

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1222
Committee Substitute Favorable 5/5/09

Short Title: Mortgage/Rate Spread & High-Cost Loans.

(Public)

Sponsors:

Referred to:

April 9, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO UPDATE THE RATE SPREAD AND HIGH-COST HOME LOANS
3 STATUTES, AND TO MAKE A CONFORMING CHANGE TO THE EMERGENCY
4 PROGRAM TO REDUCE HOME FORECLOSURES ACT.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 24-1.1E(a)(5) reads as rewritten:

7 "§ 24-1.1E Restrictions and limitations on high-cost home loans.

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

9 ...

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

11 a. The term includes all of the following:

- 12 1. All items paid by a borrower at or before closing and that are
13 required to be disclosed under sections 226.4(a) and 226.4(b)
14 of Title 12 of the Code of Federal Regulations, as amended
15 from time to time, except interest or the time-price
16 differential.
- 17 2. All charges paid by a borrower at or before closing and that
18 are for items listed under section 226.4(c)(7) of Title 12 of the
19 Code of Federal Regulations, as amended from time to time,
20 but only if the lender receives direct or indirect compensation
21 in connection with the charge or the charge is paid to an
22 affiliate of the lender; otherwise, the charges are not included
23 within the meaning of the phrase "points and fees".
- 24 3. To the extent not otherwise included in sub-subdivision a.1.
25 or a.2. of this subdivision, all compensation paid from any
26 source to a mortgage broker, including compensation paid to
27 a mortgage broker in a table-funded transaction. A bona fide
28 sale of a loan in the secondary mortgage market shall not be
29 considered a table-funded transaction, and a table-funded
30 transaction shall not be considered a secondary market
31 transaction.
- 32 4. The maximum prepayment fees and penalties which may be
33 charged or collected under the terms of the loan documents.

34 b. Notwithstanding the remaining provisions of this subdivision, the
35 term does not include (i) taxes, filing fees, recording and other
36 charges and fees paid or to be paid to public officials for determining
37 the existence of or for perfecting, releasing, or satisfying a security



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1 interest; and (ii) fees paid to a person other than a lender or an
 2 affiliate of the lender or to the mortgage broker or an affiliate of the
 3 mortgage broker for the following: fees for tax payment services;
 4 fees for flood certification; fees for pest infestation and flood
 5 determinations; appraisal fees; fees for inspections performed prior to
 6 closing; credit reports; surveys; attorneys' fees (if the borrower has
 7 the right to select the attorney from an approved list or otherwise);
 8 notary fees; escrow charges, so long as not otherwise included under
 9 sub-subdivision a. of this subdivision; title insurance premiums; and
 10 premiums for insurance against loss or damage to property, including
 11 hazard insurance and flood insurance premiums, provided that the
 12 conditions in section 226.4(d)(2) of Title 12 of the Code of Federal
 13 Regulations are met.

- 14 c. For open-end credit plans, the term includes those points and fees
 15 described in sub-subdivisions a.1. through a.3. of this subdivision
 16 ~~that are charged at or before loan closing, subdivision~~, plus (i) the
 17 minimum additional fees the borrower would be required to pay to
 18 draw down an amount equal to the total loan amount, and (ii) the
 19 maximum prepayment fees and penalties which may be charged or
 20 collected under the terms of the loan documents."

21 **SECTION 2.** G.S. 24-1.1F reads as rewritten:

22 **"§ 24-1.1F Rate spread home loans.**

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

- 24 (1) Annual percentage rate. – The annual percentage rate for the loan calculated
 25 according to the provisions of the federal Truth-in-Lending Act (15 U.S.C. §
 26 1601, et seq.) and the regulations promulgated thereunder by the Federal
 27 Reserve Board, as that Act and regulations are amended from time to time.
- 28 ~~(2) Closed end loan. – A loan other than an open end credit plan as defined in~~
 29 ~~this section.~~
- 30 (2) Average prime offer rate. – An annual percentage rate published by the
 31 Federal Reserve Board and that is derived from average interest rates, points,
 32 and other loan pricing terms currently offered to consumers by a
 33 representative sample of creditors for mortgage transactions that have
 34 low-risk pricing characteristics.
- 35 (3) Home loan. – A loan that has all of the following characteristics:
- 36 a. ~~The loan is not an equity line of credit as defined in G.S. 24-9(a)(2),~~
 37 ~~a construction loan as defined in G.S. 24-10(c), or a reverse mortgage~~
 38 ~~transaction.~~
- 39 b. ~~The borrower is a natural person.~~
- 40 c. ~~The debt is incurred by the borrower primarily for personal, family,~~
 41 ~~or household purposes.~~
- 42 d. ~~The principal amount of the loan does not exceed the conforming~~
 43 ~~loan size limit for a single family dwelling as established from time~~
 44 ~~to time for Fannie Mae.~~
- 45 e. ~~The loan is secured by (i) a security interest in a manufactured home,~~
 46 ~~as defined in G.S. 143-147(7), in the State which is or will be~~
 47 ~~occupied by the borrower as the borrower's principal dwelling, (ii) a~~
 48 ~~mortgage or deed of trust on real property in the State upon which~~
 49 ~~there is located an existing structure designed principally for~~
 50 ~~occupancy of from one to four families that is or will be occupied by~~
 51 ~~the borrower as the borrower's principal dwelling, or (iii) a mortgage~~

1 or deed of trust on real property in the State upon which there is to be
2 constructed using the loan proceeds a structure or structures designed
3 principally for occupancy of from one to four families which, when
4 completed, will be occupied by the borrower as the borrower's
5 principal dwelling.

6 f. A purpose of the loan is to (i) purchase the dwelling, (ii) construct,
7 repair, rehabilitate, remodel, or improve the dwelling or the real
8 property on which it is located, (iii) satisfy and replace an existing
9 obligation secured by the same real property, or (iv) consolidate
10 existing consumer debts into a new home loan.

11 (4) **(Effective until January 1, 2009)** Mortgage broker. – A mortgage broker as
12 defined in G.S. 53-243.01(14).

13 (4) **(Effective January 1, 2009)** Mortgage broker. – A mortgage broker as
14 defined in G.S. 53-243.01.

15 (5) Obligor. — Each borrower, co-borrower, cosigner, or guarantor obligated to
16 repay a rate spread home loan.

17 (6) Open end credit plan. — Credit extended by a lender under a plan in which (i)
18 the lender reasonably contemplates repeated transactions, (ii) the lender may
19 charge interest or otherwise impose a finance charge from time to time on an
20 outstanding unpaid balance, and (iii) the amount of credit that may be
21 extended to the obligor during the term of the plan, up to any credit limit set
22 by the lender, is generally made available to the extent that any outstanding
23 balance is repaid.

24 (7) Rate spread home loan. – A home loan in which all the following apply:

25 a. The difference between the annual percentage rate for the loan and
26 the yield on U.S. Treasury securities having comparable periods of
27 maturity is either equal to or greater than (i) 3 percentage points
28 (3%), if the loan is secured by a first lien mortgage or deed of trust,
29 or (ii) 5 percentage points (5%), if the loan is secured by a
30 subordinate lien mortgage or deed of trust. Without regard to whether
31 the loan is subject to or reportable under the provisions of the Home
32 Mortgage Disclosure Act (12 U.S.C. § 2801, et seq.)(HMDA), the
33 difference between the annual percentage rate and the yield on
34 Treasury securities having comparable periods of maturity shall be
35 determined using the same procedures and calculation methods
36 applicable to loans that are subject to the reporting requirements of
37 HMDA, as those procedures and calculation methods are amended
38 from time to time, provided that the yield on Treasury securities shall
39 be determined as of the fifteenth day of the month prior to the
40 application for the loan.

41 b. The difference between the annual percentage rate for the loan and
42 the conventional mortgage rate is either equal to or greater than (i)
43 1.75 percentage points (1.75%), if the loan is secured by a first lien
44 mortgage or deed of trust, or (ii) 3.75 percentage points (3.75%), if
45 the loan is secured by a subordinate lien mortgage or deed of trust.
46 For purposes of this calculation, the "conventional mortgage rate"
47 means the most recent daily contract interest rate on commitments
48 for fixed rate first mortgages published by the Board of Governors of
49 the Federal Reserve System in its Statistical Release H.15, or any
50 publication that may supersede it, during the week preceding the
51 week in which the interest rate for the loan is set.

- 1 a. The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii)
2 a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage
3 transaction, or (iv) a bridge loan with a term of 12 months or less,
4 such as a loan to purchase a new dwelling where the borrower plans
5 to sell a current dwelling within 12 months.
- 6 b. The borrower is a natural person.
- 7 c. The debt is incurred by the borrower primarily for personal, family,
8 or household purposes.
- 9 d. The principal amount of the loan does not exceed the conforming
10 loan size limit for a single-family dwelling as established from time
11 to time by Fannie Mae.
- 12 e. The loan is secured by (i) a security interest in a manufactured home,
13 as defined in G.S. 143-145, in the State which is or will be occupied
14 by the borrower as the borrower's principal dwelling, (ii) a mortgage
15 or deed of trust on real property in the State upon which there is
16 located an existing structure designed principally for occupancy of
17 from one to four families that is or will be occupied by the borrower
18 as the borrower's principal dwelling, or (iii) a mortgage or deed of
19 trust on real property in the State upon which there is to be
20 constructed using the loan proceeds a structure or structures designed
21 principally for occupancy of from one to four families which, when
22 completed, will be occupied by the borrower as the borrower's
23 principal dwelling.
- 24 f. The loan's annual percentage rate exceeds the average prime offer
25 rate for a comparable transaction as of the date the interest rate for
26 the loan is set by (i) one and one-half percentage points (1.5%) or
27 more if the loan is secured by a first lien on a dwelling or (ii) three
28 and one-half percentage points (3.5%) or more if the loan is secured
29 by a subordinate lien on a dwelling.
- 30 (b) No prepayment fees or penalties shall be charged or collected on a rate spread home
31 loan.
- 32 ~~(e) No lender shall make a rate spread home loan unless the lender reasonably and in~~
33 ~~good faith believes at the time the loan is consummated that one or more of the obligors, when~~
34 ~~considered individually or collectively, has the ability to repay the loan according to its terms~~
35 ~~and to pay applicable real estate taxes and hazard insurance premiums. If a lender making a rate~~
36 ~~spread home loan knows that one or more mortgage loans secured by the same real property~~
37 ~~will be made contemporaneously to the same borrower with the rate spread home loan being~~
38 ~~made by that lender, the lender making the rate spread home loan must document the~~
39 ~~borrower's ability to repay the combined payments of all loans on the same real property.~~
- 40 ~~(1) A lender's analysis of an obligor's ability to repay a rate spread home loan~~
41 ~~according to the loan terms and to pay related real estate taxes and insurance~~
42 ~~premiums shall be based on a consideration of the obligor's credit history,~~
43 ~~current and expected income, current obligations, employment status, and~~
44 ~~other financial resources other than the obligor's equity in the real property~~
45 ~~that secures repayment of the rate spread home loan.~~
- 46 ~~(2) In determining an obligor's ability to repay a rate spread home loan, the~~
47 ~~lender shall take reasonable steps to verify the accuracy and completeness of~~
48 ~~information provided by or on behalf of the obligor using tax returns, payroll~~
49 ~~receipts, bank records, reasonable alternative methods, or reasonable~~
50 ~~third-party verification.~~

1 (3) ~~In determining an obligor's ability to repay a rate spread home loan~~
2 ~~according to its terms when the loan has an adjustable rate feature, the lender~~
3 ~~shall take into consideration any balance increase that may accrue from any~~
4 ~~negative amortization provision. The lender shall calculate the monthly~~
5 ~~payment amount for principal and interest by assuming (i) the loan proceeds~~
6 ~~are fully disbursed on the date of the loan closing, (ii) the loan is to be repaid~~
7 ~~in substantially equal monthly amortizing payments of principal and interest~~
8 ~~over the entire term of the loan, with no balloon payment, and (iii) the~~
9 ~~interest rate over the entire term of the loan is a fixed rate equal to the fully~~
10 ~~indexed interest rate at the time of the loan closing, without considering any~~
11 ~~initial discounted rate. The "fully indexed interest rate at the time of the loan~~
12 ~~closing" is the interest rate that would have applied at the time of the closing~~
13 ~~had the initial interest rate been determined by the application of the same~~
14 ~~interest rate formula, (for example, an interest rate index plus or minus a~~
15 ~~margin) that applies under the terms of the loan documents to subsequent~~
16 ~~interest rate adjustments, disregarding any limitations on the amount by~~
17 ~~which the interest rate may change at any one time.~~

18 (4) ~~A lender's analysis of an obligor's ability to repay a rate spread loan may~~
19 ~~utilize reasonable commercially recognized underwriting standards and~~
20 ~~methodologies, including automated underwriting systems, provided the~~
21 ~~standards and methodologies comply with the provisions of this section.~~

22 (c) No lender shall make a rate spread home loan to a borrower based on the value of
23 the borrower's collateral without due regard to the borrower's repayment ability as of
24 consummation, including the borrower's current and reasonably expected income, employment,
25 assets other than the collateral, current obligations, and mortgage-related obligations. Without
26 regard to whether the loan is a "higher-priced mortgage loan" as defined in section 226.35 of
27 Title 12 of the Code of Federal Regulations, the methodology and standards for the
28 determination of a borrower's repayment ability set forth in section 226.34(a)(4) of Title 12 of
29 the Code of Federal Regulations and the related Federal Reserve Board's Official Staff
30 Commentary on Regulation Z, as the regulation and commentary may be amended from time to
31 time, shall be applied to determine a lender's compliance with this requirement.

32 (d) The making of a rate spread home loan which violates subsection (b) or (c) of this
33 section is hereby declared usurious in violation of the provisions of this Chapter. In addition,
34 any prepayment penalty in violation of this section shall be unenforceable. However, ~~an obligor~~
35 a borrower shall not be entitled to recover twice for the same wrong. The Attorney General, the
36 Commissioner of Banks, or any party to a rate spread home loan may enforce the provisions of
37 this section. This section establishes specific consumer protections in rate spread home loans in
38 addition to other consumer protections that may be otherwise available by law. A mortgage
39 broker who brokers a rate spread home loan that violates the provisions of this section shall be
40 jointly and severally liable with the lender.

41 (e) The provisions of this section shall apply to any person who in bad faith attempts to
42 avoid the application of this section by (i) dividing any loan transaction into separate parts for
43 the purpose and with the intent of evading the provisions of this section, or (ii) any other such
44 subterfuge.

45 (f) A lender in a rate spread home loan who, when acting in good faith, fails to comply
46 with this section, will not be deemed to have violated this section if the lender establishes that
47 either:

48 (1) Within 90 days of the loan closing and prior to the institution of any action
49 against the lender under this section, the borrower was notified of the
50 compliance failure, the lender tendered appropriate restitution, the lender
51 offered, at the borrower's option, either to (i) make the rate spread home loan

1 comply with subsection (b) or (c), or (ii) change the terms of the loan in a
2 manner beneficial to the borrower so that the loan will no longer be
3 considered a rate spread home loan subject to the provisions of this section,
4 and within a reasonable period of time following the borrower's election of
5 remedies, the lender took appropriate action based on the borrower's choice;
6 or

- 7 (2) The compliance failure was not intentional and resulted from a bona fide
8 error notwithstanding the maintenance of procedures reasonably adopted to
9 avoid such errors, and within 120 days after the discovery of the compliance
10 failure and prior to the institution of any action against the lender under this
11 section or the lender's receipt of written notice of the compliance failure, the
12 borrower was notified of the compliance failure, the lender tendered
13 appropriate restitution, the lender offered, at the borrower's option, either to
14 (i) make the rate spread home loan comply with subsection (b) or (c) of this
15 section, or (ii) change the terms of the loan in a manner beneficial to the
16 borrower so that the loan will no longer be considered a rate spread home
17 loan subject to the provisions of this section, and within a reasonable period
18 of time following the borrower's election of remedies, the lender took
19 appropriate action based on the borrower's choice. Examples of a bona fide
20 error include clerical, calculation, computer malfunction and programming,
21 and printing errors. An error of legal judgment with respect to a person's
22 obligations under this section is not a bona fide error.

23 (g) The provisions of this section shall be severable, and if any phrase, clause, sentence,
24 or provision is declared to be invalid or is preempted by federal law or regulation, the validity
25 of the remainder of this section shall not be affected thereby."

26 **SECTION 3.** G.S. 45-101 reads as rewritten:

27 "**§ 45-101. (For expiration date, see note) Definitions.**

28 The following definitions apply throughout this Article:

- 29 (1) Act as a mortgage servicer. – To engage, whether for compensation or gain
30 from another or on its own behalf, in the business of receiving any scheduled
31 periodic payments from a borrower pursuant to the terms of any mortgage
32 loan, including amounts for escrow accounts, and making the payments of
33 principal and interest and such other payments with respect to the amounts
34 received from the borrower as may be required pursuant to the mortgage
35 loan, the mortgage servicing loan documents, or servicing contract.

36 (1a) Annual percentage rate. – Defined in G.S. 24-1.1F.

37 (1b) Home loan. – A loan that has all of the following characteristics:

- 38 a. The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii)
39 a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage
40 transaction, or (iv) a bridge loan with a term of 12 months or less,
41 such as a loan to purchase a new dwelling where the borrower plans
42 to sell a current dwelling within 12 months.
43 b. The borrower is a natural person.
44 c. The debt is incurred by the borrower primarily for personal, family,
45 or household purposes.
46 d. The principal amount of the loan does not exceed the conforming
47 loan size limit for a single-family dwelling as established from time
48 to time by Fannie Mae.
49 e. The loan is secured by (i) a security interest in a manufactured home,
50 as defined in G.S. 143-145, in the State which is or will be occupied
51 by the borrower as the borrower's principal dwelling, (ii) a mortgage

1 or deed of trust on real property in the State upon which there is
2 located an existing structure designed principally for occupancy of
3 from one to four families that is or will be occupied by the borrower
4 as the borrower's principal dwelling, or (iii) a mortgage or deed of
5 trust on real property in the State upon which there is to be
6 constructed using the loan proceeds a structure or structures designed
7 principally for occupancy of from one to four families which, when
8 completed, will be occupied by the borrower as the borrower's
9 principal dwelling.

10 f. A purpose of the loan is to (i) purchase the dwelling, (ii) construct,
11 repair, rehabilitate, remodel, or improve the dwelling or the real
12 property on which it is located, (iii) satisfy and replace an existing
13 obligation secured by the same real property, or (iv) consolidate
14 existing consumer debts into a new home loan.

15 (2) Mortgage lender. – A person engaged in the business of making mortgage
16 loans for compensation or gain.

17 (3) Mortgage servicer. – A person who directly or indirectly acts as a mortgage
18 servicer as that term is defined in subdivision (1) of this section or who
19 otherwise meets the definition of the term 'servicer' in the Real Estate
20 Settlement Procedures Act, 12 U.S.C. § 2605(i), with respect to mortgage
21 loans.

22 (3a) Rate spread home loan. – A home loan in which all the following apply:

23 a. The difference between the annual percentage rate for the loan and
24 the yield on U.S. Treasury securities having comparable periods of
25 maturity is either equal to or greater than (i) three percentage points
26 (3%), if the loan is secured by a first lien mortgage or deed of trust,
27 or (ii) five percentage points (5%), if the loan is secured by a
28 subordinate lien mortgage or deed of trust. Without regard to whether
29 the loan is subject to or reportable under the provisions of the Home
30 Mortgage Disclosure Act (12 U.S.C. § 2801, et seq.) (HMDA), the
31 difference between the annual percentage rate and the yield on
32 Treasury securities having comparable periods of maturity shall be
33 determined using the same procedures and calculation methods
34 applicable to loans that are subject to the reporting requirements of
35 HMDA, as those procedures and calculation methods are amended
36 from time to time, provided that the yield on Treasury securities shall
37 be determined as of the fifteenth day of the month prior to the
38 application for the loan.

39 b. The difference between the annual percentage rate for the loan and
40 the conventional mortgage rate is either equal to or greater than (i)
41 one and three-fourths percentage points (1.75%), if the loan is
42 secured by a first lien mortgage or deed of trust, or (ii) three and
43 three-fourths percentage points (3.75%), if the loan is secured by a
44 subordinate lien mortgage or deed of trust. For purposes of this
45 calculation, the "conventional mortgage rate" means the most recent
46 daily contract interest rate on commitments for fixed-rate first
47 mortgages published by the Board of Governors of the Federal
48 Reserve System in its Statistical Release H.15, or any publication
49 that may supersede it, during the week preceding the week in which
50 the interest rate for the loan is set.

1 (4) Subprime loan. – A loan, originated on or after January 1, 2005, but before
2 December 31, 2007, that ~~would meet~~ meets the definition of a rate spread
3 home loan under ~~G.S. 24-1.1F(a)(7), if that section had been in effect when~~
4 ~~the loan was originated.~~ this Article. A mortgage servicer may rely on a
5 chart reflecting the appropriate interest rate triggers for rate spread home
6 loans for each day of the period covered by this Article provided by the
7 Commissioner of Banks for the purposes of determining if a loan is a
8 subprime loan covered by this Article. The Commissioner shall provide the
9 chart at least 60 days prior to the effective date of this act."

10 **SECTION 4.** This act becomes effective October 1, 2009.