

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1184

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

Sponsors: Representative Braxton.

Referred to: Financial Institutions, if favorable, Judiciary II.

April 8, 2009

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
36 amendment of any of the terms of a home loan, the lender may charge such
37 of the following fees and charges as may be agreed upon by the parties



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1 notwithstanding the provisions of any State law, other than G.S. 24-1.1E,
2 limiting the amount of such fees or charges:

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

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

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

37 **"§ 24-1.1E. Restrictions and limitations on high-cost home loans.**

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

39 ...

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

41 a. The term includes all of the following:

- 42 1. All items required to be disclosed under sections 226.4(a) and
43 226.4(b) of Title 12 of the Code of Federal Regulations, as
44 amended from time to time, except interest or the time-price
45 differential.
- 46 2. All charges for items listed under section 226.4(c)(7) of Title
47 12 of the Code of Federal Regulations, as amended from time
48 to time, but only if the lender receives direct or indirect
49 compensation in connection with the charge or the charge is
50 paid to an affiliate of the lender; otherwise, the charges are

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

51 ...

1 (6) "Thresholds" means:

2 a. Without regard to whether the loan transaction is or may be a
3 "residential mortgage transaction" (as the term "residential mortgage
4 transaction" is defined in section 226.2(a)(24) of Title 12 of the Code
5 of Federal Regulations, as amended from time to time), the annual
6 percentage rate of the loan at the time the loan is consummated is
7 such that the loan is considered a "mortgage" under section 152 of
8 the Home Ownership and Equity Protection Act of 1994 (Pub. Law
9 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from
10 time to time, and regulations adopted pursuant thereto by the Federal
11 Reserve Board, including section 226.32 of Title 12 of the Code of
12 Federal Regulations, as the same may be amended from time to ~~time~~;
13 time.

14 b. The total points and fees, as defined in G.S. 24-1.1E(a)(5), exceed
15 five percent (5%) of the total loan amount if the total loan amount is
16 twenty thousand dollars (\$20,000) or more, or (ii) the lesser of eight
17 percent (8%) of the total loan amount or one thousand dollars
18 (\$1,000), if the total loan amount is less than twenty thousand dollars
19 (\$20,000); provided, the following discount points and prepayment
20 fees and penalties shall be excluded from the calculation of the total
21 points and fees payable by the borrower:

22 1. Up to and including two bona fide loan discount points
23 payable by the borrower in connection with the loan
24 transaction, but only if the interest rate from which the loan's
25 interest rate will be discounted does not exceed by more than
26 one percentage point (1%) the required net yield for a 90-day
27 standard mandatory delivery commitment for a reasonably
28 comparable loan from either Fannie Mae or the Federal Home
29 Loan Mortgage Corporation, whichever is ~~greater~~; greater.

30 2. Up to and including one bona fide loan discount point
31 payable by the borrower in connection with the loan
32 transaction, but only if the interest rate from which the loan's
33 interest rate will be discounted does not exceed by more than
34 two percentage points (2%) the required net yield for a
35 90-day standard mandatory delivery commitment for a
36 reasonably comparable loan from either Fannie Mae or the
37 Federal Home Loan Mortgage Corporation, whichever is
38 ~~greater~~; greater.

39 3. For a closed-end loan, prepayment fees and penalties which
40 may be charged or collected under the terms of the loan
41 documents which do not exceed one percent (1%) of the
42 amount prepaid, provided the loan documents do not permit
43 the lender to charge or collect any prepayment fees or
44 penalties more than 30 months after the loan ~~closing~~; closing.

45 4. For an open-end credit plan, prepayment fees and penalties
46 which may be charged or collected under the terms of the
47 loan documents which do not exceed one percent (1%) of the
48 amount prepaid, provided the loan documents do not permit
49 the lender to charge or collect any prepayment fees or
50 penalties more than (i) 30 months after the loan closing if the
51 borrower has no right or option under the loan documents to

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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.