

Protecting Home Loan Seekers in South Africa: Combating Unlawful Mortgage Lending Practices by Financial Institutions

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Abstract

All over the world, home loans and mortgages are part and parcel of the products and services being offered by the financial institutions-such as banks and homeowner mortgage institutions to their numerous customers. Prior, during and post home loan transactions, they owe their customers the duty to ensure full disclosure of all the terms and conditions in the mortgage agreements without withholding any information. This paper examines any act contrary to *uberrimae fidei*-utmost good faith in the transactions. *Uberrimae fidei* requires the highest standard of good faith on both the lender and borrower to disclose all material facts that could influence the decisions of the other party in seeking and granting home loans and mortgages. Failure might result in severe consequences by exploring both the civil and criminal responsibilities and liabilities of the party who acted *mala fide*-in bad faith. Against this backdrop, this paper examines the protection offered by the laws to ensure level playing field prior, during and after mortgage lending transactions.

Keywords: financial institutions, home loans and mortgages, utmost good faith, *mala fide*, consequences, South Africa.

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1. Introduction

The Apartheid government in South Africa institutionalised racial segregation and discrimination for decades by implementing various laws and policies that favoured the white minority population and marginalised black South Africans.³ One of the ways this discrimination was implemented was through housing policies.⁴ Black South Africans were often denied access to home loans and were forced to live in overcrowded and inadequate housing conditions, while white South Africans enjoyed better housing opportunities.⁵ This racial segregation and inequality in housing were significant aspects of the broader apartheid regime.⁶ Post-apartheid South African Constitution, which came into effect in 1996 (Constitution), sought to rectify these historical injustices by establishing a more equitable and democratic society.⁷ The Constitution enshrines the principle of

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³ Freeman, A. (2008). Community reinvestment legislation and access to housing finance in post-apartheid South Africa. *Housing studies*, 23(5), 697-716.

⁴ Marais, L., & Cloete, J. (2017). Housing policy and private sector housing finance: Policy intent and market directions in South Africa. *Habitat International*, 61, 22-30.

⁵ Olivier, L. (1996). Mortgage Lending by Financial Institutions: Safe and Sound Banking Practices or Discrimination. *JS Afr. L.*, 500.

⁶ Lemon, A. (2021). The apartheid city. In *South African Urban Change Three Decades After Apartheid: Homes Still Apart?* (pp. 1-16). Cham: Springer International Publishing.

⁷ Tshishonga, N. (2019). The legacy of apartheid on democracy and citizenship in post-apartheid South Africa: An inclusionary and exclusionary binary?, *African Journal of Development Studies*, 9(1), 167-191.

equality and prohibits discrimination on the basis of race, gender or other factors.⁸ It also recognizes the right to access to adequate housing as a fundamental human right.⁹ Section 25 of the Constitution further safeguards the interests of those who acquire property, it provides that they have the right to own property and cannot unlawfully be deprived of it.¹⁰ The government has since taken various steps to address housing inequalities and promote affordable housing for all South Africans, including initiatives to provide housing subsidies, improve access to home loans, and address housing backlogs.¹¹ Section 32 of the Constitution further states that everyone has the right to access information which simply means If financial institutions failed to fully disclosing relevant information to home loan seekers, it can be viewed as a violation of their right to access information, particularly if such information is crucial for making informed decisions about taking out a loan.

Financial institution like the banking industry plays a crucial role in providing home loans and mortgages to individuals seeking to acquire real estate properties.¹² These services are crucial because if the home loan is approved, this enables the borrower to become a homeowner and the fulfilment of the constitutional right to access to housing and dignity.¹³ However, the process of lending and borrowing in the realm of home loans necessitates a delicate balance between the interests of the financial institutions and the rights of the mortgagor.¹⁴ Full disclosure is a fundamental principle in the relationship between financial institutions and mortgagors.¹⁵ Financial institutions and lenders are required to act in good faith and not to misrepresent themselves, they are required to provide comprehensive and transparent information without concealing any relevant details. Some of the key consequences of inadequate disclosure by financial institutions are that it can result in mortgagors paying more than they initially agreed to, sometimes due to hidden fees or unfavourable terms that were not clearly explained or disclosed when the contract of mortgage bond or home loan was entered into. In light of these concerns, this study aims to critically analyse the imperative for full disclosure by financial institutions in order to protect mortgagors seeking home loans. It underscores the importance of upholding the legal framework governing home loan and disclosure regulations, with primary focus on safeguarding the rights and interests of home loan seekers.

This paper examines the laws that protects mortgagors throughout the home loan lending processes. It argues that any departure from the principle of *uberrimae fidei*, meaning "utmost good faith," has implications and consequences. *Uberrimae fidei* requires complete honesty and transparency when disclosing material facts that could impact the borrower's decision. Failing to meet this standard might result in serious legal repercussions.

2. Problem statement

When individuals and families enter into mortgage bond contracts, they do so with the expectation of buy and acquire the property and thereafter become the owners enjoying peaceful possession devoid of encumbrances.¹⁶ Financial institutions are required to provide detailed information about their lending practices, including data on the loans they have approved and denied,

⁸ Section 9 of the Constitution.

⁹ Section 26 of the Constitution.

¹⁰ Dugard, J. (2019). Unpacking Section 25: what, if any, are the legal barriers to transformative land reform?. *Constitutional Court Review*, 9(1), 135-160.

¹¹ Ganiyu, B. O., Fapohunda, J. A., & Haldenwang, R. (2017). Sustainable housing financing model to reduce South Africa housing deficit. *International Journal of Housing Markets and Analysis*, 10(3), 410-430.

¹² Marais, L., & Cloete, J. (2017). Housing policy and private sector housing finance: Policy intent and market directions in South Africa. *Habitat International*, 61, 22-30.

¹³ Simón-Moreno, H., & Kenna, P. (2019). Towards a new EU regulatory law on residential mortgage lending. *Journal of Property, Planning and Environmental Law*, 11(1), 51-66.

¹⁴ Absa Bank Limited v Mokebe & others 2018 (6) SA 492 (GJ) and Standard Bank of South Africa Limited v Hendricks 2019 (2) SA 620, Para 35.

¹⁵ Dumisa, L. N. (2021). *The Legal Implications of the Duty to Disclose, Misrepresentation and Good Faith in Insurance Policies* (Doctoral dissertation, University of Pretoria (South Africa)).

¹⁶ O'Mahony, L. F. (2016). Homeownership, debt, and default: The affective value of home and the challenge of affordability. In *Affordable Housing and Public-Private Partnerships* (pp. 169-205). Routledge.

as well as the terms and conditions of the loans.¹⁷ This information is usually made available to the public to promote transparency. However, when financial institutions fail to fully disclose the relevant information to home loan seekers, it impacts their social security, overall quality of life, and their ability to meet other basic needs.¹⁸ In some cases, the lack of transparency can lead to the loss of the house, which is a significant violation of the right to access adequate housing and human dignity. The failure to adhere strictly to the principles of full disclosure and *uberrimae fidei* has severe consequences under the law, with significant implications for financial institutions.

3. Research method

This research employs a qualitative method, utilising primary sources such as the South African Constitution, case law, legislation, policies and scholarly articles. The study extensively examined jurisprudence from the courts in order to establish processes and procedures that must be followed and adhered to in home loans and mortgages practices and transactions.¹⁹

4. Literature review

A borrower seeking home loans is required to disclose the complete and accurate information to the financial institution before the loan can be approved and.²⁰ This ensures transparency, assesses creditworthiness, and prevents fraud. In return, the financial institution also has responsible to offer clear loan terms, disclosing costs, and complying with regulations. This mutual duty helps the borrower to make an informed decision and protects against risky lending practices.²¹

Disclosure is viewed as the ideal means of safeguarding consumers' interests as it upholds the principles of a free market which empowers consumers to make well-informed decisions.²² Consumers often find themselves confused and misguided by the lenders who employ conflicting approaches to calculate credit costs, such as discount rates, add-on rates, and standard interest rates that are going to be charged on their loans. In a purely transparent system, fully-informed and rational consumers effortlessly select the most suitable credit options with access to complete information, while creditors are compelled to compete among themselves to win the trust and preference of these well-informed buyers. This shows that promoting transparency through disclosure is essential for protecting consumers' interests and fostering a fair market.

According to Mehran et al., (2007), when one party withholds information, they may gain an advantage or benefit at the expense of the other party, which is commonly referred to as a conflict of interest.²³ Such a conflict of interest could emerge if a financial institution were to secure a direct advantage, such as obtaining additional underwriting fees. In most cases, financial institutions are the ones that are better informed than their customers, so this makes it easier for them to take advantage of the customer who seeks a home loan. However, if the financial institution makes it a point to provide all necessary information, the home loan seeker's interests will be protected and will receive the home loan that was requested and signed for without any further costs.

Singh (2019) indicates that mortgagors are protected by section 26(1) of the Constitution,

¹⁷ Section 2 of Home Loan and Mortgages Disclosure Act 63 of 2000.

¹⁸ Hutchison, A., & Allen, D. (2021). Unsecured lending and the indigenous economy in Australia and South Africa. *Journal of Law and Society*, 48(1), 84-105.

¹⁹ Donkor-Hyiaman, Kenneth Appiah and Kenneth Nii Okai Ghartey. "Legal origins and mortgage finance contradictions." *International Journal of Housing Markets and Analysis* 10.1 (2017): 156-179.

²⁰ De Koker, L. (2009). The money laundering risk posed by low-risk financial products in South Africa: Findings and guidelines. *Journal of Money Laundering Control*, 12(4), 323-339.

²¹ Perry, V. G., & Blumenthal, P. M. (2012). Understanding the fine print: The need for effective testing of mandatory mortgage loan disclosures. *Journal of Public Policy & Marketing*, 31(2), 305-312.

²² Pridgen, D. (2011). Putting Some Teeth in TILA: From Disclosure to Substantive Regulation in the Mortgage Reform and Anti-Predatory Lending Act of 2010. *Loy. Consumer L. Rev.*, 24, 615.

²³ Mehran, H., & Stulz, R. M. (2007). The economics of conflicts of interest in financial institutions. *Journal of Financial Economics*, 85(2), 267-296.

which asserts that 'everyone has the right to have access to adequate housing.'²⁴ While this right does not guarantee home ownership, it does ensure that everyone is entitled to information.²⁵ This right is interrelated to other fundamental human rights, including the right to dignity, privacy, and freedom, thus offering protection and support to individuals in their quest for adequate housing and an improved quality of life. This demonstrates that if financial institutions were to act in a manner that primarily benefits themselves, potentially harming the mortgagor and their ability to maintain a reasonable standard of living, it could not only impact their quality of life but also potentially infringe upon their fundamental human rights.

5. Analysis of the protection offered by the Home Loan and Mortgage Disclosure Act 63 of 2000

The Home Loan and Mortgage Disclosure Act 63 of 2000 (HLMDA) is a significant piece of legislation aimed at ensuring transparency and fairness in the home loan and mortgage industry.²⁶ In terms of section 2 of the HLMDA, it mandates that mortgage lending institutions operating in South Africa must annually disclose comprehensive details about their lending activities.²⁷ This information encompasses various aspects, such as the outcome of each mortgage application, the type, purpose, and characteristics of home mortgages originated or purchased, loan pricing details, personal demographic data of applicants, including their race, ethnicity, and income, and information about loan sales.²⁸ This allows financial institutions to be monitored and further ensure that financial institutions provide their customers with all the essential details, failing to do so would result in financial statements not complying with the necessary standards, which will then lead to legal consequences.

The HLMDA aligns with the principles outlined in Section 9 of the Constitution, which stipulates that every individual has the right to equal treatment and access to benefits, regardless of race, gender, or status.²⁹ Some financial institutions have been found to not comply with this section by failing to disclose important information for various discriminatory reasons.³⁰ Discrimination and non-disclosure of necessary information to customers can occur at an early stage when a customer inquiries or shows intention to buy a house.³¹ For instance, individuals from a specific group may face discrimination from a receptionist who holds a bias against the person. The right to adequate housing is a fundamental human right protected under the law.³² It ensured that individuals are not unfairly deprived of their right to buy a house due to non-disclosure or discriminatory practices. If a mortgagee or financial institution fails to disclose relevant information, resulting in the mortgagor unable to close the deal and become homeowner, this would amount to violation of the HLMDA which will eventually attract necessary consequences.

The HLMDA emphasises that the aspect of full disclosure is crucial for consumer protection as it empowers borrowers to make informed decisions. By knowing the terms and conditions of the loans, lenders can avoid hidden fees and unfavourable terms that may lead to financial hardships.³³

²⁴ Singh, C. (2019). To foreclose or not to foreclose: revealing the 'cracks' within the residential foreclosure process in South Africa. *SA Mercantile Law Journal*, 31(1), 145-162.

²⁵ Ibid.

²⁶ Bhutta, N., Popper, J., & Ringo, D. (2015). The 2014 home mortgage disclosure act data. *Federal Reserve Bulletin*, 101(4).

²⁷ Section 2 of the Home Loan and Mortgage Disclosure Act

²⁸ Yinger, J. (2018). Discrimination in mortgage lending: A literature review. *Mortgage lending, racial discrimination and federal policy*, 29-73.

²⁹ Preamble of the Home Loan and Mortgage Disclosure Act.

³⁰ Nengome, R. (2005). The right to access adequate housing, fair lending and the role of financial institutions. *Codicillus*, 46(2), 24-44.

³¹ Weston, M. A. (2021). Buying secrecy: Non-disclosure agreements, arbitration, and professional ethics in the# MeToo era. *U. Ill. L. Rev.*, 507.

³² Oren, M., Alterman, R., & Zilbershats, Y. (2016). Housing rights in constitutional legislation: A conceptual classification. In *Contemporary Housing Issues in a Globalized World* (pp. 141-158). Routledge.

³³ Adelino, M., Gerardi, K., & Willen, P. S. (2013). Why don't lenders renegotiate more home mortgages? Redefaults, self-cures and securitization. *Journal of monetary Economics*, 60(7), 835-853.

6. The essentials of the amendments provided by the National Credit Act 34 of 2005 (NCA)

The NCA is a piece of consumer credit legislation that tries to level the playing field between creditors and borrowers.³⁴ The majority of the population in South Africa comprises of low-income consumers who do not have readily available cash.³⁵ As a result, they frequently rely on loans to meet their basic needs and wants.³⁶ This legislation safeguards the rights of these individuals prior, during, and after the loan agreement between the creditor and the home loan seeker. These safeguards are also enforced by the prevention of over-indebtedness and the requirement of full disclosure to consumers.

Reckless lending is a breach of the principle that financial institutions operate in good faith.³⁷ In terms of section 80 of the NCA, a credit agreement is reckless if the consumer engages in it without fully understanding its conditions³⁸ and if it causes the consumer to become excessively indebted.³⁹ The moment the consumer or client gets over-indebtedness, it suggests that probably there was a failure of fully disclosure which would invariable have severe financial consequences on the borrower.⁴⁰

The NCA aims to eliminate unfair lending practices by requiring credit advertisements to disclose important information such as the instalment amount, number of instalments, total amount including interest and insurance fees, interest rate, and any residuals.⁴¹ This ensures that consumers are fully aware of the total cost they are supposed to pay, including optional items, after they have been paid off. Section 92 of the NCA requires credit providers to provide consumers with a pre-agreement and a quotation that outlines the costs inherent in the proposed agreement, including the principal debt, distribution of the debt, interest rate, other costs, and the total cost of the agreement. The credit provider is further required to disclose all costs and the method used to calculate together with the duration that the loan is supposed to be paid back.⁴² After the credit agreement has been entered into, the mortgagor must be provided with a statement of account which will show all necessary information and costs.

The National Credit Amendment Act 7 of 2019 was introduced to include provisions related to debt intervention. Section 19 of the Act outlines that a credit provider has the authority to request a consumer to maintain insurance coverage for the immovable property that serves as collateral for their mortgage and this insurance coverage should not exceed the full value of that property. In other words, the credit provider can require the borrower to have insurance for the property they are using as security. This requirement is often put in place to protect the creditor's (in this case the financial institution's) interests in case of damage, nonpayment or any other circumstances. To promote transparency and integrity, debtors are obligated to engage with a debt counsellor, who will also oversee the process of securing a home loan for which they meet the eligibility criteria.⁴³ This ensures that borrowers are provided with proper guidance and that the home loans obtained are in line with

³⁴ Mulder, I. (2015). *Reckless credit under the National Credit Act: a comparative analysis* (Doctoral dissertation).

³⁵ Tomlinson, M. R. (2007). The development of a low-income housing finance sector in South Africa: Have we finally found a way forward?. *Habitat International*, 31(1), 77-86.

³⁶ Ncube, M. (2019). *A statutory regulatory analysis of financial inclusion for the poor and low-income earners in South Africa* (Doctoral dissertation, North-West University (South Africa)).

³⁷ Engel, K. C., & McCoy, P. A. (2016). *The subprime virus: Reckless credit, regulatory failure, and next steps*. Oxford University Press.

³⁸ Section 80 (1) (ii).

³⁹ Section 80 (1) (iii).

⁴⁰ Ellyne, M., & Jourdan, B. M. (2015, May). Did the National Credit Act of 2005 facilitate a credit boom and bust In South Africa?. In *2015 African Finance Journal Conference, Cape Town*.

⁴¹ Green, P., & Sewnunan, T. D. (2015). Enactment of the National Credit Act and its implication on new and improved borrowers rights in South Africa. *Journal of applied business research (Online)*.

⁴² Sage, C. (2018). *Impact of the regulation of unsecured credit on consumers: an analysis of the National Credit Act 34 of 2005 and its regulations* (Doctoral dissertation).

⁴³ Klaasen, J. (2021). *South Africa's National Credit Amendment Act 7 of 2019: Progression or regression for natural person debt relief* (Master's thesis, Faculty of Law).

their financial capabilities and circumstances.⁴⁴

7. The Essentials of the amendments provided by the Prevention and Combating of Corrupt Activities Act 12 of 2004 (PCCA)

While the PCCA primarily focuses on combating corruption and related offenses, it implicitly provides protection to various individuals and entities, including home loan seekers. Essentially, the Constitution serves as a valuable source of ethical principles for guidance.⁴⁵ It outlines democratic principles, highlighting the fundamental values associated with these principles,⁴⁶ safeguarding the rights of individuals, and establishing essential standards for how public administration should be carried out. This is important because those who offer services to individuals have a direct responsibility to provide transparent and ethical services to the public, upholding the principles of democracy and ensuring that the public is well catered for.

The PCCA was amended aims at addressing passive corruption concerning public officials.⁴⁷ It also seeks to broaden the scope of the offense of unacceptable conduct, originally applicable to ordinary witnesses, to include whistleblowers and members of the accounting profession. Primarily, the legislation aims to raise monetary penalties on individuals or entities who do not adhere to the PCCA. In the event that a prospective home loan applicant discovers non-disclosure or dishonesty, this amendment grants them the right to report the misconduct without fear of repercussions. Furthermore, if a lender attempts to intimidate a customer or witness, or engages in any actions detailed in section 4, the lender can be charged with the offense of inappropriate behaviour towards a witness. The PCCA is focused on enhancing consumer protection and ensuring transparency and fairness in the home loan process.⁴⁸ It's important for individuals seeking home loans to be aware of their rights and protections under this amendment act and for lenders to comply with the law to avoid penalties and legal consequences.

8. Protecting consumers from predatory lenders: defining the problem and moving towards workable solutions

Predatory lending, characterised by unethical and exploitative practices that take advantage of vulnerable consumers, is essentially a concerning issue in the financial sector.⁴⁹ These lenders frequently target people who are less informed or in financial needs, subjecting them to excessive interest rates, hidden fees, and overbearing sales practices.⁵⁰ The consequences of predatory lending are severe to customers, it leads to financial hardships, foreclosure risks and a cycle of debts.⁵¹

Consumer protection encompasses a range of measures designed to safeguard and uphold the rights of consumers, with the ultimate goal of establishing the necessary systems for creating a marketplace that is equitable, fair, and open for consumer products and services.⁵²

The Consumer Protection Act 68 of 2008 (CPA) is aimed at creating a fair and accessible marketplace for consumer goods and services in order to develop appropriate norms and national

⁴⁴ James, D. (2014). "Deeper into a hole?" Borrowing and lending in South Africa. *Current Anthropology*, 55(S9), S17-S29.

⁴⁵ Pillay, S. (2004). Corruption—the challenge to good governance: a South African perspective. *International Journal of Public Sector Management*, 17(7), 586-605.

⁴⁶ Section 1 of the Constitution provides that: "the Republic of South Africa is one, sovereign, democratic state founded on the following values: (a) Human dignity, the achievement of equality, and the advancement of human rights and freedoms. (b) Non-racialism and non-sexism. (c) Supremacy of the constitution and the rule of law."

⁴⁷ Prevention and Combating of Corrupt Activities Amendment Bill. Preamble.

⁴⁸ Lekubu, B. K. (2019). *A critique of South African anti-corruption strategies and structures: a comparative analysis* (Doctoral dissertation).

⁴⁹ Agarwal, S., Amromin, G., Ben-David, I., Chomsisengphet, S., & Evanoff, D. D. (2014). Predatory lending and the subprime crisis. *Journal of financial economics*, 113(1), 29-52.

⁵⁰ Harvey, K. D., & Nigro, P. J. (2004). Do predatory lending laws influence mortgage lending? an analysis of the North Carolina predatory lending law. *The Journal of Real Estate Finance and Economics*, 29, 435-456.

⁵¹ McCoy, P. A. (2005). A behavioral analysis of predatory lending. *Akron L. Rev.*, 38, 725.

⁵² Woker, T. (2010). Why the need for consumer protection legislation? A look at some of the reasons behind the promulgation of the National Credit Act and the Consumer Protection Act. *Obiter*, 31(2), 217-231.

standards for consumer protection in South Africa.⁵³ Section 4 of the CPA allows consumers to seek legal recourse through the court or tribunal when their consumer rights have been violated. The courts are also instructed to develop and apply common law to enhance the realisation of consumer rights, promote the spirit of consumer protection, and issue appropriate orders for redress.⁵⁴ This provision will guarantee that financial institutions and other institutions consistently act in good faith when conducting transactions or engaging with their customers.

Addressing predatory lending is an ongoing and multifaceted process that necessitates a combination of regulatory measures, consumer education, and the cooperation of financial institutions. Additionally, providing resources and counselling services for individuals already ensnared in predatory loans is crucial, assisting them in managing and ultimately escaping their debt burdens.⁵⁵ It is also suggested that enhancing financial education and expanding financial access are among the strategies and policy actions that can enhance the protection of consumers.⁵⁶ Consumers should be aware of and understand their consumer rights.⁵⁷ They should be informed that they are protected, and every transaction should consistently prioritise their interests during the course of home loans negotiations by ensuring that their overall financial situations are fully considered before the granting of the loans. They should also be aware of when to seek assistance or report any case of unfair lending practices to the appropriate authorities when it becomes necessary.

9. Holding predators and fraudulent home loan lenders accountable

Predators and fraudulent home loan lenders must be held accountable for their actions to demonstrate the consequences for dishonesty.⁵⁸ Employees have an ethical duty to act with honesty and integrity, and this includes reporting misconduct when they become aware of it.⁵⁹ Whistleblowing can be seen as fulfilling this ethical duty.

It is crucial to encourage employees and individuals within financial institutions to report any knowledge of fraudulent practices.⁶⁰ Whistleblowing protection laws exist to safeguard these employees, enabling the exposure of wrongdoings and ensuring lenders are held responsible. There are legal systems that provide protection for whistleblowers to ensure they are not retaliated against for reporting misconduct.⁶¹ The Protected Disclosures Act 26 of 2000 safeguards whistle-blowers in South Africa. It applies to employees in both public and private sectors. In 2017, amendments were made to the Act,⁶² which introduced the need for companies to establish internal reporting procedures and ensure that employees are aware of them.⁶³ Section 10 of the Protected of Disclosure Amendment Act also provides protection against civil or disciplinary actions to those who make disclosures,⁶⁴ this demonstrates that the legal system recognises the importance of whistleblowers in exposing misconduct, corruption and other wrongdoings. The law aims to protect them from adverse consequences that might result from coming forward with such information.

A home loan seeker has the right to report any dishonesty or non-disclosure of important information in a home loan agreement. This is an important aspect of consumer protection in the financial industry. In accordance with section 38 of the Protected Disclosure Act of 2017, Investigation may be conducted and if sufficient evidence is found, criminal charges can be filed

⁵³ Section 3 of the CPA.

⁵⁴ Section 4(2) of the CPA.

⁵⁵ Mitchell, J. (2021). *The debt trap: How student loans became a national catastrophe*. Simon and Schuster.

⁵⁶ Magau, P. (2023). The regulatory nexus between the promotion of financial education and financial inclusion in enhancing consumer protection in South Africa. *De Jure Law Journal*, 56(1), 220-240.

⁵⁷ Larsen, G., & Lawson, R. (2013). Consumer rights: An assessment of justice. *Journal of business ethics*, 112, 515-528.

⁵⁸ Bond, P. (2015). Contradictions in consumer credit: innovations in South African superexploitation. *Critical Arts*, 29(2), 218-239.

⁵⁹ Uys, T. (2008). Rational loyalty and whistleblowing: The South African context. *Current Sociology*, 56(6), 904-921.

⁶⁰ Shonhadji, N., & Maulidi, A. (2021). The roles of whistleblowing system and fraud awareness as financial statement fraud deterrent. *International Journal of Ethics and Systems*, 37(3), 370-389.

⁶¹ Chalouat, I., Carrión-Crespo, C., & Licata, M. (2019). Law and practice on protecting whistle-blowers in the public and financial services sectors. *International Labour Organization, Working Papers*, 1-62.

⁶² Protected Disclosure Amendment Act 5 of 2017.

⁶³ Ibid, section 6.

⁶⁴ Ibid, section 10.

against the individual involved.⁶⁵ Furthermore, Victims of predatory lending practices can file civil lawsuits against the lenders responsible. These lawsuits can seek compensation for damages, including financial losses and emotional distress.⁶⁶

10. Conclusion

The principle of full disclosure by financial institutions in the home loan lending process is a fundamental necessity to protect the rights and interests of mortgagors seeking home loans. The legal framework, including the Home Loan and Mortgage Disclosure Acts, the National Credit Act, and the Consumer Protection Act, emphasizes transparency and consumer protection. Failing to disclose relevant information violate the laws. It is also a violation of the fundamental human rights enshrined in the Constitution, including the right to access adequate housing, dignity and the right to information. Full disclosure empowers consumers to make informed decisions, prevents predatory lending practices, and protects borrowers from financial instability. By upholding full disclosure, this amounts to fair, transparent, and accountable lending practices that promote housing accessibility and financial stability for all. Financial institutions that fail to adhere to full disclosure standards do not only negatively impact their consumers, but they also risk damage to their reputation and financial penalties.

11. Recommendations

The state must invest in consumer education programs to empower home loan seekers with knowledge about their rights and the lending processes. Better informed consumers are less likely to fall victim to unfair lending practices.

The awareness of full disclosure must be more accessible to the general public, and to ensure that everyone understands the terms, the language and the format of disclosure documents must be simplified.

With regard to the processes of accessing information and comparing lending options, making use of technology can significantly improve the process, rendering it more efficient and user-friendly for consumers. Online tools and platforms offer individuals convenient means to gather and assess relevant data, empowering them to make informed decisions independently. This digital shift not only enhances accessibility but also promotes financial literacy and autonomy among borrowers.

There must be implementation of a robust system for continuous monitoring and reporting of lending practices. This could involve requiring financial institutions to provide monthly reports on their lending activities, making it easier to identify discriminatory patterns or unfair practices.

Existing laws and regulations to penalise predatory lenders who engage in harmful practices must be strengthened, this may include fines, revoking licenses, and legal action.

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⁶⁵ Ibid, section 3B.

⁶⁶ Stark, D. P., & Choplin, J. M. (2010). A cognitive and social psychological analysis of disclosure laws and call for mortgage counseling to prevent predatory lending. *Psychology, Public Policy, and Law*, 16(1), 85.

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