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## North Carolina

### STATE HIGH COST/PREDATORY LENDING REGULATIONS

Last Updated: 2/23/18 By: BH

Coded: 3/2/2018 By: ZB

Reviewed: 3/5/2018 By: BH

**LAW:** NC High Cost Home Loan Law  
NC Rate Spread Home Loans  
HB 2188 effective 10/01/2013 changes Rate spread rules  
NC General Statutes Section 24.-1.1E and F

**LOAN AMOUNT COVERED:** Lesser of \$300,000 or FNMA loan limit

**BORROWERS COVERED:**

Individuals  
 Organizations

Trusts  
 Other:

**TOTAL LOAN AMOUNT (TLA) IS DEFINED AS:** NC General Statutes Section 24.-1.1E and F

Loan Amount as defined in HOEPA 226.32  
 Loan Amount as defined in HCML 1026.32

Note Amount  
 Other:

**LOAN TYPES COVERED:**

Conventional  
 VA  
 Other:

FHA  
 RHS

**LOAN PURPOSES COVERED:**

Purchase  
 Builder  
 Equity Out  
 One Time Closing  
 Purchase Plus Improvements  
 Lot Loan  
 Borrower Interim  
 HELOC

Construction to Perm  
 Refinance  
 Home Equity Closed End  
 Modification  
 Refinance Plus Improvements  
 Home Improvement  
 One Time Closing with Modification  
 Assumption

**BRIDGE LOANS COVERED**

Yes       No

**PROPERTY OCCUPANCY COVERED:**

Primary Residence  
 Investment

Second Home  
 Raw Land

**APR THRESHOLDS:** [http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_24/GS\\_24-1.1E.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_24/GS_24-1.1E.html)

APR       Unteased APR       Other:

First Lien: > 6.5 %

Subordinate Lien: > 8.5 %

**APR COMPARED AGAINST:** NC General Statutes Section 24.-1.1E and F

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APOR  
 Treasury Yield

APR Itself  
 Other:

**DATE FOR APR TEST:**

Application  
 Other: Date interest rate is set

Closing

**FEE TEST METHOD:** NC General Statutes Section 24.-1.1E and F

Use HC Flag  
 Use APR & Paid To (§1026.32)  
 Use APR & Paid To, except: for open-end exclude up to 1% prepayment penalty if charged more than 30 months after closing. For closed end exclude up to 2% of prepayment penalty if charged more than 30 months (See below in Fees Included In Test)

**FEE TEST THRESHOLDS:** NC General Statutes Section 24.-1.1E and F

All liens:  $> 5\%$  of TLA  $\geq \$20,350$

Lesser of 8% or \$1,017 for TLA  $< \$20,350$

**ADJUSTMENTS:**

No       Yes | How:

**FEES INCLUDED IN TEST:** NC General Statutes Section 24.-1.1E and F

"Points and fees" is defined as provided in this subdivision.

- a. The term includes all of the following:
1. All items paid by a borrower at or before closing and that are required to be disclosed under sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential. However, the meaning of the term "points and fees" shall not include any up-front fees collected and paid to the Federal Housing Administration, the Veterans' Administration, or the U.S. Department of Agriculture to insure or guarantee a home loan.
  2. All charges paid by a borrower at or before closing and that are for items listed under section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase "points and fees".
  3. To the extent not otherwise included in sub-subdivision a.1. or a.2. of this subdivision, all compensation paid from any source to a mortgage broker, including compensation paid to a mortgage broker in a table-funded transaction. A bona fide sale of a loan in the secondary mortgage market shall not be considered a table-funded transaction, and a table-funded transaction shall not be considered a secondary market transaction.
  4. The maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents.
- b. Notwithstanding the remaining provisions of this subdivision, the term does not include (i) taxes, filing fees, recording and other charges and fees paid or to be paid

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

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

The total points and fees, 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

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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.

#### **OTHER ITEMS TO BE TESTED/CONSIDERED: HB 2188**

#### **RATE SPREAD HOME LOANS**

##### **LOAN TYPES COVERED:**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Conventional | <input checked="" type="checkbox"/> FHA |
| <input checked="" type="checkbox"/> VA           | <input checked="" type="checkbox"/> RHS |
| <input type="checkbox"/> Other                   |   |

**Maximum Loan Amount Covered:** FNMA limit

##### **LOAN PURPOSES COVERED:**

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Purchase         | <input checked="" type="checkbox"/> Construction to Perm               |
| <input type="checkbox"/> Construction                | <input checked="" type="checkbox"/> Refinance                          |
| <input checked="" type="checkbox"/> Equity Out       | <input checked="" type="checkbox"/> Home Equity Closed End             |
| <input checked="" type="checkbox"/> One Time Closing | <input checked="" type="checkbox"/> Modification                       |
| <input checked="" type="checkbox"/> Purchase Plus    | <input checked="" type="checkbox"/> Refinance Plus                     |
| <input checked="" type="checkbox"/> Lot Loan         | <input checked="" type="checkbox"/> Home Improvement                   |
| <input checked="" type="checkbox"/> Borrower Interim | <input checked="" type="checkbox"/> One Time Closing with Modification |
| <input checked="" type="checkbox"/> HELOC            | <input checked="" type="checkbox"/> Assumption                         |
| <input checked="" type="checkbox"/> Bridge Loan      | <input checked="" type="checkbox"/> Assumption                         |

**Borrower(s) Covered:** Natural persons or trust

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**PROPERTY OCCUPANCY COVERED:**

- |   |                                      |
|---|--------------------------------------|
| <input checked="" type="checkbox"/> Primary Residence – 1-4 units | <input type="checkbox"/> Second Home |
| <input type="checkbox"/> Investment                               | <input type="checkbox"/> Raw Land    |

**Must Meet Ability to Repay and Safe Harbor standards:**

- A rate spread home loan is a loan that has an annual percentage rate that exceeds the limits set out in 15 U.S.C. Section 1639c(c)(1)(B)(ii) and any regulations.
- The making of a rate spread home loan that violates 15 U.S.C. Section 1639c(a) and any regulations is hereby declared usurious in violation of the provisions of this Chapter.
- Any prepayment penalty in violation of 15 U.S.C. Section 1639c(c) and any regulations will be unenforceable.
- A borrower will not be entitled to recover twice for the same wrong. Any party to a rate spread home loan may enforce the provisions of this section. This section establishes specific consumer protections in rate spread home loans in addition to other consumer protections that may be otherwise available by law. A mortgage broker who brokers a rate spread home loan that violates the provisions of this section will be jointly and severally liable with the lender.

**(c) PROHIBITION ON CERTAIN PREPAYMENT PENALTIES**

**(1) PROHIBITED ON CERTAIN LOANS**

**(A) IN GENERAL**

A residential mortgage loan that is not a “qualified mortgage”, as defined under subsection (b)(2), may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated.

**(B) EXCLUSIONS**

For purposes of this subsection, a “qualified mortgage” may not include a residential mortgage loan that—

- (i) has an adjustable rate; or
- (ii) has an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

(I) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is equal to or less than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 1454(a)(2) of title 12;

(II) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is more than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 1454(a)(2) of title 12; and

(III) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan.

**SPECIAL NOTES: NC General Statutes Section 24.-1.1E and F**

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**Limitations.** - A high-cost home loan shall be subject to the following limitations:

(1) No call provision. - No high-cost home loan may contain a provision which permits the lender, in its sole discretion, to accelerate the indebtedness. This provision does not apply when repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule.

(2) No balloon payment. - No high-cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.

(3) No negative amortization. - No high-cost home loan may contain a payment schedule with regular periodic payments that cause the principal balance to increase.

(4) No increased interest rate. - No high-cost home loan may contain a provision which increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

(5) No advance payments. - No high-cost home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

(6) No modification or deferral fees. - A lender may not charge a borrower any fees to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan.

(c) Prohibited Acts and Practices. - The following acts and practices are prohibited in the making of a high-cost home loan:

(1) No lending without home-ownership counseling. - A lender may not make a high-cost home loan without first receiving certification from a counselor approved by the North Carolina Housing Finance Agency that the borrower has received counseling on the advisability of the loan transaction and the appropriate loan for the borrower.

(2) No lending without due regard to repayment ability. - As used in this subsection, the term "obligor" refers to each borrower, co-borrower, cosigner, or guarantor obligated to repay a loan. A lender may not make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan). An obligor shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the obligor's total monthly debts, including amounts owed under the loan, do not exceed fifty percent (50%) of the obligor's monthly gross income as verified by the credit application, the obligor's financial statement, a credit report, financial information provided to the lender by or on behalf of the obligor, or any other reasonable means; provided, no presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that, at the time the loan is consummated, the obligor's total monthly debts (including amounts owed under the loan) exceed fifty percent (50%) of the obligor's monthly gross income.

(3) No financing of fees or charges. - In making a high-cost home loan, a lender may not directly or indirectly finance:

a. Any prepayment fees or penalties payable by the borrower in a refinancing transaction if the lender or an affiliate of the lender is the noteholder of the note being refinanced;

b. Any points and fees; or

c. Any other charges payable to third parties.

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- (4) No benefit from refinancing existing high-cost home loan with new high-cost home loan. - A lender may not charge a borrower points and fees in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same lender as noteholder.
- (5) Restrictions on home-improvement contracts. - A lender may not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan other than (i) by an instrument payable to the borrower or jointly to the borrower and the contractor, or (ii) at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the disbursement.
- (6) No shifting of liability. - A lender is prohibited from shifting any loss, liability, or claim of any kind to the closing agent or closing attorney for any violation of this section.
- (d) Unfair and Deceptive Acts or Practices. - Except as provided in subsection (e) of this section, the making of a high-cost home loan which violates any provisions of subsection (b) or (c) of this section is hereby declared usurious in violation of the provisions of this Chapter and unlawful as an unfair or deceptive act or practice in or affecting commerce in violation of the provisions of G.S. 75-1.1. The provisions of this section shall apply to any person who in bad faith attempts to avoid the application of this section by (i) the structuring of a loan transaction as an open-end credit plan for the purpose and with the intent of evading the provisions of this section when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan, or (ii) dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of this section, or (iii) any other such subterfuge. The Attorney General, the Commissioner of Banks, or any party to a high-cost home loan may enforce the provisions of this section. Any person seeking damages or penalties under the provisions of this section may recover damages under either this Chapter or Chapter 75, but not both.