

COLORADO AND FEDERAL “PREDATORY LENDING” LAWS

	Federal Home Ownership & Equity Protection Act (HOEPA)¹	Colorado Consumer Equity Protection Act²
Coverage	Consumer credit secured by principal dwelling. Exempts purchase money acquisition & initial construction loans & reverse mortgages.	Same as HOEPA but property must be located in Colorado.
Open-end included	Exempt unless structured as open-end to evade law [open-end loans were exempt]	Same as HOEPA
Rate Trigger (Annual Percentage Rate)	More than 8 points over comparable Treasury securities for 1 st lien loans; more than 10 points for junior lien loans [was 10 points for all loans] ³	Same as HOEPA
Points/Fees Trigger (paid at or before consummation)	Greater of 8% of total loan amount or approximately \$488 ⁴ ; trigger includes credit insurance premiums or similar debt cancellation product costs whether paid in cash or financed [credit insurance premiums & debt cancellation costs were not included] and all compensation paid to mortgage brokers	Same as HOEPA except that points & fees percentage trigger lowered to 6% of total loan amount.
Prepayment Penalties	Allowed in first 5 years of loan; amount unlimited; not allowed if loan prepaid by refinancing with same lender or affiliate; at consummation, consumer’s total monthly debts (including §32 payment) must be ≤ 50% of consumer’s monthly gross income (verified by signed financial statement, credit report, and consumer’s pay stubs).	Allowed in first 3 years of loan; amount limited to ≤ 6 mos. interest; must offer choice of loan with and without penalty [sample disclosure in § 5-3.5-102(1)(g)(III)]; not allowed if refinance with same lender, on partial prepayment, or on UCCC consumer loans.
Financing of Single Premium Credit Insurance	Yes, but included in points/fees trigger, even if paid in cash [was no restriction; excluded from finance charge if lender complied with Reg. Z § 226.4(d)(1)]	Not allowed (including debt cancellation contracts, credit property insurance, and non-credit insurance) but monthly premiums and fees may be financed

¹ The federal Home Ownership and Equity Protection Act is implemented through the Federal Reserve Board’s Regulation Z. This summary includes the October 2002 amendments to Regulation Z issued in December 2001. Language in brackets reflects the prior version of Regulation Z. These descriptions are based on the law, federal Regulation Z, and Federal Reserve Board Staff Commentary. Copies of these documents may be available at law libraries, some public libraries, from financial regulators, and at www.ftc.gov/bcp/menu-credit.htm. Scroll to “Rules and Acts” and select the requested law and applicable regulations.

² The act was introduced as HB 02-1259 and is found at §§ 5-3.5-101 to 5-3.5-303, 38-40-105, 6-1-105(1)(u), & 6-1-110(3), C.R.S. It was signed into law on June 7, 2002. To obtain a copy of the law, view www.colorado.gov/government.htm. Scroll to Colorado Constitution and Statutes, click on “Colorado Revised Statutes” and then enter the statutory citations listed here.

³ The yield on comparable Treasury securities is published in Statistical Release H.15, “Selected Interest Rates.” It is available at www.federalreserve.gov/releases, by calling the Federal Reserve Board at (202) 452-3244, and in major financial and metropolitan newspapers.

⁴ This amount is subject to annual adjustment by the Federal Reserve Board based on changes in the Consumer Price Index and is \$488 as of January 1, 2003.

	HOEPA	Colorado Consumer Equity Protection Act
“Flipping”/ Refinancing Within One Year Period	Only allowed within 1 year by same lender or assignee if in consumer’s interest (consider whether fees & charges commensurate with amount of new money advanced and whether charges are bona fide and reasonable). Lender cannot evade provision by refinancing its loans through affiliates, arrangements with unaffiliated lenders, or modifying loan (whether or not underlying loan is extinguished) and charging a fee.	Same as HOEPA, plus no refi of special low or zero rate non-profit loans within first 10 years of loan without holder’s written consent. Low-rate loans defined as being 2 percentage points or more below yield on comparable Treasury securities.
Suggest Default	Not addressed	No
Call/Due on Demand Provision	Not allowed except for consumer fraud or material misrepresentation, consumer fails to meet repayment terms, or consumer’s action or inaction impairs collateral securing loan. HOEPA does not override state laws that require lender to provide right to cure or impose other duties prior to acceleration.	Same as HOEPA, plus allowed for due-on-sale provision or if lender in good faith believes its position is materially insecure or impaired
Balloon Payments	Allowed if loan term is more than 5 years. No restriction on bridge loan with term of 1 year or less connected to acquisition or construction loan.	Allowed if balloon is due no less than 120 months after consummation (after 10 years). No restriction on balloons for bridge loans of 18 months or less connected with acquisition or construction loan. No restriction if loan payment schedule adjusted for seasonal or irregular income of consumer
Negative Amortization	Not allowed (except for reasonable increases due to legal obligations unrelated to payment schedule such as addition of property insurance by lender if consumer fails to obtain it.)	Not allowed (except upon consumer’s request for deferral or forbearance)
Default Rate of Interest	Not allowed (except for rate changes per legal obligations in a variable or adjustable rate transaction)	Not allowed (except for periodic interest rate changes in variable rate loan consistent with loan agreement)
Advance Payments	No more than 2 periodic payments may be consolidated and paid from loan proceeds.	Not allowed to pay any periodic payments in advance from loan proceeds

	HOEPA	Colorado Consumer Equity Protection Act
Advisory Notice	At least 3 business days before closing provide written notice that consumer may cancel loan, could lose home, APR, payment amount, and for refinances, total amount borrowed including if applicable, premiums and costs for optional credit insurance and debt cancellation within tolerance of \$100 above or below amount borrowed [amount borrowed disclosure was not required].	At least 3 business days before closing provide written notice that consumer may cancel loan, could lose home, is responsible for paying property taxes and insurance, and should continue to make regular payments to avoid negative credit rating (notice printed in §5-3.5-103(1)(a)(I), C.R.S.).
Repayment Ability	Must determine and verify; cannot consider home's equity ; prohibited from pattern/practice of extending credit without regard to ability to repay; must consider consumer's current & expected income, current obligations, and employment. Presumption of violation if lender makes loans without verifying & documenting repayment ability by reviewing credit reports, tax returns, payment records, and/or pension statements – effectively prohibiting stated income loans. For discounted initial rates, consider repayment ability based on non-discounted or fully-indexed rate at consummation. [lender only had to consider employment status, could consider unverified income if lender had reasonable basis to believe that income existed and would support loan]	Must determine and verify, can consider home's equity if also consider repayment ability, consumer's current & expected income, current obligations, and employment. Presumption of violation if lender makes loans without verifying & documenting repayment ability. Stated income: repayment ability may not be based solely on stated income but may include other information that lender customarily obtains.
Payment to Home Improvement Contractors Alone	Not allowed. OK if paid by check payable to consumer, jointly to consumer & contractor, or at consumer's request to 3d party escrow agent per written agreement.	No – same as HOEPA.
Mandatory Arbitration Clauses	Not addressed. See Federal Arbitration Act and related case law	Not allowed unless complies with rules of nationally recognized arbitration association, does not require arbitration in “distant forum,” lender required to pay at least 50% of any filing fee and all of first day's fee.
Payoff Quotes/Releases Upon Prepayment	Not addressed	Must provide payoff quote at no charge within 5 business days after written request. No charge for release upon prepayment.

	HOEPA	Colorado Consumer Equity Protection Act
Credit Reports	Not addressed	Must report favorable & unfavorable info quarterly unless held for less than 90 days or a dispute exists
Interest Refund Method	Actuarial or more favorable method (to consumer) for interest rebate due to acceleration on default.	Not addressed. If UCCC consumer loan, must use actuarial or more favorable method.
Damages/Enforcement	Administrative remedies by federal agencies; AG has 3 year statute of limitations if obtains permission of federal regulator; civil actual damages & all finance charges and fees paid by consumer; 1 year statute of limitations from date of occurrence; extended right to rescind; class action cap of \$1/2 million or 1% net worth; lender may correct upon self-discovery w/out liability	Attorney General and consumers have same remedies as under HOEPA, including civil damages, & class actions, rescission; lenders have same rights as under HOEPA to correct errors upon self-discovery and apply bona fide error defense. Because law is a new article of the UCCC, administrator of UCCC may enforce using existing UCCC remedies.
Assignee Liability	Yes, unless reasonable person would not know from loan documents that loan was covered by HOEPA; mortgage must contain notice of assignee liability.	Yes, same as HOEPA
Preemption	All lenders must comply with HOEPA	If CCEPA is preempted as to national banks and federal savings & loans, then it is also inapplicable to their operating subsidiaries and to state banks and their operating subsidiaries.
Local Ordinances	Not addressed; preempts laws providing fewer protections	Prohibits political subdivisions from passing ordinances & resolutions “pertaining to lending activities.”
Effective Date	October 1, 1995 with new amendments mandatory as of October 1, 2002	January 1, 2003 for sections described above; new section prohibiting deceptive advertising, false statements, & misrepresentations, and allowing courts to invalidate mortgage if unconscionable effective June 7, 2002.

Note: language in bold-face type shows differences between federal and state law where federal law arguably provides greater consumer protections. In these areas, federal law should be followed to avoid liability.

This document is a summary and does not include all provisions of the Home Ownership Equity and Protection Act, the Truth in Lending Act, Regulation Z, the Consumer Equity Protection Act, and the Uniform Consumer Credit Code. In particular, it does not describe the deceptive mortgage practices prohibited in § 38-40-105 and the applicable remedies. The actual laws and regulations referenced should be reviewed for a complete understanding of the law. This document is not intended as legal advice. Contact your attorney for complete compliance information.

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