

Segment 2 – 07/06/21
Colorado, Connecticut, Delaware, Florida and Georgia

Arizona Advance Fee Loan Broker Transition Checklist (2017)

https://nationwidelicensingsystem.org/slr/PublishedStateDocuments/AZ_Advance_Fee_Loan_Broker_License-Transition-Checklist.pdf

So much for the clear blue skies of Arizona. Go Suns! But, we must move on.

6. COLORADO: Colorado law requires that consumer lenders obtain a “supervised lender’s license”. A “supervised loan” is a consumer loan with an APR greater than 12%. You should also be aware that, in Colorado, excessive loan rates or predatory loan practices may constitute criminal usury, a *felony*, with penalties including 12 to 18 months in prison and a fine up to \$100,000. This law does not distinguish between consumer and commercial transactions. So, though no license is needed to make or broker commercial loans, you should still be aware of the usury limitations, the violation of which has serious penalties attached, and, generally speaking, is any APR in excess of 45% per annum. That, in Colorado, is clearly Rocky Mountain HIGH!

Colorado Uniform Consumer Credit Code (2021)

<https://coag.gov/licensing/uniform-consumer-credit-code/>

Colorado Supervised Loan Memo and Application (2021)

https://coag.gov/app/uploads/2020/12/SupervisedLender_MASTER_Application_Packet_2021.pdf

Colorado Criminal Usury Statute (2016)

<https://law.justia.com/codes/colorado/2016/title-18/article-15/section-18-15-104/>

7. CONNECTICUT: Connecticut does not require a license for a commercial transaction, but it does have a Small Loan Company license requirement, similar to Alabama and Alaska, which requires that a lender or broker obtain a license for loans of \$15,000 or less for which the interest rate exceeds 12%.

Presumably, this is a consumer statute, though, of course, that’s not what it says. You probably are not doing deals in that range. Just something for you to be aware of.

Connecticut Small Loan Lending Statute (2018)

<https://codes.findlaw.com/ct/title-36a-the-banking-law-of-connecticut/ct-gen-st-sect-36a-556.html>

8. DELAWARE: Every person desiring to transact the business of lending money in Delaware shall be required to obtain a license under this chapter; provided, however, that a person that makes not more than 5 loans within any 12-month period shall be deemed not to be transacting the business of lending money.⁵ *Del. C. 2202.*

But, under *5 Del. C. §§2210(e)* and 2202(b), the preceding statute only applies to “consumer credit transactions, including, but not limited to, extensions of credit secured by one to four family residential, owner occupied property located in this State intended for personal, family or household purposes. There are statutes governing the conduct of exempt lenders, but they are not much different than those of any other state. Based on §2210(e), it does not appear that a lender or broker engaged solely in commercial transactions needs a license to do so.

Delaware Banking/Licensed Lender Statute (2016)

<https://delcode.delaware.gov/title5/c022/sc01/index.html>

Delaware Administrative Code (2016)

<https://regulations.delaware.gov/AdminCode/title5/2200/2207.shtml>

Delaware Exemption Statutes (2014)

<https://regulations.delaware.gov/AdminCode/title5/2200/2207.shtml>

9. FLORIDA: A person may loan money to others, when the per annum percentage rate does not exceed 18 percent, without having a consumer finance license. If a mortgage is placed against real property, as collateral for such a loan, a person may need to be licensed as a mortgage lender pursuant to Chapter 494, Florida Statutes. There are no license requirements for commercial lenders, brokers or lessors. Florida does, however, impose criminal as well as civil penalties for usury and loan sharking.

In addition, Florida also has a law prohibiting loan brokers from assessing or collecting an advance fee from a borrower. *Florida Statutes Chapter 687.141.*

Finally, Florida has an interesting set of laws entitled “*Financial Technology Sandbox*”. *Florida Statutes Chapter 559.952.* These laws generally permit a FinTech company with a new product to test new services and products in a “supervised, regulatory sandbox using exceptions to specified general law and waivers of the corresponding rule requirements under defined conditions”.

Although basically a consumer statute, with a licensing requirement, it is an interesting development in the world of financial technology, and, in my opinion, will become more and more common to nurture the creation and use of innovative financial products throughout the country.

Florida Financial Technology Sandbox Statute (2020)

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0500-0599/0559/Sections/0559.952.html

10. GEORGIA: Finance companies and small loan companies that make consumer loans of \$3,000 or less are regulated by the Department pursuant to the Georgia Installment Loan Act. For finance companies that make consumer loans over \$3,000, the Federal Trade Commission along with the Consumer Financial Protection Bureau have regulatory authority over certain aspects of these loans pursuant to Regulation Z (Truth in Lending).

It also appears that Georgia has an "advance fee broker" law, not dissimilar to the one in Arizona, which might require that you obtain a license if that's part of your business model. This, like Arizona, seems to me to be a prohibition against unlicensed lenders promising loan modifications on mortgages. But, again, this is what the statute says.

Bottom line, no license needed unless you routinely collect advance payments. Once again, the definition of an "advance fee loan broker":

(3) "Loan broker" means any person, firm, or corporation who does not operate or maintain an office that is open regularly to the public for the transaction of business and where potential borrowers actually visit to transact, discuss, or negotiate potential loans and:

- (A) For or in expectation of consideration, arranges or attempts to arrange or offers to fund a loan of money, a credit card, or a line of credit;
- (B) For or in expectation of consideration, assists or advises a borrower in obtaining or attempting to obtain a loan of money, a credit card, a line of credit, or related guarantee, enhancement, or collateral of any kind or nature;
- (C) Acts for or on behalf of a loan broker for the purpose of soliciting borrowers; or

(D) Holds himself out as a loan broker.

"Loan broker" does not include any regulated lender or any third-party soliciting borrowers for a regulated lender pursuant to a written contract with the regulated lender or any mortgage banker or mortgage broker approved by a regulated lender or the federal Department of Housing and Urban Development,

the Veterans' Administration, the Federal National Mortgage Corporation, or the Federal Home Loan Mortgage Corporation.

Georgia Code re Prohibited Practices by Loan Brokers (2019)

<https://law.justia.com/codes/georgia/2019/title-7/chapter-7/section-7-7-2/>