALE/TIME ADJUSTMENT:	
A TIME ADJUSTMENT WAS WARRANTED TO REFLECT THE CURRENT MARKET FLUCTUATIONS IN THE AREA. THE TIME ADJUSTMENT WAS DETERMINED FROM SIMILAR COMPARABLES TO THE SUBJECT AND IS DIFFERENT FROM THE OVER ALL MARKET DELINE FOR THE YEAR. THE 14% DECLINE WAS USED IN THE REPORT.	
CONTINUED ON ADDENDUM	
COST APPROACH TO VALUE (not required by Fannie Mae)	
Provide adequate information for the lender/client to replicate the below cost figures and calculations.	
Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value) THE ESTIMATED SITE VALUE FROM COMPARABLE SITE VALUES, PUBLIC RECORDS, AND/OR EXTRACTION METHOD IS \$40,000 TO 50,000.	
COST APPROACH	ESTIMATED <input type="checkbox"/> REPRODUCTION OR <input type="checkbox"/> REPLACEMENT COST NEW
	OPINION OF SITE VALUE =\$
	Source of cost data
	DWELLING Sq.Ft. @ \$ =\$
	Quality rating from cost service Effective date of cost data
	Sq.Ft. @ \$ =\$
	Comments on Cost Approach (gross living area calculations, depreciation, etc.)
 =\$
	THE COST APPROACH IS NOT APPLICABLE UNDER THE NEW USPAP. ALL EMPHASIS WAS PLACED UPON THE MARKET APPROACH AS IT IS CONSIDERED TO BE THE MOST ACCURATE REFLECTION OF TYPICAL BUYERS AND SELLERS. SEE ADDENDUM
	Garage/Carport Sq.Ft. @ \$ =\$
Total Estimate of Cost-New =\$	
Less Physical Functional External	
Depreciation =\$()	
Depreciated Cost of Improvements =\$	
"As-is" Value of Site Improvements =\$	
Estimated Remaining Economic Life (HUD and VA only) 59 Years	
INDICATED VALUE BY COST APPROACH =\$	
INCOME APPROACH TO VALUE (not required by Fannie Mae)	
Estimated Monthly Market Rent \$ N/A X Gross Rent Multiplier N/A = \$ Indicated Value by Income Approach	
Summary of Income Approach (including support for market rent and GRM) THE INCOME APPROACH IS NOT APPLICABLE AS THE MARKET APPROACH IS CONSIDERED TO BE THE MOST ACCURATE WITHIN THE SUBJECT'S MARKETING AREA. SEE ADDENDUM	
PROJECT INFORMATION FOR PUDs (if applicable)	
Is the developer/builder in control of the Homeowners' Association (HOA)? <input type="checkbox"/> Yes <input type="checkbox"/> No Unit type(s) <input type="checkbox"/> Detached <input type="checkbox"/> Attached	
Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.	
Legal Name of Project THIS IS NOT A PUD	
Total number of phases Total number of units Total number of units sold	
Total number of units rented Total number of units for sale Data source(s)	
Was the project created by the conversion of existing building(s) into a PUD? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, date of conversion.	
Does the project contain any multi-dwelling units? <input type="checkbox"/> Yes <input type="checkbox"/> No Data Source	
Are the units, common elements, and recreation facilities complete? <input type="checkbox"/> Yes <input type="checkbox"/> No If No, describe the status of completion.	
Are the common elements leased to or by the Homeowners' Association? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, describe the rental terms and options.	
Describe common elements and recreational facilities.	

Uniform Residential Appraisal Report

301274
File # 08-5238PZ

This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit, including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

SCOPE OF WORK: The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a complete visual inspection of the interior and exterior areas of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

INTENDED USE: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

INTENDED USER: The intended user of this appraisal report is the lender/client.

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS: The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has provided a sketch in this appraisal report to show the approximate dimensions of the improvements. The sketch is included only to assist the reader in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
5. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing the appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
6. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

Uniform Residential Appraisal Report

301274
File # 08-5238PZ**APPRAISER'S CERTIFICATION:** The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
2. I performed a complete visual inspection of the interior and exterior areas of the subject property. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.
3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
11. I have knowledge and experience in appraising this type of property in this market area.
12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).
19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.
20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.

Uniform Residential Appraisal Report

301274
File # 08-5238PZ

- 21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).
- 22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.
- 23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.
- 24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.
- 25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

- 1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
- 2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
- 3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
- 4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
- 5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAISER

Signature *Kenn F Stokey*
 Name KENNETH F STOKEY
 Company Name PRIORITY APPRAISAL SERVICE
 Company Address P O BOX 724746, ATLANTA, GA 31139
 Telephone Number 678 483 3400
 Email Address INFO@PRIORITYAPPRAISAL.COM
 Date of Signature and Report 12/12/2008
 Effective Date of Appraisal 12/08/2008
 State Certification # CR6275
 or State License # _____
 or Other (describe) _____ State # _____
 State GA
 Expiration Date of Certification or License 3/31/2009

ADDRESS OF PROPERTY APPRAISED
690 TERRY ST SE
ATLANTA, GA 30315-1222
 APPRAISED VALUE OF SUBJECT PROPERTY \$ 140,000

LENDER/CLIENT
 Name _____
 Company Name MEDICI FINANCIAL
 Company Address 320 ORMOND ST SE, ATLANTA, GA 30315
 Email Address _____

SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature _____
 Name _____
 Company Name _____
 Company Address _____
 Telephone Number _____
 Email Address _____
 Date of Signature _____
 State Certification # _____
 or State License # _____
 State _____
 Expiration Date of Certification or License _____

SUBJECT PROPERTY

- Did not inspect subject property
- Did inspect exterior of subject property from street
Date of Inspection _____
- Did inspect interior and exterior of subject property
Date of Inspection _____

COMPARABLE SALES

- Did not inspect exterior of comparable sales from street
- Did inspect exterior of comparable sales from street
Date of Inspection _____

Uniform Residential Appraisal Report

301274
File # 08-5238PZ

FEATURE		SUBJECT			COMPARABLE SALE # 4			COMPARABLE SALE # 5			COMPARABLE SALE # 6											
Address		[REDACTED]			717 WOODSON ST SE ATLANTA, GA 30315			671 GRANT TER SE ATLANTA, GA 30315			221 SOUTH AVE SE ATLANTA, GA 30315											
Proximity to Subject		0.33 miles E			0.29 miles E			0.34 miles SE														
Sale Price		\$ 85,000			\$ 150,000			\$ 154,700			\$ 186,100											
Sale Price/Gross Liv. Area		\$ 35.93 sq.ft.			\$ 80.13 sq.ft.			\$ 80.57 sq.ft.			\$ 65.76 sq.ft.											
Data Source(s)		FMLS, TAX REC, VIS			FMLS, REDI, DEED REC			MLS, REDI, DEED REC														
Verification Source(s)		DOM 64			LISTING			LISTING														
VALUE ADJUSTMENTS		DESCRIPTION			DESCRIPTION			+(-) \$ Adjustment			DESCRIPTION			+(-) \$ Adjustment								
Sales or Financing					CONV/TYP			LISTING			LISTING											
Concessions					SLR PD \$ 6690			CONC 5%			CONC 5%			-9,300								
Date of Sale/Time					11/13/08			-1,800			LISTING											
Location		ATLANTA			ATLANTA			ATLANTA			ATLANTA											
Leasehold/Fee Simple		FEE SIMPLE			FEE SIMPLE			FEE SIMPLE			FEE SIMPLE											
Site		0.11+/- AC/TYP			0.05+-A/TYP			0.07+-A/TYP			0.1+-A/TYP											
View		TYPICAL			TYPICAL			TYPICAL			TYPICAL											
Design (Style)		2+ TRAD			2 TRAD			2 TRAD			2+ TRAD											
Quality of Construction		FRM/AVG			FRM/AVG			FRM/GD			FRM/GD			-10,000								
Actual Age		2007			2006			2003			2007											
Condition		AVG			GOOD			-15,000			AVG			GOOD			-15,000					
Above Grade		Total Bdrms. Baths			Total Bdrms. Baths			Total Bdrms. Baths			Total Bdrms. Baths											
Room Count		7 4 3.5			7 3 2.5			+3,000			7 4 3			+1,500			+1,500					
Gross Living Area		2,366 sq.ft.			1,872 sq.ft.			+7,400			1,920 sq.ft.			+6,700			2,830 sq.ft.			-7,000		
Basement & Finished Rooms Below Grade		CRAWL N/A			CRAWL N/A						CRAWL N/A			CRAWL N/A								
Functional Utility		AVERAGE			AVERAGE			AVERAGE			AVERAGE											
Heating/Cooling		FWA/CAC			FWA/CAC			FWA/CAC			FWA/CAC			FWA/CAC								
Energy Efficient Items		STANDARD			STANDARD			STANDARD			STANDARD			STANDARD								
Garage/Carport		NONE			NONE			NONE			NONE			NONE								
Porch/Patio/Deck		PCH,DK			PCH,DK,2BALC			-4,000			PCH,DK			PCH,DK,BALC			-2,000					
AMENITIES, ETC.		1 FP			NONE			+1,000			NONE			+1,000			1 FP					
AMENITIES, ETC.		NONE			NONE						NONE			NONE								
Net Adjustment (Total)					<input type="checkbox"/> + <input checked="" type="checkbox"/> - \$ -9,400			<input type="checkbox"/> + <input checked="" type="checkbox"/> - \$ -8,500			<input type="checkbox"/> + <input checked="" type="checkbox"/> - \$ -41,800											
Adjusted Sale Price of Comparables					Net Adj. 6.3 % Gross Adj. 21.5 % \$ 140,600			Net Adj. 5.5 % Gross Adj. 17.4 % \$ 146,200			Net Adj. 22.5 % Gross Adj. 24.1 % \$ 144,300											
SALES COMPARISON APPROACH													Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).									
ITEM		SUBJECT			COMPARABLE SALE # 4			COMPARABLE SALE # 5			COMPARABLE SALE # 6											
Date of Prior Sale/Transfer		SEE COMMENTS BELOW			07/01/2008			01/11/2007			08/06/2007											
Price of Prior Sale/Transfer					345,000			208,000			385,000											
Data Source(s)					DEED RECORDS			DEED RECORDS			DEED RECORDS											
Effective Date of Data Source(s)		12/08/2008			12/08/2008			12/08/2008			12/08/2008											
SALE HISTORY													Analysis of prior sale or transfer history of the subject property and comparable sales THE PRIOR SALE OR TRANSFER HISTORY OF THE SUBJECT AND COMPARABLES HAVE NO IMPACT ON THE APPRAISAL.									
ANALYSIS / COMMENTS													Analysis/Comments									

Uniform Residential Appraisal Report

301274
File # 08-5238PZ

FEATURE	SUBJECT	COMPARABLE SALE #7			COMPARABLE SALE #8			COMPARABLE SALE #9		
Address		813 FRASER ST SE ATLANTA, GA 30315			935 CONNALLY ST SE ATLANTA, GA 30315					
Proximity to Subject		0.27 miles SW			0.52 miles SE					
Sale Price	\$ 85,000	\$ 119,500			\$ 122,500			\$		
Sale Price/Gross Liv. Area	\$ 35.93 sq.ft.	\$ 62.76 sq.ft.			\$ 52.11 sq.ft.			\$ sq.ft.		
Data Source(s)		MLS, FMLS, REDI			FMLS, MLS, REDI					
Verification Source(s)		DOM 97			DOM 18					
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+	(-) \$ Adjustment	DESCRIPTION	+	(-) \$ Adjustment	DESCRIPTION	+	(-) \$ Adjustment
Sales or Financing		CONV/TYP			CONV/TYP					
Concessions		SLR PD \$0			SLR PD \$3871					
Date of Sale/Time		06/20/08		-8,400	10/10/08		-2,900			
Location	ATLANTA	ATLANTA			ATLANTA					
Leasehold/Fee Simple	FEE SIMPLE	FEE SIMPLE			FEE SIMPLE					
Site	0.11+/- AC/TYP	0.23+-A/TYP			0.09+-A/TYP					
View	TYPICAL	TYPICAL			TYPICAL					
Design (Style)	2+ TRAD	2 TRAD			2 TRAD					
Quality of Construction	FRM/AVG	FRM/AVG			FRM/GD		-10,000			
Actual Age	2007	2003			2007					
Condition	AVG	FAIR			FAIR					
Above Grade	Total Bdrms. Baths	Total Bdrms. Baths			Total Bdrms. Baths			Total Bdrms. Baths		
Room Count	7 4 3.5	6 3 2.5		+1,500	8 4 3					
Gross Living Area	2,366 sq.ft.	1,904 sq.ft.		+6,900	2,351 sq.ft.					
Basement & Finished Rooms Below Grade	CRAWL	952 SF TOT		-5,700	CRAWL					
Functional Utility	N/A	NONE			N/A					
Heating/Cooling	AVERAGE	AVERAGE			AVERAGE					
Energy Efficient Items	STANDARD	STANDARD			STANDARD					
Garage/Carport	STANDARD	STANDARD			STANDARD					
Porch/Patio/Deck	NONE	NONE			NONE					
AMENITIES, ETC.	PCH,DK	PCH,DK,BALC		-2,000	PCH,PAT,BALC		-2,000			
AMENITIES, ETC.	1 FP	1 FP			1 FP					
AMENITIES, ETC.	NONE	NONE			NONE					
Net Adjustment (Total)				\$ -9,700			\$ -16,900			\$
Adjusted Sale Price of Comparables		Net Adj. 8.1 %		\$ 109,800	Net Adj. 13.8 %		\$ 105,600	Gross Adj. %		\$
Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).										
ITEM	SUBJECT	COMPARABLE SALE #7			COMPARABLE SALE #8			COMPARABLE SALE #9		
Date of Prior Sale/Transfer	SEE COMMENTS BELOW	02/05/2008			08/05/2008					
Price of Prior Sale/Transfer		193,500			311,029					
Data Source(s)		DEED RECORDS			DEED RECORD					
Effective Date of Data Source(s)	12/08/2008	12/08/2008			12/08/2008					
Analysis of prior sale or transfer history of the subject property and comparable sales THE PRIOR SALE OR TRANSFER HISTORY OF THE SUBJECT AND COMPARABLES HAVE NO IMPACT ON THE APPRAISAL.										
Analysis/Comments										
"AS IS" COMPARABLE ADJUSTMENT COMMENTS: THE COMPS WERE ADJUSTED FOR THE DIFFERENCES NOTED. THE DATE OF SALE FOR THE COMPS MAY BE OVER THE RECOMMENDED GUIDELINE OF SIX MONTHS, BUT IS NOT OVER THE FNMA GUIDELINE OF ONE YEAR. THE COMPS MIGHT HAVE AN INFERIOR LOCATION AND WARRANT AN ADJUSTMENT DUE TO THE EXTERNAL OBSOLESCENCE. THE MARKET GRID WAS ADJUSTED FOR THE DIFFERENT MATERIALS USED, QUALITY OF WORKMANSHIP, AND EXTERIOR UPGRADES WHEN DEEMED NECESSARY. THE MARKET GRID WAS ADJUSTED FOR THE DIFFERENCE IN THE SUBJECTS AGE AND THE COMPS AGE WHEN DEEMED NECESSARY. THE COMPS "AS IS" CONDITION WAS DETERMINED BY MLS/FMLS COMMENTS, INFORMATION AVAILABLE, AND MARKET ANALYSIS OF OTHER SIMILAR CONDITION SALES. THE NET ADJUSTMENT OF 15%, THE GROSS ADJUSTMENT OF 25%, AND THE RECOMMENDED LINE ADJUSTMENT GUIDELINE OF 10% MAY BE EXCEEDED FOR THE "AS IS" COMPS DUE TO THE ADJUSTMENTS.										

APPRAISERS COMMENTS

File No. 08-5238PZ

Borrower/Client	[REDACTED]		
Property Address	[REDACTED]		
City	ATLANTA	County	FULTON
		State	GA
		Zip Code	30315-1222
Lender	MEDICI FINANCIAL		

THE SUBJECT'S VALUE EXCEEDS THE PREDOMINATE VALUE FOR THE AREA DUE TO ITS QUALITY, SIZE, AND LOCATION BUT IT'S VALUE IS SUPPORTED BY THE COMPS UTILIZED IN THE REPORT.

801 GRANT TER:

THE COMP WAS CONSIDERED IN BELOW AVERAGE CONDITION PER FMLS COMMENTS, EXTERIOR INSPECTION, AND PAIRED SALES ANALYSIS. THE COMMENTS INDICATED IT NEEDED "MINIMAL REPAIRS". IT WAS USED DUE TO ITS GLA. IT WAS A REO.

523 CONNALLY ST:

THE MARKET GRID WAS ADJUSTED FOR THE DIFFERENT MATERIALS USED, QUALITY OF WORKMANSHIP, AND EXTERIOR UPGRADES. THE QUALITY OF CONSTRUCTION WAS CONSIDERED GOOD. THE COMMENTS INDICATED IT HAD HARDWOODS, GRANITE, AND NEW APPLIANCES. IT WARRANTED AN ADJUSTMENT. THE COMP WAS CONSIDERED IN GOOD CONDITION PER FMLS COMMENTS, EXTERIOR INSPECTION, AND PAIRED SALES ANALYSIS. THE GROSS ADJUSTMENT OF 25% WAS EXCEEDED FOR THE COMP DUE TO THE QOC AND CONDITION ADJUSTMENTS. IT WAS A REO.

149 SOUTH AVE:

IT WAS CONSIDERED IN SIMILAR CONDITION AS THE SUBJECT. IT WAS A REO.

717 WOODSON ST:

THE COMP WAS CONSIDERED IN GOOD CONDITION PER FMLS COMMENTS, EXTERIOR INSPECTION, AND PAIRED SALES ANALYSIS. IT WAS A REO.

671 GRANT TER:

THE TYPICAL CONCESSION FOR LIST PRICE TO SELLING PRICE IN THE AREA IS 3% TO 10% AND AN ADJUSTMENT WAS WARRANTED. THE QUALITY OF CONSTRUCTION WAS CONSIDERED GOOD. THE COMMENTS INDICATED IT HAD SOLID SURFACE COUNTER TOPS. IT WARRANTED AN ADJUSTMENT. THE MARKET GRID WAS ADJUSTED FOR THE DIFFERENT MATERIALS USED, QUALITY OF WORKMANSHIP, AND EXTERIOR UPGRADES. IT IS A REO.

221 SOUTH AVE:

THE TYPICAL CONCESSION FOR LIST PRICE TO SELLING PRICE IN THE AREA IS 3% TO 10% AND AN ADJUSTMENT WAS WARRANTED. THE MARKET GRID WAS ADJUSTED FOR THE DIFFERENT MATERIALS USED, QUALITY OF WORKMANSHIP, AND EXTERIOR UPGRADES. THE QUALITY OF CONSTRUCTION WAS CONSIDERED GOOD. IT WARRANTED AN ADJUSTMENT. THE COMP WAS CONSIDERED IN GOOD CONDITION PER MLS COMMENTS, EXTERIOR INSPECTION, AND PAIRED SALES ANALYSIS. THE COMMENTS WERE "ALMOST NEW". THE NET ADJUSTMENT OF 15% WAS EXCEEDED FOR THE COMP DUE TO THE QOC AND CONDITION ADJUSTMENTS. IT IS A REO.

THE APPRAISED VALUE OF SUBJECT TO COMPLETE RENOVATION. THE QUALITY AND WORKMANSHIP MUST BE GOOD. RENOVATIONS MAY REQUIRE ITEMS AND COST NOT LISTED. FIGURES LISTED WERE PROVIDED FROM THE LENDER AND WERE BASED ON A CONTRACTORS ESTIMATES. THE SUBJECT IS APPRAISED UTILIZING A HYPOTHEICAL APPROACH THAT CONSIDERS IT EQUAL TO THE COMPARABLES. SEE ADDENDUM FOR REPAIR LIST.

ALL THE COMPARABLES APPEAR TO BE OCCUPIED PER EXTERIOR INSPECTION AND OTHER INFORMATION AVAILABLE TO APPRAISER, EXCEPT FOR THE LISTINGS.

LENDERS FOR THE COMPARABLES USED IN THIS REPORT:

- COMP#1 IS WELLS FARGO BK
- COMP#2 IS FLAGSTAR BK
- COMP#3 IS UNKNOWN
- COMP#4 IS UNKNOWN

PER STANDARDS RULE 2-3

I CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF:

- 1) MY ENGAGEMENT IN THIS ASSIGNMENT OR IN ANY FUTURE ASSIGNMENTS IS NOT CONTINGENT UPON DEVELOPING OR REPORTING PREDETERMINED RESULTS
- 2) MY ANALYSIS, OPINIONS AND CONCLUSIONS WERE DEVELOPED, AND THIS REPORT HAS BEEN PREPARED, IN CONFORMITY WITH THE GEORGIA REAL ESTATE APPRAISER CLASSIFICATION AND REGULATION ACT AND THE RULES AND REGULATIONS OF THE GEORGIA REAL ESTATE APPRAISERS BOARD AND USPAP.
- 3) NO ONE PROVIDED SIGNIFICANT PROFESSIONAL ASSISTANCE TO THE PERSON SIGNING THIS REPORT.

ADDITIONAL SCOPE OF WORK COMMENTS:


THE APPRAISER'S SCOPE OF WORK FOR THIS SUMMARY APPRAISAL IS TO UTILIZE THE SALES/MARKET APPROACH. THE COST AND INCOME APPROACHES ARE NOT REQUIRED TO OBTAIN CREDIBLE RESULTS.

BECAUSE OF THE AGE OF THE SUBJECT'S IMPROVEMENTS, THE COST APPROACH IS NOT A RELIABLE INDICATOR OF VALUE AND IS NOT APPLICABLE AND THEREFORE, WAS NOT DEVELOPED.
STANDARDS RULE 1-4B

BECAUSE THE SUBJECT'S NEIGHBORHOOD IS PRIMARILY OWNER OCCUPIED THE INCOME APPROACH IS NOT A RELIABLE INDICATOR OF VALUE AND IS NOT APPLICABLE AND THEREFORE, WAS NOT DEVELOPED.
STANDARDS RULE 1-4C

GEORGIA LAW, CHAPTER 539-3-02 EFFECTIVE 8/1/06

MY ANALYSIS, OPINIONS, AND CONCLUSIONS WERE DEVELOPED, AND THIS REPORT HAS BEEN PREPARED, IN CONFORMITY WITH THE GEORGIA REAL ESTATE APPRAISER CLASSIFICATION AND REGULATION ACT AND THE RULES AND REGULATIONS OF THE GEORGIA REAL ESTATE APPRAISERS BOARD.

Signature 	Signature _____
Name KENNETH F STOREY	Name _____
Date Signed 12/12/2008	Date Signed _____
State Certification # CR6275 State GA	State Certification # _____ State _____
Or State License # _____ State _____	Or State License # _____ State _____

APPRAISERS COMMENTS

File No. 08-5238PZ

Borrower/Client	[REDACTED]		
Property Address	[REDACTED]		
City	ATLANTA	County	FULTON
State	GA	Zip Code	30315-1222
Lender	MEDICI FINANCIAL		

THE SOURCE FOR THE DEFINITION OF MARKET VALUE IS AS DEFINED BY STANDARD INDUSTRY PUBLICATIONS.

CONDITIONS OF THE APPRAISAL / COMMENT ON APPRAISER CERTIFICATION #23:

THE INTENDED USER FOR THIS APPRAISAL REPORT IS THE LENDER/CLIENT. THE INTENDED USE IS TO EVALUATE THE PROPERTY THAT IS THE SUBJECT OF THIS APPRAISAL FOR A MORTGAGE FINANCE TRANSACTION, SUBJECT TO THE STATED SCOPE OF WORK, PURPOSE OF THE APPRAISAL, REPORTING REQUIREMENTS OF THIS APPRAISAL FORM AND DEFINATION OF MARKET VALUE. NO ADDITIONAL INTENDED USERS ARE IDENTIFIED BY THE APPRAISER.

GLA: THERE ARE VARIANCES IN SQUARE FOOTAGE BETWEEN THE SUBJECT AND THE COMPARABLE SALES. WHILE IT IS ALWAYS THE APPRAISERS GOAL TO OBTAIN THE MOST COMPARABLE SALES, THIS IS NOT ALWAYS POSSIBLE AND THE COMPARABLES HAVE BEEN ADJUSTED ACCORDINGLY. COMPARABLES WITH LESS THAN 100 SQUARE FOOT DIFFERENCE FROM THE SUBJECT HAVE NOT BEEN ADJUSTED.

COMMENTS REGARDING THE SUBJECT PROPERTY:

A FORMAL HOME INSPECTION REPORT FOR THE SUBJECT PROPERTY WAS NOT PROVIDED TO THE APPRAISER. THE APPRAISER ASSUMES ALL MECHANICAL, ELECTRICAL, PLUMBING SYSTEMS, AND HVAC COMPONENTS ARE IN ADEQUATE WORKING ORDER; AND THAT NO FOUNDATION OR STRUCTURAL PROBLEMS EXIST; AND THE ROOF SYSTEM IS IN ADEQUATE CONDITION. THE APPRAISER DOES NOT HAVE THE SKILL OR EXPERTISE NEEDED TO MAKE AN INSPECTION ON THESE ITEMS. IF THERE ARE ANY QUESTIONS CONCERNING THEIR CONDITION OR ADEQUACY, THEY SHOULD BE ANSWERED BY A STRUCTURAL ENGINEER OR SYSTEMS SPECIALIST.


THIS APPRAISAL REPORT SHOULD NOT BE RELIED UPON TO DISCLOSE ANY CONDITIONS PRESENT IN THE SUBJECT PROPERTY. THE APPRAISAL REPORT DOES NOT GUARANTEE THAT THE PROPERTY IS FREE OF DEFECTS. A PROFESSIONAL HOME INSPECTION IS RECOMMENDED ON ALL PROPERTY PURCHASE TRANSACTIONS.

COMMERCIAL AND/OR INDUSTRIAL DEVELOPMENT, IF ANY, WITHIN THE SUBJECT NEIGHBORHOOD IS TYPICALLY LOCATED PRIMARILY ALONG MAJOR TRAFFIC ARTERIES, AND DOES NOT ADVERSELY AFFECT THE SUBJECT PROPERTY'S VALUE OR MARKETABILITY.

SITE: A CURRENT SURVEY IS RECOMMENDED TO VERIFY LOT SITE AND FLOOD ZONE.

COMMENTS REGARDING MARKET CONDITIONS AND MORTGAGE FINANCING:

NO ADJUSTMENT FOR FINANCING WAS MADE UNLESS OTHERWISE STATED, AS THESE WERE CONSIDERED TO BE TYPICAL AND PREVALENT TRANSACTIONS IN THIS MARKET. IT WOULD APPEAR FROM THE ANALYSIS OF THE MARKET THAT THERE IS NOT A PREVALENCE OF LOAN DISCOUNTS, INTEREST BUYDOWNS AND/OR CONCESSIONS WHICH WOULD HAVE AN IMPACT ON THE SUBJECT PROPERTY'S MARKET VALUE, UNLESS OTHERWISE STATED IN THE REPORT.

Signature 	Signature _____
Name KENNETH F STOREY	Name _____
Date Signed 12/12/2008	Date Signed _____
State Certification # CR6275 State GA	State Certification # _____ State _____
Or State License # _____ State _____	Or State License # _____ State _____

REPAIR AND MAINTENANCE ADDENDUM

Borrower/Client					REO#
Property Address					
City	ATLANTA	County	FULTON	State	GA Zip Code 30315-1222
Lender	MEDICI FINANCIAL				

DESCRIPTION	AMOUNT
PLANS/PERMITS	150.00
PLUMBING ROUGH	750.00
ELECTRICAL	350.00
PLUMBING FINISH	750.00
HVAC	3,500.00
APPLIANCES	2,250.00
CARPENTRY/CLEAN/PAINT/MISC	2,660.00

- Interior Inspection
- Exterior Inspection

TOTAL AMOUNT OF RECOMMENDED REPAIRS \$ 10,410.00

ESTIMATED VALUE OF THE SUBJECT PROPERTY 'AS IS' \$ 108,000.00

ESTIMATED VALUE OF THE SUBJECT PROPERTY 'AS REPAIRED' \$ 140,000.00

Comments:

THE ESTIMATES WERE PROVIDED BY THE BUYER OR LENDER AND ARE NOT WARRANTED TO BE ACCURATE BY THE APPRAISER.

DB Comment: Eight pages of pictures of subject property and comparables, sketch of floorplan and area map have been omitted.

Market Conditions Addendum to the Appraisal Report

File No.

The purpose of this addendum is to provide the lender/client with a clear and accurate understanding of the market trends and conditions prevalent in the subject neighborhood. This is a required addendum for all appraisal reports with an effective date on or after April 1, 2009.

Property Address _____ City _____ State _____ ZIP Code _____
 Borrower _____

Instructions: The appraiser must use the information required on this form as the basis for his/her conclusions, and must provide support for those conclusions, regarding housing trends and overall market conditions as reported in the Neighborhood section of the appraisal report form. The appraiser must fill in all the information to the extent it is available and reliable and must provide analysis as indicated below. If any required data is unavailable or is considered unreliable, the appraiser must provide an explanation. It is recognized that not all data sources will be able to provide data for the shaded areas below; if it is available, however, the appraiser must include the data in the analysis. If data sources provide the required information as an average instead of the median, the appraiser should report the available figure and identify it as an average. Sales and listings must be properties that compete with the subject property, determined by applying the criteria that would be used by a prospective buyer of the subject property. The appraiser must explain any anomalies in the data, such as seasonal markets, new construction, foreclosures, etc.

Inventory Analysis		Prior 7-12 Months	Prior 4-6 Months	Current - 3 Months	Overall Trend		
Total # of Comparable Sales (Settled)					<input type="checkbox"/> Increasing	<input type="checkbox"/> Stable	<input type="checkbox"/> Declining
Absorption Rate (Total Sales/Months)					<input type="checkbox"/> Increasing	<input type="checkbox"/> Stable	<input type="checkbox"/> Declining
Total # of Comparable Active Listings					<input type="checkbox"/> Declining	<input type="checkbox"/> Stable	<input type="checkbox"/> Increasing
Months of Housing Supply (Total Listings/Ab.Rate)					<input type="checkbox"/> Declining	<input type="checkbox"/> Stable	<input type="checkbox"/> Increasing
Median Sale & List Price, DOM, Sale/List %		Prior 7-12 Months	Prior 4-6 Months	Current - 3 Months	Overall Trend		
Median Comparable Sale Price					<input type="checkbox"/> Increasing	<input type="checkbox"/> Stable	<input type="checkbox"/> Declining
Median Comparable Sales Days on Market					<input type="checkbox"/> Declining	<input type="checkbox"/> Stable	<input type="checkbox"/> Increasing
Median Comparable List Price					<input type="checkbox"/> Increasing	<input type="checkbox"/> Stable	<input type="checkbox"/> Declining
Median Comparable Listings Days on Market					<input type="checkbox"/> Declining	<input type="checkbox"/> Stable	<input type="checkbox"/> Increasing
Median Sale Price as % of List Price					<input type="checkbox"/> Increasing	<input type="checkbox"/> Stable	<input type="checkbox"/> Declining

SELLER- (developer, builder, etc.) paid financial assistance prevalent? Yes No

Explain in detail the seller concessions trends for the past 12 months (e.g., seller contributions increased from 3% to 5%, increasing use of buydowns, closing costs, condo fees, options, etc.).

Are foreclosure sales (REO sales) a factor in the market? Yes No If yes, explain (including the trends in listings and sales of foreclosed properties).

Cite data sources for above information.

Summarize the above information as support for your conclusions in the Neighborhood section of the appraisal report form. If you used any additional information, such as an analysis of pending sales and/or expired and withdrawn listings, to formulate your conclusions, provide both an explanation and support for your conclusions.

If the subject is a unit in a condominium or cooperative project, complete the following: Project Name: _____

Subject Project Data		Prior 7-12 Months	Prior 4-6 Months	Current - 3 Months	Overall Trend		
Total # of Comparable Sales (Settled)					<input type="checkbox"/> Increasing	<input type="checkbox"/> Stable	<input type="checkbox"/> Declining
Absorption Rate (Total Sales/Months)					<input type="checkbox"/> Increasing	<input type="checkbox"/> Stable	<input type="checkbox"/> Declining
Total # of Active Comparable Listings					<input type="checkbox"/> Declining	<input type="checkbox"/> Stable	<input type="checkbox"/> Increasing
Months of Unit Supply (Total Listings/Ab. Rate)					<input type="checkbox"/> Declining	<input type="checkbox"/> Stable	<input type="checkbox"/> Increasing

Are foreclosure sales (REO sales) a factor in the project? Yes No If yes, indicate the number of REO listings and explain the trends in listings and sales of foreclosed properties.

Summarize the above trends and address the impact on the subject unit and project.

Signature	Signature
Appraiser Name	Supervisory Appraiser Name
Company Name	Company Name
Company Address	Company Address
State License/Certification # _____ State _____	State License/Certification # _____ State _____
Email Address	Email Address

Evaluating the Neighborhood

As important as the property is as collateral, the neighborhood is arguably as important, if not more. When I first started investing in real estate, I heard that the three most important factors were,

“Location, location, location”

Like most investors, I believed that meant the property should be near shopping, schools, and employment centers. Over the years I have come to believe that what it really refers to is the kind of neighborhood in which the property is located.

**The three most important factors affecting the value of real estate are -
Location, Location, Location**

What this really means is -

**“I can do wonders with a house,
but I can’t do a doggone thing about the neighborhood!”**

I can’t stress this enough. You can have a great house in a bad neighborhood and not be able to do anything with it. The neighborhood determines the kind of people that will be attracted to it. Whatever kind of people you find in the neighborhood will be the same type of people who will rent or buy the subject property. This is the market.

I look for the following in a neighborhood:

- Clean streets.
- No cars up on blocks or inoperative vehicles in the front of properties.
- Some boats or other ‘toys’ that indicate there is some disposable income and/or credit.
- Pride of ownership in the properties in general. Cut lawns, not necessarily manicured. Bushes trimmed within last six months. Most homes with exterior paint, not peeling or extremely faded, and roofs in good condition.
- Majority of properties are occupied by homeowners rather than renters.

Generally, I am looking for a nice feel to the neighborhood. Since, in many cases, this is the first time I have seen the neighborhood, I can see how attractive it will be for someone coming in to buy or rent a house. The impression a neighborhood presents will be important not only to re-sales, but to the present occupants wanting to stay put even if they have financial problems. Be sure to check a couple of blocks in all directions.

The following are things that would bother me if I saw them in a neighborhood:

- Vehicles up on blocks and inoperative vehicles in the front yard.
- Several of the homes with burglar bars (unless the city generally has them).
- Any abandoned property that is open or boarded up.
- A large number of adults milling around in the middle of the day.
- Most vehicles are the ‘just-get-by’ type.
- Several bad roofs or roofs with tarps.

Demographics of the neighborhood are important. Hopefully, you are already familiar with the neighborhood. If not, you may use a site like city-data.com (also StatisticalAtlas.com and bestplaces.net) to see general housing and income information by zip code. Remember, there will be significant variation in demographics within a zip code that covers anywhere from tens to hundreds of square miles. Use only as an indicator of potential issues.

Does this mean that I never make loans in those areas that don't meet all my criteria? No, I do sometimes invest in those areas, but the investment-to-value must be excellent and, often, the interest rate and/or points are higher as well.

- 1. Remember, it's not the deals you pass up that cause you problems; it's the ones you got that you should have passed up!**
- 2. Always ask yourself, "Would I be just as happy buying the property today for the loan amount?"**

For item 2 above, your response should always be an emphatic "YES!" If you are hesitant at all, pass on the deal. You should approach deals with the following attitude.

**I make the least return when the borrower pays as agreed.
My best return is realized if the borrower defaults and I get the property.
(I want to be paid for handling problems!)**

With that attitude, you will not be hesitant to act when there is a default. Many lenders do not want the property and end up getting it anyway after months of trying to work with the borrower. By that time, the property is likely to be trashed or worse.

Don't get me wrong, I do try to work with a borrower if they contact me and offer a plan to get caught up. However, I act quickly when they do not pay as agreed.

*If you would not BUY the
property today for what you
are about to loan on it plus
any underlying debt,*

DON'T MAKE THE LOAN!

For our use

OK, you have approved the property and the borrower. Now, you may want to lock them in as well as cover upfront costs, particularly if this is a new borrower you have not worked with before.

COMMERCIAL LOAN EARNEST MONEY DEPOSIT

The following form can be used when you want to make sure a Borrower is committed to closing the loan you are agreeing to make. This earnest money is refunded to Borrower as part of closing. I developed this after I had a couple of loans that did not close because of problems on the Borrower side. I suggest you use this form and get a deposit that will cover the title search and attorney's costs, especially with new borrowers.

The amount required as earnest money is up to you. You should have no problem requiring \$250, but \$400 or \$500 would be better. For a large loan, you may want to require a couple of thousand dollars to assure the Borrower is committed to closing on the loan.

I require borrower to pay this earnest money to the closing attorney or title company, not to me personally. Since these funds are credited to the borrower at closing, they should not see this as a "fee" which it indeed is not.

FINAL COMMITMENT LETTER

This is a letter I use for third parties, such as for short sales or REO purchases where the bank requires proof of funds.

**COMMERCIAL LOAN
EARNEST MONEY DEPOSIT**

_____, hereinafter referred to as “Lender”, has agreed to consider the funding of a loan, subject to underwriting review and under certain terms and conditions, on property located at _____, for _____, hereafter referred to as “Borrower”.

Lender and Borrower agree that Lender has and will devote considerable time and expense to the processing and preparation of this loan. Therefore, Borrower is herewith depositing with Lender the sum of _____ (\$ _____) as earnest money that Borrower will close as agreed. Such closing shall be on or before _____. Such earnest money shall be applied to closing as a refund to Borrower.

If closing does not occur through no fault of the Lender or Borrower, then such earnest money shall be refunded to Borrower less any amounts due to third parties in connection with preparing to make this loan. Lender shall retain such earnest money as liquidated damages in the case where closing does not occur by the closing date through fault of the Borrower.

FOR YOUR USE ONLY

Borrower -

Lender -



THE OAKS GROUP, INC.

P.O. Box 505 • Marietta, GA 30061
(770) 428-7846 • Fax (678) 935-4439

June 5, 2019

FINAL COMMITMENT LETTER

Subject to the following conditions, we have reserved moneys and committed to fund a new loan not to exceed _____ dollars to _____ with collateral being first position on improved property located at _____

1. Clear and marketable title report showing collateral for our loan will be in a first position. A Mortgagee Title Policy from First American Title Company shall be provided to us at closing for 120% of the loan amount. Title work will be done by our attorney, Robert Witcher, and closing to be on or before thirty (30) days from date of this letter.
2. An insurance policy fully paid for one year, for replacement cost of the improvements on the property provided at closing.
3. Any outstanding liens paid in full from closing proceeds.
4. All property taxes current at time of closing.

This letter is conditional upon lender's detailed inspection, appraisal and final review of repairs to be done. If I can provide further information concerning this loan, please contact me at the above number.

Sincerely,

Dyches Boddiford – Pres.

kt/DB

A Private Financial Investment Company

ADDITIONAL FUNDING FOR LOANS

As a pre-requisite for this course, you were supposed to have enough funds of your own to make at least one hard money loan. But there will be times when you will run low on capital or have more deals than available funds. Also, you may well have friends and family that want you to put some of their money to work for them.

DO NOT POOL FUNDS! DO NOT ADVERTISE FOR CAPITAL! This is not only a securities law violation, but you can find yourself in trouble with your funders should things not go as expected. Not everyone, even family, has the same business instincts and expectations as you.

If you need additional funding on a loan, only put one person in the deal with you. Make sure they understand not only the upside, but potential downsides as well.

★ The best approach is for the other funder to make the first mortgage loan and you wrap their loan with your capital. That way, if something happens to you, they are protected. Their loan should be at a lower interest rate than your wrap. And since you are putting the deal together, you should get the points as well. Wrap documents are covered in the "Closing the Loan" section. You may also consider using an IRA or Solo 401K wrapping another funder's loan as an example. This approach can supercharge a retirement plan!

Don't be afraid that your borrower will go to the other funder next time. If the borrower is making checks to you each month, rarely in my experience do they even notice there is someone else involved. Even if your funder is approached for another loan, they should refer the borrower back to you. If they don't, that is the last deal you do with that funder.

OK, here is another approach I have used with long time financial friends only. It is a joint venture agreement found on the next page. Let me emphasize, this is an agreement intended to be used only among financial friends for funding a loan. I have used this many times when I needed someone else to put up a portion of the funds for a commercial loan. Be aware that it does not contain all the protections needed if you were to deal with a third party whom you do not know nor with whom you have not previously done business.

In any case, you should have a substantial investment in the loan—\$ 10,000 or 10% minimum position would likely counter any argument that you are essentially brokering someone else's money should you have only a small investment in the loan.

Both you and the other funder should show as holders of the Note and Security Instrument.

Co-Funders' Agreement

ONLY use with financial friends!

This Agreement dated _____ is between _____ (hereafter referred to as "**Primary Funder**") and The Oaks Group, Inc. (hereafter referred to as "**Secondary Funder**"). Primary Funder and Secondary Funder have agreed to fund a loan with the following terms:

Funds Required for Loan.....\$ _____
 Points.....\$ _____
 Loan amount including Points.....\$ _____
 Interest Rate..... %
 Monthly Payment (interest only rounded to next \$10.00).....\$ _____
 Term
 Collateral: _____
 Estimated Value: _____

Both funders get same interest rate. Use Wrap should different rates be desired.

Each party to this Agreement will provide the following funds:

Primary Funder.....\$ _____
 Secondary Funder.....\$ _____
 Total Funds Required for Loan\$ _____

The funds contributed by the parties to this Agreement shall earn interest at the Note rate shown above. As Secondary Funder desires that Primary Funder be paid first, it is agreed that Primary Funder will receive the full Monthly Payment as shown above. Any amount over and above the interest due to the Primary Funder will be used by Primary Funder to reduce his/her principal balance. Secondary Funder will not receive any payment until the Primary Funder's portion of the loan is paid in full. Secondary Funder reserves the right at any time to pay off Primary Funder in full and upon being so paid off, Primary Funder agrees to release any claim to the remaining proceeds from the loan by signing a satisfaction or assignment provided by the Secondary Funder.

At such time as the Borrower pays off the loan, Primary Funder shall first receive the balance owed on his/her portion of the loan including any accrued interest. Primary Funder shall receive at least two (2) month's interest during course of loan. Secondary Funder shall then receive the remaining funds representing his contribution to the loan, as outlined above, plus any and all points and fees charged on the full loan amount.

Secondary Funder agrees to service the loan, maintain an amortization schedule for all parties, provide end-of-year tax reporting, and provide a payoff statement when requested. In the event of a foreclosure, Secondary Funder will engage an attorney to do the foreclosure and provide direction and information as necessary. Upon sale of the property to a third party, either at foreclosure or afterward, Primary Funder shall first be paid his/her balance with accrued interest.

Primary Funder: _____ (Seal)

Checks to be made payable to: _____

Address to send checks: _____

The Oaks Group, Inc.

Secondary Funder: _____ (Seal)

Dyches Boddiford - President

LOAN INFORMATION FORMS FOR FILE TO SET UP BEFORE CLOSING

One of the following forms should be used in the front of your loan file to summarize loan and borrower information. Of course, you can develop your own as well.

LOAN INFORMATION SHEET

The Loan Information sheet is a summary of the loan I am making for my file to keep the pertinent information in one spot.

LENDER'S MORTGAGE AND BORROWER INFORMATION SHEET

This is a form developed by Bob Witcher based on his experience of information lenders wish they had gotten. As with the Loan Information Sheet above, you should try to fill out as much as you can before the closing and request the additional information at the closing. The attorney can get this information for you if they are notified ahead of time. Therefore, you should make the request a part of the closing package with instructions that you send to the attorney for closing.

Received for file: Closing Protection Letter ___/___/___ Signed Note ___/___/___ Insurance Policy ___/___/___
Recorded Mortg/DOT/DSD ___/___/___ Mortgagee Title Policy – Commitment ___/___/___ – Title Policy ___/___/___

Information

Property: _____ Insurance: _____

_____ Agent: _____

County: _____ Phone: _____

Borrower: _____ Contact: _____

(Legal Name) _____ Phone: _____

Address: _____ Tax ID: _____

Lender: _____ Phone: _____

Address: _____ Email: _____

Interest Rate..... _____ Term _____

Payment _____ Balloon Amount _____

Origination Fee..... _____ Loan Amount..... _____

Appraisal Fee..... _____ Processing Fee..... _____

Application Fee _____ Position..... _____

Credit Report Fee _____

Due on Sale: _____

Release Clause: _____

Prepayment Penalty: _____

Late Fee: _____

Personal Liability: _____

Other: _____

LENDER'S MORTGAGE AND BORROWER INFORMATION SHEET

1. NAME OF BORROWER _____

2. ADDRESS OF BORROWER _____

3. LOCATION OF COLLATERAL _____

4. BORROWER INFORMATION

A. CURRENT PHYSICAL ADDRESS _____

B. CURRENT MAILING ADDRESS _____

C. TELEPHONE NO.'S AND E-MAIL OF BORROWER
WORK _____ HOME _____
CELL _____ E-MAIL _____

D. BORROWER'S TAX I.D. NO. _____

E. IF BORROWER IS ___ CORP OR ___ LLC OR ___ TRUST, THEN

a. Names of principals in company, their addresses & tax (social security) no's

b. Basic info on corp., LLC, or trust (where, when registered, who are the officers, managers, trustees & their addresses)

For Your Use Only

F. BORROWER'S CONTACT PERSONS (names & addresses & phone no's—may include friends & relatives)

5. PROPERTY INFORMATION

A. ESTIMATED VALUE \$ _____

B. TYPE OF PROPERTY

___ Single or ___ Multi-family

___ Borrower's home or ___ Quick-Turn or ___ Rental, if rental, attach copy of current leases

C. TAX INFORMATION

Amount of taxes \$ _____

Tax ID or Bill no. _____

Address & phone no. of tax collector _____

D. INSURANCE INFORMATION

Received copy of insurance binder _____

Amount of insurance (is it enough?) \$ _____

Name & address of insurance co. _____

Insurance in same name as property owner? _____

All lien holders (including me) shown as loss payees on policy?

Premium amt. \$ _____ Paid current? _____ Renewal Date _____

E. LIEN POSITION _____

PRIOR LIENS:

1st lien holder name: _____

Address & ph. no. _____

Loan no. _____

2nd lien holder name: _____

Address & ph. no. _____

Loan no. _____

3rd lien holder (if I am not at least the 3rd position lien holder, then the name & address of a good psychiatrist should be inserted here)

For Your Use Only

FAQ for Evaluating the Loan

Q: I have a contractor/investor who has presented a deal to me where he borrows the money (60-65% of ARV, paid out of escrow as he completes renovation). There are no upfront or periodic payments prior to closing out of the property, but a flat 20% return on the money at the end. Say an \$80,000 purchase and renovation on a \$130,000 ARV property and he closes me out with a lump sum of \$96,000 at the end. The end must be in a prescribed period of time...9 months, or a pre-executed quit claim deed transfers the property in whole to me. What do you think of this model?

A: Works great IF the return is made within a year (20%), but if in two years the return would only be 9-10%. Also, no payments in the meantime does not provide pressure on borrower to complete project in a timely manner. I would prefer a participation loan where a minimum payment is made each month with a lump sum bonus at the payoff. Also, the pre-existing quit claim deed signed at the beginning of the loan and filed on default could be a legal problem later, if challenged.

Q: Why should I stay away from making small loans, especially if they can provide a higher interest rate?

A: First, many States have regulations about small loans that do not exist for larger loans. Historically, these regulations are designed to prevent small-time loan sharking, but they can affect the legitimate lender as well. Also, many States (including Georgia) have specific laws limiting the amount of collection costs a lender can charge. On a small loan, the actual costs of collection, including attorney's fees, may far exceed the statutory limitations. Finally, simply managing a small loan with small payments may not be worth the trouble.

Q: What should be the length of my loan term?

A: This depends on your own personal investment needs and the needs of the borrower. For example, if you are making a real estate loan to another investor who plans to re-sell the secured property quickly, then a one-year loan should be more than sufficient. Another factor in determining the length of the loan may be related to State tax laws. For instance, Georgia has an intangible tax on long-term loans. "Long-term" is defined as being any loan of three years or longer. Therefore, if a borrower needs a loan for 40 months, it may be more sensible to make the loan for only 35 months and avoid the intangible tax. Of course, if the borrower really needs the money for 40 months, and you can pass on the cost of the tax to the borrower, then it really becomes the borrower's choice as to the length of the loan.

Q: What do you think about loans in which the interest simply accrues until the maturity date?

A: Generally, we do not favor this type of loan except in very special circumstances. If monthly interest-only payments are required, then the lender gets a better annual yield because the interest is coming back monthly and can then earn additional interest on other investments. Also, if the borrower is going to have difficulty repaying the loan, a failure to make monthly interest payments gives the lender some advance indication that the borrower may be having additional financial difficulties.

Q: Can I make loans through my IRA?

A: Yes. If you have a Self-Directed IRA or 401k, and the company managing your account has no objections, then there should be no problem with this.

Q: Are there any special problems with construction loans?

A: Of course. To make a safe and successful construction loan, the lender will need to have some procedure for advancing funds at certain times during the construction process. Also, the lender needs to have a system of always "staying ahead" of the construction improvements. The improvements should always increase the value for the same or greater amount than the draws being advanced by the lender. Simply stated, the lender needs to maintain an equity position that would allow the lender to go in, finish the job, and still have adequate collateral if anything goes wrong. If the lender does not have a good feel for construction and renovation, then the lender may wish to employ the services of a professional inspector and charge an inspection fee as part of the loan process. Construction loans can be quite profitable, and private builder-investors often request them from private lenders. However, a private lender making these loans should have a knowledge of the construction process, hire a professional inspector, or partner the loan with another lender who has this knowledge.

Q: If I am making a real estate loan, do I need to be concerned about zoning?

A: Yes. Typically, a title insurance policy will not cover zoning. A commercial mortgage lender will almost always have a formal appraisal which will indicate the zoning of the property and the lender can check the appraisal report against the information it has from the borrower. As a private lender, you may not have a formal appraisal report, and you may need to verify the zoning independently. Obviously, if you are making a loan on a single-family home in a recent subdivision of single-family homes, then zoning should not be a serious question. On the other hand, if you are making a construction loan to an investor who is going to "gut" and re-build a triplex, then you should make certain that the neighborhood is zoned for this type of multiple-family dwelling.

Q: Are there any special requirements for hard money lending on Condominiums?

A: A clear understanding of your State's condominium laws is necessary. Some states give precedence to certain liens and condofees over a lender's mortgage. Also, a condo association can vote to limit the number of rentals in the complex, possibly frustrating your borrower's plans. In short, I don't like someone else voting on my money, so I rarely loan on condos.

Q: Do you ever run a background check on a new buyer? Like criminal record, past lawsuits, etc.

A: It is a good idea to do a background check when you are considering a new borrower. It is best to know with whom you are entrusting your capital. You should only deal with ethical people. A background check will give you a good idea if you will have a problems with the borrower.

Q: Do you run credit checks on borrowers?

A: Just like a background check of a new borrower, a credit check will indicate how financially solvent they are.

Q: Pricing: How do you discover market and competitor rates/terms for hard money lenders in your area?

A: Talking to other lenders and picking up flyers at real estate club meetings will help. Be aware of local terms, but concentrate on building a relationship with borrowers that keeps them coming back to you even if your rates are not the best available.

Q: If Lender is an LLC doing an out of state loan, does the LLC need to be registered as Foreign Entity?

A: Most states do not require an out of state entity to register as a foreign entity if it simply holds a loan secured by property in the state. However, if the entity advertises for loans in that state, then it must register. Since the answer here is state specific, you need to contact an attorney for details.

Q: Do you require borrowers to have not only Builders' Risk or Dwelling Policy, but to also purchase liability coverage?

A: Liability only protects the borrower, not the lender. However, you should encourage your borrower to get such coverage for their own protection. Indirectly, this may help you as well.

Q: When do you require a survey?

A: If the corners are obvious such as a lot in a subdivision, I do not require a survey. If the loan collateral is acreage where there is a question of corners, easements or other issues that could be cleared up by a survey, I require one. If you do require a survey, make sure the surveyor is on the title insurance company's approved list. By doing so, you can get the survey exception on the title insurance removed.

Q: Do you require a Phase 1 and 2 on commercial loans?

A: Commercial property loans require common sense and knowledge considerations of this type of property. If a Phase 1 or 2 environmental assessment is required, the borrower is responsible for all costs and orders the assessment.

Q: When you create a wrap with some of your money, what's your obligation to inform the underlying lender of your WRAP terms which may be a higher ROI in your WRAP than the investor's?

A: When you present the deal to the potential underlying lender, disclose all terms of the wrap. Point out that you control the loans and if they are not interested in the underlying terms offered, you will simply offer the opportunity to another lender. You brought the loan to them and will handle the servicing as well as solving any problems that arise. Therefore, you should get a higher rate of return.

Q: Is there a free way to access information on property taxes and deed filings?

A: A largely free way to get info is www.searchsystems.net.