Glossary of Terms

Compliments of AFFIL partners: The Center for Responsible Lending & The National Consumer Law Center

A

Ability-to-Benefit. In the student loan context, one of the criteria used to establish student eligibility in order to receive government student assistance is that a student must have earned a high school diploma or its equivalent. Students who are not high school graduates (or who have not received General Education Certificates) can demonstrate that they have the “ability to benefit” from the education or training being offered by passing an approved ability-to-benefit (ATB) test. Serious problems with ATB tests can be the basis of an application for a loan cancellation due to ATB fraud.

Acceleration. When a creditor claims the total balance of a loan is due immediately. This can not usually occur unless you have fallen behind on payments. In the case of a home mortgage, receipt of a letter stating that a loan has been “accelerated” is normally an important warning sign of foreclosure.

Accord and Satisfaction. This is the legal term which applies when you make clear that you consider your payment the full and final resolution of a disputed debt. If the creditor accepts the payment, the law treats that acceptance as the final payment of the debt.

Adjustable Rate Mortgage (ARM). A mortgage in which the interest rate can be adjusted at specified intervals by a given formula using an index and margin.

Amortize. This means to pay off a loan with regular payments. Part of each payment is applied to principal and to interest. At the end of the term, the loan is paid in full. There is no balloon payment.

Amount Financed. The amount of money you are getting in a loan, calculated under rules required by federal law. This is the amount of money you are borrowing after deduction of certain loan charges that the Truth in Lending Act defines as finance charges, i.e., principal minus finance charges. You should think of the amount financed as the real amount you are borrowing. You will find the amount financed for a loan on the disclosure statement that is given to you when the loan papers are signed.

Annual Percentage Rate. The interest rate on a loan expressed under rules required by federal law. It is more accurate to look at the annual percentage rate (as opposed to the stated interest rate) to determine the true cost of a loan, because it tells you the full cost of the loan including many of the lender’s fees. You will find the annual percentage rate for a loan on the disclosure statement that is given to you when the loan papers are signed.

Answer. In a lawsuit, this is a legal document that the defendant must file to respond to the claims being raised. There are often short time deadlines to file an answer. Failure to file an answer can result in a default judgment.

Appraisal. An estimate of the value of property made by a qualified professional called an “appraiser.” Appraisals vary in price depending upon whether it contains a full report with a market analysis involving comparable sales or a simple “drive by.”

Arbitration. See Mandatory Arbitration.

Arrears. The total amount you are behind on a debt. Usually the amount of all back payments plus any collection costs.

Assignment. The transfer of a mortgage or deed of trust to another party usually evidenced by a document showing that the current mortgage holder (assignor) assigned its rights to the new holder (assignee).

Assignee. When a mortgage is transferred from one party to another (usually because the loan is purchased for investment purposes), the party that assumes ownership of the mortgage, as well as the rights and responsibilities attached to that mortgage, is known as the “assignee.” An assignee may receive all or part of a security interest.

Assignee Liability. A legal term that means that the purchaser of a loan may be held liable for legal claims against the original lender. Typically, the original lenders sell loans in the secondary market after the loan closes. If a predatory lending claim arises, assignee liability ensures that the borrower can pursue legal action. Assignee liability also encourages loan purchasers to conduct thorough due diligence.

Attachment. A legal process that allows a creditor to “attach” a lien to property that you own. Depending on state law, almost any kind of property may be subject to attachment, including your home, automobile, bank accounts, and wages. Once a lien is attached to the property, you may face further collection action on that property, including execution, garnishment or foreclosure.

Automatic Stay. An automatic end to creditor collection activity. Filing bankruptcy is the only way to get this protection. If the debtor filed other bankruptcy cases that were dismissed within the previous twelve months, however, s/he may not get an automatic stay or it may only last for the first thirty days of the bankruptcy case.

Auto/Car Title Loan. A short term loan secured by a borrower's car title. A typical car title loan has a triple-digit annual interest rate, requires repayment within one month, and is made for much less than the value of the car. Many borrowers who cannot afford to pay off their loans repeatedly extend them for additional fees. In some states, lenders are allowed to keep the surplus from the sale of the car if the borrower defaults on payment.

B

Balloon Payment. A large lump-sum payment that is due as the last payment on a loan. Often used by lenders as a way to make monthly payments artificially low.

Bank. A financial institution that accepts deposits, makes loans, and performs other services for its customers. According to Robert Frost, "a bank is a place where they lend you an umbrella in fair weather and ask you for it back when it begins to rain."

Bankruptcy. A legal process available in all states that allows you to address your debt problems according to a set of special rules while getting protection from continued collection activity. See also Liquidation and Reorganization.

Bond. Amounts required by a court order to protect a party to a lawsuit while the case proceeds. A bond may be required in some circumstances to pursue an appeal.

Bounce Loans. A short-term loan granted by a bank to cover an overdraft incurred by using either paper check or debit cards. Banks charge high penalty fees for each overdraft, ranging from $20 to $35 per overdraft plus a per-day fee of $2 to $5 at some banks until the account is brought to a positive balance. With "bounce loan" programs, banks pay themselves back the amount of the overdraft and fees out of the next deposit.

Broker's Price Opinion. An evaluation of property value typically based on a drive-by exterior examination, public data sources, and recent comparable sales, that is obtained by a servicer as an alternative to a full appraisal after a loan is in default or when the loan is being modified.

C

Cap. A ceiling that limits how much the interest rate on the loan may be adjusted. There are periodic caps, which limit how much the interest may be adjusted per period, and a lifetime cap, which limits how much the interest rate may be adjusted over the life of the loan.

Capitalization. Capitalization occurs when items owed on a loan are treated as part of a new principal balance. When arrears are "capitalized," the amount of the arrears is included in the principal before the interest rate is applied. Often, capitalization and reamortization go hand in hand. If the arrears are "capitalized" and the loan is "reamortized," your lender will recalculate your payment using the existing interest rate and the new principal balance.

Capitalized. In the student loan context, certain loans, such as subsidized FFEL loans, the government pays the interest that accrues while the student is enrolled in school at least half-time and during periods of deferment. However, with subsidized loans in forbearance, unsubsidized loans or PLUS loans, the student or the student's parents are responsible for paying interest as it accrues. When the interest is not paid, it is capitalized or added to the principal balance, which increases the outstanding principal balance on the loan. Interest that is capitalized subsequently accrues interest, adding an additional expense to the loan.

Chapter 7 Bankruptcy. See Liquidation.

Chapter 13 Bankruptcy. See Reorganization.

Check Cashing. Service offered by alternative financial institutions to people who do not have access to mainstream banking services. Although the fees can be high (typically 3% of the check value), unlike predatory payday lending, the practice generally does not encourage a cycle of debt.

Closed-end loan. A loan with a fixed term.

Closing. The process of signing loan papers which obligate the borrower to repay a loan. This term is associated with the signing of a mortgage loan. It is also called the settlement.

Closing agent. The mortgage closing or settlement is usually conducted by an agent for the lender. This person is called the closing agent. Often this agent is an attorney.

Closing Costs. These are costs related to the financing and title transfer of real estate. They include expenses such as points, taxes, title insurance, mortgage insurance, commissions, and fees.

Collateral. Property put up to secure a loan. If you have given a creditor collateral, that creditor can normally take and sell the collateral if you are not able to repay the loan. A creditor with collateral is normally known as a "secured creditor."

Commitment. An agreement, often in writing, between a lender and a borrower to loan money at a future date subject to the completion of paperwork or compliance with stated conditions. The commitment may guarantee an interest rate or other terms until a future date. See "lock."

Complaint. A document beginning a lawsuit. A complaint normally includes a statement of all of the claims being raised by the person bringing the lawsuit.

Consolidation. In the student loan context, consolidation loans allow borrowers to combine different types of federal student loans to simplify repayment. Consolidation is similar to refinancing of a loan. Borrowers have the option to consolidate all, just some, or even just one of their existing student loans. There is generally no minimum or maximum size for a Direct Consolidation Loan. Not all student loans are eligible for consolidation. Each program has its own rules.

Conventional Loan. A loan issued to a borrower with an excellent or very good credit rating. Conventional loans do not include those insured by the federal government, such as the Federal Housing or Veterans Administrations, or subprime loans.

Cosigner. A person who agrees to be responsible for someone else's debt. A cosigner is normally responsible for paying back a debt just as if he or she had received the money.

Counterclaim. A response to a lawsuit in which the person being sued raises legal claims against the person (or business) which started the case. For example, if you are sued by an automobile seller who claims you did not pay for a car, you might counterclaim that the car was a "lemon."

Credit Bureau. Also called consumer reporting agency or credit reporting agency. This is a company that receives information about a consumer's credit history and keeps records that are available to those seeking data about that consumer. Click here for information about your credit report.

Credit Insurance. Insurance designed to pay off a borrower's mortgage debt if the borrower dies or is otherwise incapable of meeting the loan obligation. When sold in a "single premium" or "lump sum," all premiums are charged in advance and typically added to the loan balance, increasing the overall cost by requiring the borrower to pay interest on the premiums over the life of the loan. Since single-premium credit insurance has fallen into disfavor, lenders have introduced analogous products such as “debt cancellation” contracts.

Credit Report. Also called a consumer report or a credit record. A report documenting the credit history and current status of a borrower’s monthly payment obligations and containing public information such as bankruptcies, court judgments, and tax liens.

Credit Score. A credit score (sometimes called a “FICO” score) is a number that summarizes your credit history. The score is based on a number of factors, including how well debts have been paid off, current levels of debt, types of credit, and length of credit history. Lenders use credit scores to decide who qualifies for a loan and how much the loan should cost. Scores generally range from 350 to 900; most lenders consider a score over 660 to be very good.

Creditor. Also called a lender. Any person or business to whom you owe money.

Cure a Default. If you have defaulted on a debt, this is a process for correcting the default. Most often, a “cure” refers to getting caught up on missed payments (paying the arrears). A cure may also be called reinstatement.

D

Debt Collector. The most common use of this term applies to anyone who collects debts. However, under the federal Fair Debt Collection Practices Act “FDCPA,” the term “debt collector” only applies to collection agencies and lawyers (or their employees) that are collecting debts for others. State laws may cover other types of collectors.

Debt Consolidation. Refinancing debt into a new loan. In the mortgage lending context, relatively short-term, unsecured debt often is rolled into long-term mortgage loans, putting the home at greater risk.

Debt-to-Income Ratio. The relationship between the consumer’s monthly debt payments and the monthly income, expressed as a ratio. Lenders will often set a maximum debt-to-income ratio and usually do not make loans to consumers whose ratios exceed the lender’s standard.

Debt Management Plan. Debt management plans are offered by many credit counseling agencies. Through debt management plans (DMPs), consumers send the credit counseling agency a monthly payment, which the agency then distributes to the consumer's creditors. In return, the consumer is supposed to get a break, usually in the form of creditor agreements to waive fees and to lower interest rates.

Debtor. Any person who owes money to another. In bankruptcy, the term "debtor" refers to the person who begins a bankruptcy case.

Debtor's Examination. Also known as "post-judgment process," "asset examination," and "supplementary process." This is normally a court ordered proceeding in which a debtor must appear in court or in an attorney's office to answer questions about current income and assets from which a judgment may be collected. In many states, failure to appear at a debtor's examination can result in an arrest warrant.

Debt Settlement. Negotiation and settlement services are different from debt management services (see Debt Management Plan) mainly because the debt settlement agencies do not send regular monthly payments to creditors. Instead, these agencies generally maintain a consumer's funds in separate accounts, holding the money until the agency believes it can settle a consumer's debts for less than the full amount owed.

Deed. A deed is an instrument that transfers ownership from the seller to the buyer upon the closing of the sale.

Deed-in-Lieu. An agreement to turn real estate over to a lender as an alternative to foreclosure.

Deed of Trust. In some states, this is the term used for a pledge of real estate as collateral. It is similar to a mortgage.

Default. Failing to meet the requirements of an agreement. Most defaults involve failure to make required payments. However, other types of defaults are possible, including failure to maintain necessary insurance and failure to keep collateral in proper condition. In the student loan context: Failure to pay a student loan according to the terms agreed to in the promissory note. For FFEL and Direct Loans, default occurs if a borrower fails to make a payment for 270 days if the loan is repaid monthly or 330 days if the payments are due less frequently.

Default Judgment. A judgment in a lawsuit against a party who did not meet legal requirements in connection with the case. The most common reason for a default judgment is failing to file an answer or other necessary papers before deadlines specified by law.

Default Rate. The interest rate the creditor will charge once the borrower defaults on the loan. If a default interest rate is listed in a loan contract, it is always higher than the contract interest rate.

Defendant. In a lawsuit, this is the person or business that is being sued.

Defense. A legal reason why a court should not award any or all of what is requested in a lawsuit. For example, a statement that the money is not owed is a defense to a collection lawsuit.

Deferment. Deferments allow eligible borrowers of student loans to postpone paying back their loans in certain circumstances. This is an extremely useful option particularly since, in most cases, interest does not accrue on the loan during the deferment period. Deferment categories vary depending on the type of loan, but generally include deferments for borrowers who are in-school, unemployed, in the military, or in a period of economic hardship.

Deficiency. The amount a debtor owes a creditor on a debt after the creditor seizes and sells the collateral. A deficiency arises when the collateral is sold for less than the amount of the debt. Normally, a creditor must bring a lawsuit to collect a deficiency.

Deposition. A proceeding in a legal case in which a person is asked questions about relevant facts (usually in a lawyer’s office) and gives sworn answers under oath. Your deposition may be required if you start a lawsuit or if one is filed against you. Your lawyer may require depositions of others. Depositions are a normal part of the discovery process used to prepare for a court trial.

Deregulation. In the lending context, the process started in the 1980s of loosening or eliminating regulation of the lending industry. Deregulation resulted, in part, in the removal of usury caps and borrower protections. Since then, abusive lending practices have increased.

Direct Loans. Student loans issued directly from the federal government to the student, with the assistance of the school or other entity that originates the loan. The main types of Direct Loans are Stafford, consolidation, and PLUS.

Discharge. A document that ends a debtor's legally enforceable obligation to pay a debt. It is common to get a discharge of a mortgage debt after the mortgage is fully paid off. In addition, most bankruptcies result in a discharge at the end of the case that applies to many debts.

Disclosure Statement. This term is commonly used to refer to the document that explains loan terms according to the Truth in Lending Act.

Discovery. This term covers a variety of legal processes by which the parties to a lawsuit obtain information from each other and documents related to the case.

Discount Fee. See points.

Downpayment. Money paid to make up the difference between the purchase price and the mortgage amount. Down payments are usually 20% of the sale price on conventional loans.

E

Equity. Your equity in property is the amount of cash you would keep if you sold property and paid off all of the liens on that property. For example, if you own a house worth $100,000, but you owe $60,000 on your original mortgage and $10,000 on a second mortgage, you have $30,000 in equity. The same principle applies to cars and other types of property.

Equity Stripping. Loan terms on mortgages (usually refinances) designed to maximize the lender's revenues by increasing the borrower's loan balance; this practice reduces the borrower's equity in the home. Equity stripping may occur in various ways, but the most common is charging excessive fees that are financed as part of the new loan.

Escrow. Amounts set aside for a particular purpose. A formal escrow usually requires a legal agreement that covers permissible usage of the escrow and how and where the money is to be kept. One type of escrow is money you pay to your mortgage company to cover taxes and insurance. Escrow is also used when you have a dispute with a creditor. You may choose to set up an escrow to pay the debt in the event you lose the dispute.

Escrow Closing or Settlement. The occasion where the purchase of a home is financed or a non-purchase money loan (see home equity loan) and mortgage is signed, the buyer pays the mortgage, and closing costs are paid.

Eviction. A legal process terminating the right to occupy a home, apartment or business property. State law eviction proceedings are required before putting someone out.

Execution. The process of enforcing a court judgment by taking property from the defendant. Execution of a judgment of eviction, for example, involves the sheriff or a public official putting the tenants out. Execution of a judgment lien involves seizing and selling the property subject to the lien.

Exempt Property. Property that the law allows you to keep when you are being faced with collection on an unsecured debt. In bankruptcy, exempt property is protected from sale to satisfy the claims of creditors. Your exemption applies to your equity in the property after deduction for the amounts you owe to pay liens on that property.

Exemptions. These are laws that give you the right to keep your exempt property.

Exploding ARM (adjustable rate mortgage). A common type of "hybrid" ARM in the subprime mortgage market that includes both a fixed- and adjustable-interest rate component. A "2/28" hybrid ARM comes with an initial short-term fixed interest rate for two years, followed by rate adjustments, generally in six-month increments for the remainder of the loan's term. Typically the introductory rate is artificially low, giving homeowners a dramatic increase in housing costs after the introductory period expires.

F

Fair Credit Reporting Act. A federal (national) law that regulates credit bureaus and the use of credit reports.

Fair Debt Collection Practices Act. A federal (national) law that governs the conduct of debt collectors and that prevents many abusive collection tactics.

Fannie Mae. See Federal National Mortgage Association.

Federal Deposit Insurance Corporation (FDIC). An independent agency created by Congress in 1933 to maintain financial stability and public confidence in the nation's banking system. The FDIC insures deposits in banks and thrift institutions for up to

$100,000. The agency also directly examines and supervises about 5,300 banks and savings banks, more than half of the institutions in the U.S. banking system.

Federal Family Education Loans (FFEL). This is the generic name for the major forms of guaranteed federal student loans. Private lenders provide the funds for these loans. Lenders have incentives to participate in the guaranteed loan programs because the government reimburses them when borrowers default. The main types of FFEL loans are Stafford, consolidation, and PLUS loans.

Federal Reserve Board (Fed). The central bank of the United States. It was created by Congress to provide the nation with a safer, more flexible, and more stable monetary and financial system. Its central agency conducts US monetary policy, and its 12 regional banks support and regulate commercial banks and thrifts.

Federal Housing Administration (FHA). One of the agencies of the federal government that insures first mortgage lenders against loss when a loan is made following FHA regulations. The FHA does not lend money; it only insures the loan.

Federal Law. A law of the United states that applies throughout the country. The bankruptcy law is an example of a federal law.

Federal National Mortgage Association (Fannie Mae) and Federal Home Mortgage Corporation (Freddie Mac). A high percentage of mortgages are now held by investors. The two largest investors that purchase mortgages on the secondary market are Fannie Mae and Freddie Mac. These “government sponsored enterprises” were created by Congress to provide liquidity or capital in the housing market by purchasing mortgages. This helps put money back into the hands of the originating lender so that new loans can be made. The originating lender must follow certain guidelines specified by Freddie Mac and Fannie Mae when qualifying the borrower for a loan, commonly called underwriting guidelines.

Fee. Any charge added to a loan.

Finance Charge. The amount of money a loan will cost you expressed as a dollar figure. The finance charge includes the interest together with certain other loan charges specified by the Truth in Lending Act. You will find the loan’s finance charge on the disclosure statement given to you when you sign the loan papers.

Finance company. A company engaged in making loans to individuals or businesses. Unlike a bank, it does not receive deposits from the public.

Fixed-Rate Mortgage. A mortgage on which the interest rate is set for the term of the loan.

Flipping. The practice of refinancing a mortgage loan without providing a net benefit to the homeowner. Although some borrowers may receive cash as a result of flipped loans, the benefit of this compensation may be outweighed by the costs of losing equity or taking on unaffordable debt. See property flipping.

Forbearance. In the student loan context: forbearance involves a loan holder agreeing to a temporary stoppage of payments, an extension of time for making payments, or acceptance of smaller payments. Interest continues to accrue during a forbearance period.

Force-Placed Insurance. The insurance policy your lender will “force” you to purchase if your insurance is cancelled or if your lender does not have proof of your insurance coverage. Force-placed insurance is very expensive.

Foreclosure. A legal process to terminate your ownership of real estate that is collateral for a debt, based on a mortgage or deed of trust. In some states, foreclosure involves a court proceeding (“judicial foreclosure”), while in others foreclosure occurs by creditor action alone (“non-judicial foreclosure”).

Foreclosure Rescue Scam. This scam targets those who have fallen behind on their mortgage payments. A con artist promises to help consumers save their home but is actually intent on stealing the home or most of its accumulated equity.

Fraudulent Transfer. Giving away property to keep it out of the hands of creditors. The law allows creditors to sue to get the property back.

Freddie Mac. See Federal Home Mortgage Corporation.

G

Garnishment. A creditor’s seizure, to satisfy a debt, of property belonging to the debtor that is in the possession of a third party. Usually a court has to authorize the seizure in advance. An example would be seizure of money in your bank account to repay a court judgment. Wages owed to you can also be garnished in many states.

Good Faith Estimate (GFE). An itemization of the estimated closing costs. Lenders or brokers must provide this list to the loan applicant for a mortgage loan within 3 business days after receipt of the application. The GFE is intended to assure that consumers have adequate information about closing costs early on to enable them to shop for those, as well as interest rates. This disclosure is required by the Real Estate Settlement Procedures Act.

Government National Mortgage Association (Ginnie Mae). A quasi-governmental agency that guarantees pools of Federal Housing Administration (FHA) and Veteran Administration (VA) insured-loans that had been securitized for investment purposes.

Government Mortgage Guarantors. There are special government programs that provide mortgage insurance or guarantees to lenders who make purchase-money mortgage loans to homebuyers who meet certain criteria. These programs are offered through the federal government (the Federal Housing Administration, part of the Department of Housing and Urban Development; the Rural Housing Service, part of the Department of Agriculture; and the Veterans Administration) or by a state housing finance agency. In addition to the insurance, these loans come with an obligation on the part of the insured lenders to work with homeowners to cure defaults.

Grace Period. In the student loan context: a period of time after the student graduates or leaves school before the student must begin repayment. The grace period for Stafford loans is generally six months. For Perkins loans, the grace period is nine months. Repayment on PLUS loans generally must being within sixty days after the final loan disbursement for the period of enrollment for which the loan was borrowed. In the credit card context: the amount of time after you make purchase before interest on the loan begins to acrue.

Guarantor. A person who agrees to pay another person's debt in the event that he or she does not pay. The term guarantor is often used interchangeably with cosigner, even though there are some minor legal distinctions in the collection process.

Guaranty Agency. An organization that administers the Federal Family Education Loan (FFEL) Program. This agency is the best source of information on FFEL loans. For the name, address, and telephone number of the agency in any particular state, contact the Federal Student Aid Information Center at 1-800-4-FED-AID. For a list of state guaranty agencies, click here.

H

Hazard Insurance. Insurance that covers property loss or damage, usually paid for by borrowers and required when obtaining a mortgage.

Holder. The mortgage holder “owns” the borrowers’ mortgage. Since many mortgages are assigned by the originator to a purchaser on the secondary market, very often the mortgage holder will not be the bank or mortgage company who made the loan.

Home Equity Loan. Generally, this term is used to describe any mortgage loan that is not used to finance the purchase of the home.

Home Ownership and Equity Protection Act (HOEPA). This is a federal (national) law that provides special protection to homeowners when they obtain home mortgage loans at high interest rates or with high fees.

Homestead Exemption. The right, available in most states and in the bankruptcy process, to treat your residence as exempt property that can not be sold to satisfy the claims of unsecured creditors. In most states, the homestead exemption covers a certain dollar amount of your equity in your residence. A home can not normally be sold to pay claims of your creditors unless your equity in the home exceeds the amount of the exemption. A homestead exemption will not normally protect you from foreclosure when you have voluntarily pledged your home as collateral.

I

Index. A published rate often used to establish the interest rate charged on adjustable rate mortgages or to compare investment returns. Examples of commonly used indexes include Treasury bill rates, the prime rate, LIBOR (the London Interbank Offered Rate), and the 11th District cost-of-funds-index (issued by the San Francisco Federal Home Loan Bank).

Interest. The cost of borrowing money over time. Interest rates are expressed as a percentage.

Investor. A company that invests in mortgages that other companies have originated. They purchase the mortgage for a set amount and collect monthly payments, usually through a servicer.

Insolvent. A person or business that does not have sufficient assets to pay its debts.

J

Judgment. A determination by a court as to the outcome of a lawsuit, including any amounts owed.

Judgment Lien. A lien that attaches to property as the result of a judgment. For example, if you lose a collection lawsuit, the creditor normally has the right to an attachment on any real estate that you own.

Judgment-Proof. This term is applied to people or businesses with property of minimal value, which can be entirely protected by exemptions. If you are judgment-proof, it is difficult or sometimes impossible for any creditor to force you to pay a debt.

K

Kickback. Money paid by one of the settlement service providers, e.g., the lender, title company, or closing attorney, for referring a customer.

L

Lemon Law. This is a state law that gives you protection if you purchase an automobile that does not work properly and can not easily be fixed. Most lemon laws only apply to new cars, but some also apply to used cars.

Levy. A process, in some states, for attachment of a judgment lien and/or execution of that lien.

Lien. Also called a “security interest,” it is a legal interest taken by creditors in your property to secure repayment of a debt. A lien can be created voluntarily in connection with a loan, such as when you pledge real estate by giving a creditor a mortgage or deed of trust. A lien can also be created without your consent by attachment based on a court order. A creditor with a lien is called a secured creditor.

Liquidation. Sale of property to pay creditors. The term is also used as a shorthand name for the chapter 7 bankruptcy process, even though property is not always sold in that bankruptcy process.

Lis Pendens. A notice, recorded in the chain of title to real property, required or permitted in some states to warn all persons that certain property is the subject of litigation and that any interests in the real property acquired during the pendency of the suit are subject to its outcome.

Loan Application. A standard form that creditors use to obtain personal and financial information from a borrower before deciding whether to make a loan.

Loan Term. The loan term is the length of time before the loan is due to be repaid in full. Most mortgage loans have 15 or 30-year terms. Many predatory consumer loans (payday loans, car title loans, refund anticipation loans) have very short loan terms, which increase the APR earned by the lender and/or pressure consumers into extending their loans at additional fees.

Loan to Value Ratio (LTV). The relationship, expressed as a percentage, between the loan amount and the value of the property securing the loan. The more equity in the property, the lower the percentage. Conversely, the less equity, the higher the percentage. A “high LTV loan” is one made with little or no equity in the property to secure the loan in the event of foreclosure. Conventional lenders require an LTV of, at most, 80%. Subprime lenders usually prefer a lower LTV, in the 70-75% range.

Lock. The interest rate selected by the borrower at a certain time during the loan process that is guaranteed by the lender for a specific number of days. This is called “locking” the rate. Once the rate is locked, neither the lender nor the borrower can change it.

M

Mandatory Arbitration. A clause in a loan contract that requires the borrower to use arbitration to resolve any legal disputes that arise from the loan. Mandatory arbitration typically means borrowers lose their right to pursue legal actions, including any appeals, in a court of law. Evidence indicates that arbitration is often costly for borrowers and may reduce their chances of receiving a fair outcome. Borrowers often are unaware that a mandatory arbitration agreement has been included in their documents. Most credit card agreements have a binding mandatory arbitration clause.

Margin. The number added to the index to determine the interest rate on an adjustable rate mortgage. For example, if the index rate is 6%, and the current note rate is 8.75%, the margin is 2.75%.

Market Value. The highest price one would pay and the lowest price the seller would accept on a property. Market value may be different from the price a property could actually be sold for at a given time.

Mortgage. An agreement in which a property owner grants a creditor the right to satisfy a debt by selling the real property in the event of a default.

Mortgage-Backed Security. A type of investment backed by pools of mortgage loans, with payments on the underlying mortgages generating the return to investors. By selling mortgages in the secondary mortgage market, where they are collected and packaged as investments, lenders are able to generate more funds for future lending.

Mortgage Broker. An individual who offers to arrange financing for a homeowner. In theory, the broker operates as the agent for the homeowner, seeking the best product. States vary as to whether or not the brokers are regulated.

Mortgagee. The entity that obtains a security interest in the real property of another, usually a lender.

Mortgage Insurance. See Private Mortgage Insurance.

Mortgage Servicer. A bank, mortgage company, or a similar business that communicates with property owners concerning their mortgage loans. The servicer usually works for another company that owns the mortgage. It may accept and record payments, negotiate workouts, and supervise the foreclosure process in the event of a default.

Mortgagor. The owner of real property who grants a mortgage to another, usually a lender.

N

National Student Loan Data System. The Department of Education's database for federal student financial aid. NSLDS receives data from schools, guaranty agencies and from the federal Department of Education. See www.nsldds.ed.gov.

Negative Amortization. Negative amortization occurs when your payments do not cover the amount of interest due for that payment period. For example, if you have a $50,000 loan at 10% interest for 15 years and make monthly payments of $400 a month, that loan will negatively amortize. At the end of the 15 years, even if you make all of your payments, you will still owe more than $50,000. Negative amortization is usually associated with a large balloon payment due in the last month of the loan.

Negative Equity. Negative equity arises when the value of an item of property you own is less than the total you owe on all the liens on that property. For example, if you own a home worth $100,000 and borrow $125,000 to consolidate debts, you have negative equity of $25,000.

Non-Purchase Money Security Interest. A non-purchase money security interest arises when you agree to give a lender collateral that was not purchased with money from that loan. For example, a finance company may insist that you give a lawn-mower or living room set as collateral for a loan you take out to pay for car repairs.

Non-Sufficient Funds (NSF). Fees are charged for non-sufficient funds (NSF) when a checking account is overdrawn. The threat of these charges contribute to the pressure payday borrowers are under to renew loans and pay repeated fees. NSF fees differ from overdraft fees, which are charged for the extension of a loan using bank funds to cover the amount you would have overdrawn.

Note. This term is commonly used as a name for a contract involving the loan of money.

Notice of Right to Cancel. This document explains your right to cancel a loan in some circumstances. You should receive such a notice in connection with most door-to-door sales and for mortgage loans that are not used to buy your residence.

Notice to Quit. In most states, this is a notice given by an owner of property (usually a landlord) demanding that a tenant leave within a specified period of time or face eviction proceedings.

O

Ombudsman. There is an ombudsman office in the Department of Education that is supposed to help borrowers with student loan problems. See http://www.fsahelp.ed.gov or www.ombudsman.ed.gov for more information or call 877-557-2575. Borrowers should first try to resolve problems on their own before calling the Ombudsman. Many guaranty agencies have their own ombudsman offices.

Office of the Comptroller of the Currency (OCC). Charters, regulates and supervises all national banks. It also supervises all federal branches and agencies of foreign banks.

Office of Thrift Supervision (OTS). The successor thrift regulator to the Federal Home Loan Bank Board and a division within the Treasury Department. The OTS is responsible for the examination and regulation of federally chartered and state chartered savings associations.

Open-ended Loan. A loan without a definite term, or end date.

Origination Fee. A fee paid to a lender for processing a loan application. It is stated as a percentage of the mortgage amount, or "points."

Originator. The lender who makes the loan and whose name is on the loan documents.

Overdraft Loan. See Bounce Loans.

P

Payday Loan. (Also called "cash advances," "deferred presentment," "deferred deposits" or "check loans.") Payday loan customers write the lender a post-dated check or sign an authorization for the lender to take money out of an account electronically for a certain amount. The amount on the check equals the amount borrowed plus a fee that is either a percentage of the full amount of the check or a flat dollar amount. The check (or debit agreement) is then held for up to a month, usually until the customer's next payday or receipt of a government check. At the end of the agreed time period, the customer must either pay back the full amount of the check (more than what the lender gave out), allow the check to be cashed, or pay another fee to extend the loan. Most payday borrowers get caught in a debt trap, unable to pay off the loan in the two-week term, and so are compelled to avoid default by paying repeated high fees for no new money.

Payment Option ARM (adjustable rate mortgage). A mortgage that allows a number of different payment options each month, including very minimal payments. The minimum payment option can be less than the interest accruing on the loan, resulting in negative amortization.

Payment Shock. An unmanageable rise in a consumer's monthly mortgage payment, typically the result of an increase in the interest rate on an ARM loan. For example, a 2% bump in a loan's interest rate can increase the consumer's monthly payment 24%.

Perkins Loans. Low-interest student loans for both undergraduate and graduate students with exceptional financial need.

Personal Property. Property other than real estate.

PITI. Principal + Interest + Taxes + Insurance. The total monthly mortgage expense.

Plaintiff. This is a person or business that begins a lawsuit.

PLUS Loans. PLUS loans are student loans offered through both the FFEL and Direct loan programs. Until July 2006, these loans were available only for parents borrowing on behalf of their children. As of July 1, 2006, PLUS loans are also available for graduate and professional students.

Points/Loan Discount Points. A cost of the credit imposed by the lender. Points are prepaid in cash or financed as part of the loan principal. Each point is equal to 1% of the loan amount (e.g., two points on a $100,000 mortgage would cost $2,000). Generally in the conventional loan market and sometimes in the subprime market, points are paid to lower the loan's interest rate. In that event, the points are called discount points.

Power of Sale Clause. A provision in a mortgage or deed of trust permitting the mortgagee or trustee to sell the property without court authority if the payments are not made.

Predatory Lending. A term for a variety of lending practices that strip wealth or income from borrowers. Predatory loans typically are much more expensive than justified by the risk associated with the loan. Characteristics of predatory loans may include, but are not limited to, excessive or hidden fees, charges for unnecessary products, high interest rates, terms designed to trap borrowers in debt, fraud, and refinances that do not provide any net benefit to the borrower. Read AFFIL's The Basics of Predatory Lending and Top Ten Tricks of the Lending Trade for more information.

Preemption. A term used when one law or rule directly overrides an existing law or rule. Preemption provisions in a federal law generally displace state laws governing the same topic. In the area of predatory lending, federal preemption would nullify many state protections for homeowners and prevent states from addressing local predatory lending issues as they arise. Banks and other depository institutions claim broad preemption of state laws.

Prepayment. Paying off all or part of the loan balance before it is due.

Prepayment Penalty. A fee charged by a lender if the borrower pays the loan off early. The lender's rationale for imposing prepayment penalties is to cover the loss of costs advanced by the lender at the time of origination. Mortgage loans with prepayment penalties often include a yield spread premium payment by the lender to the broker.

Pre-Sale. Sale of property in anticipation of foreclosure or repossession, usually with the lender's consent. A pre-sale is likely to lead to a higher sale price than foreclosure or repossession.

Principal. The amount borrowed.

Private Mortgage Insurance (PMI). Insurance provided by non-government insurers that protects lenders against loss if a mortgage borrower defaults. This insurance is usually required when a borrower makes less than a 20% down payment. When the borrower's equity in the property equals 20%, s/he may request the insurance be canceled.

Private Student Loans. Banks and other financial institutions make private student loans without any direct financial backing from the federal government. They are not subsidized, meaning that interest starts to accrue at the time the loans are obtained.

Processing Fee. A charge imposed by a creditor to process or handle a loan application.

Property Flipping. Property flipping scams typically involve speculators who buy dilapidated residential properties at low prices and resell them at huge markups to unsophisticated (and often first-time) homebuyers. Falsified appraisals are often the linchpin of property flipping scams.

Property Inspection Fee. A charge imposed by a servicer for inspections (usually drive-bys) to determine the physical condition or occupancy status of mortgaged property, often charged repeatedly once an account is placed in default status.

Pro Se (also called pro per). Representing yourself (without an attorney) in a legal case or bankruptcy proceeding.

Punitive Damages. Special damages that are sometimes awarded in court to punish a party which is responsible for serious misconduct.

Purchase Money Mortgage. The mortgage loan obtained to purchase a home.

Purchase Money Security Interest. A lien on property that arises when you agree to allow a lender to take as collateral the property you are purchasing with the loan.

R

Reaffirmation. An agreement in the bankruptcy process to pay back a debt that would otherwise be discharged in bankruptcy. Most reaffirmation agreements are a bad idea.

Real Estate Settlement Procedures Act (RESPA). The purpose of this federal law is to protect consumers from unnecessarily high settlement charges and certain abusive practices that have developed in the residential real estate market. The law requires disclosures before and at the closing, as well as periodically throughout the term of the mortgage loan. The disclosures address settlement costs, servicing transfers, and escrows. RESPA also prohibits kickbacks and fee-splitting between settlement servicer providers.

Reamortization. When a loan is reamortized, your payment is recalculated based on loan terms that are different from the original terms. For example, if you have paid for five years on a ten-year loan, your lender might consider starting the ten-year period again and recalculating your payments. This will lower your payments. Similarly, your arrears may be capitalized (included in the principal) and your loan reamortized to reflect the higher principal balance on which interest is accruing.

Redeem. Recovering collateral from a creditor by paying the entire amount you owe whether past due or not.

Redlining. In the mortgage lending context, the practice of *denying* the extension of credit to residents of a specific geographic area due to their race, ethnicity, age, or sex. See also Reverse Redlining.

Refinancing. The process of paying off current debts by borrowing new money either from an existing creditor or a new creditor.

Refund Anticipation Loan. See Tax Refund Anticipation Loans.

Registry of Deeds. Also called Land Records or Recorder's Office. These offices are located in every county. Real property deeds, mortgages or deeds of trust, assignments, liens, and other documents affecting real property are filed in these offices.

Rehabilitation. This is a process where borrowers with defaulted student loans can get out of default by making a required number of on-time payments. Once payments are made, the guarantor or the Department must attempt to find a lender to purchase the loan. If the loan is sold, the loan is removed from default status and the borrower is eligible for new loans and grants.

Reinstatement. The process of remedying a default so that the lender will treat you as if you had never fallen behind.

Renewal. In some states, regulations limit the number of times a single payday loan can be extended or "rolled over." Payday lenders accomplish the same effect with loan renewals, also known as "back-to-back transactions." In a renewal transaction, the borrower pays off an existing payday loan in order to open another one (either immediately or after a cooling-off period). The borrower gets no new money, but pays another fee for the new loan.

Rent-to-Own. Rent-to-own companies "rent" merchandise to a consumer for a stated period, after which the consumer owns the merchandise. A consumer would pay over four times the value of the merchandise under a typical contract. The company is not required to disclose interest rates, although the transaction is much like a loan in that the company may levy unlimited finance charges for late payments, and may repossess the merchandise.

Reorganization (Chapter 13 Bankruptcy). This is a bankruptcy process to get relief from debts by making court-supervised payments over a period of time. The alternative is usually liquidation under chapter 7.

Replevin. The legal process in which a creditor seeks to recover personal property on which it claims a lien. Replevin is often threatened, but rarely occurs.

Repossession. (Often called "self-help repossession.") Seizure by the creditor of collateral after the debtor's default, usually without court supervision or permission. Repossession is most common in connection with car loans.

Rescission. This is a right under some laws to cancel a contract or loan. The most common example of rescission arises in home equity loan transactions. You have the right to rescind that loan within the first three business days after the loan is signed. In some cases, if the creditor has violated the law, your right to rescind may continue after the three-day period is up.

Retaliatory Eviction. An eviction where a landlord seeks to punish a tenant for exercising his or her legal rights (such as complaining to the building inspector or forming a tenant's organization).

Reverse Mortgage. A refinancing option usually available only to older homeowners who have built up substantial equity in their property. In a reverse mortgage, money is drawn based on the value of the property without an immediate repayment obligation, because the lender expects repayment by sale of the property at some point in the future.

Reverse Redlining. The practice of *extending unsafe credit* to those in certain communities based upon race, ethnicity, sex, or age. See also Redlining.

Rollover. Rollovers are common practice in payday lending. Payday loan terms are typically two weeks, but borrowers are flipped into rollovers: they pay another fee to keep the loan outstanding in an extension. Many borrowers pay a high fee every payday without ever paying down the principal or receiving new money, and end up paying many times the original loan amount in fees. See also renewal .

S

Sale/leaseback. An early form of payday lending circumvention, in which a payday lender avoids legal restrictions by claiming the loan they make is payment for an item the borrower owns, but pretends to "sell" to the lender, who then "leases" it back to the borrower for a fee. The "sale" proceeds are the loan, and the fee is the interest. Also commonly used in car title lending.

Satisfaction. This is a legal document that states that a debt has been fully paid or that partial payment has been accepted as payment in full. A satisfaction is a type of discharge.

Secondary Market. This term describes the phenomenon where originating lenders sell their loans to buyers (often called investors), usually in bulk. This enables mortgage companies specializing in home equity lending to operate with a small capital base. They can obtain a line of credit from a major bank, originate loans, and then obtain money to make new loans by selling them to investors. The secondary market includes "wholesale" lenders who buy loans from small lenders, and the securitization market, where mortgage loans are pooled and sold to investors.

Secured Credit Cards. A credit card for which the card issuer requires that the card holder place a certain amount of money in a bank account with the card issuer. If the debtor does not repay the credit card, the card issuer can seize the money in the bank account.

Secured Creditor. Any creditor that has collateral for a debt.

Secured Debt. A debt for which the creditor has collateral in the form of a mortgage, lien, or security interest in certain items of property. The creditor can seize the property (collateral) if the debtor defaults in repayment of the debt.

Securitization. The process of investing in and providing capital for the creation of mortgage loans. This process brings together a variety of entities to accomplish these goals. Loans are pooled and assigned to a trustee that supervises the servicer of the loans and distributes the monthly returns to the securities holders. The pools of loans are sometimes insured and they are rated by the various bond-rating agencies. An investment firm invites investors to buy certificates or mortgage-backed securities that pay an attractive interest rate over a specific term. Investors are compensated through interest payments that are often guaranteed by bond insurance companies. The borrower's monthly payments on the loan cover both the return to the investors and a profit to the lender. The risk of loss to the investors is negligible given insurance and recourse agreements between the trustee and the lender. Creating capital flow in this way for subprime lenders only took off following 1994.

Security Interest. See "Lien," above.

Self-help Repossession. See Repossesssion.

Servicer. See "Mortgage Servicer."

Settlement. The closing of a mortgage loan. Also, the delivery of a loan or security to a buyer.

Settlement Statement ("the HUD-1"). The Real Estate Settlement Procedures Act requires lenders to give this disclosure at closing, or one day in advance of closing if the consumer requests it. It should be the final statement of settlement costs. The RESPA disclosure focuses on closing costs as a dollar amount.

Short-term credit. Payday lenders and purveyors of overdraft loans, car title loans and refund anticipation loans offer extremely short-term credit, typically a few days to one month, and charge interest rates in the triple digits. The excessive charges far outweigh the risks associated with these loans.

Short Sale. A type of pre-sale in which the creditor agrees to let you sell property (usually real estate) for less than the full amount owed and to accept the proceeds of the sale as full satisfaction of the debt.

Stafford Loans. These student loans are made to students through both the Direct Loan program and the FFEL program. Stafford loans are either subsidized or unsubsidized. A subsidized loan is awarded on the basis of financial need. For these loans, borrowers are not charged any interest before the repayment period begins or during authorized periods of deferment.

State Law. A law passed by an individual state that only applies to transactions in that state.

State Tuition Recovery Funds (STRFs). STRFs contain deposits of money collected from schools approved to operate in the state. The funds are disbursed to victimized students under specified conditions. Many states have either a STRF or a bond program to reimburse defrauded students.

Statute. Another word for a law passed by a state or federal legislative body. Laws enacted by local bodies, such as city councils, are usually called ordinances.

Steering. The practice of routing certain borrowers to lenders that charge higher fees or interest rates than the borrowers' credit histories warrant.

Subpoena. A document that is normally issued by a court in connection with a lawsuit, and that directs your attendance in a court or law office at a particular time. A subpoena may require production of documents related to the case.

Subprime Loan. A loan that is more expensive than a comparable prime loan. Subprime lending is generally defined as less than 'A' (i.e. prime) lending. This type of lending is designed to provide credit to borrowers with no credit history or past credit problems at a higher cost than conventional 'A' mortgage loans. Most of the predatory mortgage lending occurs in the subprime market.

Summons (also called “original notice” or “notice of suit”). This is a document that is provided at the beginning of the lawsuit to tell the defendant what is being requested and what must be done to respond to the complaint. The term “summons” is also sometimes used interchangeably with subpoena for other legal papers that direct a person to be at a particular place at a particular time.

T

Table-Funded Transaction. A transaction where the nominal lender is actually originating the loan for another entity whose money is used to fund the loan. The loan will be transferred within a relatively short period of time after the closing to the lender who funded the loan.

Targeting. A practice in which lenders specifically market high-cost or predatory loans to potential customers based on factors such as race, ethnicity, or age. Targeting is a form of discrimination because it targets minorities and other populations and exploits them by offering loans with abusive terms and conditions.

Tax Refund Anticipation Loan. A loan to the debtor to be repaid out of the debtor’s tax refund. The refund is often then sent directly to the lender. These loans can be very expensive.

Tax Service Fee. The fee charged by a lender for a report about whether the borrower is or has been delinquent on the payment of taxes.

Title. A legal document establishing the right of ownership.

Title Insurance. Insurance to protect the lender (lender’s policy) or the buyer (buyer’s policy) against loss arising from disputes over ownership or a property.

Title Search. A check of the title records to ensure that the seller is the legal owner of the property and that there are no outstanding liens or other claims on the property.

Triple-Digit Interest. Payday and overdraft loans typically carry triple digit interest rates. The annual percentage rate (APR) for payday and other predatory consumer loans generally exceeds 400%.

Trustee. A trustee is a person or business that is responsible for managing assets for others. In bankruptcy, the trustee is a person appointed to administer the bankruptcy case and its assets to maximize the recovery for unsecured creditors.

Truth in Lending Act (TILA). A federal (national) law that requires that most lenders, when they make a loan, provide standard form disclosures of the cost and payment terms of the loan.

U

Underwriting. The process of applying established lending criteria to the qualifications of a particular loan applicant.

Underwriting Fee. A fee charged by a creditor to perform underwriting.

Undue Hardship. Borrowers must be able to prove "undue hardship" in order to discharge student loans in bankruptcy. (Not all types of loans are automatically discharged in bankruptcy; see Bankruptcy for more information.)

Unsecured Creditor. A creditor that has no collateral for the debt owed.

Unsecured Debt. A debt that does not involve collateral.

Usury. The practice of lending money and charging the borrower interest, especially at an exorbitant or illegally high rate. Examples include payday, overdraft, and auto title loans. Payday loans typically carry an annual percentage rate (APR) of over 400%, sometimes exceeding 1000%. Societies and religions throughout history have banned or limited the practice of usury. See The History of Usury for more information.

V

Variable Rate. Interest rate that changes periodically in relation to an index.

Variable-Rate Mortgage. This is a mortgage loan on which the interest rate can change over time. The changes can affect the amount of your monthly payments.

W

Wage Assignment. An agreement to have wages paid to a person other than yourself. For example, some people assign a portion of their wages to be paid directly to cover a credit union bill.

Wage Garnishment. Garnishment of the debtor’s wages from the debtor’s employer.

Warranty. Goods or services you purchase contain explicit and/or implicit promises (called warranties) that the goods or services sold will meet certain standards. A seller’s failure to live up to warranties often can be a defense to repayment of the debt.

Workout. This term covers a variety of negotiated agreements you might arrange with creditors to address a debt you are having trouble paying. Most commonly, the term is used with respect to agreements with a mortgage lender to restructure a loan to avoid foreclosure.

Y

Yield Spread Premiums (YSP). A fee from a lender to a loan broker paid when the broker arranges a loan where the interest rate on the loan is inflated to an amount higher than the “par” rate. The par rate is the base rate at which the lender will make a loan to borrower on a given day.