

## Texas Second Mortgages Over 10 Percent

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The other area of Texas law that is aimed at loans over a certain interest rate threshold involves junior lien mortgage loans that bear interest at rates above 10 percent. A number of specific restrictions and requirements apply to these loans, and there are separate licensing requirements for lenders who make (or brokers who arrange) these loans.

Chapter 342 of the Texas Finance Code is the operative statute impacting these loans. It applies to any loan made for personal, family or household purposes that is secured by a lien on real property that is already subject to one or more prior liens, with a maturity greater than 90 days and an interest rate greater than 10 percent. Anyone making or brokering these loans must hold a regulated loan license issued under Chapter 342 by the Texas Office of Consumer Credit Commissioner, unless the lender is a state or federal bank, savings bank, or savings and loan association.

The fees, costs and charges that may be collected on or before closing or which may be included in the principal of the loan are limited to:

1. reasonable fees for title examination and abstract of title by a title company or search firm authorized to do business in Texas or an attorney who is not an employee of the lender;
2. premiums or fees for title insurance or title search;
3. reasonable fees charged for preparation of loan documents by an attorney who is not an employee of the lender;
4. charges paid to public officials for filing, recording and releasing a security interest;
5. the reasonable cost of an appraisal by an appraiser who is not a salaried employee of the lender;
6. the reasonable cost of a credit report;
7. reasonable fees for a survey prepared by a registered surveyor who is not a salaried employee of the lender;
8. premiums for credit life, credit accident, or other insurance that protects the lender against default;
9. reasonable fees incurred to comply with a federally mandated program if required by a federal agency (i.e., flood determination);
10. premiums for required property insurance;
11. costs of a debt cancellation agreement; and
12. an administrative fee not to exceed \$25 for a loan of more than \$1,000.

The loan contract may also provide for the payment of reasonable fees or charges paid for foreclosure and sale of the property, reasonable attorney fees paid for collection of a delinquent loan and court costs incurred in the collection and foreclosure of the loan. The lender may also assess and collect a fee as permitted by state law for the return of a dishonored check.

Other than these specific fees and charges, and lawful interest on the principal amount of the loan, a lender may not charge, contract for, or receive any fee, compensation, bonus, commission, discount or charge of any nature.