

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 2188
Committee Substitute Favorable 6/23/08

Short Title: Earlier Notification of Mortgage Servicer Fee.

(Public)

Sponsors:

Referred to:

May 19, 2008

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE THAT ANY FEE INCURRED BY A HOME LOAN
2 SERVICER BE CLEARLY AND CONSPICUOUSLY EXPLAINED TO THE
3 BORROWER WITHIN THIRTY DAYS AFTER THE FEE IS ASSESSED, TO
4 CLARIFY THAT THE SERVICER IS NOT REQUIRED TO SEND A
5 STATEMENT TO THE BORROWER UNDER CERTAIN CIRCUMSTANCES,
6 TO PROVIDE THAT A SERVICER IS NOT REQUIRED TO PROVIDE
7 NOTIFICATION TO THE BORROWER IF A PARTIAL PAYMENT IS
8 ACCEPTED AND CREDITED IN ACCORDANCE WITH A WRITTEN
9 AGREEMENT, TO MAKE CONFORMING CHANGES IN THE DEFINITION
10 OF HIGH COST HOME LOANS, AND TO ADD TO THE LIST OF
11 PROHIBITED ACTS UNDER THE MORTGAGE LENDING ACT.
12

13 The General Assembly of North Carolina enacts:

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

15 **"§ 45-91. (Effective April 1, 2008) Assessment of fees; processing of payments;**
16 **publication of statements.**

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

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

- 21 a. Assessed within 45 days of the date on which the fee was
22 incurred. Provided, however, that attorney or trustee fees and
23 costs incurred as a result of a foreclosure action shall be
24 assessed within 45 days of the date they are charged by either
25 the attorney or trustee to the servicer.
26 b. Explained clearly and conspicuously in a statement mailed to
27 the borrower at the borrower's last known address ~~at least~~
28 within 30 days after assessing the fee, provided the servicer
29 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 affirmatively requested by the borrower,
4 (ii) is paid for by the borrower at the time the service is
5 provided, and (iii) is not charged to the borrower's loan account.

6 (2) All amounts received by a servicer on a home loan at the address
7 where the borrower has been instructed to make payments shall be
8 accepted and credited, or treated as credited, within one business day
9 of the date received, provided that the borrower has made the full
10 contractual payment and has provided sufficient information to credit
11 the account. If a servicer uses the scheduled method of accounting, any
12 regularly scheduled payment made prior to the scheduled due date
13 shall be credited no later than the due date. Provided, however, that if
14 any payment is received and not credited, or treated as credited, the
15 borrower shall be notified within 10 business days by mail at the
16 borrower's last known address of the disposition of the payment, the
17 reason the payment was not credited, or treated as credited to the
18 account, and any actions necessary by the borrower to make the loan
19 current.

20 (2a) The notification required by subdivision (2) of this section is not
21 necessary if (i) the servicer complies with the terms of any agreement
22 or plan made with the borrower and has applied and credited payments
23 received in the manner required, and (ii) the servicer is applying and
24 crediting payments to the borrower's account in compliance with all
25 applicable State and federal laws including bankruptcy laws, and if at
26 least one of the following occurs:

27 a. The borrower has entered into a written loss mitigation, loan
28 modification, or forbearance agreement with the servicer that
29 itemizes all amounts due and specifies how payments will be
30 applied and credited;

31 b. The borrower has elected to participate in an alternative
32 payment plan, such as a biweekly payment plan, that specifies
33 as part of a written agreement how payments will be applied
34 and credited; or

35 c. The borrower is making payments pursuant to a bankruptcy
36 plan.

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

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

1 **SECTION 2.** G.S. 24-1.1E(a)(6) reads as rewritten:

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
5 mortgage transaction" is defined in section 226.2(a)(24) of Title
6 12 of the Code of Federal Regulations, as amended from time to
7 time), the annual percentage rate of the loan at the time the loan
8 is consummated is such that the loan is considered a "mortgage"
9 under section 152 of the Home Ownership and Equity
10 Protection Act of 1994 (Pub. Law 103-25, [15 U.S.C. §
11 1602(aa)]), as the same may be amended from time to time,
12 and regulations adopted pursuant thereto by the Federal Reserve
13 Board, including section 226.32 of Title 12 of the Code of
14 Federal Regulations, as the same may be amended from time to
15 time;

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

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

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

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- 3. For a closed-end loan, prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than 30 months after the loan closing;
- 4. For an open-end credit plan, prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees or 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
- 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. G.S. 53-243.11 is amended by adding a new subdivision to

read:

1 "(16) No lender shall provide nor shall any broker receive any compensation
2 that changes based on the terms of the loan in connection with the
3 brokering or making of a rate-spread loan as defined in G.S. 24-1.1F."
4 **SECTION 4.** This act becomes effective October 1, 2008.