

§ 53-177. Fees.

(a) **Recording Fees.** – The licensee may collect from the borrower the amount of any fees necessary to file or record its security interest with any public official or agency of a county or the State as may be required pursuant to Article 9 of Chapter 25 of the General Statutes or G.S. 20-58 through G.S. 20-58.8. Upon full disclosure to the borrower on how the fees will be applied, the fees may either (i) be paid by the licensee to the public official or agency of the county or State or (ii) in lieu of recording or filing, applied by the licensee to purchase nonfiling or nonrecording insurance on the instrument securing the loan; however, the amount collected by the licensee from the borrower for the purchase of a nonfiling or nonrecording insurance policy shall be the premium amount for the insurance as fixed by the Commissioner of Insurance. The premium shall be at least one dollar (\$1.00) less than the cost of recording or filing a security interest. A licensee shall not collect or permit to be collected any notary fee in connection with any loan made under this Article, nor shall a licensee collect any fee from the borrower for the cost of releasing a security interest except the fee as actually paid to any public official or agency of the county or State for this purpose.

(b) **Late Payment Fees.** –

- (1) A licensee may charge a late payment fee for any payment that remains past due for 10 days or more after the due date.
- (2) No licensee shall charge a late payment fee in an amount greater than eighteen dollars (\$18.00) nor charge a late payment fee more than once with respect to a single late payment.
- (3) If a late payment fee has been once imposed with respect to a particular late payment, no late payment fee shall be imposed with respect to any future payment that would have been timely and sufficient but for the previous default.
- (4) A licensee may apply a borrower's most recent payment to the oldest installment due.
- (5) A licensee shall not collect more than one late payment fee from any full or partial payment made toward a particular scheduled installment payment. However, a licensee may collect more than one late payment fee from any payment made toward more than one installment payment so long as the number of late payment fees collected does not exceed the number of different installment payments that were past due for 10 days or more and to which the payment was applied.
- (6) If a licensee declares a borrower in default and accelerates a loan, the licensee may collect a late payment fee for each installment payment that was, as of the date of acceleration, past due for 10 days or more. A licensee shall not collect a late payment fee for any installment that becomes due solely because the licensee has declared a borrower in default and accelerated a loan.
- (7) If a licensee refinances a loan, a licensee may include in the amount financed late payment fees for each installment payment that was, as of the date of the refinancing, past due for 10 days or more.
- (8) If a loan reaches maturity, a licensee may include in the final balance owed a late payment fee for each installment payment that remains past due for 10 days or more.

(c) **Deferral Charges.** – A licensee may, by agreement with the borrower, collect a deferral charge and defer the due date of all or part of one or more installments under an existing loan contract as permitted by G.S. 25A-30. A licensee may assess a deferral charge for each month of the remaining loan term on each installment owed after the date of deferral. A licensee may also charge a late payment fee on deferred payments that remain past due for 10 days or more

after the agreed upon due date. A deferral shall not alter the maturity date of the loan contract, even if a payment is deferred beyond maturity.

(d) Insurance Policy. – If a licensee, in lieu of recording, collects a fee to purchase a nonfiling or nonrecording insurance policy as authorized under subsection (a) of this section, to be valid, any claim arising from the policy shall only be used to compensate the licensee for damages arising from failure to record or file its security interest in accordance with Article 9 of Chapter 25 of the General Statutes. Following payment of the claim, the licensee shall do the following:

- (1) Properly credit the full claim amount posted to the balance of the loan, effective the date the proceeds were received.
- (2) Close the loan account and cease collection efforts on any loan that was paid in full by a claim.
- (3) Provide the borrower written notice, unless otherwise prohibited by federal law, that (i) the claim has been partially paid or paid in full and (ii) to the extent the loan is subject to the insurance company's subrogation rights, instructions about direction of future payments.
- (4) Cancel of record or properly credit, as appropriate, any judgments against the borrower arising from the loan and, if the judgment has been paid in part, file a certificate of partial satisfaction.
- (5) Accurately report any account adjustments to any credit bureau used by the licensee.

(e) Recovery of Costs. – If a borrower requests in writing of the lender to take a voluntary dismissal of an action to recover a loan made under this Article, and both parties agree to the dismissal, the lender shall obtain in writing from the borrower an acknowledgment that (i) the borrower will be liable for the statutory court costs and (ii) any other reasonable and bona fide costs incurred in the course of bringing the action, and the lender may recover the statutory court costs incurred as well as any other reasonable and bona fide costs incurred in the course of bringing the action. Nothing in this section authorizes the collection of attorney fees otherwise prohibited by G.S. 53-180(e). This section does not apply if the borrower, in written documentation raises an affirmative defense to an action to collect a loan under this Article. Nothing in this section affects or prohibits a magistrate, judge, or arbitrator from awarding filing fees and fees for service of process incurred by the lender in bringing the civil action or the other bona fide costs set forth in this subsection. (1961, c. 1053, s. 1; 1989, c. 17, s. 7; 2000-169, s. 36; 2013-162, s. 5; 2015-179, s. 1; 2023-61, s. 1.)