

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1817

Short Title: Protect Consumers - Rate Spread Home Loans. (Public)

Sponsors: Representatives Blue; Current, Faison, Harrison, and Womble.

Referred to: Financial Institutions.

April 19, 2007

A BILL TO BE ENTITLED
AN ACT TO PROTECT CONSUMERS REGARDING RATE SPREAD HOME
LOANS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 24-1.1E(a)(5) reads as rewritten:

"(5) "Points and fees" is defined as provided in this subdivision.

a. The term includes all of the following:

1. All items required to be disclosed under sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential.
2. All charges for items listed under section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase "points and fees".
3. ~~All~~ To the extent not otherwise included in sub-subdivision a.1. or a.2. of this subdivision, all compensation paid from any source directly by the borrower to a mortgage broker not otherwise included in sub-subdivision a.1. or a.2. of this subdivision, that originates a loan in its own name in a table-funded transaction.
4. The maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents.

- 1 b. Notwithstanding the remaining provisions of this subdivision,
2 the term does not include (i) taxes, filing fees, recording and
3 other charges and fees paid or to be paid to public officials for
4 determining the existence of or for perfecting, releasing, or
5 satisfying a security interest; and (ii) fees paid to a person other
6 than a lender or an affiliate of the lender or to the mortgage
7 broker or an affiliate of the mortgage broker for the following:
8 fees for tax payment services; fees for flood certification; fees
9 for pest infestation and flood determinations; appraisal fees;
10 fees for inspections performed prior to closing; credit reports;
11 surveys; attorneys' fees (if the borrower has the right to select
12 the attorney from an approved list or otherwise); notary fees;
13 escrow charges, so long as not otherwise included under
14 sub-subdivision a. of this subdivision; title insurance premiums;
15 and ~~fire~~ premiums for insurance against loss or damage to
16 property, including hazard insurance and flood insurance
17 premiums, provided that the conditions in section 226.4(d)(2) of
18 Title 12 of the Code of Federal Regulations are met.
- 19 c. For open-end credit plans, the term includes those points and
20 fees described in sub-subdivisions a.1. through a.3. of this
21 subdivision that are charged at or before loan closing, plus (i)
22 the minimum additional fees the borrower would be required to
23 pay to draw down an amount equal to the total loan amount, and
24 (ii) the maximum prepayment fees and penalties which may be
25 charged or collected under the terms of the loan documents."

26 **SECTION 2.** Article 1 of Chapter 24 of the General Statutes is amended by
27 adding a new section to read:

28 **"§ 24-1.1F. Rate spread home loans; protection of consumers.**

29 (a) Prepayment Fees. – No borrower of a rate spread home loan shall be charged
30 any fee or penalty for prepayment of the loan. A prepayment penalty provision
31 contained in a rate spread home loan shall be unenforceable.

32 (b) No lender shall make a rate spread home loan unless the lender reasonably
33 believes at the time the loan is consummated that one or more of the obligors,
34 individually or collectively, will be able to pay the presumptive payment amount based
35 upon a consideration of the obligor's current and expected income, current obligations,
36 employment status, and any other financial resources not including the obligor's equity
37 in the real property that secures repayment of the loan. Under this section, an obligor is
38 presumed to be able to pay the presumptive payment amount if, at the time the loan is
39 consummated, the obligor's total monthly debts, including the estimated escrow
40 payment amount and the presumptive payment amount, do not exceed fifty percent
41 (50%) of the obligor's monthly gross income, and if they do exceed fifty percent (50%)
42 of the obligor's monthly gross income, the obligor is presumed to be unable to pay the
43 presumptive payment amount. In determining whether an obligor is able to pay the
44 presumptive payment amount of a rate spread home loan that permits negative

1 amortization, the lender shall consider any balance increase that may accrue from the
2 negative amortization provision during the first seven years of the loan term.

3 (c) In determining an obligor's current and expected income, current obligations,
4 employment status, and other financial resources under subsection (b) of this section, a
5 lender shall take reasonable steps to verify the accuracy and completeness of
6 information provided by or on behalf of the obligor. Acceptable methods of verification
7 include verification of employment with the obligor's employer, verification of deposit
8 and brokerage relationships with financial institutions and brokerage firms, the review
9 of public records, and review of financial records such as credit reports, tax returns,
10 bank and brokerage account statements, and payroll receipts.

11 (d) The lender in a closed-end rate spread home loan transaction shall require the
12 obligor to make monthly payments into an escrow account for the purpose of paying
13 taxes, hazard insurance premiums, and, if applicable, flood insurance premiums. This
14 subsection does not apply when the obligor is not the owner of the real property that
15 secures repayment of the loan or the lender reasonably believes that, following the loan
16 closing, the obligor will be required, or will continue to be required, to make escrow
17 payments for taxes and insurance on the property in connection with another loan
18 secured by the same real property.

19 (e) A lender in a rate spread home loan transaction is responsible for the acts,
20 omissions, and representations made by a mortgage broker in that rate spread home loan
21 transaction if the mortgage broker sells or delivers the rate spread home loan to the
22 lender.

23 (f) In an action or as a defense against the original lender, or as a defense in any
24 action to foreclose on the collateral securing a rate spread home loan or to collect sums
25 owed on a rate spread home loan, an obligor in a rate spread home loan transaction may,
26 acting only in an individual capacity and not on behalf of a class, assert a violation of
27 subsection (a), (b), (c), or (d) of this section. The burden of proof shall be upon the
28 obligor.

29 If the obligor prevails in establishing that the original lender failed to comply with
30 the provisions of subsection (a) of this section, the obligor shall be entitled to recover
31 three times the amount of the maximum prepayment penalty the obligor paid or could
32 have been charged under the terms of the loan documents or ten thousand dollars
33 (\$10,000), whichever is greater, or actual damages, and the obligor shall be entitled to
34 recover the costs of the action and, in the discretion of the court, the obligor's reasonable
35 attorneys' fees. If the obligor prevails in establishing that the original lender failed to
36 comply with the provisions of subsection (b) or subsection (c) of this section, the
37 obligor shall not be liable for the remaining sums owed on the rate spread home loan,
38 any foreclosure of the mortgage or deed of trust securing the loan shall be barred, and
39 the obligor shall be entitled to recover the costs of the action and, in the discretion of the
40 court, the obligor's reasonable attorneys' fees. If the obligor prevails in establishing a
41 violation of subsection (d) of this section, the obligor shall be entitled to recover, in
42 addition to the costs of the action and, in the discretion of the court, the obligor's
43 reasonable attorneys' fees, the greatest of each of the following:

44 (1) The damages actually incurred by the obligor.

1 (2) Three times the sum of the total taxes and insurance premiums paid or
2 payable by the obligor in connection with the real property securing
3 the loan during the previous calendar year.

4 (3) Ten thousand dollars (\$10,000).

5 (g) The total sums recovered by an obligor from parties other than the original
6 lender for violations under subsection (f) of this section shall not exceed the original
7 principal amount of the rate spread home loan, plus costs and any reasonable attorneys'
8 fees awarded.

9 (h) At the obligor's option, in any action to foreclose on a loan, all or a portion of
10 the sums the obligor is entitled to recover under subsection (f) of this section shall be
11 credited against any delinquent sums owed on the loan by the obligor and if such sums
12 are sufficient to cure this delinquency shall be a defense to the acceleration of the loan
13 and the foreclosure action.

14 (i) The remedies provided for in subsections (f) through (h) of this section are
15 the only remedies available to an obligor for a violation of the provisions of subsections
16 (a), (b), (c), or (d) of this section.

17 (j) The provisions of this section shall be severable, and if any phrase, clause,
18 sentence, or provision is declared to be invalid or is preempted by federal law or
19 regulation, the validity of the remainder of this section shall not be affected thereby.

20 (k) As used in this section, the following definitions apply:

21 (1) Annual percentage rate. – The annual percentage rate for the loan
22 calculated according to the provisions of the federal Truth-in-Lending
23 Act (15 U.S.C. § 1601, et seq., as amended) and the regulations
24 promulgated thereunder by the Federal Reserve Board, as amended.

25 (2) Closed-end loan. – A loan other than open-end credit plan.

26 (3) Estimated escrow payment amount. – One-twelfth of the sum of all of
27 the following:

28 a. The ad valorem taxes assessed against the real property
29 securing a rate spread home loan during the calendar year in
30 which the loan closing occurs or, if not then known, the
31 previous calendar year.

32 b. The anticipated premiums for one year's hazard insurance
33 coverage on the real property securing a rate spread home loan.

34 c. If applicable, the anticipated premiums for one year's flood
35 insurance coverage on the real property securing a rate spread
36 home loan.

37 (4) Open-end credit plan. – Credit extended by a lender under a plan in
38 which all of the following apply:

39 a. The lender reasonably contemplates repeated transactions.

40 b. The lender may charge interest or otherwise impose a finance
41 charge from time to time on an outstanding unpaid balance.

42 c. The amount of credit that may be extended to the borrower
43 during the term of the plan, up to any credit limit set by the

- 1 lender, is generally made available to the extent that any
2 outstanding balance is repaid.
- 3 (5) Presumptive payment amount. – In the context of a closed-end loan,
4 the highest of all of the following:
- 5 a. The monthly payment amount for principal and interest
6 calculated by assuming the loan proceeds are fully disbursed on
7 the date of the loan closing, the loan is to be repaid in
8 substantially equal monthly amortizing payments of principal
9 and interest over the entire term of the loan, with no balloon
10 payment, and the interest rate over the entire term of the loan is
11 a fixed rate equal to the initial interest rate in effect at the time
12 of the loan closing.
- 13 b. The monthly payment amount for principal and interest
14 calculated by assuming the loan proceeds are fully disbursed on
15 the date of the loan closing, the loan is to be repaid in
16 substantially equal monthly amortizing payments of principal
17 and interest over the entire term of the loan, with no balloon
18 payment, and the interest rate over the entire term of the loan is
19 a fixed rate equal to the fully indexed interest rate at the time of
20 the loan closing, without considering any initial discounted rate.
- 21 c. The maximum monthly payment amount for principal and
22 interest that could be due under the terms of the loan during the
23 first seven years of the loan term, but excluding any balloon
24 payment due at maturity.
- 25 Presumptive payment amount, in the context of an open-end credit
26 plan, is the monthly payment amount for principal and interest
27 calculated by assuming an amount equal to the maximum credit limit
28 of the open-end credit plan is fully disbursed on the date of the loan
29 closing, the loan is to be repaid in substantially equal monthly
30 amortizing payments of principal and interest over the entire term of
31 the loan, without any balloon payment, and the interest rate over the
32 entire term of the loan is a fixed rate equal to the fully indexed interest
33 rate at the time of the loan closing, without considering any initial
34 discounted rate.
- 35 (6) Rate spread home loan. – Any loan other than a reverse mortgage
36 transaction in which all of the following apply:
- 37 a. In the case of an open-end credit plan, the borrower's initial
38 maximum credit limit does not exceed the conforming loan size
39 limit for a single-family dwelling as established from time to
40 time by Fannie Mae, or, in the case of a closed-end loan, the
41 principal amount of the loan does not exceed the conforming
42 loan size limit for a single-family dwelling as established from
43 time to time by Fannie Mae.
- 44 b. The borrower is a natural person.

- c. The debt is incurred by the borrower primarily for personal, family, or household purposes.
 - d. The loan is secured by a mortgage or deed of trust on real property upon which there is located a structure or structures designed principally for occupancy of from one to four families that are or will be, occupied by the borrower as the borrower's principal dwelling.
 - e. If the loan is a closed-end loan, the difference between the annual percentage rate for the loan and the yield on U.S. Treasury securities having comparable periods of maturity is either equal to or greater than (i) three percentage points, if the loan is secured by a first lien mortgage or deed of trust, or (ii) five percentage points, if the loan is secured by a subordinate lien mortgage or deed of trust. If the loan is an open-end credit plan, the difference between the annual percentage rate for the loan and the yield on U.S. Treasury securities having comparable periods of maturity is equal to or greater than five percentage points, regardless of whether the open-end credit plan is secured by a first or subordinate lien mortgage or deed of trust. Without regard to whether the loan is subject to or reportable under the provisions of the federal Home Mortgage Disclosure Act (12 U.S.C. § 2801, et seq.) (HMDA), the difference between the annual percentage rate and the yield on U.S. Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirements of HMDA.
- (7) Obligor. – Each borrower, co-borrower, cosigner, or guarantor obligated to repay a rate spread home loan."

SECTION 3. G.S. 24-9(c)(1) reads as rewritten:

"(1) The provisions of G.S. 24-1.1E (relating to restrictions and limitations on high-cost home loans)-loans) and the provisions of G.S. 24-1.1F (relating to restrictions and limitations on rate spread home loans)."

SECTION 4. G.S. 53-243.04 reads as rewritten:

"§ 53-243.04. Rule-making authority.

(a) The Banking Commission may adopt any rules ~~when~~ it deems necessary to carry out the provisions of this Article, to provide for the protection of the borrowing public, ~~and~~ to instruct mortgage lenders or brokers in interpreting this ~~Article~~Article, and to implement and interpret the provisions of G.S. 24-1.1E, 24-1.1F, and 24-10.2 as they apply to licensees under this Article.

(b) Subject to the provisions of G.S. 53-243.03, the Commissioner may, by order, prohibit licensees under this Article from engaging in acts and practices in connection with mortgage loans that the Commissioner finds to be unfair, deceptive, designed to evade the laws of this State, or that are not in the best interest of the borrowing public."

1 **SECTION 5.** G.S. 53-243.10 reads as rewritten:

2 "**§ 53-243.10. Mortgage broker duties.**

3 (a) A mortgage broker, including any mortgage broker licensee and any person
4 required to be licensed as a mortgage broker under this Article, shall, in addition to
5 duties imposed by other statutes or at common law:

6 (1) Safeguard and account for any money handled for the
7 ~~borrower;~~borrower.

8 (2) Follow reasonable and lawful instructions from the
9 ~~borrower;~~borrower.

10 (3) Act with reasonable skill, care, and ~~diligence;~~ and diligence.

11 (3a) Timely and clearly disclose to the borrower material information that
12 may be expected to influence the borrower's decision and is reasonably
13 accessible to the mortgage broker, including the total compensation the
14 broker would receive from any of the loan options the broker presents
15 to the obligor.

16 (4) Make reasonable efforts, ~~with lenders with whom the broker regularly~~
17 ~~does business~~ to secure a loan that is reasonably advantageous to the
18 borrower considering all the circumstances, including the rates,
19 charges, and repayment terms of the ~~loan and the loan options for~~
20 ~~which the borrower qualifies with such lenders.~~ loan.

21 (b) Nothing in this section shall be construed to limit or abrogate any duties
22 imposed under other statutes or common law."

23 **SECTION 6.** G.S. 53-243.11 reads as rewritten:

24 "**§ 53-243.11. Prohibited activities, activities; damages in civil actions.**

25 (a) In addition to the activities prohibited under other provisions of this Article, it
26 shall be unlawful for any person in the course of any mortgage loan transaction:

27 (1) To misrepresent or conceal the material facts or make false promises
28 likely to influence, persuade, or induce an applicant for a mortgage
29 loan or a mortgagor to take a mortgage loan, or to pursue a course of
30 misrepresentation through agents or otherwise.

31 (2) To refuse improperly to issue a satisfaction of a mortgage.

32 (3) To fail to account for or to deliver to any person any funds, documents,
33 or other thing of value obtained in connection with a mortgage loan,
34 including money provided by a borrower for a real estate appraisal or a
35 credit report, which the mortgage banker, broker, or loan officer is not
36 entitled to retain under the circumstances.

37 (4) To pay, receive, or collect in whole or in part any commission, fee, or
38 other compensation for brokering a mortgage loan in violation of this
39 Article, including a mortgage loan brokered by any unlicensed person
40 other than an exempt person.

41 (5) To charge or collect any fee or rate of interest or to make or broker any
42 mortgage loan with terms or conditions or in a manner contrary to the
43 provisions of Chapter 24 of the General Statutes.

- 1 (6) To advertise mortgage loans, including rates, margins, discounts,
2 points, fees, commissions, or other material information, including
3 material limitations on the loans, unless the person is able to make the
4 mortgage loans available to a reasonable number of qualified
5 applicants.
- 6 (7) To fail to disburse funds in accordance with a written commitment or
7 agreement to make a mortgage loan.
- 8 (8) To engage in any transaction, practice, or course of business that is not
9 in good faith or fair dealing or that constitutes a fraud upon any
10 person, in connection with the brokering or making of, or purchase or
11 sale of, any mortgage loan.
- 12 (9) To fail promptly to pay when due reasonable fees to a licensed
13 appraiser for appraisal services that are:
- 14 a. Requested from the appraiser in writing by the mortgage broker
15 or mortgage banker or an employee of the mortgage broker or
16 mortgage banker; and
- 17 b. Performed by the appraiser in connection with the origination or
18 closing of a mortgage loan for a customer or the mortgage
19 broker or mortgage banker.
- 20 (10) To broker a mortgage loan ~~which that~~ contains a prepayment penalty if
21 the principal amount of the loan is one hundred fifty thousand dollars
22 (\$150,000) or ~~less~~ less or if the loan is a rate spread home loan as
23 defined in G.S. 24-1.1F.
- 24 (11) To influence or attempt to influence through coercion, extortion, or
25 bribery, the development, reporting, result, or review of a real estate
26 appraisal sought in connection with a mortgage loan. Nothing in this
27 subdivision shall be construed to prohibit a mortgage broker or
28 mortgage banker from asking the appraiser to do one or more of the
29 following:
- 30 a. Consider additional appropriate property information.
- 31 b. Provide further detail, substantiation, or explanation for the
32 appraiser's value conclusion.
- 33 c. Correct errors in the appraisal report.
- 34 (12) To fail to comply with the mortgage loan servicing transfer, escrow
35 account administration, or borrower inquiry response requirements
36 imposed by sections 6 and 10 of the Real Estate Settlement Procedures
37 Act (RESPA), 12 U.S.C. § 2605 and § 2609, and regulations adopted
38 there under by the Secretary of the Department of Housing and Urban
39 Development.
- 40 (b) In an original civil action or as a defense in any action brought by any broker
41 or original lender, as a defense in any action to foreclose on the collateral securing the
42 loan, or in any action to collect sums owed on the loan, a borrower establishing a
43 violation of the provisions of this Article shall be entitled to recover the greater of three
44 times actual damages or ten thousand dollars (\$10,000) and, in the discretion of the

1 court, reasonable attorneys' fees. The total sums recovered against a holder of a loan
2 who was not the original lender shall not exceed the original principal amount of the
3 home loan."

4 **SECTION 7.** G.S. 53-243.14 reads as rewritten:

5 "**§ 53-243.14. Criminal penalty.**

6 A violation of G.S. 53-243.02 is a ~~Class I~~Class H felony. Each transaction involving
7 the unlawful making or brokering of a mortgage loan is a separate offense."

8 **SECTION 8.** Section 7 of this act becomes effective December 1, 2007. The
9 remainder of this act becomes effective October 1, 2007, and applies to rate spread
10 home loans, as defined in G.S. 24-1.1F, as enacted in Section 2 of this act, that are
11 entered into on or after that date.