

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

**SESSION LAW 2008-227  
HOUSE BILL 2188**

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, 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, TO MAKE CONFORMING CHANGES IN THE DEFINITION OF HIGH COST HOME LOANS, AND TO ADD TO THE LIST OF PROHIBITED ACTS UNDER THE MORTGAGE LENDING ACT.

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 provisions of the federal bankruptcy code. The servicer shall not be required to send such a statement for a fee that: (i) results from a service that is affirmatively requested by the borrower, (ii) is paid for by the borrower at the time the service is provided, and (iii) is not charged to the borrower's loan account.
- (2) All amounts received by a servicer on a home loan at the address where the borrower has been instructed to make payments shall be accepted and credited, or treated as credited, within one business day of the date received, provided that the borrower has made the full contractual payment and has provided sufficient information to credit the account. If a servicer uses the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date shall be credited no later than the due date. Provided, however, that if any payment is received and not credited, or treated as credited, the borrower shall be notified within 10 business days by mail at the borrower's last known address of the disposition of the payment, the

reason the payment was not credited, or treated as credited to the account, and any actions necessary by the borrower to make the loan current.

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

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

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

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

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

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

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

"(6) "Thresholds" means:

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

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

1. Up to and including two bona fide loan discount points payable by the borrower in connection with the loan

- transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than one percentage point (1%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either Fannie Mae or the Federal Home Loan Mortgage Corporation, whichever is greater;
2. Up to and including one bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than two percentage points (2%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either Fannie Mae or the Federal Home Loan Mortgage Corporation, whichever is greater;
  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."

read: **SECTION 3.** G.S. 53-243.11 is amended by adding a new subdivision to

"(16) In connection with the brokering or making of a rate-spread home loan as defined under G.S. 24-1.1F, no lender shall provide nor shall any broker receive any compensation that changes based on the terms of the loan. This subdivision shall not prohibit compensation based on the principal balance of the loan."

**SECTION 4.** This act becomes effective October 1, 2008.

In the General Assembly read three times and ratified this the 10<sup>th</sup> day of July, 2008.

s/ Beverly E. Perdue  
President of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 10:02 p.m. this 17<sup>th</sup> day of August, 2008