

Examples of Business Purpose vs. Consumer Loans.

Business Purpose	Consumer Loan	Facts	Notes	Authority
OWNER-OCCUPIED PROPERTIES				
Yes		A loan to expand a business, even if it is secured by the borrower's residence or personal property.		Reg. Z Commentary § 226.3(a)-2.
Yes		A loan to improve a principal residence by putting in a business office.		Reg. Z Commentary § 226.3(a)-2.
	Yes	If the owner expects to occupy the property for more than 14 days during the coming year, the property cannot be considered non-owner-occupied.	The property is considered owner-occupied.	Reg. Z Commentary § 226.3(a)-3
Maybe	Maybe	A beach house that the owner will occupy for a month in the coming summer and rent out the rest of the year is owner occupied. Not subject to special residential rental rule. Where no special rule applies, the 5 factors above would have to be considered to determine whether the loan is a consumer or business purpose loan.	The property is considered owner-occupied.	Reg. Z Commentary § 226.3(a)-3, referring back to § 226.3(a)-2 factors.
Yes		Loans to acquire rental property that is, or will be owner-occupied within the coming year, is deemed to be for business purposes if it contains more than 2 housing units.		Reg. Z Commentary § 226.3(a)-4.
Yes		Loans to improve or maintain one unit of which is owner-occupied, the rental property is deemed to be for business purposes if it contains more than 4 housing units. Note - if there are 4 or less housing units, the loan could still be business purpose - the 5 factors above would have to be considered.		Reg. Z Commentary § 226.3(a)-4 referring back to § 226.3(a)-2 factors
Yes		Guarantors who pledged their primary residences to secure the guaranty of a loan to finance a corporation and its business are business purpose loans.	The court said "We must examine the transaction as a whole and the purpose for which the credit was extended in order to determine whether this transaction was primarily consumer or commercial in nature."	Poe v. First Nat. Bank of DeKalb County 597 F.2d 895 (5th Cir. Ga., 1979).
Yes		A loan secured by borrower's primary residence, but used to finance a tailor shop is business purpose.		In re DiPietro, 135 B.R. 773 (E.D.Pa.1992).

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RENTAL PROPERTIES				
Yes		Non-owner occupied rental property: Credit extended to acquire, improve, or maintain rental property (regardless of the number of housing units) that is not owner-occupied is deemed to be for business purposes.		Reg. Z Commentary § 226.3(a)-3; see, Daniels v. SCME Mortgage Bankers 680 F.Supp.2d 1126 (2010) at 1029
Yes		Non-owner occupied rental property: The acquisition of a warehouse that will be leased is business purpose.		Reg. Z Commentary § 226.3(a)-3.
Yes		Non-owner occupied rental property: A single-family house that will be rented to another person to live in is deemed to be for a business purpose.		Reg. Z Commentary § 226.3(a)-3. Daniels v. SCME Mortgage Bankers 680 F.Supp.2d 1126 (2010) at 1029
	Yes	Business purpose credit that is refinanced for personal, family or household purposes is no longer business purpose.	Not business purpose anymore and TILA and RESPA disclosures required.	Reg. Z Commentary § 226.3(a)-5.
	Yes	Loan secured by a home rented to a caretaker for nominal rent, and in which the borrower had lived for a long time in the past, and intended to live when she retired is for personal use.		Tower v. Moss 625 F.2d 1161 (5th Cir. Ala., 1980
Yes		Loan to refinance debt secured by a rental property was business purpose, even though borrowers had full-time jobs from which they derived most of their incomes		Sapenter v. Dreyco, Inc. 326 F.Supp. 871 (La. 1971), aff'd by the 5th Cir, cert denied by the U.S. Supreme Court

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		LOAN FOR OR TO BORROWER'S BUSINESS		
Yes*		Loans to corporations, partnerships, associations, churches, unions, and fraternal organizations regardless of whether a "natural person" guaranties the loan and regardless of the purpose of the loan.	Loans to these entities are exempt because TILA only applies to loans to "natural persons". The organizational credit exemption is separate from the business purpose exemption and may not provide an exemption from RESPA	Reg. Z Commentary § 226.3(a)-7.
Yes		Loan to buy an oyster farm and hotel, where borrower checked "commercial" on the application is business purpose.		Quinn v. McCoy (unpublished) 2002 WL 1303407 (1st Dist. Court of Appeal 2002).
	Yes	Loans made to corporate developer with the knowledge and intent that the loans would be assumed by individual buyers who were consumers (i.e., not for a business purpose).	Even though the original loan was to a corp., the lender intended that the obligation would finally rest with individuals, and penalized the buyers if they didn't assume the loans, therefore, the loans were for personal, family, or	Adiel v. Chase Fed. Sav. & Loan Ass'n 810 F.2d 1051(11th Cir. Fla.1987).
Yes		A 2nd mortgage against the borrower's primary residence for the purpose of building a barn and to provide working capital for a business of buying and selling Arabian horses is business purpose.	The loan is for business or commercial purposes.	Sherrill v. Verde Capital Corp.719 F.2d 364 (11th Cir. Fla.,1983).
Yes		A "personal loan" to 25% shareholder and officer of a corporation, where the borrower gave all of the proceeds of the loan to the corporation, and where lender stated that it would not lend any more money to the corporation, but only to the shareholder, was for business purposes.	Even though the shareholder was a lawyer and did not work for the corporation, the loan was still business purpose. TILA "does not distinguish between full-time and part-time businesses."	Henson v. Columbus Bank and Trust Co.651 F.2d 320 (5th Cir. Ga., 1981).
Yes		Credit (credit card) issued to borrower: on a business application; for business purposes; where the statements were mailed to the business and where all but a small number of charges were non-consumer, business purpose transactions is business purpose.		American Exp. Co. v. Koerner 452 U.S. 233, 101 S.Ct. 2281 68 L.Ed. 2d 803 (1981).

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LOANS FOR INVESTMENT PURPOSES				
5. Yes		A loan against a person's primary residence for the purpose of buying gold coins for investment is a business purpose.		Weber v. Langholtz (1995) 39 Cal. App. 4th 1578.
Yes		Loan to invest in a limited partnership from which the borrower intended to "personally benefit" was business purpose.	The court was analyzing whether the loan was business purpose under the FDCPA, but looked to cases interpreting similar provisions of TILA.	Gowing v. Royal Bank of Canada 100 F.3d 962 (9th Cir. Cal.1996).
Yes		Loan to invest money in a software company of which the borrower was president, and that he represented as an attorney, and the application for loan indicated that the loan was for "venture capital in an investment" was business purpose.	The court was analyzing whether the loan was business purpose under the FDCPA, but looked to cases interpreting similar provisions of the Consumer Credit Protection Act which includes TILA.	Bloom v. I.C. System, Inc. 972 F.2d 1067 (9th Cir. Or. 1992).
Maybe	Maybe	A loan to set up a limited liability company to buy an apartment building may be for "personal" as opposed to "business" purposes, and therefore covered under TILA.	The court didn't decide whether the loan in the case was or was not business purpose. Instead, it sent the case back to the trial court to make that determination. There is no written opinion on the result.	Thorns v. Sundance Properties, 726 F.2d 1417 (9th Cir. Nev. 1984).
Yes		Loan where borrower checked "investment" on loan application, and borrower had 3 other investment properties from which he derived significant income is business purpose, despite the fact that borrower's stated occupation was "electrician's apprentice" and borrower stated that extended family members lived on the property.	The court went through the 5 factors	Daniels v. SCME Mortgage Bankers, Inc. 680 F.Supp.2d 1126 (C.D.Cal. 2010).
BUSINESS PURPOSE BY TYPE OF COLLATERAL				
Yes		Loan to 3 brothers who were pharmacists to buy aircrafts, which were planned to be leased to an aviation firm for the purpose of generating revenue to make monthly payments was business purpose, even though the aircrafts were in fact used for personal use by the brothers after the sale.	Can't determine purpose of the loan by only looking at the collateral. Must look at the intent at the time of the loan. This is not a TILA or RESPA case but the reasoning may be useful.	Cessna Finance Corp. v. Pivo 58 Cal.App.3d 281 (1976)
	Yes	Purchase of a truck when the borrower owned no business at the time of the loan, and had no other means of transportation was for personal use	Lender can't consider all loans secured by trucks to be business purpose - must look at the whole transaction.	Gallegos v. Stokes 593 F.2d 372 (C.A.N.M., 1979).

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