

Prepayment Penalty Guidelines for Business Purpose Loans

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
- Colorado (specific disclosure required)
- Connecticut
- District of Columbia
- Delaware
- Florida
- Georgia
- Idaho
- Indiana
- Iowa
- Kentucky (Excludes Platinum)
- Louisiana (Excludes Platinum)
- Maine
- Massachusetts
- Missouri
- Montana
- Nevada
- New Hampshire
- New York
- North Carolina
- Oklahoma
- Oregon (specific disclosure required)
- South Carolina
- Tennessee
- Texas
- Utah
- Virginia
- Washington (Fixed rate only)
- West Virginia
- Wisconsin (specific disclosure required)
- Wyoming

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

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 > \$312,159 (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.

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.

- Kansas
- Maryland
- Michigan
- Minnesota
- Mississippi
- New Mexico
- Ohio
- Rhode Island

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)

Excluded Loan Product Types

The following loan product types are excluded from this policy.

- Reverse Mortgage
- 2nd lien business purpose mortgage loan
- Negative Amortization mortgage loan