

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 2188

Short Title: Earlier Notification of Mortgage Servicer Fee. (Public)

Sponsors: Representatives Blue, Church (Primary Sponsors); Alexander, Bell, Carney, Coates, Cotham, Dickson, Faison, Farmer-Butterfield, Glazier, Hall, Harrison, Hill, Insko, Luebke, Pierce, and Wainwright.

Referred to: Judiciary II.

May 19, 2008

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT ANY FEE INCURRED BY A HOME LOAN SERVICER BE CLEARLY AND CONSPICUOUSLY EXPLAINED TO THE BORROWER WITHIN THIRTY DAYS AFTER THE FEE IS ASSESSED, TO CLARIFY THAT THE SERVICER IS NOT REQUIRED TO SEND A STATEMENT TO THE BORROWER UNDER CERTAIN CIRCUMSTANCES, AND TO PROVIDE THAT A SERVICER IS NOT REQUIRED TO PROVIDE NOTIFICATION TO THE BORROWER IF A PARTIAL PAYMENT IS ACCEPTED AND CREDITED IN ACCORDANCE WITH A WRITTEN AGREEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-91 reads as rewritten:

"§ 45-91. (Effective April 1, 2008) Assessment of fees; processing of payments; publication of statements.

A servicer must comply as to every home loan, regardless of whether the loan is considered in default or the borrower is in bankruptcy or the borrower has been in bankruptcy, with the following requirements:

(1) Any fee that is incurred by a servicer shall be both:

- a. Assessed within 45 days of the date on which the fee was incurred. Provided, however, that attorney or trustee fees and costs incurred as a result of a foreclosure action shall be assessed within 45 days of the date they are charged by either the attorney or trustee to the servicer.
- b. Explained clearly and conspicuously in a statement mailed to the borrower at the borrower's last known address ~~at least~~ within 30 days after assessing the fee, provided the servicer shall not be required to take any action in violation of the

1 provisions of the federal bankruptcy code. The servicer shall
2 not be required to send such a statement for a fee that: (i) results
3 from a service that is requested by the borrower, (ii) is paid for
4 by the borrower at the time the service is provided, (iii) is not
5 collected by the servicer, and (iv) is not charged to the
6 borrower's loan account.

7 (2) All amounts received by a servicer on a home loan at the address
8 where the borrower has been instructed to make payments shall be
9 accepted and credited, or treated as credited, within one business day
10 of the date received, provided that the borrower has made the full
11 contractual payment and has provided sufficient information to credit
12 the account. If a servicer uses the scheduled method of accounting, any
13 regularly scheduled payment made prior to the scheduled due date
14 shall be credited no later than the due date. Provided, however, that if
15 any payment is received and not credited, or treated as credited, the
16 borrower shall be notified within 10 business days by mail at the
17 borrower's last known address of the disposition of the payment, the
18 reason the payment was not credited, or treated as credited to the
19 account, and any actions necessary by the borrower to make the loan
20 current. Provided, however, that if a written loan modification or loss
21 mitigation agreement is entered into between the servicer and the
22 borrower that provides for the acceptance and crediting of partial
23 payments, no such notification is necessary if the agreed upon
24 payments are applied as provided in the agreement.

25 (3) Failure to charge the fee or provide the information within the
26 allowable time and in the manner required under subdivision (1) of
27 subsection (a) of this section constitutes a waiver of such fee.

28 (4) All fees charged by a servicer must be otherwise permitted under
29 applicable law and the contracts between the parties. Nothing herein is
30 intended to permit the application of payments or method of charging
31 interest which is less protective of the borrower than the contracts
32 between the parties and other applicable law."

33 **SECTION 2.** This act becomes effective October 1, 2008.