National
Consumer Law
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# Model Clauses For State Legislation and Regulations to Address Home Equity Investment Loans

National Consumer Law Center®

**August 2025**

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# I. INTRODUCTION

Home Equity "Investment" (HEI) Loans are a relatively new financial product secured by a homeowner's primary residence. HEI lenders attempt to evade consumer protections by falsely claiming that they are not loans. Courts, however, have rejected that assertion.[1] HEI Loans provide homeowners with a relatively small amount of cash upfront and require a lump-sum repayment calculated as a percentage of the home's value or equity. When the payment comes due, it is often shockingly big. Most HEI loans have an APR that is far greater than traditional mortgages and exceeds state lending caps.

Although HEI Loans look similar to shared appreciation mortgages, they are very different from the shared appreciation tool that has long been used by community land trusts and others to preserve affordable housing. HEI Loans were invented by private capital investors to tap into the trillions of dollars of equity Americans have saved in their homes.[2] Without adequate protections, HEI Loans are far more likely to cost people their most valuable assets than preserve them.

These model clauses are designed to address problems that homeowners have experienced with the nascent HEI Loan market and to clarify that these products are in fact loans subject to state lending laws and regulations. By adopting them now, before predatory practices become more widespread, states will be able to avoid a repeat of past market failures, like the subprime mortgage crisis.

# II. DEFINITIONS

"**Home Equity Investment Loan**"[3]

1. means a writing evidencing a transaction or any option, future, or any other derivative between a person and a consumer where the consumer receives money or any other item of value in exchange for an interest or future interest in a dwelling or residential real property or a future obligation to pay an amount based on the value of the dwelling or residential real property that is secured by a mortgage, deed of trust, or equivalent consensual security interest in the consumer's principal dwelling, on the occurrence of an event, such as:

    a. the transfer of ownership;

    b. a repayment maturity date;

    c. the death of the consumer; or

    d. any other event contemplated by the writing.

2. "Home Equity Investment Loan" does not include any home secured loan guaranteed or insured or otherwise offered by a government agency or government-sponsored enterprise.

3. A Home Equity Investment Loan shall be deemed a debt secured by a security interest in residential real property under the laws of this State.

   ***Legislative Drafting Note*:** Any existing definition of "residential mortgage loan" (or equivalent) in the State should be amended to include Home Equity Investment Loans.

"**Creditor**," when used in connection with a Home Equity Investment Loan, shall mean:

1. any person that provides funds to a consumer, is entitled to receive payment from a consumer, or otherwise owns an interest, in whole or in part, in connection with a Home Equity Investment Loan, including but not limited to, an originator, holder, investor, assignee, agent, successor, trust, trustee, or nominee; and

2. the loan servicer.

"**Home Equity Investment Loan Servicer**" means —

1. *[if appropriate]* a mortgage loan servicer as defined in [cross-reference to the state's existing definition];

2. a person that acts or purports to act on behalf of the Creditor in connection with the terms of a Home Equity Investment Loan, including when—

   a. Receiving a payment from a consumer, including an amount received for an escrow account;

   b. Making or advancing payments to the owner of a Home Equity Investment Loan;

   c. Evaluating a consumer for loss mitigation or communicating with the consumer with respect to loss mitigation;

   d. Sending or receiving correspondence or notices related to a Home Equity Investment Loan; orTaking any other action with respect to a Home Equity Investment Loan that affects the consumer's payment or performance of the contract or that relates to the enforcement of the Creditor's rights under the obligation;

3. a person that holds, owns, or originates a Home Equity Investment Loan if the person also satisfies the terms of paragraphs (1) or (2) of this definition.

## III. CAPS

1. The contract for a Home Equity Investment Loan shall state the maximum amount, in dollars, that the consumer would be required to pay pursuant to the agreement.

2. The maximum amount the consumer may be required to pay pursuant to a Home Equity Investment Loan shall not exceed the lesser of 15 percent of—

    a. the amount by which the value of the property at the time the consumer's payment is due exceeds the value of the property at the time the contract was executed, after accounting for adjustments made pursuant to [cross reference to section on adjustments for improvements and lack of maintenance]; or

    b. the value of the property at the time the contract was executed.

3. The APR for a Home Equity Investment Loan shall be calculated according to the requirements of 12 C.F.R. Part 1026, Appendix J (i.e. TILA) based on the maximum payment described in paragraph 2, any fees paid to the lender, and the full term of the agreement.

4. The APR for a Home Equity Investment Loan, as of the date of the consumer's application, shall not exceed the lesser of (i) the state's maximum interest rate for residential mortgage loans *or* (ii) the average prime offer rate for a comparable transaction, as defined by 15 U.S.C. 1639c(b)(2)(B) by—

    a. 1.5 or more percentage points for loans secured by a first lien;

    b. 2.5 or more percentage points for loans secured by a subordinate lien.

## IV. ADDITIONAL PROVISIONS

1. **Limitations on terms of Home Equity Investment Loans:** A Home Equity Investment Loan shall not:

    a. Contain a provision that requires owner occupancy or otherwise prevents a consumer from using the property as the consumer chooses;

    b. Contain a provision that prevents a consumer from refinancing a mortgage or lien or obtaining a subordinate lien or mortgage against the property that is the subject of the Home Equity Investment Loan;

    c. Require the consumer to pay more than half of any actual cost paid to third parties (i.e., appraisers, inspectors, closing costs, etc.) associated with the origination, servicing, or satisfaction of the Home Equity Investment Loan;

    d. Require a consumer to pay any fees or costs to the Servicer or Creditor after origination beyond those bona fide charges paid to third parties;

    e. Include a prepayment penalty or otherwise require additional payment or sums for satisfying or otherwise terminating the Home Equity Investment Loan at any point before its scheduled maturity date or termination date;

    f. Contain a provision restricting or waiving the substantive or procedural rights or remedies at law of a consumer;

g. Charge the consumer for any attorney's fees or legal costs incurred by the Creditor arising from any dispute, claim, or legal proceeding related to this loan, regardless of the outcome;

h. Include a confidentiality provision regarding the terms of the loan or any dispute related to the loan;

i. Contain a provision allowing the Creditor to alter any term of the agreement without the express written consent of the consumer.

2. **Requirements for terms of Home Equity Investment Loans contracts.**

   a. The terms of a Home Equity Investment Loan shall contain:

      i. A provision requiring the Creditor to provide to the consumer at least 90 days' written advance notice of any action required by the consumer under the terms of the Home Equity Investment Loan, which, if not timely taken by the consumer, will affect the rights or interests of the consumer under the agreement;

      ii. A provision requiring the Creditor to provide, within three business days of the consumer's request, and at no cost to the consumer, a payoff quote that itemizes everything for which the consumer is liable to pay to the Creditor;

      iii. A provision requiring the Creditor to provide, within three business days of the consumer's request, a written description of the process for terminating the Home Equity Investment Loan;

      iv. A provision specifying that the consumer shall receive credit for improvements made to the property securing the Home Equity Investment Loan in the amount of the greater of the funds paid for the improvements or any increase in appraised value of the home resulting from the improvements;

      v. A provision stating that the value of any adjustments for lack of maintenance or for improvements shall be determined by a property appraisal conducted by a certified or licensed appraiser in accordance with the Uniform Standards of Professional Appraisal Practice;

      vi. A provision stating that any property valuation required by the Home Equity Investment Loan, including but not limited to any valuation at or before origination or at the conclusion of the contract, shall be performed by a licensed or certified appraiser in accordance with the Uniform Standards of Professional Appraisal practice. The appraiser shall not be affiliated with the Creditor. The valuation may not be discounted or otherwise adjusted from the actual appraised value;

vii. A right to cancel the Home Equity Investment Loan for 3 business days after consummation or the delivery of all disclosures and documents described in [CROSS REFERENCE TO IV. DISCLOSURES], whichever is later;

viii. A provision specifying that:

1. if the consumer is unable to repay the loan in full at maturity without selling the property, the Creditor agrees to refinance the remaining balance due with a fully-amortizing, 30-year, closed-end mortgage with a fixed interest rate at the current market interest rate, using the current version of the Fannie Mae/Freddie Mac uniform instruments.

2. if refinancing as specified in (a) is not completed by the maturity date through no fault of the consumer, the Creditor agrees not to pursue foreclosure or require sale of the property until the refinance is completed, and only thereafter upon default on the refinanced loan.

ix. A provision that, if the consumer is successful in an action disputing an HEI loan, the Creditor shall be responsible for the reasonable attorney's fees and legal costs incurred by the consumer in connection with such dispute or proceeding;

x. A provision that, if the consumer is successful in an action disputing an HEI loan, the Creditor shall be responsible for the reasonable attorney's fees and legal costs incurred by the consumer in connection with such dispute or proceeding.

b. A mortgage, deed of trust, or equivalent consensual security interest in the consumer's principal dwelling that secures any obligation under a Home Equity Investment Loan shall state the maximum amount, in dollars, that the consumer may be required to pay pursuant to the agreement.

3. **Requirement for counseling before execution of Home Equity Investment Loan:**

a. A Creditor shall not consummate a Home Equity Investment Loan, unless the Creditor receives documentation that:

i. the consumer has obtained homeownership counseling from a counseling organization or counselor certified or approved by the U.S. Department of Housing and Urban Development to provide reverse mortgage Home Equity Conversion Mortgage (HECM) or other person authorized by the [STATE REGULATOR];

ii. the consumer has received counseling on the cost, affordability, and risks of the loan;

iii. the counselor had received by the time of the counseling session,

    1. a copy of the loan contract; and

    2. a cost disclosure form comparable to the Loan Estimate or Final Disclosure described by the Truth in Lending Act, the Real Estate Settlement Procedures Act, and their implementing regulations;

iv. The counselor shall not be liable for determining the accuracy or completeness of any documents provided pursuant to (c).

4. **Requirement for execution of Home Equity Investment Loan by consumer in presence of knowledgeable Creditor representative.** At the time of consummation, the Creditor shall provide the consumer with contemporaneous access to a representative of the Creditor who is able to answer any questions the consumer may have about the transaction.

## V. DISCLOSURES

1. A Creditor originating a Home Equity Investment Loan shall provide a copy of the following documents to the consumer no less than thirty calendar days before consummation of a Home Equity Investment Loan:

    a. all documents the consumer will be required to sign in order to consummate the loan; including but not limited to:

    i. a copy of the loan contract;

    ii. all disclosures required by federal law, including the Loan Estimate and Final Disclosure form described by the Truth in Lending Act, the Real Estate Settlement Procedures Act, and their implementing regulations;

    iii. A notice setting forth:

        1. a clear, conspicuous, and highly prominent statement of the maximum dollar payment the consumer could be required to make under the terms of the loan;

        2. the conditions that trigger the obligation to pay;

        3. how the amount due will be calculated;

        4. that, while the consumer is not required to make a payment during the loan term, they will still need to make payments on any other mortgages and for property taxes, homeowner's insurance, and HOA fees if applicable;

        5. the requirement for counseling before execution of the HEI loan; and

6. that the consumer may reject or cancel the offer at any time up to three business days after closing and how that right might be exercised.

iv. other document the consumer will be provided when consummating the loan; and

v. such other disclosures or documents as the [STATE REGULATOR] may require.

b. The [STATE REGULATOR] shall promulgate forms for Creditors to provide the notices required by (1) and such other documents as the [STATE REGULATOR] may require.

## VI. REMEDIES

It is essential that any consumer protection law include remedies and authorization for public and private enforcement. Here, consumers should be able to enforce cancellation of a contract, seek a court order voiding any noncompliant contract, obtain damages and/or statutory penalties, and recoup reasonable attorneys' fees and costs, in addition to other appropriate relief. A remedies provision for violations of the model code could be freestanding or cross-referenced to a state's general consumer protection statutory remedies and/or remedies found in state lending or mortgage statutes, as appropriate.

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## ENDNOTES

1. *See, e.g.*, Olson v. Unison Agreement Corp., 2025 WL 2254522 (9th Cir. Aug. 7, 2025) (rejecting lender's argument that contract was "option agreement" exempt from lending laws; holding product was "credit" under term's "plain and ordinary meaning"); Stone v. Real Estate Equity Exchange, 2025 WL 2222829 (Bankr. D. Colo. July 30, 2025) (borrower plausibly alleged product was a loan, rather than true option contract); Com. v. Hometap Equity Partners, LLC, 2025 WL 2468564 (Mass.Super. Aug. 21, 2025) (same).
2. *See* Podcast Transcription Session No. 103—Thomas Sponholtz & Jim Riccitelli, Lend Academy (hereinafter "Unison Podcast") (2017), https://perma.cc/5RZ4-TP2K (describing origin of HEI loan product). ICE Mortgage Technology, June 2025 Mortgage Monitor (June 2, 2025) https://mortgagetech.ice.com/resources/data-reports/june-2025-mortgage-monitor (noting record levels of home equity)
3. There are many possible names for this product. We recommend including the word "loan" to provide clarity. Some options others have used include:  Shared Appreciation Mortgages/Contracts, Home Equity Investment Loan Contracts, and Home Equity Sharing Agreements.