

## **Prepayment Penalty Guidelines for Business Purpose Loans**

### **A. No Prepayment Penalty Restrictions**

The following states permit a Prepayment Penalty to be charged without limitation with respect to amount, time or other loan characteristics.

- Alabama
- Arizona
- Arkansas
- California
- Connecticut
- District of Columbia
- Florida
- Georgia
- Hawaii
- Idaho
- Indiana
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maine
- Massachusetts
- Mississippi
- Missouri
- Montana
- Nebraska
- Nevada
- New York
- North Carolina
- North Dakota
- Oklahoma
- South Carolina
- South Dakota
- Tennessee
- Texas

- Utah
- Vermont
- Virginia
- Washington
- West Virginia
- Wisconsin (specific disclosure reqt's)
- Wyoming

## **B. Restricted Prepayment Penalty Terms**

The following states have restrictions when including a prepayment penalty provision as a loan term on commercial or business purpose loans.

**Illinois** (generally) – permissible if the interest rate is less than 8%, regardless of loan purpose.

**Cook County, Illinois** - permissible on a business purpose loan secured by real property in Cook County, IL only if loan amount exceeds \$250,000 and interest rate is less than 8%

**Maryland** – permitted only for business purpose loans in excess of \$75,000

**Michigan** – prohibited after 3 years from date of the loan for business purpose loan that secures a SFD unit. PPP may not exceed >1% of prepayment amount made (Mich. Comp. Laws Ann. Sect. 438.31c(1c)(2)(c))

**New Jersey** – permitted only if mortgagor is limited liability company or corporation. PPP are prohibited on BPL made to a natural person

**Pennsylvania** – permissible for Business Purpose loans securing real property containing 2 or fewer residential units if the loan amount > \$278,204 (adjusted annually for inflation) (41 PA Const. Stat. Ann. Sect 101). PPP permissible on Business Purpose loans securing real property containing 3 or more units.

**Rhode Island** – permissible if charged within the first year anniversary from date of loan. Any PPP charged within the first year, may not exceed 2% of the outstanding balance due at the day of pay-off. Any PPP charge after the anniversary of the first year are prohibited.

## **C. Prohibition on Prepayment Penalty Terms**

The following states prohibit charging a prepayment penalty for commercial or business purpose loans, in addition to the prohibition on owner occupied, consumer credit transactions.

- Alaska
- Delaware
- Minnesota
- New Hampshire

- New Mexico
- Ohio

#### **D. Prepayment Penalty Disclosure Requirements**

The following states have disclosure obligations for commercial or business purpose loans with prepayment penalty provisions. If a prepayment penalty is charged, the maximum prepayment penalty must be set forth in the loan agreement and promissory note and disclosed at closing to ensure enforceability.

**Colorado** – terms of the offer of a loan product with a PPP must be provided clearly and conspicuously in writing and include the following statutory acknowledgement

“LOAN PRODUCT CHOICE DISCLOSURE

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty.”

(Colo. Rev. Stat. Ann. Sect. 5-3.5-102(1)(g)(III).

**Oregon** – if a loan agreement provides for a penalty to be charged for repaying the loan prior to the date provided for repayment in the loan agreement, the loan agreement shall contain in at least 10-point bold or underlined type substantially the following notice:

NOTICE TO THE BORROWER

“Do not sign this loan agreement before you read it. This loan agreement provides for the payment of a penalty if you wish to repay the loan prior to the date provided for repayment in the loan agreement.”

(Or. Admin. R. 441-870-0040).

**Wisconsin** – terms of the offer of a loan product with a PPP must be provided clearly and conspicuously in writing and include the following disclosure:

“LOAN PRODUCT CHOICE DISCLOSURE

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty.”

(Wis. Stat. Ann. Sect. 428.207)

#### **E. Excluded Loan Product Types**

The following loan product types are excluded from this policy.

- Reverse Mortgage
- 2<sup>nd</sup> lien business purpose mortgage loan

- Negative Amortization mortgage loan