

**Predatory Lending Practices**  
**and**  
**What to Do If You Are at Risk of Foreclosure**

**Community Health Law Project**

This manual is a public education service of the Community Health Law Project. If you or someone you know needs further information regarding predatory lending practices or foreclosure, contact the Law Project at:

Community Health Law Project  
185 Valley Street  
South Orange, New Jersey 07079  
(973) 275-1175  
TTY: (973) 275-1721

This manual is made possible by a grant from the Grotta Fund for Senior Care.

© 2008, 2009 by the Community Health Law Project

All rights reserved. No part of this manual may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by an information storage and retrieval system, without the written permission of the Community Health Law Project, except as permitted by law.

## Table of Contents

Introduction	1
<u>Part I: Predatory Lending Practices</u>	
1. What is predatory lending?	2
2. How is predatory lending related to the subprime market?	2
3. How do I know if I'm in the subprime market?	3
4. Who do unscrupulous lenders target?	3
5. What caused the increase in predatory lending practices?	3
6. How do I recognize a predatory loan?	4
7. How do I avoid becoming a victim of predatory lending practices?	5
8. What questions should I ask when applying for a loan?	7
9. How do I know if my loan officer is licensed?	7
10. Who do I complain to if I've been victimized by a predatory lender?	8
<u>Part II: What to Do If You Are at Risk of Foreclosure</u>	
11. What can I do if I'm behind on my loan payments?	9
12. Should I hire a loan modification consultant to negotiate with my lender?	10
13. Should I worry about foreclosure assistance scams?	10
14. Will filing for bankruptcy protect my home when I'm facing foreclosure?	10
15. Who can I call for help when I'm threatened with foreclosure on my home?	11
16. Is there any special help for active military personnel?	13
17. Am I protected from eviction if I rent a home that goes into foreclosure?	14
18. Is there any way to challenge a foreclosure action in court?	14
19. How can the new federal housing plan help me?	18
Glossary	20
Resource Directory	22



## Introduction

This manual was originally written, in March 2008, as an educational tool to accompany seminars conducted on predatory lending practices in Essex and Union counties in New Jersey. The seminars and this manual were funded by the Grotta Fund for Senior Care and were intended to address what was then an emerging crisis in predatory lending practices, subprime lending, and mortgage foreclosures. In the year since the manual was published, enormous changes have occurred in the way lenders and courts address impending home foreclosures. For instance, in New Jersey, the Administrative Office of the Courts established a mandatory mediation program for contested foreclosures. Lenders have been under pressure and been given incentives to modify loans in order to make them more affordable to homeowners facing foreclosure. In March 2009, President Obama announced a new federal housing plan to help homeowners either modify their loans or refinance them. These changes are discussed in this updated edition of the manual.

The general information in this manual has universal relevance to the problem. However, the resources offered are as specific as possible to New Jersey and, in particular, to Essex and Union counties. Toward the end of the manual New Jersey and federal statutes are discussed. This material is current as of the date of this writing, March 2009.

## **Part I: Predatory Lending Practices**

### **1. What is predatory lending?**

Predatory lending is the use of unfair lending practices that result in borrowers paying higher fees and interest rates than they should. These abusive lending tactics may have been practiced by creditors, mortgage brokers, or home improvement contractors. Some examples of predatory lending practices are:

- Loaning money without verifying the borrower's ability to repay the loan.
- Charging higher interest rates than is justified by the risk involved in the loan.
- Misrepresenting the terms of the loans; for example, not telling the borrower about a high prepayment penalty that will make it too costly to refinance the loan at a later date.
- Lending money for home improvement work that does not include any guarantee that the work will be completed properly.
- Pressuring borrowers to refinance frequently, which results in borrowers paying more in fees to the lender but getting little benefit in return.
- Adding unnecessary products to a loan, like credit insurance.
- Targeting high-cost loans to elderly, low-income, and minority families.

### **2. How is predatory lending related to the subprime market?**

Borrowers with low credit scores due to late payments, court judgments, and bankruptcies are considered high risk. Lenders offer these borrowers loans with high interest rates and they are placed in the "subprime market." (Borrowers with good credit history are offered lower interest rates and are put in the "prime market.") Some lenders exploit subprime

borrowers using the predatory lending practices cited above.

### **3. How do I know if I'm in the subprime market?**

You may be in the subprime market if one or more of the following apply to you:

- You've had a judgment filed against you, a foreclosure, or a repossession within the past 2 years.
- You've declared bankruptcy within the past 5 years.
- You have a credit score of 620 or below.
- You've paid a bill more than 30 days late twice in the last year or more than 60 days late once in the last 2 years.

### **4. Who do unscrupulous lenders target?**

Older homeowners are a frequent target of predatory lenders because they've either paid off their mortgage or they've amassed a lot of equity in their home. But many seniors are on a fixed income that doesn't cover more than their normal living expenses. When they have extraordinary expenses (for example, home repairs, medical care, high property taxes), they need access to cash or easy credit. Predatory lenders prey on this population. They also prey on minority homeowners because many of them are not well served by traditional banking services and instead rely on finance companies, which are not as well regulated as banks.

### **5. What caused the increase in predatory practices?**

The increase in real estate property values in the 1990s and early 2000s turned people's homes into their most valuable asset. Until the housing market crashed, predatory lenders cared less about homeowners' ability to repay loans than about the resale value of homes. When homeowners default on loans, lenders could foreclose on the property, purchase it at auction,

and then resell it at a profit. For the past year, resale of any property has been much more difficult.

## **6. How do I recognize a predatory loan?**

Here are some warning signs:

- A lender or mortgage broker tries to persuade you to lie on a loan application and make it seem that you have a higher income than you really have so that you can qualify for the loan. Or the lender doesn't ask you for proof of your income (such as pay stubs or bank statements).

- A contractor offers you loan terms to pay for costly home improvements that you didn't think you needed or steers you to a finance company to get a loan that will cover the cost of the work.

- A lender tries to persuade you to take out an adjustable rate mortgage with a very low introductory interest rate and monthly payment. This is called a "teaser rate." After a specific period of time (usually two years), the loan terms "reset" to a much higher interest rate and your monthly payments rise substantially.

- A loan includes a "balloon payment." This is a large lump sum of money due at the end of the loan term. If you can't afford the balloon payment, you'll either lose your home or be forced to refinance.

- There are high closing costs with many fees for services like document preparation, appraisal, attorneys, and brokers.

- There is a "prepayment penalty" for paying off your loan before the end of the term. This makes it very costly to refinance at a lower interest rate.

- A lender tries to persuade you to refinance (or “flip” a loan) in order to get cash. The new loan pays off the existing loan, including any prepayment penalty, but you end up with a higher principal balance and new closing costs and fees. Every time you refinance more fees are imposed, draining the equity from your home. You may even end up owing more than the home is worth.

- A lender tries to sell you credit insurance, accident or health insurance with the loan. You may get no benefit from the insurance, and the lender may own the insurance company or receive a commission for selling it to you.

- A lender structures your loan so that your monthly payments cover only the interest due each month but not the principal. The amount of principal that you owe grows each month. At the end of the loan term you will owe more than you originally borrowed.

- A mortgage broker asks for a fee to get you the best rate on a loan. That fee is financed as part of the loan, even though the broker may be getting a commission from the lender for referring you. You may not be getting the best interest rate because the broker may be getting a kickback for steering you to a lender who charges you a higher interest rate.

- A lender tries to persuade you to consolidate your other debts (for example, credit card or medical debt) into your mortgage loan. This higher debt puts your home at risk if you ever have financial problems. (Credit card and medical debt are not secured by your home, so you don't risk losing your home, as you would if you defaulted on your mortgage.)

- The lender or mortgage broker discourages you from contacting an attorney to review the loan agreement, or the loan agreement restricts your right to contest a provision of the agreement.

**7. How do I avoid becoming a victim of predatory lending practices?**

●Check your credit report and correct any mistakes you may find. In New Jersey, you have a right to one free credit report a year. You can contact the three main credit reporting agencies through the NJ Department of Banking Insurance website or at the numbers listed below. If you find any mistakes, write to the credit reporting agencies and dispute the mistakes. Know your FICO credit score.

[http://www.state.nj.us/dobi/division\\_consumers/finance/creditreport.htm](http://www.state.nj.us/dobi/division_consumers/finance/creditreport.htm).

Equifax	1-800-685-1111	<a href="http://www.equifax.com">www.equifax.com</a>
Experian	1-888-397-3742	<a href="http://www.experian.com">www.experian.com</a>
TransUnion	1-800-888-4213	<a href="http://www.transunion.com">www.transunion.com</a>

●Avoid mortgage brokers or one-stop lenders. You can get a mortgage directly through a lender without paying extra for a broker.

●Comparison shop for the lowest interest rate by calling banks and other lenders directly. You can also go to the New Jersey Department of Banking and Insurance website to see what the prevailing interest rates are depending on what your credit score is.

[http://www.state.nj.us/dobi/division\\_consumers/finance/ficorate.pdf](http://www.state.nj.us/dobi/division_consumers/finance/ficorate.pdf) Make sure that the quotes you get include up-front costs, interest rates, terms of the loan, and monthly payments.

●Make sure that the loan you apply for is affordable. A common rule for mortgages is that your monthly mortgage payment (including insurance and property taxes) is not greater than 28% of your gross monthly income. If you're thinking about refinancing your current mortgage, compare the monthly payments of the new and the current mortgages. Make sure that both figures include all of the same costs (e.g., homeowners insurance and property taxes).

- Don't let someone who's trying to sell you a loan rush you into a decision. Contact an attorney to review the loan agreement or take the time to read the loan documents yourself and have someone you trust go over them with you. If you have doubts at the closing, don't close. Most closing fees are refundable. Your loan application should state which fees are refundable.

- Don't accept any oral promises, such as: "The lender will refinance the loan at a better rate in the future." Make sure everything is in writing.

- Don't sign any documents that include blanks. The terms of the loan might be changed later by someone who is dishonest.

- Beware of door-to-door salespeople or telemarketers who tell you that your bad credit is not a problem.

- Avoid lenders recommended by home improvement contractors.

## **8. What questions should I ask when applying for a loan?**

Ask about the specific terms of your loan:

- Do your monthly payments include taxes and insurance?

- Will the monthly payments increase during the life of the loan?

- Will the interest rate reset during the life of the loan (that is, does it have a "fixed rate" or an "adjustable rate" of interest)?

- Are there any prepayment penalties if you pay off the loan before the end of its term?

- Is a balloon payment due at the end of the loan term?

- Is there an application fee? If so, how much and when will it be charged--when you apply for the loan, when the loan is approved, or at closing?

## **9. How do I know if my loan officer is licensed?**

You can check to see if your loan officer is licensed by the Department of Banking and Insurance by going on to the Department's website or by calling it at 1-800-446-7467.

[https://www6.state.nj.us/DOBI\\_LicSearch/Jsp/bnkSearch.jsp](https://www6.state.nj.us/DOBI_LicSearch/Jsp/bnkSearch.jsp)

**10. Who do I complain to if I've been victimized by a predatory lender?**

You can file a complaint with the state or federal agency that regulates the lending institution.

- The NJ Department of Banking and Insurance regulates licensed mortgage lenders in the state and state-chartered depository institutions. You can file a complaint by calling the Department at **609-984-2777** or **1-800-446-7467**.

- To file a complaint against a federally chartered bank, call the Office of the Comptroller of the Currency at **1-800-613-6743**.

- To file a complaint against a federally chartered savings bank or federally chartered savings and loan association, call the Office of Thrift Supervision at **1-201-413-1000**.

- To file a complaint against institutions insured by the Federal Deposit Insurance Corporation (FDIC)--all state and federally chartered banks, savings banks, and savings and loan associations--call the FDIC at **1-800-334-9593**.

- To file a complaint against an institution insured by the National Credit Union Administration (NCUA)--all state and federally chartered credit unions--call the NCUA at **1-800-755-1030** or **1-703-519-4600**.

- To file a complaint involving a violation of the New Jersey Consumer Fraud Law, call the Division of Consumer Affairs within the New Jersey Department of Law and Public Safety at **1-800-242-5846**.

## **Part II: What to Do If You Are at Risk of Foreclosure**

### **11. What can I do if I'm behind on my loan payments?**

Call your loan servicer to discuss your options. Don't wait until you go into foreclosure.

The loan servicer or lender may suggest one of the following solutions.

- Forbearance - the lender will postpone payment until you are able to make other arrangements.

- Reinstatement - the lender will let you bring your account up to date with a lump-sum payment.

- Repayment - lender gives you a new payment plan that adds the delinquent funds to future payments that are more affordable for you.

- Refinance - lender lets you roll your debt into a new loan with an extended term of years, spreading the debt out over a longer period and thus making the monthly payments more affordable. The new federal housing plan removes a limit on refinancing on mortgages owned or guaranteed by Fannie Mae or Freddie Mac; even if the mortgage amount is greater than 80% of the home's value, homeowners may refinance at lower rates.

- Modification - lender modifies the terms of a loan by extending its length or taking other steps to reduce the payments. The new federal housing plan creates incentives for lenders to modify the terms of loans so that monthly payments are no more than 31% of the borrower's income.

- Property giveback - the lender can let you give back your property and then forgive

your debt. It will affect your credit record, but not as badly as a foreclosure would. It lets you walk away from a crushing debt and start over. It is a remedy of last resort for people who owe more on a loan than their property is worth if they sold it.

**12. Should I hire a loan modification consultant to negotiate with my lender?**

With the rise in the number of foreclosures a new business has emerged that offers to negotiate with a borrower's lender for loan modification or foreclosure prevention. These businesses charge up-front fees for their services. Before enlisting the aid of such a consultant, you might consider calling the NJ Department of Banking and Insurance, which has been monitoring complaints about such businesses. HUD-approved housing counseling agencies offer the same services for free (see page 13, below, and the Resource Directory on page 22).

**13. Should I worry about foreclosure assistance scams?**

If someone calls you and identifies him or herself as a "foreclosure specialist," ask if the person is licensed by the Department of Banking and Insurance. The answer should be no because the Department, as of this writing, has no regulatory authority over such agents. "Foreclosure specialists" charge large fees and provide services that may not help you avoid foreclosure. Also avoid "lease/buy back" deals—they require that you sell your house to an investor for the amount due on your mortgage, then let you lease your home as a tenant with the promise that you can buy back the house at the end of the lease period. The rent may be too high and, if you miss a payment, you could get evicted from the property. Or the buy-back price may be too high for you to afford.

**14. Will filing for bankruptcy protect my home when I'm facing foreclosure?**

Homeowners can file for Chapter 13 bankruptcy protection in an effort to save their

homes. Under Chapter 13, you can file a reorganization plan. If there's no chance of you being able to afford your mortgage (e.g., once your interest rate resets), the bankruptcy action can at least put off foreclosure for two or three months. This gives you a little time to find someplace to move. Under new proposed federal legislation, bankruptcy judges would be authorized to change the terms of mortgages.

Chapter 7 bankruptcy eliminates only unsecured debts like credit card charges and medical bills. But to qualify for it, you have to be below New Jersey's median income (about \$64,000 for a couple with one earner) or pass a means test.

#### **15. Who can I call for help when I'm threatened with foreclosure on my home?**

There are several organizations that help people facing foreclosure. Some are housing counselors who help by calling the lender and trying to negotiate a restructuring of the loan. Some offer legal services for free to low-income people. Some can help refinance loans at a low interest rate. The organizations are described below.

- Legal Services of New Jersey (1-732-572-9100) has a Consumer Protection/Home Defense Project (formerly known as the Anti-Predatory Lending Project). It provides representation to low-income consumers who have been the victims of predatory mortgage lending practices, abusive medical and credit card collection practices, and Consumer Fraud Act violations. Central Jersey Legal Services (Elizabeth Office) - 1-908-354-4340. Essex-Newark Legal Services - **1-973-824-3000**.

- Community Health Law Project offers free representation to low-income people with disabilities and, in Essex and Union counties, to seniors facing foreclosure. People with disabilities in Essex and Union counties can call CHLP's regional offices in Bloomfield (**973-**

680-5599) or Elizabeth (908-355-8282). Seniors in those counties can call the CHLP administration office in South Orange (973-275-1175).

- New Jersey Citizen Action (1-800-656-9637 or 1-973-643-8800) has a loan counseling service that helps people who are looking for a below-market rate mortgage or home improvement loan. It refers them to banks that participate in its program. An application for its loan counseling service is available on [www.njcitizenaction.org](http://www.njcitizenaction.org).

- HOPE Preservation Foundation (1-888-995-HOPE) has counselors who help homeowners avoid foreclosure. The organization works with the NJ Housing and Mortgage Finance Agency, which has developed a Homeownership Preservation Refinance Program to provide affordable financing to borrowers who can't afford their current mortgage. (See below.)

- Homeownership Preservation Refinance Program is an initiative of the New Jersey Housing & Mortgage Finance Agency (1-800-NJ-HOUSE or 1-609-278-7400). It provides an affordable loan to borrowers whose current mortgage is no longer suitable. It is a 30- or 40-year loan fixed at a low interest rate for the life of the loan. The loan can equal 100% of the appraised value of the home, but there are income limits for borrowers (140% of the area's median income, \$118,160 in Essex and Union counties) and maximum mortgage limits (\$429,619 for a one-family home in Essex and Union counties).

- The Neighborhood Assistance Corporation of America (1-973-679-2601 or 1-888-297-5568) is a nonprofit community advocacy and home ownership organization. Its Home Save Program tries to help home owners lower their mortgage payment to an amount that is affordable for the term of the mortgage. You can complete a mortgage submission on the organization's website: [www.naca.com](http://www.naca.com).

● HomeSaver Advance (1-888-326-6435) is a program of Fannie Mae and Freddie Mac, federal government-sponsored mortgage companies. They offer personal loans to approved Fannie Mae servicers for eligible borrowers who are behind on their house payments. The loan (up to \$15,000) is intended to help borrowers who have a temporary setback get current with their mortgage obligations.

● FHASecure (1-800-225-5342) offers refinancing to homeowners with strong credit histories who had been making timely mortgage payments before their loans reset between June 2005 and December 2009; who have 3% cash or equity in their home; and who have enough income to make the mortgage payments.

● NeighborWorks America (1-908-282-0781, extension 103 in Elizabeth and 1-973-678-3110, extension 23 in Orange) offers foreclosure counseling, mitigation counselors, and foreclosure intervention programs.

● ACORN (1-866-67-ACORN or 1-973-792-1222) is a housing counseling agency that tries to help home owners preserve their homes.

In addition to the above agencies, there are several other HUD-approved housing counseling agencies in Union and Essex counties:

● Tri-City People Corporation - East Orange: **1-800-201-4095** or **1-973-676-5506**. In Newark: **1-973-676-5506** or **1-800-860-0566**.

● Brand New Day - Elizabeth: **1-908-282-0781, extension 103**.

● CCCS of New Jersey - Montclair and Newark: **1-888-726-3260**.

● Episcopal Community Development, Inc. - Newark: **1-973-430-9986**.

● Faith, Bricks & Mortar, Inc. - Plainfield: **1-908-756-5774**.

**16. Is there any special help for active military personnel?**

The Servicemembers Civil Relief Act provides mortgage payment relief and protection from foreclosure to active military personnel and reservists. To be eligible the military personnel must have had mortgage commitments before enlisting or being called to active duty. Service members should contact their lenders or call **1-800-225-5342**.

**17. Am I protected from eviction if I rent a home that goes into foreclosure?**

Under New Jersey's Anti-Eviction Act, residential tenants are protected from eviction by foreclosing mortgagees.<sup>1</sup> However, the new owner of the home is permitted to offer the tenant a new lease with a higher rent if the previous owner had entered into a lease that had a rent well below market rate.<sup>2</sup> If the new homeowner threatens you with eviction, call Legal Services of New Jersey (**732-572-9100**), Community Health Law Project (**973-275-1175**), or the New Jersey Public Advocate (**609-826-5090**).

**18. Is there any way to challenge a foreclosure action in court?**

Mandatory Mediation. In January 2009, the New Jersey courts began requiring mandatory mediation in all contested foreclosure actions and voluntary mediation in uncontested mediation actions. Although the lender does not have to agree to mortgage modification, sitting down to negotiate with a court-appointed mediator will slow down the foreclosure proceedings and give borrowers an opportunity to try to negotiate affordable loan terms. You can call the Office of the Courts Foreclosure Mediation Program at **888-989-5727**, or log on to

---

<sup>1</sup>NJSA 2A:18-61.3(b).

<sup>2</sup>Chase Manhattan Bank v. Josephson, 135 N.J. 209, 228 (1994).

[www.njforeclosuremediation.org](http://www.njforeclosuremediation.org).

When mediation doesn't help, there are several legal grounds on which to challenge a foreclosure action, including violations of the following statutes:

- Mortgage Stabilization and Relief Act, P.L. 2008, c. 127, appropriates \$40 million and creates two programs in the state Housing and Mortgage Finance Agency (HMFA) to help prevent foreclosures. One program will use \$25 million to establish the Mortgage Stabilization Program (MSP) and \$15 million to establish the Housing Assistance and Recovery Program (HARP). Under the MSP, the HMFA will provide a nonamortizing mortgage equal to half the difference between the new first mortgage amount and the appraised value of the property, not to exceed \$25,000. The other half of the difference will be secured by a lien held by the lender. Under the HARP, the HMFA will assist nonprofit and public entities in executing lease-purchase agreements with homeowners. These entities will use the appropriate funds to purchase properties in danger of foreclosure and then lease them back to the homeowners until they can buy back the properties.

- Save New Jersey Homes Act of 2008, P.L. 2008, c.86, NJSA 46:10B-3.6. This statute went into effect on September 15, 2008, and will remain in effect until January 1, 2011. The SHA provides relief to homeowners who have introductory rate mortgages (IRMs), which have an artificially low "teaser rate" that resets at a much higher rate later. The HSA allows IRM borrowers to continue making their monthly payments at the initial teaser rate for three years after the date on which the rate was to reset. If they don't exercise that right and they're in or about to be in foreclosure, the SHA suspends the foreclosure for three years, allowing them to make monthly payments during the suspension at the teaser rate.

●Mortgage note has not been assigned to the plaintiff in foreclosure action. Because many mortgage notes are sold to investors who bundle them into packages with hundreds of other such loans, plaintiffs in foreclosure actions are sometimes unable to prove that they actually have been legally assigned the mortgage of a particular defendant. The New Jersey courts have been strict about requiring legal proof of assignment before allowing the foreclosure action to proceed.

●New Jersey Consumer Fraud Act,<sup>3</sup> which prohibits material misrepresentations, knowing omissions, and unconscionable business practices associated with the sale of consumer goods or services.<sup>4</sup>

---

<sup>3</sup>NJSA 56:8-1.1 to 12-70.

<sup>4</sup>In June 2007, a federal court in New Jersey awarded \$220,000 to a borrower who sued his mortgage company for violations of the NJ Consumer Fraud Act. In Leff v. EquiHome Mortgage Corp., 05-CV-3648 (D.N.J. June 6, 2007), the borrower alleged that EquiHome had engaged in unconscionable business practices by soliciting a mortgage that was unsuitable for him. He originally had a reverse mortgage with no monthly payments, a credit line of \$76,000 and no risk of foreclosure. EquiHome convinced him to refinance to a \$223,000, 30-year fixed-rate mortgage with monthly payments of \$1,300 and a cash payout of \$52,000. Leff's main source of income was \$965 a month in Social Security. He defaulted on the loan within a year. The case went to a jury, which found that EquiHome's solicitation of the loan violated the NJ Consumer Fraud act. There was no published decision in this case.

● New Jersey Homeowners Security Act of 2002<sup>5</sup> applies to first, second, and subsequent mortgages secured by New Jersey realty. It prohibits financing certain credit insurance premiums or debt cancellation agreements, encouraging default on an existing mortgage loan, charging a late payment fee greater than 5% of the amount of the payment due, charging a late fee greater than 5% of the past due payment, accelerating indebtedness at the creditor's discretion, or charging a fee for borrower's payoff balance information. For high-cost loans, there are additional prohibited practices: charging most balloon payments, negative amortization (when the principal balance of the loan increases even though all payments are being made), increasing the interest rate after default, requiring more than two periodic payments to be paid in advance from the loan proceeds, and much more.

● Truth in Lending Act (TILA),<sup>6</sup> a federal law that gives homeowners the right to rescind a loan secured by their primary residence for up to three business days after the transaction and an extended right to rescind the loan for up to three years if they were not given a notice of the right to cancel the loan or if they didn't receive all of the required disclosures. The law also mandates that lenders disclose the terms of the loans in an understandable manner.

● Home Ownership and Equity Protection Act (HOEPA),<sup>7</sup> an amendment to TILA that covers some high-rate home equity loans. If a loan is covered by HOEPA, lenders must provide not only the disclosures required under TILA, but also the Annual Percentage Rate (APR) and

---

<sup>5</sup>NJSA 46:10B-22 to -35.

<sup>6</sup>15 USC §§ 1601 to 1615.

<sup>7</sup>15 USC §§ 1639.

the monthly payment three days before closing. The law prohibits certain terms in the loan contract: for example, increase of the interest rate when there is a default, balloon payments in loans of less than five years, negative amortization, more than two prepaid payments, extension of credit to people without regard to their ability to repay the loan, disbursement of funds payable solely to a home improvement contractor, and most prepayment penalties. In addition to the right to the relief provided under TILA (right to rescind the loan), violations of HOEPA give rise to civil liability for damages, as well as attorneys fees and costs.

- Real Estate Settlement and Procedures Act (RESPA),<sup>8</sup> a federal law that prohibits payment of unearned fees and kickbacks, such as a lender kickback to a mortgage broker for making a referral. The remedy for violation of this law is treble damages and payment of the borrower's attorneys fees.

- New Jersey Fair Foreclosure Act<sup>9</sup> is a New Jersey law that gives homeowners the opportunity to cure defaults and avoid foreclosure. By paying the amount past due to the lender, the homeowner can reinstate the mortgage at any time until the entry of a final judgment of foreclosure.

## **19. How can the new federal housing plan help me?**

On March 4, 2009, the U.S. Treasury announced the details of the Obama Administration's federal housing plan to aid homeowners threatened with foreclosure. The two main components of the plan are the Home Affordable Refinance Program and the Home

---

<sup>8</sup>12 USC §§ 2601 et seq.

<sup>9</sup>NJSA 2A:50-53 to -68.

### Affordable Modification Program.

The refinance program will help homeowners who have a good payment history on a mortgage owned by Fannie Mae or Freddie Mac. In the past they would have been unable to refinance their loans because their homes have lost value, pushing their current loan-to-value ratio above 80%. Under the refinance program, the mortgage can be up to 105% of the home's current market value. As long as borrowers owe no more than \$729,750 and have enough income to handle payments, they would be able to refinance at more affordable rates than their current loan.

Under the modification program, homeowners who have a mortgage created before January 1, 2009, owe no more than \$729,750 on a 1-unit home, have mortgage payments greater than 31% of their gross monthly income, and have enough income to handle their payments on a modified loan, can apply to their loan servicer for a modification that would lower mortgage payments to 31% of their income by dropping rates to as low as 2%, or extending the loan term to up to 40 years, or accepting principal payments without interest. After five years, the rate may rise to the market level at the time of modification. The federal government will pay servicers of mortgages incentives of \$1,000 to modify a delinquent loan and \$1,500 for modifying a nondelinquent loan, as well as up to \$1,000 a year for three years if they're paid on time. Borrowers who pay on time would also receive incentive payments of up to a \$5,000 reduction in principal over five years.

## Glossary

**Adjustable rate mortgage** - A mortgage with a low interest rate that is fixed for a specific period of time and then resets to a higher interest rate, which results in higher monthly mortgage payments.

**Balloon mortgage** - A mortgage with monthly payments that do not fully pay down the loan; the balance of the mortgage is due in a lump sum at a specific date, usually the end of the loan term.

**Credit insurance** - A type of insurance of little benefit to borrowers that lenders sell as part of the loan package. It is profitable to the lender because either the lender owns the insurance company or receives a commission for the sale of the insurance. Because the insurance premium is financed over the life of the loan, it increases the total interest charged on the principal.

**Fixed-rate mortgage** - A mortgage with a fixed rate of interest for the entire term of the loan.

**Lease/buy-back deals** - A transaction in which you sell your house to an investor for the amount due on your mortgage, then lease your home as a tenant. The investor may promise that you can buy back the house at the end of the lease period, but the buy-back price may be too high for you to afford. Also, the rent may be too high and, if you miss a payment, you could be evicted from the property.

**Loan flipping** - A lender encourages you to refinance your mortgage over and over in order for you to access more cash. This increases your debt because fees are tacked on to each loan transaction and you pay a higher interest rate than you did on your original loan. That means that your monthly payments are higher and you increase the danger of losing your home.

**Negative amortization** - The lender structures the loan such that monthly payments don't cover the amount of interest due each month and the principal due increases every month. At the end of the loan term, the borrower owes more than the amount originally borrowed.

**Prepayment penalty** - A charge that the borrower pays the lender for the privilege of prepaying the loan before the end of the full life of the loan. Sometimes the penalty is so large that it inhibits refinancing to a loan at a lower interest rate.

**Subprime market** - Borrowers with low credit scores as a result of late payments, court judgments and bankruptcies present a higher risk to the lender and so are offered higher interest rates. They are placed in the subprime market, as opposed to those with a better credit history, who are placed in the prime market and are offered lower interest rates.

**Teaser rate** - A very low introductory interest rate and monthly payment, which is offered with some adjustable-rate mortgages. After a specified period of time, the interest rate resets to a much higher rate.

**Yield-spread premium** - This is a fee that compensates a mortgage broker for steering a borrower to a lender that charges a higher interest rate. The broker gets a kickback.

## Resource Directory

### **State and Federal Agencies**

NJ Department of Banking and Insurance	609-984-2777	<a href="http://www.state.nj.us/dobi">www.state.nj.us/dobi</a>
NJ Division of Consumer Affairs	800-242-5846	<a href="http://www.state.nj.us/oag/ca">www.state.nj.us/oag/ca</a>
Office of the Comptroller of the Currency	800-613-6743	<a href="http://www.occ.treas.gov">www.occ.treas.gov</a>
Office of Thrift Supervision	201-413-1000	<a href="http://www.ots.treas.gov">www.ots.treas.gov</a>
Federal Deposit Insurance Corporation	800-334-9593	<a href="http://www.fdic.gov">www.fdic.gov</a>
National Credit Union Administration	800-755-1030	<a href="http://www.ncua.gov">www.ncua.gov</a>
Fannie Mae		<a href="http://www.fanniemae.com">www.fanniemae.com</a>
Office of the Courts Foreclosure Mediation Program	888-989-5277	<a href="http://www.njforeclosuremediation.org">www.njforeclosuremediation.org</a>

### **Legal Services**

Community Health Law Project	973-275-1175	<a href="http://www.chlp.org">www.chlp.org</a>
Legal Services of New Jersey	732-572-9100	<a href="http://www.lsnj.org">www.lsnj.org</a>
Central Jersey Legal Services	908-354-4340	
Essex-Newark Legal Services	973-824-3000	

### **Loan Counselors**

NJ Citizen Action	800-656-9637	<a href="http://www.njcitizenaction.org">www.njcitizenaction.org</a>
HOPE Preservation Foundation	888-995-HOPE	<a href="http://www.state.nj.us/dobi/njhope">www.state.nj.us/dobi/njhope</a>
Neighborhood Assistance Corp.	973-679-2601	<a href="http://www.naca.com">www.naca.com</a>
HomeSaver Advance	888-326-6438	<a href="http://www.efanniemae.com">www.efanniemae.com</a>
NJ Housing & Mortgage Finance Agency	609-278-7400	<a href="http://www.state.nj.us/dca/hmfa">www.state.nj.us/dca/hmfa</a>
NeighborWorks America	908-282-0781	<a href="http://www.nw.org">www.nw.org</a>
	973-678-3110	
ACORN	866-67-ACORN	<a href="http://www.acorn.org">www.acorn.org</a>
	973-792-1222	
Tri-City People Corp.	800-201-4095	
	800-860-0566	
Brand New Day	908-282-0781	
CCCS of NJ	888-726-3260	
Episcopal Community Development	973-430-9975	
Faith, Bricks & Mortar	908-756-5774	