

# A Victim's Guide to Predatory Lending

Have you been trapped by a loan that might be a predatory loan? While not all bad deals or sub-prime loans are illegal, there has been a growth of predatory loan activity around the state and seniors are sometimes caught up in such loans. This area of the law is complex, and the fact situation can also be complex. This makes it difficult to create a simple tool for non-lawyers. Still, here are some things to look for, or steps you might take, if caught in such a loan situation.

## Signs of possible predatory lending:

Has your lender:

- Used false appraisals to sell you property for more than it is worth.
- Lent you money knowing that you can not afford to repay.
- Charged fees for unnecessary or nonexistent products or services.
- Refinanced to you in a vulnerable situation, like when you needed cash in an emergency.
- Convinced you into a refinancing that has little or no actual benefit to you – “stripping” your home’s equity.
- Wanted you to sign a contract that contains false information.
- Changed the costs and terms originally agreed upon or talked about.

## ***What can you do?***

If you think any of the above has happened, you may be involved with a predatory lender. If you are, you usually must act quickly. Some of the available remedies have to be sought within a few days or weeks at most, while other remedies can be asserted more than a year later.

In addition, if you are ever sued on such a loan, or sued in a foreclosure action or the like, you can often respond to such a law suit or foreclosure action through legal paperwork known as pleadings and then raise the issues, if any, regarding violations of these laws. Again, because of the complexity, we recommend you see an attorney as soon as you can to review the entire matter.

To start, gather all your papers, and also make separate notes of anything you recall about your loan transactions. Use that information and review these key but very very brief law summaries which are aimed at restricting predatory loan or unfair loan activity:

### **1. The Truth in Lending Act requires lenders to:**

- disclose the identity of the creditor;

- itemize the amount financed, annual percentage rate, finance charges, total payments with schedule, and prepayment/late payment penalties.
- give the borrower two copies of the Truth in Lending notice explaining the right to rescind.

Once full disclosure is made **the borrower may rescind the contract for any reason within three business days** (business days include Saturday, but not Sundays or Federal holidays). If disclosures were not made or made incorrectly you have **three years** to rescind, but the right is “cut-off” if your entire interest in the property is sold or transferred.

### **How to rescind:**

1. Follow the instructions in the contract.
2. If no instructions were given, mail a written notice advising the lender of your desire to rescind. Send the notice by registered mail to ensure its receipt and **keep copies of all paperwork related to the loan transaction.**

### ***What happens next?***

1. The lender has 20 days to return all money or property and release any security interest.
2. They are not entitled to finance charges; rescission cancels the contract and makes it as if it was never entered into.
3. If you received money or property from the lender you may hold on to it until the lender shows it no longer has an interest in it and returns any money you paid. Then, you must offer to return it, but if the lender does not claim it within 20 days, you may keep it.

### **You do NOT have a right to rescind if:**

1. - your loan is to buy/build your principal residence or refinance current balance with the same lender.
  - a state agency is the lender for the loan.
2. The Home Ownership and Equity Protection Act protects consumers from excessive fees and interest rates and applies to a:
  - 1st mortgage IF the annual percentage rate is more than eight percentage points above the rate on Treasury securities of comparable maturity; same lender;
  - 2nd mortgage IF the annual percentage rate is more than ten percentage points above the rate on Treasury securities of comparable maturity; or
  - loan where the total fees payable by consumer at/before closing exceed the larger of \$510.00 of the total loan amount or eight percent of the total loan amount.

This Act applies if the lender meets all the disclosure requirements of the Truth in Lending Act (mentioned above) plus the following:

- The lender must give written notice that the borrower has three business days to decide whether to sign the loan agreement and the loan need not be completed;
- You must receive a warning that the lender will have a mortgage on your home and that you could lose the home for failing to make payments; and
- The lender must disclose the annual percentage rate, payment amounts, and total amount.
- If you have a variable rate loan, the lender must disclose that the rate and monthly payment may go up. The lender must state the maximum monthly payment.

3. The **Real Estate Settlement Procedures Act**, prohibits kickbacks between different parties in the real estate settlement process, and also requires lenders to provide a good faith estimate for all the costs of a particular loan. It was designed to protect consumers from needlessly high closing costs. The Act prevents lenders, realtors, and title companies from engaging in providing undisclosed kickbacks to each other. [Sample complaint letter]

4. The **Consumer Mortgage Protection Act** is a Michigan statute that covers:
- loan transactions;
  - home improvement contracts which are secured by first liens, subordinate liens, or other liens; and
  - land contracts on real property located in Michigan and used by the applicant or borrower as its principal dwelling.

The statute does **NOT** cover the following loan transactions:

- Loans in which the loan proceeds are used to purchase a dwelling. These loans are sometimes referred to as “purchase money loans;”
- Reverse mortgages;
- Open-end credit in which the lender reasonably expects the borrower to access multiple advances.

**If you are a victim of a predatory lender:**

1. Sometimes the best choice is to seek the advice of an attorney. If you do:

Keep all paperwork from the suspected predatory transaction.

- a. Mortgage
- b. Promissory Note
- c. Settlement Statement
- d. Application papers
- e. Advertisements, etc

Document all contacts in detail (what was said, promised, and/or implied)

State Bar of Michigan Referral Service: (800) 968-0738

Legal Hotline for Michigan Seniors: (800) 347-5297

2. It may also be appropriate to notify the proper governing agency of the fraud.

State Attorney General's Office or Attorney General (Your State)  
PO Box 30213  
Lansing, Michigan 48909  
[www.michigan.gov/ag](http://www.michigan.gov/ag) or [www.naag.org](http://www.naag.org)

Department of Labor and Economic Growth/Financial and Insurance Services  
[www.michigan.gov/dleg](http://www.michigan.gov/dleg)

If the fraud is criminal, contact your local police department.  
[www.officer.com/links/agency\\_search](http://www.officer.com/links/agency_search)

For more information on the Three-Day Cancellation Rule, contact the Federal Trade Commission at 1-877-FTC-HELP. [www.ftc.gov](http://www.ftc.gov)