

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE DRH50412-ME-61 (03/25)

Short Title: Mortgage/Clarify Treatment of US Gov't Fees.

(Public)

Sponsors: Representative Braxton.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THAT DELIVERY FEES CHARGED BY UNITED STATES
3 GOVERNMENT AGENCIES TO BORROWERS DO NOT COUNT AS POINTS OR
4 FEES IN HOME LOANS, BUT RISK-BASED FEES CHARGE BY UNITED STATES
5 GOVERNMENT AGENCIES DO COUNT AS DISCOUNT POINTS.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 24-1.1A(c) reads as rewritten:

8 "§ 24-1.1A. Contract rates on home loans secured by first mortgages or first deeds of
9 trust.

10 ...

11 (c) If the home loan is one described in subdivision (a)(1) or subdivision (a)(2) of this
12 section, the lender may charge the borrower the following fees and charges in addition to
13 interest and other fees and charges as permitted in this section and late payment charges as
14 permitted in G.S. 24-10.1:

15 (1) At or before loan closing, the lender may charge such of the following fees
16 and charges as may be agreed upon by the parties notwithstanding the
17 provisions of any State law, other than G.S. 24-1.1E, limiting the amount of
18 such fees or charges:

- 19 a. Loan application, origination, commitment, and interest rate lock
20 fees;
- 21 a1. Fees to administer a construction loan or a construction/permanent
22 loan, including inspection fees and loan conversion fees;
- 23 b. Discount points, but only to the extent the discount points are paid
24 for the purpose of reducing, and in fact result in a bona fide reduction
25 of the interest rate or time-price differential;
- 26 c. Assumption fees to the extent permitted by G.S. 24-10(d);
- 27 d. Appraisal fees to the extent permitted by G.S. 24-10(h);
- 28 e. Fees and charges to the extent permitted by G.S. 24-8(d); and
- 29 f. Additional fees and charges, however individually or collectively
30 denominated, payable to the lender which, in the aggregate, do not
31 exceed the greater of (i) one quarter of one percent (1/4 of 1%) of the
32 principal amount of the loan, or (ii) one hundred fifty dollars
33 (\$150.00).

34 (2) Except as provided in subsection (g) of this section with respect to the
35 deferral of loan payments, upon modification, renewal, extension, or



1 amendment of any of the terms of a home loan, the lender may charge such
 2 of the following fees and charges as may be agreed upon by the parties
 3 notwithstanding the provisions of any State law, other than G.S. 24-1.1E,
 4 limiting the amount of such fees or charges:

- 5 a. Discount points, but only to the extent the discount points are paid
 6 for the purpose of reducing, and in fact result in a bona fide reduction
 7 of, the interest rate or time-price differential;
- 8 a1. Fees which do not exceed one quarter of one percent (1/4 of 1%) of
 9 the principal amount of the loan if the principal amount of the loan is
 10 less than one hundred fifty thousand dollars (\$150,000), or one
 11 percent of the principal amount of the loan if the principal amount of
 12 the loan is one hundred fifty thousand dollars (\$150,000) or more, for
 13 the conversion of a variable interest rate loan to a fixed interest rate
 14 loan, of a fixed interest rate loan to a variable interest rate loan, of a
 15 closed-end loan to an open-end loan, or of an open-ended loan to a
 16 closed-end loan;
- 17 b. Assumption fees to the extent permitted by G.S. 24-10(d);
- 18 c. Appraisal fees to the extent permitted by G.S. 24-10(h);
- 19 d. Fees and charges to the extent permitted by G.S. 24-8(d); and
- 20 e. If no fees are charged under subdivision (c)(2)b. of this section,
 21 additional fees and charges, however individually or collectively
 22 denominated, payable to the lender which, in the aggregate, do not
 23 exceed the greater of (i) one quarter of one percent (1/4 of 1%) of the
 24 balance outstanding at the time of the modification, renewal,
 25 extension, or amendment of terms, or (ii) one hundred fifty dollars
 26 (\$150.00). The fees and charges permitted by this sub-subdivision
 27 may be charged only pursuant to a written agreement which states
 28 the amount of the fee or charge and is made at the time of the
 29 specific modification, renewal, extension, or amendment, or at the
 30 time the specific modification, renewal, extension, or amendment is
 31 requested.

32 For purposes of this subsection, "discount points" includes any fees paid by or on behalf of a
 33 borrower to the Federal National Mortgage Association, the Federal Home Loan Mortgage
 34 Corporation, the Government National Mortgage Association, the Veterans Administration, the
 35 United States Department of Agriculture, or any federal agency as loan level price adjustments,
 36 adverse market delivery charges, or any other charges levied by the agency to compensate for
 37 increased risks and costs based on credit score, loan size, or housing type."

38 **SECTION 2.** G.S. 24-1.1E(a) reads as rewritten:

39 **"§ 24-1.1E. Restrictions and limitations on high-cost home loans.**

40 (a) Definitions. – The following definitions apply for the purposes of this section:

41 ...

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

43 a. The term includes all of the following:

- 44 1. All items required to be disclosed under sections 226.4(a) and
 45 226.4(b) of Title 12 of the Code of Federal Regulations, as
 46 amended from time to time, except interest or the time-price
 47 differential.
- 48 2. All charges for items listed under section 226.4(c)(7) of Title
 49 12 of the Code of Federal Regulations, as amended from time
 50 to time, but only if the lender receives direct or indirect
 51 compensation in connection with the charge or the charge is

- 1 paid to an affiliate of the lender; otherwise, the charges are
2 not included within the meaning of the phrase "points and
3 fees".
- 4 3. To the extent not otherwise included in sub-subdivision a.1.
5 or a.2. of this subdivision, all compensation paid from any
6 source to a mortgage broker, including compensation paid to
7 a mortgage broker in a table-funded transaction. A bona fide
8 sale of a loan in the secondary mortgage market shall not be
9 considered a table-funded transaction, and a table-funded
10 transaction shall not be considered a secondary market
11 transaction.
- 12 4. The maximum prepayment fees and penalties which may be
13 charged or collected under the terms of the loan documents.
- 14 b. Notwithstanding the remaining provisions of this subdivision, the
15 term does not include (i) taxes, filing fees, recording and other
16 charges and fees paid or to be paid to public officials for determining
17 the existence of or for perfecting, releasing, or satisfying a security
18 interest; and (ii) fees paid to a person other than a lender or an
19 affiliate of the lender or to the mortgage broker or an affiliate of the
20 mortgage broker for the following: fees for tax payment services;
21 fees for flood certification; fees for pest infestation and flood
22 determinations; appraisal fees; fees for inspections performed prior to
23 closing; credit reports; surveys; attorneys' fees (if the borrower has
24 the right to select the attorney from an approved list or otherwise);
25 notary fees; escrow charges, so long as not otherwise included under
26 sub-subdivision a. of this subdivision; title insurance premiums; and
27 premiums for insurance against loss or damage to property, including
28 hazard insurance and flood insurance premiums, provided that the
29 conditions in section 226.4(d)(2) of Title 12 of the Code of Federal
30 Regulations are met.
- 31 c. For open-end credit plans, the term includes those points and fees
32 described in sub-subdivisions a.1. through a.3. of this subdivision
33 that are charged at or before loan closing, plus (i) the minimum
34 additional fees the borrower would be required to pay to draw down
35 an amount equal to the total loan amount, and (ii) the maximum
36 prepayment fees and penalties which may be charged or collected
37 under the terms of the loan documents.
- 38 d. The term does not include fees paid to an agency of the United States
39 Government in connection with a home loan if (i) the home loan has
40 an initial principal balance less than one hundred fifty thousand
41 dollars (\$150,000), (ii) the home loan is made, insured, or guaranteed
42 by the government agency, and (iii) the fee is for making, insuring,
43 or guaranteeing the loan. These fees or charges may have been paid
44 (i) by the borrower directly, (ii) by a settlement agent or lender on
45 behalf of the borrower, or (iii) by a lender with respect to the
46 borrower's loan from funds loaned to or received from the borrower.
47 The term "agency of the United States Government" includes,
48 without limitation, the Federal National Mortgage Association, the
49 Federal Home Loan Mortgage Corporation, the Government National
50 Mortgage Association, the Veterans Administration, the United
51 States Department of Agriculture, or any federal agency.

1 ...

2 (6) "Thresholds" means:

- 3 a. Without regard to whether the loan transaction is or may be a
4 "residential mortgage transaction" (as the term "residential mortgage
5 transaction" is defined in section 226.2(a)(24) of Title 12 of the Code
6 of Federal Regulations, as amended from time to time), the annual
7 percentage rate of the loan at the time the loan is consummated is
8 such that the loan is considered a "mortgage" under section 152 of
9 the Home Ownership and Equity Protection Act of 1994 (Pub. Law
10 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from
11 time to time, and regulations adopted pursuant thereto by the Federal
12 Reserve Board, including section 226.32 of Title 12 of the Code of
13 Federal Regulations, as the same may be amended from time to ~~time~~;
14 time.
- 15 b. The total points and fees, as defined in G.S. 24-1.1E(a)(5), exceed
16 five percent (5%) of the total loan amount if the total loan amount is
17 twenty thousand dollars (\$20,000) or more, or (ii) the lesser of eight
18 percent (8%) of the total loan amount or one thousand dollars
19 (\$1,000), if the total loan amount is less than twenty thousand dollars
20 (\$20,000); provided, the following discount points and prepayment
21 fees and penalties shall be excluded from the calculation of the total
22 points and fees payable by the borrower:
- 23 1. Up to and including two bona fide loan discount points
24 payable by the borrower in connection with the loan
25 transaction, but only if the interest rate from which the loan's
26 interest rate will be discounted does not exceed by more than
27 one percentage point (1%) the required net yield for a 90-day
28 standard mandatory delivery commitment for a reasonably
29 comparable loan from either Fannie Mae or the Federal Home
30 Loan Mortgage Corporation, whichever is ~~greater~~; greater.
 - 31 2. Up to and including one bona fide loan discount point
32 payable by the borrower in connection with the loan
33 transaction, but only if the interest rate from which the loan's
34 interest rate will be discounted does not exceed by more than
35 two percentage points (2%) the required net yield for a
36 90-day standard mandatory delivery commitment for a
37 reasonably comparable loan from either Fannie Mae or the
38 Federal Home Loan Mortgage Corporation, whichever is
39 ~~greater~~; greater.
 - 40 3. For a closed-end loan, prepayment fees and penalties which
41 may be charged or collected under the terms of the loan
42 documents which do not exceed one percent (1%) of the
43 amount prepaid, provided the loan documents do not permit
44 the lender to charge or collect any prepayment fees or
45 penalties more than 30 months after the loan ~~closing~~; closing.
 - 46 4. For an open-end credit plan, prepayment fees and penalties
47 which may be charged or collected under the terms of the
48 loan documents which do not exceed one percent (1%) of the
49 amount prepaid, provided the loan documents do not permit
50 the lender to charge or collect any prepayment fees or
51 penalties more than (i) 30 months after the loan closing if the

borrower has no right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time or, (ii) if the borrower has a right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time, 30 months after the date the borrower voluntarily exercises that right or option; or option.

For purposes of this sub-subdivision, "discount points" includes any fees paid by or on behalf of a borrower to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the Veterans Administration, the United States Department of Agriculture, or any federal agency as loan level price adjustments, adverse market delivery charges, or any other charges levied by the agency to compensate for increased risks and costs based on credit score, loan size, or housing type.

c. If the loan is a closed-end loan, the loan documents permit the lender to charge or collect prepayment fees or penalties more than 30 months after the loan closing or which exceed, in the aggregate, more than two percent (2%) of the amount prepaid. If the loan is an open-end credit plan, the loan documents permit the lender to charge or collect prepayment fees or penalties (i) more than 30 months after the loan closing if the borrower has no right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time or, (ii) if the borrower has a right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time, more than 30 months after the date the borrower voluntarily exercises that right or option, or (iii) which exceed, in the aggregate, more than two percent (2%) of the amount prepaid.

...."

SECTION 3. This act is effective October 1, 2009.