**MORTGAGE LOANS FROM YESTERDAY TO TODAY**

1. **LAW NO 4077**

Law on Protection of the Consumer with no 4077 entered into force on 6 months later after being issued on 09.09.1995 (Official Gazette dated 08.03.1995 and no 22221). Following that date, the loans taken from the banks and similar financial institutions with the purpose of housing were used within the scope of the provision;**Article 10 with the heading Consumer Loans;**

"**In case a consumer applies to a bank or a similar financial institution for consumer loan in order to buy a good or service a written agreement must be made between the bank or financial institution and the consumer and a copy of this agreement must be given to the consumer.** **Loan terms foreseen under the agreement made between the parties cannot be changed against the consumer during the period of the agreement. “**

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However in the course of time lawsuits were filed because of the disputes arouse between the consumers and credit institutions.

The jurisdiction took the decision that; **"The loans used by the consumers in order to buy a house can't be qualified as a Consumer Loan, the definition of a Commodity under the Law no 4077 covers the movable commodity subject of a commerce not the immovable property."**

Upon the said decision the loans used by the consumers from banks or similar financial institutions for ACQUISITION OF PROPERTY laid OUTSIDE THE SCOPE OF THE LAW.

1. **LAW NO 4822**

**THE COMMODITY DESCRIPTION is expanded** in **the Law no 4822 on Related to Making Amendments in the Law on Protection of the Consumer** issued in the Official Gazette dated 14.03.2003 and no 25048 in order to eliminate unjust treatment to the consumers, shortcomings emerged either with the EU Legislative Alignment or during the application. According to this;

**Commodity:** **Immovable article, immovable goods with the purpose of house and holiday and software prepared to be used in an electronic medium, voice, scene and similar intangible goods subject of the merchandising, (Article:3/c)**

Conflict which the consumers encounter in this field is eliminated with this amendment. Thus loans used by the consumers with the purpose of house and holiday as of this date have been TAKEN INTO THE SCOPE OF THE LAW.

1. **LAW NO 5582**

Article 10/B with the title **Housing Finance Agreements** is added with the amendments in the Law no 4077 on Protection of the Consumer made by the Law no 5582 on Making Amendments in Various Laws Relating to the Housing Finance System (Official Gazette dated 06.03.2007 and no 26454) which was publicly known as Mortgage Law.

As of this date the loans used by the consumers were subject to the provision of this article.

**In the Law no 5582**

**In the Capital Market Law no 2499**

The Article 20 has set forth; "... consumers, who are party of a loan and financial leasing agreements corresponding to the housing finance definition, may claim assessment of the procedure subject of the agreement out of the scope of housing finance stated under the article 38/A of this Law by applying to the housing finance institution of which the agreement has been made by, within three months following the date this article has entered into force. Agreements, made before this article has entered into force, of the consumers, who do not apply within the stipulated time, are considered in the scope of the paragraph one of the article 38/A of this Law. Provisions of the fourth paragraph of article 10 of the Law no 4077 on Protection of the Consumer are applied in case the debt is paid before maturity date for the agreements made according to the Law no 4077 on the Protection of the Consumer before this article has entered into force." (Provisional Article 11)

**In the law no 4077 on Protection of the Consumer;**

**Under the definitions article;** "r) Housing finance institution: The institutions stated in the second paragraph of the article 38/A of the Capital Market Law no 2499,"

Third paragraph of the article four with title **Defective Good;** "The manufacturer-producer, seller, dealer, agent, importer and **according to the ninth paragraph of article 10/B** or fifth paragraph of article 10 **the creditor are severally liable for the defective good and optional rights of the consumer indicated under this article.** **Liability of the housing finance institution is limited for a period of 1 year starting from the delivery date and with the amount of the loan used according to the ninth paragraph of article 10/B.** **Even if the loan given by housing finance institution according to the ninth paragraph of article 10/B by the housing finance institution is transferred, the liability of the creditor housing finance institution continues.** The transferee institution isn't liable in the scope of this article. If more than one person is liable from the loss caused by the defective good then they are held responsible severally. Not to have any knowledge that the sold good is defective doesn't render the liability invalid.

Paragraph three of the article 7 **with the title Sales Campaign**; "In case the delivery or execution of the announced and committed good or service haven't been completed or duly fulfilled, the seller, supplier, dealer, agent, producer-manufacturer, importer and the creditor according to the paragraph five of the article 10 are severally liable. In case the announced and committed house hasn't been delivered completely, duly or within the stipulated time, **the creditor housing finance institution is severally liable as much as the provided loan together with the seller, supplier, dealer, agent, producer-manufacturer, importer according to the ninth paragraph of article 10/B.** **Even if the loan given by housing finance institution according to the ninth paragraph of article 10/B by the housing finance institution is transferred, the liability of the creditor housing finance institution continues.** The transferee institution isn't liable in the scope of this article."

**By adding the article 10/B with the title Housing Finance Agreements;**

The definition of the loan is made, providing an Pre-Agreement Information Form, preparation of it in written and handing one copy to the consumer, no changes can be made against the consumer on the terms of agreement during the agreement period, conditions of default, financial leasing procedures, provisions regarding to the security and warrant, arrangements regarding to the interest rates (fixed, variable and fixed/variable combined), reference interests and indexes, provisions regarding to the early payment and issues those must be written in the agreement at minimum level are given.

**4 Regulations were issued regarding to the subject as well as the legal arrangements.**

* Regulation on Procedures and Principles of **Pre-Agreement Information Form** that will be Provided by the Housing Finance Institutions (31.05.2007 / 26538 O.G.)
* Regulation on Procedures and Principles of **Early Payment Discount and Annual Cost Rate Calculation** in the Housing Finance System (31.05.2007 / 26538 O.G.)
* Regulation on Procedures and Principles of **Availability of Consumer Information** on Housing Finance Agreements **Including Variable Interest** (31.05.2007 / 26538 O.G.)
* Regulation on Procedures and Principles of **Refinancing of Loans** in the scope of Housing Finance (29.09.2007 / 26658 O.G.)

1. **LAW NO 6502**

Law on Protection of the Consumer with no 6502 entered into force on 6 months later after being issued on the 29th of May 2014 (Official Gazette dated 28.11.2013 and no 28835).

Article 86 of the Law and and the Law on Protection of Consumers dated 23.02.1995 and no 4077 are annulled.

The arrangements under single heading legislated as article 10/B in the Law no 4077 with the Law no 5582 and relevant with the Housing Finance Agreements are subjected to classification under separate article headings **excluding the provisions relevant with the linked loan and Insurance** with this Law.

It is seen that procedures and principles determined by the regulation also include what will be the elements those should be set forth in the agreement.

**Articles regarding to the Housing Finance Agreements in the law no 6502 on Protection of the Consumer are as follows.**

**Housing Finance Agreements**

**ARTICLE 32 -** (1) A housing finance agreement is an agreement directed towards consumers to use loans, to rent houses via financial leasing, to have consumers use loans under the warranty of houses they posses and use of loans with the purpose of refinancing of these loans with the purpose of acquisition of house.

(2) Housing finance agreement isn't valid as long as it isn't established in written. A financing institution, who didn't make a valid agreement, cannot set forth invalidity of the agreement against the consumer.

**Liability to inform before agreement**

**ARTICLE 33-** (1) Housing finance institutions should deliver the pre-agreement information form covering the housing finance conditions, to the consumer before establishment of the agreement by providing a reasonable time for the consumer to examine.

**Default**

**ARTICLE 34 -** (1) In case the consumer goes into default and if the housing finance institution has reserved the right to claim payment of the remaining debt then this right can be exercised only if the housing finance institution has fulfilled all of its obligations and if the consumer has went into default for at least two consecutive installments. The housing finance institution should make due notice to consumer by providing **at least thirty days** in order to exercise this right.

(2) Interest, commission and similar expenses aren't taken into consideration when calculating the due installments.

(3) In financial leasing transactions, if the consumer doesn't fulfill the obligations within the time stipulated in the due notice and if housing finance institution terminates the housing finance agreement, the housing finance institution is obliged to put the house on sale after the given time is ended in order to use right to collect the remaining debt completely. Before the sale the housing finance institution should has an appraisal from persons or bodies authorized in accordance with the Capital Market Law dated 6/12/2012 and no 6362. At least ten business days before the sale the consumer is informed about the the appraised real estate. The housing finance institution performs the sale of the house by acting as prudent merchant by taking the appraised value into consideration. If the value from the sale of the house exceeds the remaining debt the excessive amount is immediately reimbursed to the consumer.   Article 33 of the Financial Leasing, Factoring and Finance Companies Law dated 21/12/2012 and no 6361 isn't applied in financial leasing transactions which are directed towards to housing finance.

(4) The consumer or if the ownership is transferred, the third person who have the ownership or are obliged to evacuate the house following, if any, the payment of the amount exceeding the remaining debt to the consumer and the execution of the sale of the house in the scope of the paragraph three of this article. In case the house isn't evacuated the homeowner might claim enforcement of a lien in accordance with the articles 26 and 27 of Enforcement and Bankruptcy Law dated 9/6/1932 and no 2004 against consumer or third person who has the ownership.

**linked loans**

**ARTICLE 35** - (1) A linked loan agreement; is an agreement where the housing finance loan is given for the financing of an agreement when a certain house is bought exclusively and objectively these two agreements form an economic unity.

(2) Seller and housing finance institution are severally liable in linked loans if the consumer uses one of the optional rights indicated under the article 11 of this law due to non-delivery or improper delivery of the house. However the liability of the housing finance institution is one year limited with the loan amount used; if the house is delivered, starting from the delivery date of the house; and if the house isn't delivered starting from the delivery date of house indicated in the property sale agreement or in the linked loan agreement.

(3) Even if the loan given by housing finance institutions is transferred to a mortgage financing institution, housing finance fund or mortgage backed securities cover pool, the liability of the creditor housing finance institution continues. The transferee institution isn't liable in the scope of this article.

(4) Loans made available by payment by a creditor housing finance institution of a house value determined by the consumers himself without an agreement between the housing finance institution and seller regarding to the procurement of a certain house aren't considered as linked loans.

**Interest rate**

**ARTICLE 36-**(1) The part exceeding the principal amount of repayment amounts for loans and of leasing values for the leasing procedures is evaluated as the interest in the scope of this article.

(2) The interest rate might be determined either fixed or variable or taking both methods as basis for the same loan in loans directed towards the housing finance and financial leasing procedures provided that to be stated in the agreement. In case the interest rate is determined as fixed the rate determined on the date of agreement cannot be changed except approvals of the parties. In case the rate is determined as variable, the rate initially determined in the agreement can be changed taking the lowest rate from commonly used indices and generally accepted abroad and at home that will be determined in the agreement provided that the periodical repayment amount shall not exceed the maximum periodical repayment amount determined in the agreement initially. It is obligatory to provide knowledge to the consumer about the possible effects of this method in cases when the rates are determined as variable. Reference rates and indices those might be used with this purpose are determined by the Central Bank of Turkish Republic.

**Early repayment**

**ARTICLE 37 -** (1) The consumer might pay the housing finance debt completely as well as paying one or more than one undue installments. In these cases the housing finance institution is obliged to make discount regarding to all interests and other expenses according to the early payment amount.

(2) In case the interest rate is determined as fixed early payment compensation might be claimed from the consumer by housing finance institution when one or more than one installments are paid before due provided that to be stated in the agreement. The early payment compensation cannot exceed the one percent of the remaining balance of the debt paid to the housing finance institution for the loans with a remaining maturity not exceeding thirty-six months, and two percent for the loans with remaining maturity exceeding thirty-six months. In case the rates are determined as variable no early compensation might be claimed from the consumer.

**Insurance**

**ARTICLE 38 -** (1) No insurance is made regarding to the loan without an explicit written claim of consumer or via durable medium. In case the consumer requests to have an insurance, any policy provided by any insurance company the consumer wishes must be accepted by the housing finance institution. This insurance policy should be in compliance with the loan subject, the remaining balance in fixed sum insurance and its maturity.

**Miscellaneous**

ARTICLE 39 - (1) In case an account is opened regarding to the housing finance agreement and only transactions related to the loan are carried out with this account, no fees nor expenses related to such account, under any heading shall be claimed from the consumer. This account shall be closed following the payment of the loan, unless there is a contrary request from the consumer in written.

(2) No credit deposit account agreement related to the housing finance contract can be made, without clear instructions of the consumer.

(3) Real person shareholders of housing cooperatives shall also be deemed as consumers in the implementation of the provisions of this section.

(4) Procedures and principles related to the scope of pre-agreement notification, rights and obligations of the consumer and the house financing institution, the compulsory content of the contract, house financing advertisements, refinancing, linked loan, default, early payment and the calculation of the annual cost rate and other matters are determined by the regulations.

**The Housing Finance Agreements Regulation** entered into force after issued in the Official Gazette dated May 28th, 2015 and no 29369 for the detailed arrangement directed towards the application of the aforementioned Law provisions.

**CONSEQUENTLY;**

**At this stage the topics, consumers should pay attention before and after signing the Housing Finance Agreements are as follows.**

* **It is obligatory to submit Pre-Agreement Information Form** within a reasonable time before the establishment of the agreement. (In practice, Pre-Agreement Information Form should be signed by affixing the date a few days before the Housing Finance Agreement is signed.)
* **It is obligatory to make it in written and to submit one copy to the consumer.**
* **Terms foreseen under the agreement made between the parties cannot be changed against the consumer during the period of the agreement. .**
* **In case the consumer doesn't pay the debt and is in default of acceptance, the housing finance institution is;**
* **Obliged to send notification** to the consumer with registered mail **within 5 business days following the date of default.**
* **If the housing finance institution reserved the right to execute the remaining debt completely in case the repayments haven't been made, this right** can be used **only if at least 2 consecutive payments are in default.**
* The housing finance institution should make due notice by providing **at least 30 days** in order to exercise this right.
* **In financial leasing transactions,** following the end of the time limit given in due notice, if housing finance institution terminates the financial leasing agreement in order to use right to collect the remaining debt completely, the consumer is obliged to put the house on sale.
* Before the sale the housing finance institution should has an appraisal from persons or bodies authorized according to the provisions of the Capital Market Law.
* **At least 10 business days before the sale** the consumer is informed about the the appraised real estate.
* The housing finance institution performs the sale of the house by acting as prudent merchant by taking the appraised value into consideration.
* The consumer is liable against the loss of the housing finance institution for the portion of the amount exceeding the part acquired from the house sale.
* If the value from the sale of the house exceeds the remaining debt the excessive amount is paid to the consumer.
* The consumer or if the ownership is transferred, the third person who have the ownership or are **obliged to evacuate** the house following the payment of the amount exceeding the remaining debt to the consumer and the execution of the sale of the house in the scope of the paragraph three of this article.
* **In case the house isn't evacuated the homeowner** might claim **enforcement of a lien** in accordance with the provisions Enforcement and Bankruptcy Law against the consumer or if the ownership is transferred against the third person who has the ownership.
* **Liability of Guarantor**

In cases where personal guarantee is given as a warranty of the financing, the housing finance institution cannot request payment of debt from the guarantor **without applying to principal debtor and other warrants.**

* **Liability of the Creditor in Linked Loans;**
* Seller and housing finance institution are severally liable if the consumer uses one of the optional rights indicated due to non-delivery or improper delivery of the house.
* Liability of Housing Finance Institution;
* The liability of the housing finance institution is **1 year** limited with the loan amount used; if the house is delivered, **starting from the delivery date of the house**; and if the house isn't delivered **starting from the delivery date of house indicated in the property sale agreement** or in the linked loan agreement.
* **Interest Types**

The interest rates are 3 types in loans directed towards the housing finance and financial leasing procedures provided that to be stated in the agreement.

1. Fixed Interest
2. Variable Interest
3. Fixed and Variable Interest (applied together)

* **In case the rate is determined as fixed;**

1. The rate determined in the agreement initially cannot be changed without consent of both parties.
2. Early Payment Fee not exceeding the 2% of the early paid amount might be claimed from the consumer by housing finance institution when one or more than one installments are paid before due.

* **In case the rate is determined as variable;**

1. Reference interests announced and determined by the Central Bank of Turkish Republic based upon the consumer price index two months before the actual month are applied to the interest rate initially determined in the agreement provided that not to exceed the maximum periodical repayment amount.
2. No early payment fee is claimed from the consumer for the early payments.

**Variable Interest Rates Table Determined by TCMB (Central Bank of Turkish Republic)**

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **2007** | **2008** | **2009** | **2010** | **2011** | **2012** | **2013** | **2014** | **2015** | **2016** |
| **January** |  | 7.70 | 11.99 | 5.08 | 8.62 | 7.66 | 7.80 | 7.71 | 8.96 | 7.58 |
| **February** |  | 8.40 | 10.76 | 5.53 | 7.29 | 9.48 | 6.37 | 7.32 | 9.15 |  |
| **March** |  | 8.39 | 10.06 | 6.53 | 6.40 | 10.45 | 6,16 | 7.40 | 8.17 |  |
| **April** |  | 8.17 | 9.5 | 8.19 | 4.90 | 10.61 | 7.31 | 7.75 | 7.24 |  |
| **May** |  | 9.10 | 7.73 | 10.13 | 4.16 | 10.43 | 7.03 | 7.89 | 7.55 |  |
| **June** | 10.86 | 9.15 | 7.89 | 9.56 | **3.99** | 10.43 | 7.29 | 8.39 | 7.61 |  |
| **July** | 10.72 | 9.66 | 6.13 | 10.19 | 4.26 | 11.14 | 6.13 | 9.38 | 7.91 |  |
| **August** | 9.23 | 10.74 | 5.24 | 9.10 | 7.17 | 8.28 | 6.51 | 9.66 | 8.09 |  |
| **September** | 8.60 | 10.61 | 5.73 | 8.37 | 6.24 | 8.87 | 8.30 | 9.16 | 7.20 |  |
| **October** | 6.90 | 12.06 | 5.39 | 7.58 | 6.31 | 9.07 | 8.88 | 9.32 | 6.81 |  |
| **November** | 7.39 | **11.77** | 5.33 | 8.33 | 6.65 | 8.88 | 8.17 | 9.54 | 7.14 |  |
| **December** | 7.12 | 11.13 | 5.27 | 9.24 | 6.15 | 9.19 | 7.88 | 8.86 | 7.95 |  |

* **Early repayment**

Housing Finance Institution is liable to apply the required **interest discount** for the early payment installments in case the consumer pays before maturity;

1. The total amount,
2. One or more than one payments.

The method in **Regulation on Housing Finance Agreements** Annex (ANNEX:2) is applied in calculation of annual cost rate of the interest discount and of the loan required according to the paid amount.

* **Insurance**
* No insurance is made regarding to the loan without an explicit written claim of consumer or via durable medium.
* In case the consumer requests to have an insurance, any policy provided by any insurance company the consumer wishes must be accepted by the housing finance institution.
* This insurance policy should be in compliance with the loan subject, the remaining balance in fixed sum insurance and its maturity.
* **Miscellaneous**
* In case an account is opened regarding to the housing finance agreement and only transactions related to the loan are carried out with this account, no fees nor expenses related to such account, under any heading shall be claimed from the consumer. This account shall be closed following the payment of the loan, unless there is a contrary request from the consumer in written.
* No credit deposit account agreement related to the housing finance contract can be made, without clear instructions of the consumer.
* Real person shareholders of housing cooperatives shall also be deemed as consumers in the implementation of the provisions of this section.
* Other details regarding to the Housing Finance Agreements are given in the **Regulation on Housing Finance Agreements**.
* **Negotiable Paper**
* **Only bills written in the name of holder and prepared separately for each installment** can be arranged as negotiable paper because of the transactions performed by the consumer.
* Any bills arranged contrary to these provisions are invalid from in terms of consumer. (Law no 6502 Basic Principles 4/5)
* **Guarantee**
* Any personal guarantees taken from the **CONSUMER** in the housing finance agreements are considered as **ORDINARY GUARANTEE** whatever the title is.
* **Personal guarantees give by the counter party** regarding to the receivables of the consumer are considered as **joint guaranty** as long as there is a contrary provision in the other laws.

(Law no 6502 Basic Principles 4/6)

* **Compound Interest Prohibition**

**NO COMPOUND INTEREST is applied in the consumer transactions including the condition of default.** (Law no 6502 Basic Principles 4/7)

**EPILOGUE**

**THE INTEREST RATES GIVEN IN THE MORTGAGE LOAN ADVERTISEMENTS ARE CONTRACTUAL INTEREST RATES AND THEY DO NOT REFLECT THE MONTHLY/ANNUAL COST RATES.**

**THESE RATES ARE SHOWN ALMOST 2-3 SECONDS IN THE TV COMMERCIALS AND THE CONSUMER OVERLOOK THEM.**

**TOTAL COST THE CONSUMER MUST PAY WHEN USING THE MORTGAGE LOAN IN OTHER WORDS THE AMOUNT THAT WILL GO OUT OF THE CONSUMER'S POCKET HAVE IMPORTANCE.**

**AGAINST THE LOAN;**

1. **Interest (Contractual Interest)**
2. **Fee**
3. **Tax**
4. **Duty**
5. **And similar expenditures (Allocation Fee, Expertise Fee, Immovable Lien Fee...**

**ATTENTION SHOULD BE PAID TO MONTHLY/ANNUAL COST RATES THOSE WILL BE CALCULATED BY INCLUDING ALL OF THE PAYMENTS.**

**INCLUSIVE INTEREST RATE SHOULD BE QUESTIONED.**

**WHEREAS IT CHANGES ACCORDING TO THE MATURITY, APPROXIMATELY 1% RATE GIVEN IN TV COMMERCIALS FOR 100,000-TL LOAN WITH 10-YEAR MATURITY SHOWS THE CONTRACTUAL INTEREST RATE.**

**HOWEVER IT IS SEEN THAT MONTHLY RATE REACHES UPTO 1,40 % LEVELS WHEN THE AFOREMENTIONED ITEMS, THOSE WILL BE PAID WHILE USING THE LOAN, ARE INCLUDED.**

**IN OTHER WORKDS THE REAL FINANCE CHARGE PERCENTAGE THAT WILL GO OUT OF THE CONSUMER'S POCKET WILL BE 1,40%.**

**CONSCIOUS CONSUMER IS THE BASIS OF A HEALTHY ECONOMY.**

**Özcan PEKTAŞ**

**Consumer and Environmental Education Foundation**

**TÜKÇEV**

**Secretary General**