



PHIL BREDESEN
GOVERNOR

STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS
SUITE 400, NASHVILLE CITY CENTER
511 UNION STREET
NASHVILLE, TENNESSEE 37219
(615) 741-2236 FAX (615) 741-2883

GREG GONZALES
ACTING COMMISSIONER

MEMORANDUM

To: Mortgage and TILT Licensees/Registrants

From: *GG* Greg Gonzales, Commissioner

Subject: Tennessee Home Loan Protection Act, Public Chapter 801

Date: September 11, 2006

The Tennessee Home Loan Protection Act ("THLPA") was passed by the General Assembly on May 10, 2006 and signed by Governor Bredesen on May 26, 2006. The THLPA which takes effect on January 1, 2007 places specific limitations and restrictions on the making of high-cost home loans. This memorandum is intended to provide the industry with a brief outline of some of the significant provisions of the THLPA.

❖ **High-Cost Home Loan Defined (THLPA, Section 2):** Excludes residential mortgage transactions as defined in 12 C.F.R. Section 226.2(a)(24), reverse mortgage transactions as defined in Title 47, Chapter 30 of the Tennessee Code Annotated, loans insured by/sold to a government agency, and construction loans as defined in the THLPA, as well as open-end loans as defined in 12 C.F.R. Section 226.2(a)(20) unless used to evade the THLPA. Otherwise, applies to closed-end consumer home loans⁽¹⁾ that meet or exceed one of the following thresholds:

- *Rate:* Same as the Federal Home Ownership and Equity Protection Act ("HOEPA") and 12 C.F.R. 226.32 (a)(1)(i).
- *Points and Fees:* for loans more than \$30,000 - exceed the greater of 5% of total loan amount or \$2,400; for loans \$30,000 or less - exceed 8%. (Points and Fees defined: Generally, similar to Federal HOEPA, see 12 C.F.R. 226.32 (b); but, excludes: 2 bona fide loan discount points as defined in the THLPA and real-estate related fees as defined in 12 C.F.R. 226.4 (c)(7) paid to a 3rd party or an affiliate if reasonable.)

❖ **Prohibitions and Limitations on High-Cost Home Loans (THLPA, Section 3):**

- 1) Lender⁽²⁾ shall not encourage default or payment skipping.

- 2) Borrower is entitled to receive 2 pay-off statements free of charge within a 12 month period. A lender may charge a reasonable fee for additional requests.
- 3) Lender may charge actual cost for recording release.
- 4) Lender shall not knowingly or intentionally make a high-cost home loan within 30 months of existing home loan where new loan has no reasonable benefit to the borrower considering all the circumstances.
- 5) Permits financing of single premium credit insurance where total benefits payable from all policies combined do not exceed \$50,000, the principal amount of financed premiums is repayable during the policy term and the amounts payable under a credit life insurance policy shall not be more than 103 % on the unamortized principal balance.
- 6) Lender must reasonably believe that borrower will be able to repay the loan considering borrower's obligations other than borrower's equity in home. A borrower shall be deemed to be able to repay the loan if the borrower's total monthly debt at closing, including amounts owed under the loan, do not exceed 50% of borrower's monthly gross income.
- 7) Lender shall not directly or indirectly finance points and fees in excess of the greater of 3% or \$1,500 if total loan amount is more than \$30,000 or 5% if total loan amount is \$30,000 or less. Registrants under Tennessee's Industrial Loan and Thrift Companies, Title 45, Chapter 5, may finance as points and fees an amount not to exceed the charges allowed pursuant to § 45-5-403(a)(1)(A) on loans made under the provisions of Title 45, Chapter 5.
- 8) Prohibits charging of points and fees in connection with refinancing an existing high-cost home loan with a high-cost home loan where loan is with the same lender or affiliate of the lender. This prohibition does not apply to additional proceeds, as defined in the THLPA.
- 9) Limits prepayment penalties in excess of 2% in the first 24 months; No prepayment penalties can be charged where refinancing is with the same lender or affiliate. This provision sets forth the permissible refund method.
- 10) Prohibits balloon payments.
- 11) Prohibits negative amortization. Payment schedule cannot cause the principal to increase.
- 12) Lender cannot accelerate the debt in its sole discretion.
- 13) Lender cannot require more than two payments to be consolidated and paid in advance from loan proceeds.
- 14) Interest rate cannot be increased after the borrower defaults.
- 15) Late payment fees may not exceed the greater of 5% or \$15. They may be only assessed for a payment past due 10 days or more.

- 16) Contains a notice which must be given to the borrower, at least 3 business days before closing, which tells borrower to shop around, that the lender will have lien on home and that borrower can obtain list of credit counselors from HUD or TDFI.
- 17) Requires a redisclosure, at least 1 business day before closing, when material changes in interest rate, term, type of loan, or settlement charges are made. Defines "materially different settlement charges" as 15% or greater. Establishes specified locations for high cost home loan closings.
- 18) Requires quarterly reporting of favorable and unfavorable payment history information to a nationally recognized consumer credit reporting agency.
- 19) Requires notation on mortgage or deed of trust and note that this instrument is a high-cost home loan.
- 20) Cannot leave material terms blank on any loan related document. Cannot modify a loan document after closing without consent in writing of persons affected, or by valid power of attorney.
- 21) Must provide borrower with a separate document listing 3rd party non-profit credit counselors not later than the time that the good faith estimate is provided.

- ❖ **Borrowers Right to Cure (THLPA, Section 4):** affords borrowers the right to cure a default on a high-cost home loan up to 3 days before foreclosure; borrower may exercise once in a 12-month period. Requires that actual notice of right to cure be sent to borrower.
- ❖ **Assignee and successor liability (THLPA, Section 5):** Applies only to high-cost home loans. Makes a purchaser or assignee liable for any claims or defenses that could be raised against the original lender unless the purchaser or assignee can show the exercise of due diligence.
- ❖ **Public Enforcement (THLPA, Section 9):** Grants Tennessee Department of Financial Institutions regulatory authority, interpretive and rulemaking authority; examination authority with respect to persons subject to TDFI's regulatory jurisdiction as well as persons reasonably suspected of being subject to TDFI's regulatory jurisdiction; authority to issue subpoenas and require the production of documents; authority to issue cease and desist orders, assess civil money penalties up to \$10,000 per violation, require restitution to borrowers and suspend, revoke or refuse to renew a license; authority to bar individuals from the industry; and bring actions in chancery court. State Attorney General's Office may also bring an action for violations of the THLPA.
- ❖ **Private Right of Action (THLPA, Section 11):** Creates a private right of action for violations of the THLPA; contains a 3 year statute of limitations; allows for actual damages, statutory damages for willful or intentional violations, punitive damages for malicious or reckless violations as well as costs and reasonable attorney's fees; and, requires notice of any civil action under the THLPA be given to the Department of Financial Institutions.
- ❖ **Preemption (THLPA, Section 13):** Preempted to the extent it is in conflict with or inconsistent with the National Bank Act, the Homeowner's Loan Act, the Federal Credit

Union Act or regulations issued by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation or the National Credit Union Administration, and as interpreted by the federal courts, with respect to national and state banks, trust companies, federal and state savings institutions, and federal and state credit unions and their operating subsidiaries.

This memorandum is for informational purposes only and is not meant to be exhaustive in nature or all-inclusive with regard to the provisions of the THLPA. You should read the THLPA in its entirety. A link to the THLPA and additional information pertinent to the implementation of the THLPA is posted on the Department's website at: <http://state.tn.us/tdfi/>. The Department will be conducting THLPA informational workshops October 17-19, 2006 in Memphis, Nashville and Knoxville, respectively.

In addition, for purposes of gathering statistics on high cost loans, enclosed you will find a short survey. Please complete this survey and return to the Department by October 1, 2006.

¹ Applies to home loans whose principal amount does not exceed the lesser of the conforming loan size limit for a single-family dwelling as established by the federal national mortgage association, or \$350,000. See, THLPA, Section 2(10)(A).

² For purposes of the THLPA, "Lender" shall mean "lender" as defined in 24 CFR 3500.2. "Lender" shall also mean a "mortgage broker" as defined in Tennessee Code Annotated, Section 45-13-102(12). See, THLPA, Section 2(8).