

April 18, 2007

H 1817. PROTECT CONSUMERS—RATE SPREAD HOME LOANS. Filed 4/18/07. *TO PROTECT CONSUMERS REGARDING RATE SPREAD HOME LOANS.*

To be summarized in tomorrow's *Daily Bulletin*.

Intro. by Blue.

GS 24, 53

April 19, 2007

H 1817. PROTECT CONSUMERS—RATE SPREAD HOME LOANS. Filed 4/18/07. *TO PROTECT CONSUMERS REGARDING RATE SPREAD HOME LOANS.*

Enacts GS 24-1.1F to provide consumer protection for borrowers with a *rate spread home loan* (loans to natural persons for personal, family, or household purposes secured by mortgage on borrower's principal dwelling when the difference between the annual percentage rate for the loan and the yield on US Treasury Securities having comparable periods of maturity is 3% or more for closed-end loans or 5% or more for open-end loans and closed-end loans secured by a subordinate lien mortgage). Prohibits prepayment penalties in these loans. Prohibits making these loans unless the lender reasonably believes at the time of the loan consummation that the obligator will be able to repay the loan. Establishes a presumption of ability to pay if the presumptive monthly payment does not exceed 50% of obligator's monthly gross income, with presumption of inability to pay if the presumptive monthly payment exceeds that amount. Sets method of calculation of income, obligations, and presumptive payments. Specifies applicability to and responsibilities of mortgage brokers. Sets penalties for violations and remedies for obligators. Authorizes rule-making by the Banking Commission to implement the law. Makes conforming amendments to other statutes. Criminal penalties for violation of the act become effective December 1, 2007, and the remainder of act becomes effective October 1, 2007.

Intro. by Blue.

GS 24, 53

May 16, 2007

H 1817. PROTECT CONSUMERS—COVERED LOANS (NEW). Filed 4/18/07. House committee substitute replaces all provisions of the 1st edition with *AN ACT TO PROTECT CONSUMERS REGARDING COVERED LOANS AND TO INCREASE THE COMMISSIONER'S DISCIPLINARY AUTHORITY OVER LICENSEES UNDER THE MORTGAGE LENDING ACT*. Amends GS 24-10.2 (which sets maximum fees on loans secured by real property) by adding new subsection (d1) prohibiting a lender from making a consumer home loan based on the foreclosure value of the real estate taken as collateral unless the lender reasonably believes that the borrowers can repay the loan according to its terms and can pay applicable real estate taxes and hazard insurance premiums. Requires the lender to (1) take reasonable steps to verify the accuracy of the financial information provided by the borrower in support of the loan application and (2) make its analysis of the borrower's ability to repay the loan on the basis of credit scores, credit history, income, other debt, employment status, and other financial resources. If the loan is an adjustable rate loan, the lender must consider any increase to the balance resulting from negative amortization and must assume that the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed interest rate. Proposed new subsection (d1) will not apply to equity lines of credit or to consumer home loans underwritten and approved on the basis of a borrower's credit risk score when considered in conjunction with one or more other underwriting factors or on the basis of other commercially reasonable and prudent underwriting standards.

Amends GS 53-243.04 to give the Banking Commission authority to issue rules interpreting GS 24-10.2 and GS 24-1.1E (restrictions and limitations on high-cost home loans). Enacts new GS 53-243.12(m) authorizing the Commissioner of Banks to prohibit mortgage lending licensees from engaging in unfair and deceptive practices. Effective October 1, 2007.

July 28, 2007

H 1817. PROTECT CONSUMERS—COVERED LOANS. Filed 4/18/07. Senate committee substitute makes the following changes to 2nd edition. Deletes the proposed new GS 24-10.2(d1). Amends GS 24-1.1E(a)(5) to include in the definition of *points and fees*

compensation paid from any source to a mortgage broker (was, paid directly by the borrower to a mortgage broker). Also excludes from the definition fees paid to a person other than a lender or mortgage broker for premiums for insurance against loss or damage to property, including hazard insurance and flood insurance (was, fire and flood insurance premiums). Amends GS 24-1.1E(a) to add definitions of *mortgage broker* and a *table-funded transaction*. Enacts new GS 24-1.1E(g) to provide that a mortgage broker who brokers a high-cost home loan that violates the limitations on high-cost home loans or commits an act or practice that is prohibited in the making of a high-cost home loan is jointly and severally liable with the lender.

Enacts new GS 24-1.1F prohibiting fees or penalties from being charged or collected on a rate spread home loan. Prohibits a lender from making a rate spread home loan unless the lender reasonably believes that one or more of the obligors has the ability to repay the loan according to its terms and pay applicable taxes and premiums. Also sets facts to be considered in determining ability to repay and for handling situations when one or more loans secured by the same real property will be made contemporaneously to the same borrower with the rate spread home loan. Makes a lender jointly and severally liable to the borrower for the wrongful acts and omissions of a mortgage broker in the origination of a rate spread home loan in specified instances. Provides that the making of a rate spread home loan in violation of the statute is usurious and that any prepayment penalty in violation of the statute is unenforceable. Also provides that the statute applies to any person who in bad faith tries to avoid the application of the statute by dividing any loan transaction into separate parts or uses another subterfuge to evade the statute. Provides that a lender in a rate spread home loan action acting in good faith who fails to comply with the statute is not deemed to have violated the statute. Adds a severability clause and provides that the statute applies to rate spread home loans made on or after October 1, 2007.

Enacts new GS 24-10.2(h) to make a mortgage broker who brokers a consumer home loan in violation of the statute jointly and severally liable with the lender. Modifies GS 53-243.04 to make a conforming change and to allow the NC Commissioner of Banks (was, the Banking Commission) to adopt rules. Amends GS 53-243.10 to add to the duties of a mortgage broker. Amends GS 53-243.11 to make conforming and technical changes and to make it illegal to (1) broker an adjustable rate mortgage loan without disclosing to the borrower the terms and costs associated with a fixed rate loan from the same lender, (2) fail to comply with applicable federal laws and regulations related to mortgage lending, and (3) engage in unfair, misleading, or deceptive advertising related to a solicitation of a mortgage loan.

August 1, 2007

H 1817. PROTECT CONSUMERS—COVERED LOANS. Filed 4/18/07. Senate amendment makes the following changes to 3rd edition. Modifies proposed new GS 24-1.1F to expand the applicable criteria for defining the term *rate spread home loan*. Deletes the definition for *table-funded transaction*. Deletes several provisions regarding the lender's joint and several liability to the borrower for the wrongful acts and omissions of a mortgage broker in the origination of a rate spread home loan. Reletters the remaining statutory subsections accordingly. Deletes provision that would credit a borrower's recovery of damages from a lender or a mortgage broker to their liability under the section. Modifies proposed amendments to GS 53-243.10 to delete language providing that the mortgage broker owes a duty of loyalty to the borrower. Deletes the requirement that a mortgage broker inform prospective lenders of each of the other lenders' loans when the mortgage broker knows that a borrower has contemporaneously acquired more than one loan secured by the same property. Provides an expanded list of the mortgage broker's duties. Makes clarifying and technical changes.

August 27, 2007

SL 2007-352 (H 1817). PROTECT CONSUMERS—COVERED LOANS. AN ACT TO PROTECT CONSUMERS REGARDING COVERED LOANS AND TO INCREASE THE COMMISSIONER'S DISCIPLINARY AUTHORITY OVER LICENSEES UNDER THE MORTGAGE LENDING ACT. Summarized in *Daily Bulletin* 4/19/07, 5/16/07, 7/28/07, and 8/1/07. Enacted August 16, 2007. Effective January 1, 2008.

