

By: Dukes

H.B. No. 1205

A BILL TO BE ENTITLED

AN ACT

relating to certain practices in connection with home loans.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 343.104, Finance Code, is amended to read as follows:

Sec. 343.104. RESTRICTIONS ON SINGLE PREMIUM CREDIT INSURANCE AND DEBT CANCELLATION OR SUSPENSION AGREEMENT. (a) A lender may not require or allow the advance collection of a premium for ~~[offer any individual or group]~~ credit life, disability, ~~[or]~~ unemployment, or property insurance on a [prepaid] single premium basis, or require or allow the advance collection of a fee for a debt cancellation or suspension agreement, in conjunction with a home loan, regardless of whether the premium or fee is paid directly or financed as part of the loan. ~~[unless the following notice is provided to each applicant for the loan by hand delivery or mail to the applicant not later than the third business day after the date the applicant's application for a home loan is received.~~

~~[INSURANCE NOTICE TO APPLICANT~~

~~[You may elect to purchase credit life, disability, or involuntary unemployment insurance in conjunction with this mortgage loan. If you elect to purchase this insurance coverage, you may pay for it either on a monthly premium basis or with a single premium payment at the time the lender closes this loan. If you choose the single premium payment, the cost of the premium will be financed at the~~

1 ~~interest rate provided for in the mortgage loan.~~

2 ~~[This insurance is NOT required as a condition of closing the~~
3 ~~mortgage loan and will be included with the loan only at your~~
4 ~~request.~~

5 ~~[You have the right to cancel this credit insurance once purchased.~~
6 ~~If you cancel it within 30 days of the date of your loan, you will~~
7 ~~receive either a full refund or a credit against your loan account.~~

8 ~~If you cancel this insurance at any other time, you will receive~~
9 ~~either a refund or credit against your loan account of any unearned~~
10 ~~premium. YOU MUST CANCEL WITHIN 30 DAYS OF THE DATE OF THE LOAN TO~~
11 ~~RECEIVE A FULL REFUND OR CREDIT.~~

12 ~~[To assist you in making an informed choice, the following~~
13 ~~estimates of premiums are being provided along with an example of~~
14 ~~the cost of financing. The examples assume that the term of the~~
15 ~~insurance product is ____ years and that the interest rate is ____~~
16 ~~percent (a rate that has recently been available for the type of~~
17 ~~loan you are seeking). PLEASE NOTE THAT THE ACTUAL LOAN TERMS YOU~~
18 ~~QUALIFY FOR MAY VARY FROM THIS EXAMPLE. "Total amount paid" is the~~
19 ~~amount that would be paid if you financed only the total insurance~~
20 ~~premium for a ____ year period and is equal to the amount you would~~
21 ~~have paid if you made all scheduled payments. This is NOT the total~~
22 ~~of payments on your loan.~~

23 ~~[CREDIT LIFE INSURANCE: Estimated premium of \$_____~~

24 ~~[DISABILITY INSURANCE: Estimated premium of \$_____~~

25 ~~[INVOLUNTARY UNEMPLOYMENT INSURANCE: Estimated premium of~~
26 ~~\$_____~~

27 ~~[TOTAL INSURANCE PREMIUMS: \$_____~~

1 [TOTAL AMOUNT PAID: \$_____]

2 (b) For the purposes of this section, a contract issued by a
3 government agency or private mortgage insurance company to insure
4 the lender against loss caused by a mortgagor's default is not
5 considered credit insurance.

6 SECTION 2. Subchapter B, Chapter 343, Finance Code, is
7 amended by adding Sections 343.105-343.107 to read as follows:

8 Sec. 343.105. RECOMMENDATION OF DEFAULT. A lender may not
9 recommend or encourage default on an existing loan or other debt
10 before and in connection with the closing or planned closing of a
11 home loan that refinances all or part of the existing loan or debt.

12 Sec. 343.106. INFLUENCING APPRAISAL. A lender may not
13 directly or indirectly compensate, coerce, or intimidate an
14 appraiser for the purpose of influencing the independent judgment
15 of the appraiser with respect to the value of real property that is
16 to be covered by a home loan or is being offered as security for a
17 home loan.

18 Sec. 343.107. DOCUMENT WITH BLANKS. A home loan document
19 in which blanks are left to be filled in after it is signed by the
20 borrower is void.

21 SECTION 3. Section 343.202, Finance Code, is amended to
22 read as follows:

23 Sec. 343.202. BALLOON PAYMENT. A high-cost home loan may
24 not contain a provision for a scheduled payment that is more than
25 twice as large as the average of earlier scheduled monthly
26 payments, unless the balloon payment becomes due not less than
27 seven years [60 months] after the date of the loan. This

1 prohibition does not apply if the payment schedule is adjusted to
2 account for the seasonal or otherwise irregular income of the
3 borrower or if the loan is a bridge loan with a maturity of less than
4 12 months [~~in connection with the acquisition or construction of a~~
5 ~~dwelling intended to become the borrower's principal dwelling~~].

6 SECTION 4. Section 343.203, Finance Code, is amended to
7 read as follows:

8 Sec. 343.203. NEGATIVE AMORTIZATION. A high-cost home loan
9 may not provide for a payment schedule with regular periodic
10 payments that cause the principal balance to increase because the
11 payments do not cover the full amount of interest due, except that
12 this section does not apply if the payment schedule is adjusted to
13 account for the seasonal or otherwise irregular income of the
14 borrower [~~prohibit negative amortization as a consequence of a~~
15 ~~temporary forbearance, bridge loan, or restructure sought by the~~
16 ~~borrower~~].

17 SECTION 5. Section 343.205, Finance Code, is amended to
18 read as follows:

19 Sec. 343.205. (a) A lender may not make a high-cost home
20 loan containing a provision for a prepayment penalty that exceeds:

21 (1) three percent of the original principal amount of
22 the loan, if prepayment occurs before the first anniversary of the
23 loan closing;

24 (2) two percent of the original principal amount of
25 the loan, if prepayment occurs on or after the first anniversary and
26 before the second anniversary of the loan closing; or

27 (3) one percent of the original principal amount of

1 the loan, if prepayment occurs on or after the second anniversary
2 and before the third anniversary of the loan closing.

3 (b) A lender may not make a high-cost home loan containing a
4 provision for a prepayment penalty applicable to a prepayment
5 occurring on or after the third anniversary of the loan closing.

6 SECTION 6. Subchapter C, Chapter 343, Finance Code, is
7 amended by adding Sections 343.206-343.212 to read as follows:

8 Sec. 343.206. INCREASED INTEREST RATE PROHIBITED. (a) A
9 lender may not include in a high-cost home loan a provision that
10 increases the interest rate after default.

11 (b) This section does not apply to an interest rate change
12 in a variable rate loan otherwise consistent with the loan
13 documents, if the change is not triggered by the event of default or
14 the acceleration of the indebtedness.

15 Sec. 343.207. ADVANCE PAYMENTS PROHIBITED. A lender may
16 not include in a high-cost home loan terms under which more than two
17 periodic payments required under the loan are consolidated and paid
18 in advance from the loan proceeds provided to the borrower.

19 Sec. 343.208. CALL PROVISION PROHIBITED. (a) A lender may
20 not include in a high-cost home loan a provision that permits the
21 lender, in the lender's sole discretion, to accelerate the
22 indebtedness.

23 (b) This section does not prohibit acceleration of a loan in
24 good faith due to the borrower's failure to abide by the material
25 terms of the loan.

26 Sec. 343.209. HOME-IMPROVEMENT CONTRACTS. A lender may not
27 pay a contractor under a home-improvement contract from the

1 proceeds of a high-cost home loan, unless the instrument is payable
2 to the borrower or jointly to the borrower and the contractor, or,
3 at the election of the borrower, through a third-party escrow agent
4 in accordance with terms established in a written agreement signed
5 by the borrower, the lender, and the contractor before
6 disbursement.

7 Sec. 343.210. FLIPPING. A lender may not make a high-cost
8 home loan to a borrower that refinances an existing home loan if the
9 new loan does not have reasonable, tangible net benefit to the
10 borrower considering all of the circumstances, including the terms
11 of both the new and refinanced loans, the cost of the new loan, and
12 the borrower's circumstances.

13 Sec. 343.211. MODIFICATION OR DEFERRAL FEES PROHIBITED. A
14 lender may not charge a borrower to modify, renew, extend, or amend
15 a high-cost home loan or to defer any payment due under the terms of
16 a high-cost home loan unless the borrower is in default on the loan.

17 Sec. 343.212. LENDING WITHOUT COUNSELING PROHIBITED. A
18 lender may not make a high-cost home loan without first receiving
19 certification from a counselor approved by the United States
20 Department of Housing and Urban Development, the Texas Department
21 of Housing and Community Affairs, or a regulatory agency that has
22 jurisdiction over the lender, that the borrower has received
23 counseling on the advisability of the loan transaction.

24 SECTION 7. The change in law made by this Act applies only
25 to a loan closed on or after the effective date of this Act. A loan
26 closed before the effective date of this Act is governed by the law
27 in effect when the loan was closed, and the former law is continued

1 in effect for that purpose.

2 SECTION 8. This Act takes effect September 1, 2003.