

2018

**HOUSE SELECT
COMMITTEE ON
BANKING & LOAN
ORIGINATION FEE
REFORM**

MINUTES

HOUSE SELECT COMMITTEE ON BANKING AND LOAN ORIGINATION FEE
REFORM
2018 Session

<u>MEMBER</u>	<u>ASSISTANT</u>	<u>PHONE</u>	<u>OFFICE</u>	<u>SEAT</u>
Rep. Howard, Chair	Cody Huneycutt Committee Clerk	3-5904	302	1
Rep. Conrad, Vice Chair	Ginny Taylor	3-5787	416B	44
Rep. J. Bell	Susan Horne	5-3017	301 F	5
Rep. Brawley	Lynn Taylor	3-5800	534	19
Rep. D. Hall	David Cobb	3-5931	306 C	87
Rep. K. Hall	Cameron Dawson	3-5609	536	78
Rep. Hardister	Jayne Nelson	3-5191	638	39
Rep. B. Jones	Andrew Bailey	3-5821	2217	88
Rep. Lambeth	Pan Briles	3-5747	303	65
Rep. Lucas	Thelma Utely	3-5775	509	22
Rep. Saine	Elise Yost	3-5782	1326	26
Rep. Setzer	Margaret Herring	3-4948	2204	2
Rep. Szoka	Beverly Slagle	3-9892	2207	30
Rep. Terry	Franklin Terry	3-5777	1015	80

STAFF

Amy Darden
Greg Roney
Rodney Bizzell

Lewis King, Speaker's Office

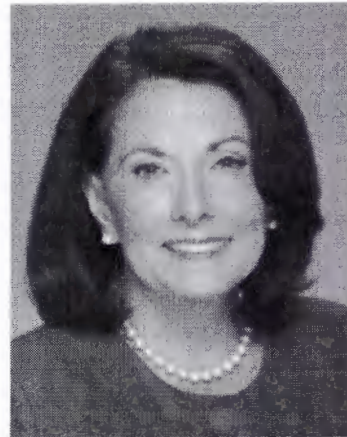


Select Committee on Banking and Loan Origination Fee Reform

Clerk: Cody Huneycutt



Rep Julia Howard,
Chair



Rep. Jon Hardister,
Vice-Chair



Rep. John Bell



Rep. Bill Brawley



Rep. Destin Hall



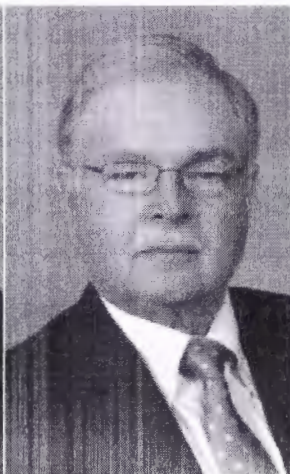
Rep. Kyle Hall



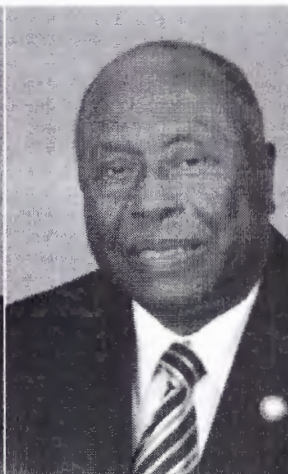
Rep. Jon Hardister



Rep. Brenden Jones



Rep. Donny Lambeth



Rep Marvin Lucas



Rep. Jason Saine



Rep. Mitchell Setzer





Rep. John Szoka

Rep. Evelyn Terry



Banking and Loan Origination Committee

DATES	
9-24-2018	
	Howard
	Conrad
	J. Bell
	Brawley
	Hardister
	Destin Hall
	Kyle Hall
	B. Jones
	Lambeth
	Lucas
	Saine
	Setzer
	Szoka
	Terry



Cody Huneycutt (Rep. Julia Howard)

From: Cody Huneycutt (Rep. Julia Howard)
Sent: Wednesday, September 05, 2018 09:43 AM
To: Cody Huneycutt (Rep. Julia Howard)
Subject: <NCGA> House Select Committee on Banking and Loan Origination Fee Reform
Committee Meeting Notice for Monday, September 24, 2018 at 10:00 AM
Attachments: Add Meeting to Calendar_LINC_.ics

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2017-2018 SESSION**

You are hereby notified that the **House Select Committee on Banking and Loan Origination Fee Reform** will meet as follows:

DAY & DATE: Monday, September 24, 2018
TIME: 10:00 AM
LOCATION: 544 LOB

Respectfully,

Representative Julia C. Howard, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 9:41 AM on Wednesday, September 05, 2018.

____ Principal Clerk
____ Reading Clerk – House Chamber

Cody Huneycutt (Committee Assistant)



AGENDA

HOUSE SELECT COMMITTEE ON BANKING AND LOAN ORIGINATION FEE REFORM

Rep. Julia Howard, Chair

Monday, September 24th, 2018
Room 544, Legislative Office Building
10:00 a.m.

I. Call to Order

II. Committee Charge Overview

Amy Darden, Legislative Analysis Division

III. Banking 101

Ray Grace, NC Commissioner of Banks

Katherine Bosken, Deputy Commissioner of Banks

IV. NC Lending Laws and Chapter 24

Nathan Batts, Senior Vice President and Counsel, NC Bankers Association

V. Adjournment





The House Select Committee on Banking and Loan Origination
September 24, 2018
Room 544 Legislative Office Building

The House Committee on Banking and Loan Origination met on Monday, September 24th at 10:00 AM. The meeting was held in Room 544 of the Legislative Office Building in Raleigh. Rep. Julia Howard presided. Members present were: Rep. Julia Howard, Chair, Rep. Debra Conrad, Vice-Chair, Rep. Destin Hall, Rep. Kyle Hall, Rep. Jon Hardister, Rep. Brenden Jones, Rep. Marvin Lucas, Rep. Mitchell Setzer, Rep. John Szoka, and Rep. Evelyn Terry. Amy Darden and Rodney Bizzell, staff. Cody Huneycutt, Committee Clerk.

I. Call to Order

Rep. Howard called the meeting to order at 10:02 AM. Members, staff and guests were welcomed.

II. Committee Charge Overview

Rep. Howard recognized and gave the floor to Amy Darden, Staff Attorney, Legislative Analysis Division to fulfill this portion of the agenda. Upon completion, the floor was opened to the members for questions. No questions were presented.

III. Banking 101

Rep. Howard recognized and gave the floor to Ray Grace, NC Commissioner of Banks and Katherine Bosken, Deputy Commissioner of Banks. Upon completion, the floor was opened to the members for questions.

Rep. Brawly: Could you expand of the special purpose VINTEC definition?



Katherine Bosken: It will allow online banks to not take deposits but gain access to payment systems like money transmitters or mortgage companies.

Rep Brawly: When you say virtual currency, does that include Bitcoin?

Katherine Bosken: Yes.

Rep. Hardister: Banking commission, non-depositories do not have seats on the commission. Do you think they will be added?

Katherine Bosken: We are not against it.

Rep Lucas: Do banks verify the validity of what is being told when a client comes in with big deposits?

Katherin Bosken: Absolutely, Tellers are trained and have to file a suspicious report if they feel the need.

Rep. Lucas: Does it imply to the frequency of deposits?

Katherine Bosken: Yes. Banks monitor that.

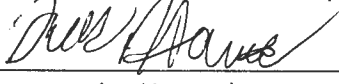
IV. NC Lending Laws and Chapter 24

Rep. Howard recognized and gave the floor to Nathan Batts, Senior Vice President and Counsel, NC Bankers Association to fulfill this portion of the Agenda. Upon completion, the floor was opened to the members for questions. No questions were presented.


V. Adjournment

There being no further business, the meeting adjourned at 11:03 AM.

These minutes have not been approved by the Select Committee on Banking and Loan Origination.



Representative Howard
Presiding

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Cody Huneycutt, Committee Clerk





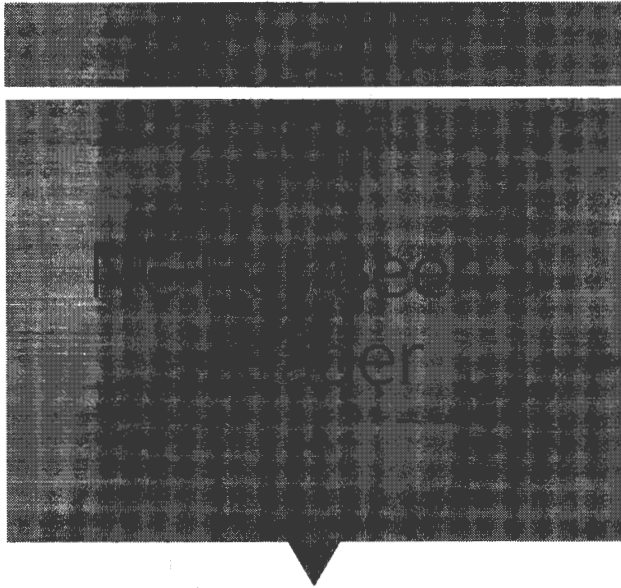
NC Lending Laws and Chapter 24

House Select Committee on Banking and Loan Origination Fee Reform

Monday, September 24

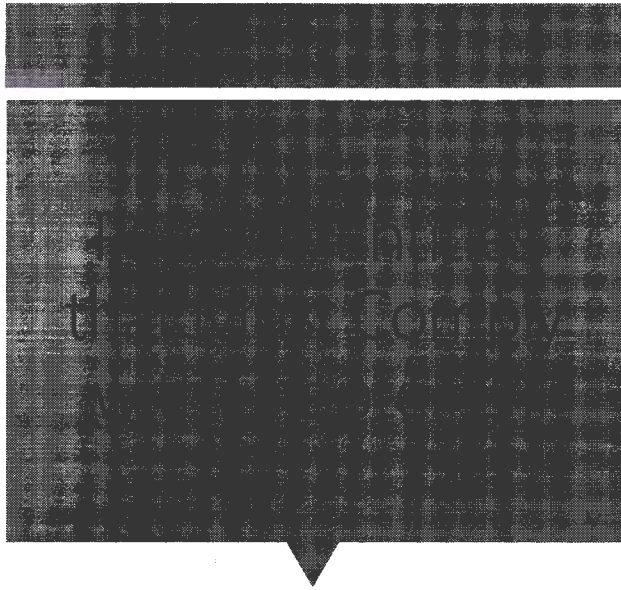
Nathan Batts, SVP and Counsel, North Carolina Bankers Association





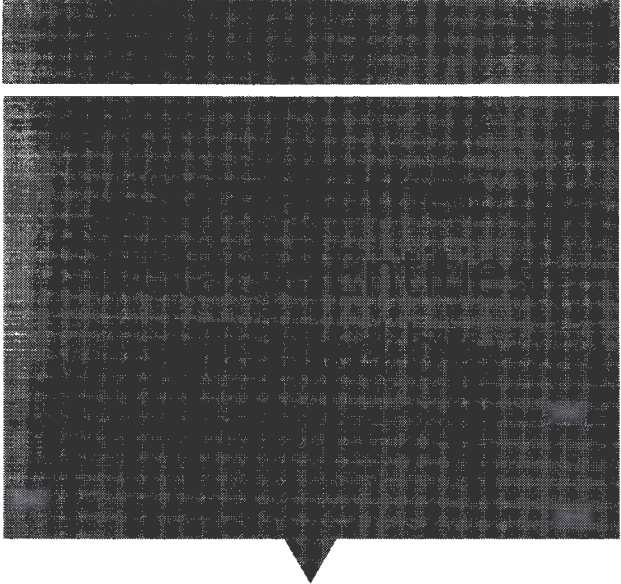
- Anti-Predatory Lending Protections (Passed in 1999; GS 24-1.1E)
- Protections for Subprime Loans (Passed in 2007; GS 24-1.1F)
- “The Secure and Fair Enforcement Mortgage Licensing Act” (Passed in 1999; Article 19B of *Chapter 53*)



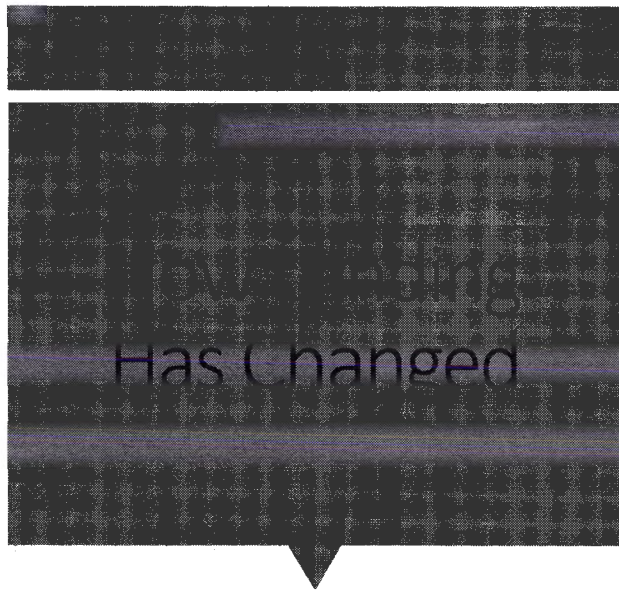


- Banks (State-Chartered NC Banks and Those Applying “Host State Law”)
- NC Mortgage Companies
- Anyone Lending Money Under the Authority of Chapter 24



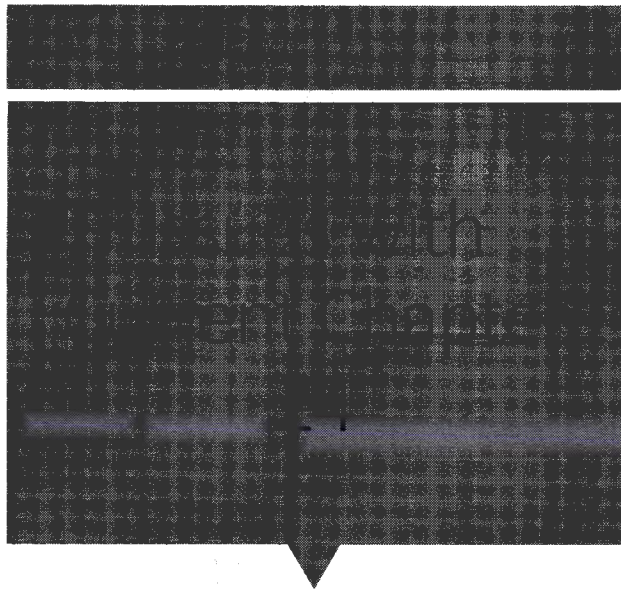
- 
- Credit Unions (Through Interpretations by the Attorney General of Chapter 54 and Chapter 24)
 - Retailers (Credit Cards and Revolving Charge Accounts; GS 24-11)
 - Consumer Finance Companies (For Loans Not Made Under Article 15 of Chapter 53)





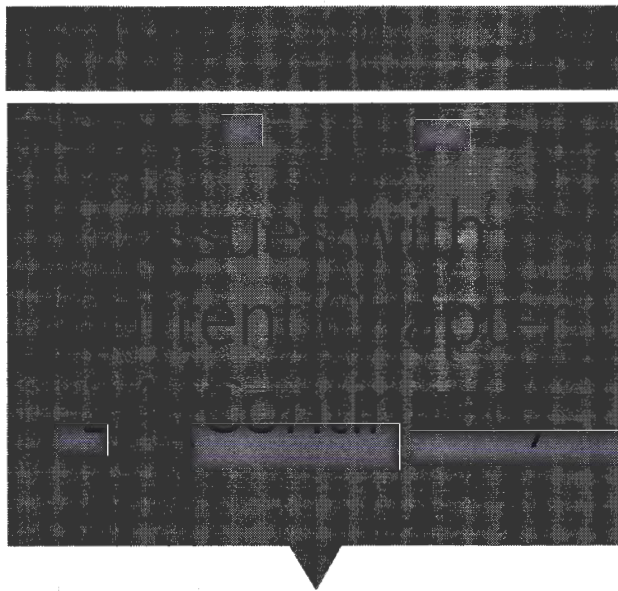
- Offerings by Out-of-State and National Lenders
- Internet-Based Lending
- Convergence in the Offerings by Banks, Credit Unions, Mortgage Companies, and Others
- Peer-to-Peer Lending
- FinTechs





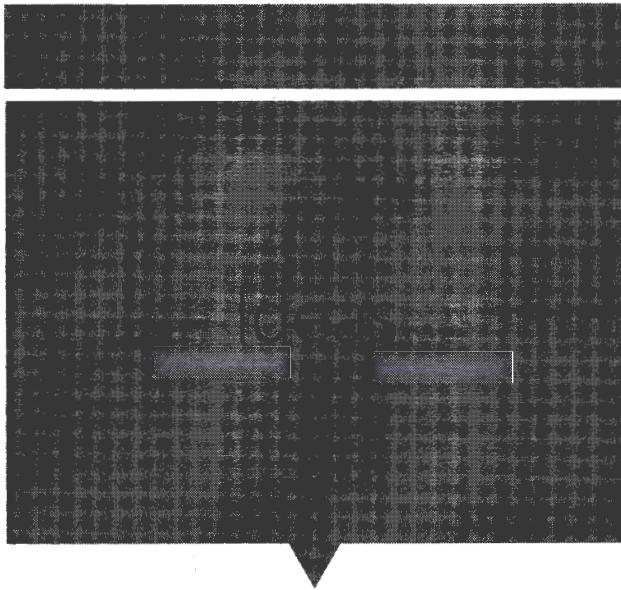
- 41 Statutes (7 Repealed or Expired)
- No “Scope Provision”
- You Have to Jump 25 Statutes to Get to One Setting Out Which Loans are Exempt
- No Statute with Definitions for the Chapter as a Whole, Creating Litigation Fodder





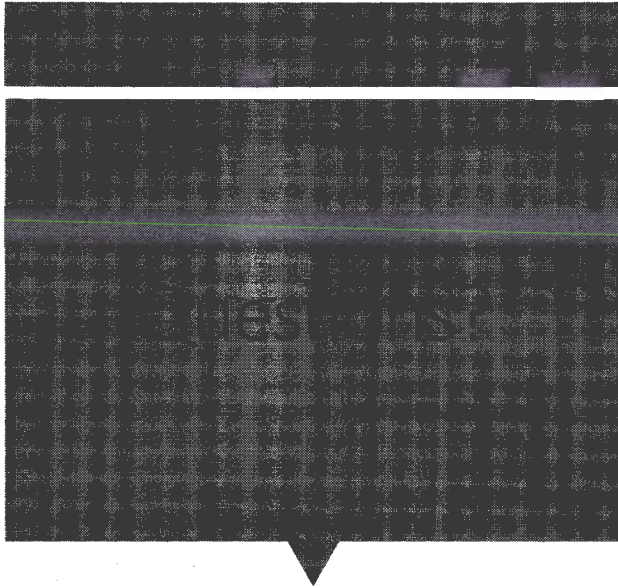
- Well-Intended, But with Each Revision the Chapter Has Become Harder to Understand
- A Law Firm Representing Banks Prepared a 36-Page Memo with Charts to Try to Help Banks Organize and Understand What Is Authorized by Chapter 24
- Many Statutes Haven't Been Inflation-Adjusted in Decades
- The Anti-Predatory Lending and Subprime Tests Are Similar to But Don't Quite Match Federal Regulation Z





- Reorganize or Replace Chapter 24
- Add Definitions and a Scope Provision
- Clarify Those Instances Where Restrictions Apply to Interest Rates and Fees
- Add Inflation Adjustments
- Align the State Tests for High-Cost and Rate-Spread Loans with Federal Regulation Z
- Consider Simplifying the Number of Loan Categories





- Nathan Batts:
 - 919-781-7979
 - nathan@ncbankers.org





SUMMARY OF NORTH CAROLINA USURY LAWS

OCTOBER 2015

The following charts summarize the provisions of the North Carolina usury laws contained in Chapter 24 of the North Carolina General Statutes, as in effect on October 1, 2015, as they pertain to various types of loans and extensions of credit. The summaries are general in nature and are intended only as a reference and not as a substitute for reviewing the usury statutes themselves. *You should refer to the full text of the relevant sections of Chapter 24 for a complete understanding of the limitations on interest and fees and other related requirements that apply to a particular loan or extension of credit.*

ASHEVILLE
828.333.9470

GREENVILLE
252.215.4000

NEW BERN
252.672.5400

RALEIGH
919.277.9100

WILMINGTON
910.794.4800



INTRODUCTION

The following charts take a functional approach to North Carolina's complex usury laws, identifying the specific usury and other limitations applicable to different classes of loans made by lenders in North Carolina. There are nine charts, each chart dealing with a separate category of loans. **You should use the following analysis in using the accompanying charts:**

STEP 1. Determine whether the loan is an "exempt" loan as described in Usury Chart #1. If it is, your inquiry is usually over – but there is a major exception you will need to consider. If (i) the loan qualifies as an exempt loan only because the loan amount (or initial maximum credit limit) is \$300,000 or more, and (ii) the loan is secured by either (a) a manufactured home that is or will be occupied by the borrower as the borrower's principal dwelling, or (b) real property upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling, then you will still need to determine whether the loan is subject to any of the "special" consumer protection provisions identified in Usury Chart #9.

STEP 2. Unless you have determined that the loan is an exempt loan, determine if Usury Chart #2, 3, 4, 5, 6, 7, or 8 applies. The chart you use will in large measure depend on the identity of the lender, the nature of the collateral, and whether the loan is a closed-end or open-end (revolving) loan.

STEP 2. When appropriate, evaluate the loan in the context of the "special" consumer protection provisions described in Usury Chart #9. One or more of the "special" consumer protection provisions may apply to the loan even if it is otherwise exempt from the rate and fee limitations contained in North Carolina's usury laws because the loan amount is \$300,000 or more.

Usury Chart #1	Exempt Loans (G.S. 24-9)
Usury Chart #2	First Lien Closed-End Home Loans (G.S. 24-1.1A)
Usury Chart #3	Closed-End Loans originated under Article 1 of Chapter 24 (Other than First Lien Closed-End Home Loans described in Chart #2)
Usury Chart #4	Loans secured by secondary or junior mortgages originated under Article 2 of Chapter 24
Usury Chart #5	Equity Lines of Credit that qualify for the limited usury exemption under G.S. 24-9
Usury Chart #6	Equity Lines of Credit that are subject to G.S. 24-1.2A because they DO NOT qualify for the limited usury exemption under G.S. 24-9
Usury Chart #7	Open-End Credit Card Plans that (1) are unsecured or secured by collateral other than real property, and (2) qualify for the limited usury exemption under G.S. 24-9
Usury Chart #8	Open-End Credit Plans that DO NOT qualify for the limited usury exemption under G.S. 24-9 and ARE NOT Home Equity Lines of Credit
Usury Chart #9	Consumer Protections for loans secured by the borrower's principal dwelling



USURY CHART #1
EXEMPT LOANS (G.S. 24-9)
October 2015

The following loans are exempt loan transactions. Except as explained in Note 1, they are not subject to NC usury limitations, regardless of whether the loan is open-end or closed-end. Any borrower in an exempt loan transaction may agree to pay, and any lender may charge and collect from the borrower, interest at any rate and fees and other charges in any amount that the borrower agrees to pay. A claim or defense of usury is prohibited in an exempt loan transaction. A loan may qualify as an exempt loan transaction based on the (i) loan amount, (ii) the identity of the borrower, or (iii) the loan purpose.

<u>EXEMPTION BASED ON</u>	<u>DESCRIPTION OF EXEMPTION</u>
Loan Amount	The loan amount is \$300,000 or more. However, although technically exempt from usury limitations, a loan (regardless of the loan amount) may still be subject to certain consumer protection statutes found in Chapter 24 – See Note A.
Identity of Borrower	The borrower is a person other than a natural person (<i>e.g.</i> , the borrower is a corporation, LLC, or partnership). See Note B.
Loan Purpose	The loan is obtained by a natural person primarily for a purpose <u>other than</u> a personal, family, or household purpose. See Note B.

NOTES TO USURY CHART #1:

1. Without regard to the loan amount or whether the loan is an open-end or closed-end loan, a loan to a natural person for a consumer purpose should be evaluated using Usury Chart #9 if:
 1. The loan qualifies as an exempt loan transaction only because the loan amount is \$300,000 or more; and
 2. The loan is secured by a lien on *either* (a) a manufactured home that is or will be occupied by the borrower as the borrower's principal dwelling, or (b) real property upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling.
2. Whether a loan is obtained primarily for a purpose other than a personal, family, or household purpose is "guided by" the standards established by the federal Truth-in-Lending Act and the regulations and rulings issued pursuant to that Act. The federal Truth-in-Lending Act and its implementing regulations (Regulation Z, 12 C.F.R. Part 1026) adopted by the Consumer Financial Protection Bureau ("CFPB") draw a distinction between a loan obtained by a natural person primarily for a personal, family, or household purpose (*i.e.*, a consumer-purpose loan) and a loan obtained by a natural person primarily for business, commercial, or agricultural purpose (*i.e.*, a business-purpose loan). Regardless of the amount of the loan, a loan that is obtained by a natural person primarily for a purpose other than a personal, family, or household purpose is an exempt loan transaction for NC usury purposes.

It is instructive to note that the CFPB now considers a consumer-purpose loan to a trust or to the trustee(s) of a trust created by an individual for tax and/or estate planning purposes to be a loan to a natural person for a consumer purpose. The unanswered question for purposes of G.S. 24-9 is whether a loan to a trust or to the trustee(s) of a trust is considered a loan to a "person other than a natural person" so as to be an exempt loan pursuant to G.S. 24-9(a)(3)b. regardless of the loan purpose, or whether the North Carolina courts will follow the CFPB's lead, declaring that a loan made for a consumer purpose to a trust or to the trustee(s) of a trust created by an individual for tax and/or estate planning purposes is considered to be a loan to a natural person for a consumer purpose, and therefore not an exempt loan transaction under G.S. 24-9(a)(3)b. or c.



USURY CHART #2
FIRST LIEN CLOSED-END HOME LOANS (G.S. 24-1.1A)
October 2015

A closed-end home loan that is subject to the usury limitations contained in this chart should also be evaluated using Usury Chart #9 to determine whether the loan is subject to the "special" consumer protection statutes discussed in Usury Chart #9. If so, then the limitations, restrictions, and prohibitions contained in the applicable consumer protection statute(s) control and override any corresponding limitations, restrictions, and prohibitions contained in this chart.

A "home loan" is defined in G.S. 24-1.1A(e) as "a loan, other than an open-end credit plan, where the principal amount is less than three hundred thousand dollars (\$300,000) secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located one or more single-family dwellings or dwelling units or secured by an equivalent first security interest in a manufactured home."

This Usury Chart #2 applies *only if*:

- The borrower is a natural person;
- The debt is incurred by the borrower primarily for personal, family, or household purposes (i.e., the loan is a consumer-purpose loan);
- The loan is a closed-end loan;
- The loan amount is less than \$300,000;
- The loan is secured by either (i) a FIRST lien on real property upon which one or more single-family dwellings or dwelling units are or will be located, or (ii) an equivalent FIRST security interest in a manufactured home; AND
- The loan is NOT regulated by G.S. 53C-5-3 (See Note Q to Usury Chart #2).

This Usury Chart #2 divides lenders into three categories, depending on the identity of the lender and, in certain cases, the loan amount:

- Category 1 Lender: The lender is an affiliate or a subsidiary of a licensee under the North Carolina Consumer Finance Act (Article 15 of Chapter 53) operating in the same office as the licensee.

NOTE: A Category 1 Lender is prohibited by G.S. 24-1.1A(c2) from charging or receiving any interest, fees, charges, or discount points other than (i) the fees described in G.S. 24-10 (see Notes F and K to Usury Chart #2); (ii) to the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials (see Note H to Usury Chart #2); (iii) interest as permitted in G.S. 24-1.1A(a)(4) (see Note A to Usury Chart #2); and (iv) late payment charges to the extent permitted by G.S. 24-10.1 (see Note N to Usury Chart #2).

- Category 2 Lender: Lender is not a Category 1 Lender and *either* (i) the loan amount is \$10,000 or more, or (ii) the loan amount is less than \$10,000, but the Lender
 - (i) Has been approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Department of Veterans Affairs, a national mortgage association, or any federal agency; or
 - (ii) Is a local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan associations and permitted by law to make home loans, credit union, or insurance company; or
 - (iii) Is a State or federal agency.



- **Category 3 Lender:** The loan amount is less than \$10,000, and the Lender is neither a Category 1 Lender nor a Category 2 Lender.

NOTE: A Category 3 Lender is prohibited by G.S. 24-1.1A(c1) from charging or receiving any interest, fees, charges, or discount points other than (i) to the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials (see Note H to Usury Chart #2); (ii) interest at a rate that is not in excess of 16% (see Note C to Usury Chart #2); and (iii) late payment charges to the extent permitted by G.S. 24-10.1 (see Note N to Usury Chart #2).

	CATEGORY 1 LENDER	CATEGORY 2 LENDER	CATEGORY 3 LENDER
Loan Amount	Less than \$300,000	Less than \$300,000	Less than \$10,000
Maximum Interest Rate	A	B	C
Prepayment Penalty	F	F	Not permitted – See Note E
Fees at Origination	Not permitted – See Note D	G	Not permitted – See Note E
Passthrough Fees	H	I	H
In-House Appraisal Fees	Not permitted – See Note D	J	Not permitted – See Note E
Assumption Fees	K	K	Not permitted – See Note E
Modification Fees	Not permitted – See Note D	L	Not permitted – See Note E
Deferral Fees	Not permitted – See Note D	M	Not permitted – See Note E
Late Charges	N	N	N
Balloon Payment	Not Permitted – See Note O	Permitted	Permitted
Other Requirements	P, Q	P, Q	P, Q

NOTES TO USURY CHART #2:

Maximum Interest Rate

- A.** G.S. 24-1.1A(a)(4) controls. A Category 1 Lender may charge interest on the outstanding principal balance on a monthly basis at a rate that does not exceed the interest rate announced and published on the 15th of each month by the North Carolina Commissioner of Banks pursuant to G.S. 24-1.1A(a)(4). The rate is the greater of (i) 15%, or (ii) the rate determined by rounding off the most recent six-month Treasury bill rate to the nearest .5% and adding 6%. On a fixed rate loan, the announced rate is the maximum rate for loans made during the next calendar month (e.g., the rate published July 15 applies to loans made in August). The maximum rate in effect during the month the loan is made then becomes the maximum rate for the life of the loan. The statute does not address whether the interest rate may be changed by contract when a loan is modified or extended. On a variable rate loan, the maximum rate during any month during the term of the loan is the rate announced by the Commissioner in the preceding calendar month.
- B.** G.S. 24-1.1A(a)(1) and (2) control, but only if the lender is a Category 2 Lender.
- 1) There is no limit on the interest rate if the loan amount is \$10,000 or more. The parties may contract for the payment of interest as agreed upon by the parties.
 - 2) There is no limit on the interest rate if the loan amount is less than \$10,000, but only if lender is (i) approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Department of Veterans Affairs, a national mortgage association, or any federal agency; or (ii) a local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan associations and permitted by law to make home loans, credit union, or insurance company; or (iii) a State or federal agency. The parties may contract for the payment of interest as agreed upon by the parties.

The mortgage or deed of trust may include provisions for adding deferred interest to principal or otherwise providing for interest to be charged on deferred interest as agreed upon by the parties. 24-1.1A(h)

- C. G.S. 24-1.1A(a)(3) controls. If the lender is a Category 3 Lender, the interest rate may not exceed 16%.

Restrictions Applicable only to Category 1 Lenders

- D. A Category 1 Lender is prohibited by G.S. 24-1.1A(c2) from charging or receiving any interest, fees, charges, or discount points other than (i) the fees described in G.S. 24-10 (see Notes F and K); (ii) to the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials (see Note H); (iii) interest as permitted in G.S. 24-1.1A(a)(4) (see Note A); and (iv) late payment charges to the extent permitted by G.S. 24-10.1 (see Note N).

Restrictions Applicable only to Category 3 Lenders

- E. A Category 3 Lender is prohibited by G.S. 24-1.1A(c1) from charging or receiving any interest, fees, charges, or discount points other than (i) to the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials (see Note H); (ii) interest at a rate that is not in excess of 16% (see Note C); and (iii) late payment charges to the extent permitted by G.S. 24-10.1 (see Note N).

Prepayment Penalty

- F. The rules regarding prepayment penalties in home loans made by a Category 1 or Category 2 Lender are complex:

- 1) A borrower may prepay a loan in whole or in part without penalty where the loan instrument does not explicitly state the borrower's rights with respect to prepayment or where the provisions for prepayment are not in accordance with law. G.S. 24-2.4
- 2) A home loan that is a construction loan may be prepaid in part or in full at any time without penalty. G.S. 24-10(b). A "construction loan" is a loan to finance all or part of the cost of constructing buildings or other improvements on real property where (i) the loan proceeds are to be disbursed periodically under the terms of a written contract between the lender and the borrower as such construction work progresses, and (ii) the loan is payable in full no later than 18 months after the note is signed (if the loan amount is for \$25,000 or less) or 36 months (if the loan amount is more than \$25,000). A construction loan may include advances for the purchase price of the property upon which the improvements are to be constructed. G.S. 24-10(c)
- 3) Regardless of whether the loan is a construction loan, a home loan may be prepaid in part or in full at any time without penalty if (i) the loan amount is \$150,000 or less, and (ii) the loan is secured by a first lien on real property upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling. G.S. 24-1.1A(b)(1). However, the limitation on prepayment fees and penalties on home loans of \$150,000 or less does not apply to the extent state law limitations on prepayment fees and penalties are preempted by federal law or regulation. G.S. 24-1.1A(b)(2)
- 4) A lender and a borrower may agree on any terms as to prepayment of a home loan if the loan is not a construction loan and either (i) the loan amount is more than \$150,000, or (iii) the loan is secured by collateral other than a first lien on real property upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling. G.S. 24-1.1A(b); G.S. 24-10(b)

NOTE: G.S. 53-244.111(10) of Article 19B of Chapter 53 (The North Carolina Secure and Fair Enforcement (S.A.F.E.) Mortgage Licensing Act) makes it unlawful for any person in the course of a residential mortgage loan transaction to broker a mortgage loan that contains a prepayment penalty if the principal amount of the loan is \$150,000 or less or the loan is a "rate spread home loan" as defined in G.S. 24-1.1F. A loan is subject to this prohibition if the loan is made to a natural person or persons primarily for personal, family, or household use and the loan is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling located within this State or residential real estate upon which a dwelling is constructed or is intended to be constructed. A



"dwelling" is a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, manufactured home, mobile home, or trailer if it is used as a residence. G.S. 53-244.111 (10); G.S. 53-244.030 (9) and (30)

Fees at Origination

- G.** G.S. 24-1.1A(c) controls. The following fees may be charged by a Category 2 Lender by agreement with the borrower at or before closing pursuant to G.S. 24-1.1A(c) if either (i) the loan amount is \$10,000 or more, or (ii) the loan amount is less than \$10,000 and the lender is (a) approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Department of Veterans Affairs, a national mortgage association, or any federal agency; or (b) a local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan associations and permitted by law to make home loans, credit union, or insurance company; or (c) a State or federal agency:
- 1) Any amount for loan application, origination, commitment fees, and interest rate lock fees.
 - 2) Any amount to administer a construction loan or a construction/permanent loan, including inspection fees and loan conversion fees.
 - 3) Bona fide loan discount points.
 - 4) Passthrough fees (see Note I).
 - 5) In-house appraisal fees (see Note J).
 - 6) Assumption fees (see Note K).
 - 7) Additional fees, however denominated, payable to the lender that, in the aggregate, do not exceed the greater of (i) \$150, or (ii) 0.25% of the loan amount.

Passthrough Fees

- H.** G.S. 24-1.1A(c1) and (c2) control if the lender is a Category 1 or Category 3 Lender. To the extent permitted by G.S. 24-8(d), the following passthrough fees may be charged by agreement with the borrower at or before closing pursuant to G.S. 24-1.1A(c1) and (c2):
- 1) Sums for the payment of taxes, filing fees, recording fees, and other charges and fees paid to public officials.
 - 2) Sums for the payment of bona fide loan-related goods, products and services provided or to be provided by third parties, including fees for tax payment services, fees for flood certifications, fees for pest infestation determinations, mortgage broker fees, appraisal fees, inspection fees, environmental assessment fees, fees for credit report services, assessments, costs of upkeep, surveys, attorneys' fees, notary fees, escrow charges, and insurance premiums (including, for example, fire, title, life, accident and health, disability, unemployment, flood, and mortgage insurance).

However, no third party may charge or receive (i) any unreasonable compensation for loan-related goods, products, and services, or (ii) any compensation for which no loan-related goods and products are provided or for which no or only nominal loan-related services are performed.

Missing from the foregoing list of permissible passthrough fees are sums for the payment of fees paid to a governmental or a government agency to participate in a loan program sponsored or offered by the government or government agency (including loan guarantee and tax credit programs), fees that G.S. 24-8(d) clearly states may be collected by any lender from the borrower "[n]otwithstanding any contrary provision of State law." As a result, G.S. 24-1.1A(c1) and (c2) and G.S. 24-8(d) appear to be in conflict as to whether Category 1 and Category 3 Lenders may collect from the borrower fees paid to a governmental or a government agency to participate in a loan program sponsored or offered by the government or government agency (including loan guarantee and tax credit programs). However, this conflict may be of little practical importance – it is unlikely that a Category 1 or Category 3 Lender will originate home loans that involve the payment of fees to a governmental or a government agency to participate in a loan program sponsored or offered by the government or government agency.



I. Pursuant to G.S. 24-8(d), a Category 2 Lender may collect money from the borrower for the payment of:

1. Taxes, filing fees, recording fees, and other charges and fees paid to public officials.
2. Fees paid to a governmental or a government agency to participate in a loan program sponsored or offered by the government or government agency, including loan guarantee and tax credit programs.
3. Bona fide loan-related goods, products and services provided or to be provided by third parties, including fees for tax payment services, fees for flood certifications, fees for pest infestation determinations, mortgage broker fees, appraisal fees, inspection fees, environmental assessment fees, fees for credit report services, assessments, costs of upkeep, surveys, attorneys' fees, notary fees, escrow charges, and insurance premiums (including, for example, fire, title, life, accident and health, disability, unemployment, flood, and mortgage insurance).

However, no third party may charge or receive (i) any unreasonable compensation for loan-related goods, products, and services, or (ii) any compensation for which no loan-related goods and products are provided or for which no or only nominal loan-related services are performed.

In-House Appraisal Fees

J. A bank, savings and loan association, savings bank, or credit union, or any subsidiary thereof organized under the laws of North Carolina or the United States, may charge a reasonable fee as agreed upon by the parties in a loan secured by real property for an appraisal performed by an employee of the bank, savings and loan association, savings bank, or credit union, or any subsidiary or affiliate thereof. If a fee is collected for the appraisal from the borrower, a copy of the appraisal must be provided to the borrower at the borrower's request at no additional charge. G.S. 24-10(h). Otherwise, a lender may not charge or receive a fee for an in-house appraisal. G.S. 24-8(a)

Assumption Fees

K. When a mortgage or deed of trust in a loan secured by real property contains a due-on-sale clause and the original obligor is released from liability, an assumption fee up to \$400 is permitted. When a mortgage or deed of trust in a loan secured by real property contains a due-on-sale clause and the original obligor is NOT released from liability, or when a mortgage or deed of trust does not contain a due-on-sale clause, an assumption fee up to \$125 is permitted. G.S. 24-10(d)

Modification Fees

L. Pursuant to G.S. 24-1.1A(c)(2), a Category 2 Lender may charge the following fees for any modification, renewal, extension, or amendment of a home loan (other than deferral fees for deferral of loan payments – see Note M below):

- 1) Bona fide discount points.
- 2) Fees for the conversion of a variable rate loan to a fixed rate loan, of a fixed rate loan to a variable rate loan, of a closed-end loan to an open-end loan, or of an open-end loan to a closed-end loan, provided the fees do not exceed:
 - (a) 0.25% of the loan amount, if the principal loan amount is less than \$150,000.
 - (b) 1% of the loan amount, if the principal loan amount is \$150,000 or more.
- 3) Passthrough fees (see Note I).
- 4) In-house appraisal fees (see Note J).
- 5) Assumption fees (see Note K).
- 6) If no assumption fees are charged, additional fees, however denominated, payable to the bank which, in the aggregate, do not exceed the greater of \$150 or 0.25% of the outstanding balance. These additional fees may be charged only pursuant to a written agreement which states the amount of the fee and is made at the time the loan is modified, renewed, extended, or amended or at the time the specific modification, renewal, extension, or amendment is requested.



Deferral Fees

- M. G.S. 24-1.1A(g) controls. If the lender is a Category 2 Lender, the parties may contract to defer payments, and for the payment of interest on deferred interest, as may be agreed upon by the parties, and the parties may agree that deferred interest may be added to the principal of a home loan.

However, if the home loan is secured by real property upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling, then the deferral fee is subject to the following limitations:

- 1) There must be a contemporaneous agreement stating the fee, and, if the installment to be deferred is 15 days or more past due, the agreement must be in writing and signed by at least one of the borrowers. An agreement will be considered a signed writing if the lender receives from at least one of the borrowers a facsimile or computer-generated message confirming or otherwise accepting the agreement.
- 2) The fee may not exceed the greater of \$50 or 5% of each installment deferred, multiplied by the number of complete months in the deferral period. A month is measured from the date an installment is due. The deferral period is that period during which no payment is required or made as measured from the date on which the deferred installment would otherwise have been due to the date the next installment is due under the terms of the note or the deferral agreement.
- 3) The bank may not pyramid deferral fees.
- 4) No late payment charge may be imposed if the deferred payment is paid as agreed.
- 5) A deferral fee may be charged for deferring the payment of all or part of one or more regularly scheduled payments, regardless of whether the deferral results in an extension of the maturity date or the date a balloon payment is due. A modification or extension of the maturity date or the balloon payment due date which is not incident to a deferral of a regularly scheduled payment is considered a modification or extension as described in Note L above.

Late Charges

- N. No late fee may be charged if all of the principal and interest are payable in a single payment (i.e., the loan is a "bullet" loan that is not payable in installments of interest or principal and interest). Otherwise a lender may charge a late fee of up to 4% of the amount of a payment which is past due for 15 days or more. If interest is paid in advance, the delinquent payment must be 30 days past due or more. The lender is required to notify the borrower within 45 days following the date the payment was due that a late payment charge has been imposed for a particular late payment. No late fee may be collected from the borrower if the borrower informs the lender that non-payment of an installment is in dispute and presents proof of payment within 45 days of receipt of the lender's notice of the late fee. G.S. 24-10.1(b)

The "pyramiding" of late charges is expressly prohibited, and no late charge may be assessed more than once with respect to a single late payment. If a late payment charge is deducted from a payment made on the loan and the deduction results in a subsequent default on a subsequent payment, no late payment charge may be imposed for the default. If a late payment charge has been once imposed with respect to a particular late payment, no late charge may be imposed with respect to any future payment which would have been timely and sufficient but for the previous default. However, when a borrower fails to make an installment payment and the terms of the loan agreement provide that subsequent payments are to be applied first to the past due balance, and the borrower resumes making installment payments but has not paid all past due installments, then the lender may enforce the loan contract according to its terms, imposing a separate late payment charge for each installment that becomes due until the default is cured. G.S. 24-10.1(b)(4)

G.S. 24-10.1(c) provides a late charge "savings" provision that is available only if the lender is (i) approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Department of Veterans Affairs, a national mortgage association, or any federal agency; or (ii) a local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan associations and permitted by law to make home loans, credit union, or insurance company; or (iii) a State or federal agency. If so, then G.S. 24-10.1(c) provides that, even if the note or other loan document sets forth a late payment charge in excess of that permitted in G.S. 24-10.1(b), the loan will not be deemed to be unlawful if no late fee in excess of those permitted in G.S. 24-10.1(b) has been assessed or collected by the lender, and either

- 1) If the loan was executed on or after July 14, 1993, the lender provided written notice to the borrower within 90 days of the date of execution of the loan documents that the late payment charge with respect to the loan would be 4% or less; or



- 2) If the loan was executed prior to July 14, 1993, the lender provided written notice to the borrower within six months of July 14, 1993 that the late payment charge with respect to the loan would be 4% or less.

Balloon Payment

- O.** A Category 1 Lender may not make a home loan for a term in excess of 6 months that contains a balloon payment. A balloon payment is defined as any scheduled payment that is more than twice as large as the average of earlier scheduled payments. G.S. 24-1.1A(a)(4)

Other Requirements

- P.** Not later than the date of the home loan closing or three business days after the lender receives an application for a home loan, whichever is earlier, the lender must deliver or mail to the loan applicant information and examples of amortization of home loans reflecting various terms in a form made available by the Commissioner of Banks. Not later than three business days after the home loan closing, the lender must deliver or mail to the borrower an amortization schedule for the borrower's home loan. However, a lender is not be required to provide an amortization schedule unless the loan is a fixed rate home loan that requires the borrower to make regularly scheduled periodic amortizing payments of principal and interest. If the loan is a construction/permanent home loan, the amortization schedule must be provided only with respect to the permanent portion of the home loan during which amortization occurs. If the home loan transaction involves more than one natural person, the lender may deliver or mail the required materials to any one or more of the borrowers. G.S. 24-1.1A(a1)
- Q.** The provisions of G.S. 24-1.1A as set forth in this Usury Chart #2 are not applicable to any loan regulated by G.S. 53C-5-3. G.S. 24-1.1A(d). As a consequence, the provisions of G.S. 24-1.1A do not apply to a real estate-secured loan made by a financial institution engaged in business in North Carolina or by certain fiduciaries if (i) the loan is insured or guaranteed by the Department of Housing and Urban Development, the Federal Housing Administration, a national mortgage association, or the Veterans Administration, or (ii) the loan is eligible and committed for sale to a national mortgage association, federal home loan bank, federal home loan mortgage corporation, or other agency or instrumentality of the United States.

G.S. 53C-5-3(g) further provides that no North Carolina law (i) prescribing the nature, amount, or form of security or requiring security upon which loans may be made, (ii) prescribing or limiting the rates or time of payment of the interest any obligation may bear, or (iii) prescribing or limiting the period for which loans may be made, shall apply to loans or investments made pursuant to G.S. 53C-5-3.



USURY CHART #3
CLOSED-END LOANS ORIGINATED UNDER ARTICLE 1 OF CHAPTER 24
(OTHER THAN FIRST LIEN CLOSED-END HOME LOANS DESCRIBED IN CHART #2)
October 2015

A closed-end residential loan that is subject to the usury limitations contained in this chart should also be evaluated using Usury Chart #9 to determine whether the loan is subject to the "special" consumer protection statutes discussed in Usury Chart #9. If so, then the limitations, restriction, and prohibitions contained in the applicable consumer protection statute(s) control and override any corresponding limitations, restrictions, and prohibitions contained in this chart.

This Usury Chart #3 applies *only if*:

- The borrower is a natural person;
- The debt is incurred by the borrower primarily for personal, family, or household purposes (i.e., the loan is a consumer-purpose loan);
- The loan is a closed-end loan;
- The loan amount is less than \$300,000; *AND*
- The loan is (i) unsecured, (ii) secured by collateral other than real property or a first lien on a manufactured home, or (iii) secured by real property, but the loan is *NOT* secured by a first lien on real property upon which one or more single-family dwellings or dwelling units (including condominiums and manufactured homes) are or will be located.

	LOAN IS SECURED BY FIRST LIEN ON REAL PROPERTY other than a First Lien on real property upon which one or more single-family dwellings or dwelling units (including condominiums and manufactured homes) are or will be located	LOAN IS SECURED BY SUBORDINATE LIEN ON REAL PROPERTY	LOAN IS UNSECURED OR SECURED BY COLLATERAL OTHER THAN REAL PROPERTY OR A FIRST LIEN ON A MANUFACTURED HOME
Loan Amount	Less than \$300,000	Less than \$300,000	Less than \$300,000
Maximum Interest Rate	A	A	A
Prepayment Penalty	B	B	B
Fees at Origination	C	C, D	E
Passthrough Fees	F	F	F
In-House Appraisal Fees	G	G	No Fee Permitted
Assumption Fees	H	H	No Fee Permitted
Modification Fees / Deferral Fees	I	I	I
Late Charges	J	J	J

NOTES TO USURY CHART #3:

Maximum Interest Rate

A. G.S. 24-1.1(a) controls. Interest is not considered in excess of the rates stated below when interest is computed monthly on the outstanding principal balance and is collected not more than 31 days in advance of its due date. G.S. 24-1.1(b)

- 1) If the loan amount is more than \$25,000, the parties may contract in writing for the payment of interest at any rate agreed upon by the parties.



- 2) If the loan amount is \$25,000 or less, the parties may contract in writing for the payment of interest at any rate that does not exceed the Commissioner's Rate. The "Commissioner's Rate" is the interest rate announced and published on the 15th of each month by the North Carolina Commissioner of Banks pursuant to G.S. 24-1.1(c). The rate is the greater of (i) 16%, or (ii) the rate determined by rounding off the most recent six-month Treasury bill rate to the nearest .5% and adding 6%. The announced rate is the maximum rate for loans made during the next calendar month (*e.g.*, the rate published July 15 applies to loans made in August). On a fixed rate loan, the maximum rate in effect during the month the loan is made is the maximum rate for the life of the loan. The statute does not address whether the interest rate may be changed by contract when a loan is modified or extended. On a variable rate loan, the maximum rate at any given time during the term of the loan is the greater of the rate announced as the Commissioner's Rate by the Commissioner in the preceding calendar month or the calendar month preceding that in which the rate is varied or adjusted. G.S. 24-1.1(c).

There is one exception to these rules that applies only to credit unions chartered under North Carolina law -- G.S. 54-109.65 provides that a North Carolina state-chartered credit union may charge interest on loans to its members at a rate of interest that does not exceed 18%, unless a greater rate not to exceed the annual percentage rate permitted to be charged by federally chartered credit unions is otherwise approved by the North Carolina Credit Union Commission. As a consequence, a North Carolina state-chartered credit union can charge interest on loans to its members at a rate that does not exceed the greater of (i) 18%, or such higher rate as may be permitted to be charged by federally chartered credit unions, provided that higher rate is approved by the North Carolina Credit Union Commission.

Prepayment Penalty

B. The following are the rules regarding prepayment penalties:

- 1) A borrower may prepay a loan in whole or in part without penalty where the loan instrument does not explicitly state the borrower's rights with respect to prepayment or where the provisions for prepayment are not in accordance with law. G.S. 24-2.4
- 2) A construction loan may be prepaid in part or in full at any time without penalty. G.S. 24-10(b). A "construction loan" is a loan to finance all or part of the cost of constructing buildings or other improvements on real property where (i) the loan proceeds are to be disbursed periodically under the terms of a written contract between the lender and the borrower as such construction work progresses, and (ii) the loan is payable in full no later than 18 months after the note is signed (if the loan amount is for \$25,000 or less) or 36 months (if the loan amount is more than \$25,000). A construction loan may include advances for the purchase price of the property upon which the improvements are to be constructed. G.S. 24-10(c)
- 3) If the loan is not a construction loan but the original principal amount of the loan is \$100,000 or less, a maximum prepayment penalty of 2% of the outstanding balance may be charged if prepayment is made within three years after the first payment of principal. After three years, the loan may be prepaid in part or in full without penalty. A lender may require 30 days' notice of prepayment. G.S. 24-10(b)
- 4) If the loan is not a construction loan and the original principal amount of the loan is more than \$100,000, the prepayment penalty is fully negotiable. G.S. 24-10(b)

NOTE: G.S 53-244.111(10) of Article 19B of Chapter 53 (The North Carolina Secure and Fair Enforcement (S.A.F.E.) Mortgage Licensing Act) makes it unlawful for any person in the course of a residential mortgage loan transaction to broker a mortgage loan that contains a prepayment penalty if the principal amount of the loan is \$150,000 or less or the loan is a "rate spread home loan" as defined in G.S. 24-1.1F. A loan is subject to this prohibition if the loan is made to a natural person or persons primarily for personal, family, or household use and the loan is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling located within this State or residential real estate upon which a dwelling is constructed or is intended to be constructed. A "dwelling" is a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, manufactured home, mobile home, or trailer if it is used as a residence. G.S 53-244.111 (10); G.S 53-244.030 (9) and (30)

Fees at Origination

- C.** This rule applies only if the loan is secured by real property. For a real estate-secured construction loan on other than a one- or two-family dwelling, a lender can charge fees or discounts that, in the aggregate, do not exceed 2%. For all other real estate-secured loans, a lender may charge fees or discounts which, in the



aggregate, do not exceed 1%. However, if a lender makes both the construction loan and a permanent loan utilizing one note (*i.e.*, a construction/permanent loan), the lender may collect the fees as if they were two separate loans. G.S. 24-10(a)

- D. Notwithstanding the limitations on fees and discounts described in Note C (above), fees or discounts which, in the aggregate, do not exceed 2% of the loan amount may be charged in any loan secured by a subordinate lien on real property if the lender is (i) a mortgagee approved by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Department of Veterans Affairs, a national mortgage association or any federal agency, or (ii) a local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan association and permitted by law to make home loans, credit union, or insurance company, or (iii) a state or federal agency. G.S. 24-10(g)
- E. In a loan that is not secured by real property, a bank or savings institution organized under the law of North Carolina or of the United States may charge an origination fee that does not exceed the greater of \$50 or 0.25% of the outstanding balance of the loan. Thus, if no funds are disbursed at closing, the lender may charge a \$50 fee. If funds are disbursed at closing, the lender may charge a \$50 fee or 0.25% of the outstanding principal balance of the loan, whichever is greater. G.S. 24-1.1(e). Otherwise, a lender may not or receive fees or discounts at origination. G.S. 24-8(a)

Passthrough Fees

- F. Pursuant to G.S. 24-8(d), a lender may collect money from the borrower for the payment of:
- 1) Taxes, filing fees, recording fees, and other charges and fees paid to public officials.
 - 2) Fees paid to a governmental or a government agency to participate in a loan program sponsored or offered by the government or government agency, including loan guarantee and tax credit programs.
 - 3) Bona fide loan-related goods, products and services provided or to be provided by third parties, including fees for tax payment services, fees for flood certifications, fees for pest infestation determinations, mortgage broker fees, appraisal fees, inspection fees, environmental assessment fees, fees for credit report services, assessments, costs of upkeep, surveys, attorneys' fees, notary fees, escrow charges, and insurance premiums (including, for example, fire, title, life, accident and health, disability, unemployment, flood, and mortgage insurance).

However, no third party may charge or receive (i) any unreasonable compensation for loan-related goods, products, and services, or (ii) any compensation for which no loan-related goods and products are provided or for which no or only nominal loan-related services are performed.

In-House Appraisal Fees

- G. A bank, savings and loan association, savings bank, or credit union, or any subsidiary thereof organized under the laws of North Carolina or the United States, may charge a reasonable fee as agreed upon by the parties in a loan secured by real property for an appraisal performed by an employee of the bank, savings and loan association, savings bank, or credit union, or any subsidiary or affiliate thereof. If a fee is collected for the appraisal from the borrower, a copy of the appraisal must be provided to the borrower at the borrower's request at no additional charge. G.S. 24-10(h). Otherwise, a lender may not charge or receive a fee for an in-house appraisal. G.S. 24-8(a)

Assumption Fees

- H. When a mortgage or deed of trust in a loan secured by real property contains a due-on-sale clause and the original obligor is released from liability, an assumption fee up to \$400 is permitted. When a mortgage or deed of trust in a loan secured by real property contains a due-on-sale clause and the original obligor is NOT released from liability, or when a mortgage or deed of trust does not contain a due-on-sale clause, an assumption fee up to \$125 is permitted. G.S. 24-10(d). Otherwise, a lender may not charge or receive loan assumption fee. G.S. 24-8(a)

Modification Fees / Deferral Fees

- I. A bank or savings institution organized under the law of North Carolina or of the United States may charge a fee for the modification, renewal, extension or amendment of any terms of the loan. The fee may not exceed the greater of \$50 or 0.25% of the balance outstanding at that time. G.S. 24-1.1(d). Otherwise, a



lender may not charge or receive a fee for the modification, renewal, extension or amendment of any terms of the loan or for the deferral of any payment. G.S. 24-8(a)

For loans of these types, the deferral of a payment (regardless of the collateral) will, if properly documented, likely be considered a loan modification for which the lender may charge a loan modification fee pursuant to G.S. 24-1.1(d).

Late Charges

- J. No late fee may be charged if all of the principal and interest are payable in a single payment (i.e., the loan is a "bullet" loan that is not payable in installments of interest or principal and interest). Otherwise a lender may charge a late fee of up to 4% of the amount of a payment which is past due for 15 days or more. If interest is paid in advance, the delinquent payment must be 30 days past due or more. The lender is required to notify the borrower within 45 days following the date the payment was due that a late payment charge has been imposed for a particular late payment. No late fee may be collected from the borrower if the borrower informs the lender that non-payment of an installment is in dispute and presents proof of payment within 45 days of receipt of the lender's notice of the late fee. G.S. 24-10.1(b)

The "pyramiding" of late charges is expressly prohibited, and no late charge may be assessed more than once with respect to a single late payment. If a late payment charge is deducted from a payment made on the loan and the deduction results in a subsequent default on a subsequent payment, no late payment charge may be imposed for the default. If a late payment charge has been once imposed with respect to a particular late payment, no late charge may be imposed with respect to any future payment which would have been timely and sufficient but for the previous default. However, when a borrower fails to make an installment payment and the terms of the loan agreement provide that subsequent payments are to be applied first to the past due balance, and the borrower resumes making installment payments but has not paid all past due installments, then the lender may enforce the loan contract according to its terms, imposing a separate late payment charge for each installment that becomes due until the default is cured. G.S. 24-10.1(b)(4)

G.S. 24-10.1(c) provides a late charge "savings" provision that is available only if the lender is (i) approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Department of Veterans Affairs, a national mortgage association, or any federal agency; or (ii) a local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan associations and permitted by law to make home loans, credit union, or insurance company; or (iii) a State or federal agency. If so, then G.S. 24-10.1(c) provides that, even if the note or other loan document sets forth a late payment charge in excess of that permitted in G.S. 24-10.1(b), the loan will not be deemed to be unlawful if no late fee in excess of those permitted in G.S. 24-10.1(b) has been assessed or collected by the lender, and either

- 1) If the loan was executed on or after July 14, 1993, the lender provided written notice to the borrower within 90 days of the date of execution of the loan documents that the late payment charge with respect to the loan would be 4% or less; or
- 2) If the loan was executed prior to July 14, 1993, the lender provided written notice to the borrower within six months of July 14, 1993 that the late payment charge with respect to the loan would be 4% or less.



USURY CHART #4 **LOANS SECURED BY SECONDARY OR JUNIOR MORTGAGES ORIGINATED UNDER ARTICLE 2 OF CHAPTER 24** **October 2015**

Article 2 of Chapter 24 (entitled “Loans Secured by Secondary or Junior Mortgages”) is an enigma – originally enacted in 1971 and subsequently amended over the years, it appears to provide an alternative set of rules that some (but not all) lenders may use to originate certain small loans (\$25,000 or less) secured by a subordinate lien on real property. There is little case law interpreting Article 2, and experience suggests that changes to Article 1 over the years have rendered Article 2 obsolete. It is unlikely that any Article 2 loans are currently being made in North Carolina.

A loan secured by a subordinate lien on residential property that is subject to the usury limitations contained in this chart should also be evaluated using Usury Chart #9 to determine whether the loan is subject to the “special” consumer protection statutes discussed in Usury Chart #9. If so, then the limitations, restriction, and prohibitions contained in the applicable consumer protection statute(s) control and override any corresponding limitations, restrictions, and prohibitions contained in this chart.

This Usury Chart #4 applies only if:

- The borrower is a natural person;
- The debt is incurred by the borrower primarily for personal, family, or household purposes (i.e., the loan is a consumer-purpose loan);
- The loan is NOT made under the authority of Article 1 of Chapter 24 of the General Statutes;
- The "principal amount of the loan" is \$25,000 or less;
- The loan is repayable in no less than 6 nor more than 181 successive monthly payments that are substantially equal in amount;
- The loan is secured by a SUBORDINATE lien on real property; AND
- The lender is NOT any of the following:
 - A bank or its designated agent compensated directly by the lender
 - An insurance company or its designated agent compensated directly by the lender
 - A duly licensed credit union
 - A production credit association authorized by the Farm Credit Act of 1933
 - A savings and loan association authorized to do business in North Carolina
 - A lender licensed by, and under the supervision of, the Commissioner of Banks or the State Banking Commission under the provisions of Chapter 53 of the General Statutes
 - A lender licensed by, and under the supervision of, the Commissioner of Insurance under the provisions of Chapter 58 of the General Statutes

However, *any* lender approved as a mortgagee by the Federal Housing Administration is entitled to make loans under Article 2

Principal Amount of the Loan	A
Maximum Interest Rate	B
Prepayment Penalty	Not permitted – See Note C
Fees at Origination	D
Passthrough Fees	E
In-House Appraisal Fees	Not permitted
Assumption Fees	F
Modification Fees	Not permitted
Deferral Fees	Not permitted
Late Charges	Not permitted
Other Requirements	G, H, I

NOTES TO USURY CHART #4:

Principal Amount of the Loan

- A. This Chart #4 applies only if the “principal amount of the loan” is \$25,000 or less. The “principal amount of the loan” is defined in G.S. 24-13 as the aggregate of the following:
- 1) The amount or value actually received by the borrower at the time of the loan; plus
 - 2) To the extent included in the loan amount, the lender’s actual expenses which are paid to third parties in connection with the loan for title examination, title insurance, appraisals, surveys, and recording fees or releasing fees to trustees or public officials, and permissible insurance charges¹;
 - 3) To the extent imposed by the lender and included in the loan amount, fees or discounts not exceeding 2% of the principal amount of the loan less the amount of any existing loan by that lender to be refinanced, modified or extended. The fees and discounts are fully earned when the loan is made and are not considered a prepayment penalty.
 - 4) To the extent included in the loan amount, the sum of all existing indebtedness of the borrower paid on behalf of the borrower by the lender.

Maximum Interest Rate

- B. The lender may not charge, take or receive, directly or indirectly, simple interest in excess of 1.50% per month or an annual rate equivalent to the Federal Discount Rate plus 5%, whichever is the greater, computed on the actual or average daily unpaid balance of the principal amount of the loan for the time actually outstanding. Interest may not be compounded. G.S. 24-14(a)

Prepayment Penalty

- C. No prepayment penalty is permitted. The borrower has the right to anticipate payment of the debt in whole or in part at any time, without payment of interest penalty or any other fee or charge for such prepayment. G.S. 24-14(e)

Fees at Origination

- D. The lender may include in the principal balance of the loan fees or discounts not exceeding 2% of the principal amount of the loan less the amount of any existing loan by that lender to be refinanced, modified or extended. The fees and discounts are fully earned when the loan is made and are not a prepayment penalty. G.S. 24-14(f). However, no application fee or other charge shall be allowed if the loan is not consummated. G.S. 24-14(f)

Passthrough Fees

- E. Pursuant to G.S. 24-8(d), a lender may collect money from the borrower for the payment of:
- 1) Taxes, filing fees, recording fees, and other charges and fees paid to public officials.

¹ The lender may require evidence of hazard insurance. Credit life, credit accident and health, and credit unemployment insurance, or any of them, may be offered by the lender but may not be required by the lender. With respect to credit life, credit accident and health, and/or credit unemployment insurance, the following requirements must be satisfied: (i) the borrower must indicate a desire to purchase such insurance by signing a statement to that effect, (ii) the borrower must be advised that the borrower may acquire the insurance from any insurance carrier, (iii) the borrower must be aware that the insurance may be rescinded by the borrower within 30 days after receipt of the policy or certificate, and (iv) the borrower must direct the lender to purchase the insurance from the proceeds of the loan. The rates for the insurance may not exceed the standard rates approved by the Commissioner of Insurance for such insurance, and proof of all insurance issued in connection with loan must be furnished to the borrower within 10 days from the date of the borrower’s application for the insurance. G.S. 24-14(c)



- 2) Fees paid to a governmental or a government agency to participate in a loan program sponsored or offered by the government or government agency, including loan guarantee and tax credit programs.
- 3) Bona fide loan-related goods, products and services provided or to be provided by third parties, including fees for tax payment services, fees for flood certifications, fees for pest infestation determinations, mortgage broker fees, appraisal fees, inspection fees, environmental assessment fees, fees for credit report services, assessments, costs of upkeep, surveys, attorneys' fees, notary fees, escrow charges, and insurance premiums (including, for example, fire, title, life, accident and health, disability, unemployment, flood, and mortgage insurance).

However, no third party may charge or receive (i) any unreasonable compensation for loan-related goods, products, and services, or (ii) any compensation for which no loan-related goods and products are provided or for which no or only nominal loan-related services are performed.

Assumption Fees

- F. When a mortgage or deed of trust in a loan secured by real property contains a due-on-sale clause and the original obligor is released from liability, an assumption fee up to \$400 is permitted. When a mortgage or deed of trust in a loan secured by real property contains a due-on-sale clause and the original obligor is NOT released from liability, or when a mortgage or deed of trust does not contain a due-on-sale clause, an assumption fee up to \$125 is permitted. G.S. 24-10(d)

Other Requirements

- G. In addition to any disclosures required by the federal Truth-in-Lending Act and its implementing regulations, the borrower must be provided at closing a complete and itemized closing statement that shows all disbursements of the loan proceeds, which must equal the principal amount of the loan. The closing statement must be signed by the lender or its representative, and a completed and signed additional copy retained in the files of the lender and available at all reasonable times to the borrower, the borrower's successor in interest to the security real property, or the authorized agent of the borrower or the borrower's successor, until such time as the security instrument is satisfied in full. The closing statement must contain the following language printed in a conspicuous manner:

"This loan is one regulated by the provisions of Chapter 24, Article 2 of the General Statutes of North Carolina entitled 'Loans Secured by Secondary or Junior Mortgages'"

- H. Unless the lender is approved as a mortgagee by the Federal Housing Administration, the following types of lenders are not authorized to make loans under the authority of Article 2 of Chapter 24:

- | | |
|---|---|
| <ul style="list-style-type: none"> • Banks or their designated agents compensated directly by the lender • Insurance companies or their designated agents compensated directly by the lender • Duly licensed credit unions • Production credit associations authorized by the Farm Credit Act of 1933 | <ul style="list-style-type: none"> • Savings and loan associations authorized to do business in North Carolina • Lenders licensed by, and under the supervision of, the Commissioner of Banks or the State Banking Commission under the provisions of Chapter 53 of the General Statutes • Lenders licensed by, and under the supervision of, the Commissioner of Insurance under the provisions of Chapter 58 of the General Statutes |
|---|---|

G.S 24-16.1

- I. The provisions of Article 2 of Chapter 24 (and this Usury Chart #4) do not apply to a loan made under Article 1 of Chapter 24. G.S 24-16.1



USURY CHART #5
EQUITY LINES OF CREDIT THAT QUALIFY FOR THE LIMITED USURY EXEMPTION UNDER G.S. 24-9
October 2015

The regulation of equity lines of credit in North Carolina is particularly complex. Prior to October 2003, equity lines of credit were regulated by G.S. 24-1.2A. In 2003, the North Carolina General Assembly carved out a special "limited" usury exemption that applies to certain equity lines of credit made by certain "banks." Equity lines of credit that qualify for the limited usury exemption are exempt from most rate and fee limitations pursuant to G.S. 24-9. Equity lines of credit that do not qualify for the limited exemption remain subject to G.S. 24-1.2A.

However, regardless of whether an equity line of credit is subject to G.S. 24-9 or G.S. 24-1.2A, if the equity line of credit is secured by a mortgage or deed of trust upon real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one-to-four families which is or will be occupied by the borrower as the borrower's principal dwelling, then the equity line of credit is potentially subject to one or more of the consumer protection statutes discussed in Usury Chart #9 and should be evaluated using this chart and Usury Chart #9. If the loan is subject to one or more of the consumer protection statutes identified in Usury Chart #9, then the limitations, restriction, and prohibitions contained in the applicable consumer protection statute(s) control and override any corresponding limitations, restrictions and prohibitions contained in this chart.

This Usury Chart #5 applies only if:

- The lender is a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States;¹
- The borrower is a natural person;
- The debt is incurred by the borrower primarily for personal, family, or household purposes (*i.e.*, the loan is a consumer-purpose loan);
- The loan is a revolving line of credit, open-end loan, revolving credit plan, or revolving credit card plan;
- The initial credit limit is \$12,000 or more, but less than \$300,000;²
- At any time within a specified period not to exceed thirty years, the borrower may request, and the lender is obligated to provide, credit advances up to the agreed aggregate credit limit;³
- Any repayments of principal within the specified time will reduce the amount of advances counted against the aggregate credit limit; AND
- The loan is secured by a first or subordinate mortgage or deed of trust on real property.

¹ For an equity line of credit to be exempt under G.S. 24-9, the lender must be a "bank." The term "bank" is defined in G.S. 24-9 as "a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States." The term "bank" does not include any subsidiary or affiliate of a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States that is not itself a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States.

What about financial institutions that are not chartered under the laws of North Carolina or the United States? May they offer equity lines of credit that are exempt under G.S. 24-9? Federal law and state laws governing interstate banking may hold the answer to this question. For example, if a bank chartered under the laws of another state establishes and maintains one or more branches in North Carolina, then G.S. 53-226.15 permits that bank to conduct any activities in its North Carolina branch or branches that are authorized under the laws of North Carolina for a North Carolina-state chartered bank, except to the extent such activities may be prohibited by other laws, regulations, or orders applicable to the out-of-state bank.

² As originally adopted in 2003, the initial credit limit had to be \$10,000 or more. However, on January 1, 2008, and on January 1 every five years thereafter, G.S. 24-9(a)(2)e, provides that the minimum initial credit limit required to qualify the equity line of credit for the limited usury exemption will be increased by \$1,000. This means, for example, that if the closing occurred on or after January 1, 2008, but prior to January 1, 2013, the initial credit limit had to be \$11,000 or more to qualify for the limited usury exemption. If the loan closes on or after January 1, 2013, but prior to January 1, 2018, the initial credit limit must be at least \$12,000 to qualify for the limited exemption. If the initial credit limit is \$300,000 or more, the loan is an exempt transaction pursuant to G.S. 24-9(a)(3)a. – see Usury Chart #1.

³ The term "lender is obligated" means that the lender is contractually bound to provide credit advances – they may not be discretionary on the lender's part. However, a lender may terminate the plan or suspend credit privileges if permitted under the Truth-in-Lending regulations that govern home equity lines of credit.



Other Practical Requirement

From a practical standpoint, the deed of trust securing the equity line of credit should also show on its face (i) the maximum principal amount that may be secured at any one time, and (ii) that it secures an equity line of credit governed by the provisions of Article 9 of Chapter 45 of the North Carolina General Statutes.⁴

Limited Usury Exemption

If the equity line of credit has all of the characteristics listed above, the equity line of credit qualifies for the limited usury exemption under G.S. 24-9, and the lending bank may charge and collect from the borrower interest at any rate and fees and other charges in any amount the borrower agrees to pay in connection with the equity line of credit.

However, even if an equity line of credit qualifies for the limited usury exemption under G.S. 24-9, the equity line of credit will still be subject to the following, to the extent otherwise applicable:

1. The provisions of G.S. 24-1.1E, the anti-predatory lending statute that regulates high-cost home loans. (See Usury Chart #9)
2. The provisions of G.S. 24-10.2, which provides consumer protections for certain home loans. (See Usury Chart #9)
3. Limitations on prepayment penalties. (See below)
4. Loss of exempt status if the borrower's credit limit is at any time reduced below the borrower's initial credit limit for any reason other than a permissible reason. (See below)

Limitations on Prepayment Penalties

Equity lines of credit that qualify for the limited usury exemption contained in G.S. 24-9 are subject to special limitations regarding prepayment penalties. The general rule under G.S. 24-9(c) and G.S. 45-82.4 is that no prepayment fees or penalties may be charged or collected by the bank with respect to an equity line of credit. However, there is one exception to this rule: According to G.S. 24-9(c)(3), a bank may charge and collect prepayment fees or penalties following the borrower's voluntary exercise of a right or option to repay all or any portion of the outstanding balance of a variable interest rate equity line of credit at a fixed interest rate over a specified period of time⁵, subject to the following limitations:

1. Prepayment fees or penalties may be charged only with respect to the prepayment of that portion of the outstanding balance the borrower voluntarily agrees to repay at a fixed interest rate over a specified time;
2. No prepayment fees or penalties may be charged for prepayments made more than 30 months after the borrower voluntarily exercises the right or option to repay that portion of the outstanding balance of the equity line of credit at a fixed interest rate over a specified period of time; and
3. The prepayment fees or penalties charged may not exceed, in the aggregate, more than 2% of the amount prepaid.

⁴ The requirements for the mortgage or deed of trust to state on its face the maximum principal amount secured and that it secures an equity line of credit are not requirements that must be satisfied to qualify the equity line of credit for the limited usury exemption under G.S. 24-9. However, unless these requirements are satisfied, the mortgage or deed of trust will not qualify as an equity line security instrument under Article 9 of Chapter 45 of the General Statutes, and future advances will not have priority for lien purposes from the date the mortgage or deed of trust is recorded. G.S.45-81(4)

⁵ Some banks permit a borrower to "carve out" a portion of the outstanding balance of an existing equity line of credit and pay that amount at a fixed interest rate over time as though it were a separate term loan. The borrower's credit limit under the equity line of credit is typically reduced by the amount of the "carve out." G.S. 24-9(c)(3) permits the bank to charge and collect prepayment fees or penalties only with respect to the amount of the "carve out."



Reduction of Borrower's Credit Limit May Result in Loss of the Limited Usury Exemption

If the borrower's credit limit is at any time reduced below the borrower's initial credit limit, the bank will lose its limited usury exemption (and the loan will thereafter be subject to the usury limitations in G.S. 24-1.2A described in Usury Chart #6) unless the credit limit is reduced because of one or more of the following⁶:

1. There is fraud or material misrepresentation by the borrower in connection with the plan.
2. The borrower fails to meet the repayment terms of the agreement for any outstanding balance.
3. Any action or inaction by the borrower adversely affects the bank's security for the plan, or any right the bank has in such security.
4. Federal law dealing with credit extended by the bank to its executive officers specifically requires that, as a condition of the plan, the credit shall become due and payable on demand, provided the bank includes such a provision in the initial agreement.
5. The value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan.
6. The bank reasonably believes that the borrower will be unable to fulfill the repayment obligations under the plan because of a material change in the borrower's financial circumstances.
7. The borrower is in default of any material obligation under the agreement.
8. The bank is precluded by government action from imposing the annual percentage rate provided for in the agreement.
9. The priority of the bank's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line.
10. The bank is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice.
11. The credit limit was reduced at the request of the borrower because the borrower was engaged in the refinancing of a loan secured by a superior lien on the same real property, and the reduction in the credit limit of the equity line of credit is no greater than the difference between the loan amount secured by the refinancing mortgage and the outstanding principal balance of the loan being refinanced.

⁶ With the exception of No. 11, the justifications for reducing the borrower's credit limit are the same reasons a creditor may unilaterally reduce a borrower's credit limit in a home equity line of credit that is subject to Reg Z. In identifying the reasons a borrower's credit limit may be reduced without losing the limited usury exemption, G.S. 24-9(a)(2)e. refers specifically to section 5b of Reg Z, and in particular to 12 C.F.R. 226.5b(f)(2) and 12 C.F.R. 226.5b(f)(3)(vi), both of which were adopted by the Federal Reserve Board. Because the CFPB now has rulemaking authority and responsibility for the federal Truth-in-Lending Act, the references in G.S. 24-9 to the regulations previously adopted by the Federal Reserve Board are now outdated. The corresponding regulations adopted by the CFPB are codified at 12 C.F.R. 1026.40(f)(2) and 12 C.F.R. 1026.40(f)(3)(vi).

USURY CHART #6
EQUITY LINES OF CREDIT THAT ARE SUBJECT TO G.S. 24-1.2A
BECAUSE THEY Do Not QUALIFY FOR THE LIMITED USURY EXEMPTION UNDER G.S. 24-9
October 2015

The regulation of equity lines of credit in North Carolina is particularly complex. Prior to October 2003, equity lines of credit were regulated by G.S. 24-1.2A. In 2003, the North Carolina legislature carved out a special "limited" usury exemption that applies to certain equity lines of credit made by certain "banks." Equity lines of credit that qualify for the limited usury exemption are exempt from most rate and fee limitations pursuant to G.S. 24-9. Equity lines of credit that do not qualify for the limited exemption remain subject to G.S. 24-1.2A.

However, regardless of whether an equity line of credit is subject to G.S. 24-9 or G.S. 24-1.2A, if the equity line of credit is secured by a mortgage or deed of trust upon real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one-to-four families which is or will be occupied by the borrower as the borrower's principal dwelling, then the equity line of credit is potentially subject to one or more of the consumer protection statutes discussed in Usury Chart #9 and should be evaluated using this chart and Usury Chart #9. If the loan is subject to one or more of the consumer protection statutes identified in Usury Chart #9, then the limitations, restriction, and prohibitions contained in the applicable consumer protection statute(s) control and override any corresponding limitations, restrictions and prohibitions contained in this chart.

This Usury Chart #6 applies *only if*:

- The borrower is a natural person;
- The debt is incurred by the borrower primarily for personal, family, or household purposes (*i.e.*, the loan is a consumer-purpose loan);
- The loan is an open-end (or revolving) line of credit;
- The credit limit is less than \$300,000;
- At any time within a specified period not to exceed thirty years, the borrower may request, and the lender is obligated to provide, credit advances up to the agreed aggregate credit limit;¹
- Any repayments of principal within the specified time will reduce the amount of advances counted against the aggregate credit limit;
- The loan is secured by a first or subordinate mortgage or deed of trust on real property; AND
- For whatever reason, the equity line of credit does not qualify for the limited usury exemption under G.S. 24-9 (See Chart #5).

Other Practical Requirement

From a practical standpoint, the deed of trust securing the equity line of credit should also show on its face (i) the maximum principal amount that may be secured at any one time, and (ii) that it secures an equity line of credit governed by the provisions of Article 9 of Chapter 45 of the North Carolina General Statutes.²

¹ The term "lender is obligated" means that the lender is contractually bound to provide credit advances – they may not be discretionary on the lender's part. The contract must set forth any events of default by the borrower, or other events not within the lender's control, which may relieve the lender from the lender's obligation, and must state whether or not the lender has reserved the right to cancel or terminate the obligation.

² The requirements for the mortgage or deed of trust to state on its face the maximum principal amount secured and that it secures an equity line of credit are not requirements that must be satisfied to qualify the equity line of credit for the limited usury exemption under G.S. 24-9. However, unless these requirements are satisfied, the mortgage or deed of trust will not qualify as an equity line security instrument under Article 9 of Chapter 45 of the General Statutes, and future advances will not have priority for lien purposes from the date the mortgage or deed of trust is recorded. G.S.45-81(4)



	Equity Line of Credit Secured by FIRST OR SUBORDINATE LIEN on real property
Initial Credit Limit	Less than \$300,000
Maximum Interest Rate	A
Prepayment Penalty	B
Fees at Origination / Life of Loan Limits	C
Passthrough Fees	D
In-House Appraisal Fees	E
Assumption Fees	F
Modification Fees / Deferral Fees	G
Late Charges	None Permitted

NOTES TO USURY CHART #6

Maximum Interest Rate

- A. The interest rate may not exceed the Commissioner's Rate as specified in G.S. 24-1.1(c).

The "Commissioner's Rate" is the interest rate announced and published on the 15th of each month by the North Carolina Commissioner of Banks pursuant to G.S. 24-1.1(c). The rate is the greater of (i) 16%, or (ii) the rate determined by rounding off the most recent six-month Treasury bill rate to the nearest .5% and adding 6%. The announced rate is the maximum rate for loans made during the next calendar month (e.g., the rate published July 15 applies to loans made in August). On a fixed rate loan, the maximum rate in effect during the month the loan is made is the maximum rate for the life of the loan. On a variable rate loan, the maximum rate in effect for a given period may not exceed the maximum rate permitted under G.S. 24-1.1(c) for the same period. G.S. 24-1.2A(a); G.S.24-1.1(c).

There is one exception to this rule that applies only to credit unions chartered under North Carolina law – G.S. 54-109.65 provides that a North Carolina state-chartered credit union may charge interest on loans to its members at a rate of interest that does not exceed 18%, unless a greater rate not to exceed the annual percentage rate permitted to be charged by federally-chartered credit unions is otherwise approved by the North Carolina Credit Union Commission. As a consequence, a North Carolina state-chartered credit union can charge interest on loans to its members at a rate that does not exceed the greater of (i) 18%, or (ii) such higher rate as may be permitted to be charged by federally-chartered credit unions, provided that higher rate is approved by the North Carolina Credit Union Commission.

Prepayment Penalty

- B. Equity lines of credit subject to G.S. 24-1.2A may be prepaid in part or in full at any time without penalty. G.S. 45-82.4. When the balance is \$0, the lender must cancel the mortgage or deed of trust upon request. G.S. 45-81

Fees at Origination / Life of Loan Limits

- C. G.S. 24-1.2A(b) permits a lender to charge fees on equity lines of credit which, in the aggregate and over the life of the contract based on the maximum limit of the line of credit, do not exceed those permitted under G.S. 24-10. This provision is ambiguous because the following fees permitted by G.S. 24-10 are permitted only if the loan is made under G.S. 24-1.1. While it may be argued that the intent of G.S. 24-1.2A(b) is to permit lenders to charge the following fees even though the equity line of credit is made under G.S. 24-1.2A (and not G.S. 24-1.1), the ability of a lender to charge the following fees is uncertain:

- When the loan is secured by a lien on real property
 - If the loan is a construction loan on other than one- or two-family dwellings (which is unlikely in the context of an equity line of credit), a lender may charge fees or discounts that, in the aggregate, do not exceed 2%.



- If the loan is not a construction loan on other than one- or two-family dwellings, a lender may charge fees or discounts which, in the aggregate, do not exceed 1%.
- If a lender makes both the construction loan and a permanent loan utilizing one note (i.e., a construction/permanent loan), a lender may collect the fees as if they were two separate loans. G.S. 24-10(a)
- Notwithstanding the limitations on fees and discounts described in the first bullet (above), fees or discounts which, in the aggregate, do not exceed 2% of the loan amount may be charged in any loan secured by a subordinate lien on real property if the lender is (i) a mortgagee approved by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Department of Veterans Affairs, a national mortgage association or any federal agency, or (ii) a local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan association and permitted by law to make home loans, credit union, or insurance company, or (iii) a state or federal agency. G.S. 24-10(g)

Passthrough Fees

D. Pursuant to G.S. 24-8(d), a lender may collect money from the borrower for the payment of:

- 1) Taxes, filing fees, recording fees, and other charges and fees paid to public officials.
- 2) Fees paid to a governmental or a government agency to participate in a loan program sponsored or offered by the government or government agency, including loan guarantee and tax credit programs.
- 3) Bona fide loan-related goods, products and services provided or to be provided by third parties, including fees for tax payment services, fees for flood certifications, fees for pest infestation determinations, mortgage broker fees, appraisal fees, inspection fees, environmental assessment fees, fees for credit report services, assessments, costs of upkeep, surveys, attorneys' fees, notary fees, escrow charges, and insurance premiums (including, for example, fire, title, life, accident and health, disability, unemployment, flood, and mortgage insurance).

However, no third party may charge or receive (i) any unreasonable compensation for loan-related goods, products, and services, or (ii) any compensation for which no loan-related goods and products are provided or for which no or only nominal loan-related services are performed.

In-House Appraisal Fees

E. A bank, savings and loan association, savings bank, or credit union, or any subsidiary thereof organized under the laws of North Carolina or the United States, may charge a reasonable fee as agreed upon by the parties for an appraisal performed by an employee of the bank, savings and loan association, savings bank, or credit union, or any subsidiary or affiliate thereof. If a fee is collected for the appraisal from the borrower, a copy of the appraisal must be provided to the borrower at the borrower's request at no additional charge. G.S. 24-10(h). Otherwise, a lender may not charge or receive a fee for an in-house appraisal. G.S. 24-8(a)

Assumption Fees

F. When a mortgage or deed of trust contains a due-on-sale clause and the original obligor is released from liability, an assumption fee up to \$400 is permitted. When a mortgage or deed of trust contains a due-on-sale clause and the original obligor is NOT released from liability, or when a mortgage or deed of trust does not contain a due-on-sale clause, an assumption fee up to \$125 is permitted. G.S. 24-10(d)

Modification Fees / Deferral Fees

G. A lender may charge a fee for the modification, renewal, extension or amendment of any terms of the loan. The fee may not exceed the greater of \$50 or 0.25% of the balance outstanding at that time. G.S. 24-1.2A(b). For an equity line of credit, the deferral of a payment that is properly documented as a modification will likely be considered a loan modification for which the lender may charge a loan modification fee pursuant to G.S. 24-1.2A(b).



USURY CHART #7
OPEN-END CREDIT CARD PLANS THAT:
(1) ARE UNSECURED OR SECURED BY COLLATERAL OTHER THAN REAL PROPERTY,
AND
(2) QUALIFY FOR THE LIMITED USURY EXEMPTION UNDER G.S. 24-9
October 2015

In 2003, the North Carolina General Assembly carved out an additional "limited" usury exemption for certain revolving credit card plans offered by "banks." If the credit card plan satisfies the specific requirements of G.S. 24-9, the credit card plan will be subject to the limited usury exemption described in that statute. If the revolving line of credit does not satisfy all of the requirements for a bank credit card plan under G.S. 24-9, the revolving line of credit (if not otherwise exempt) is subject to the provisions of G.S. 24-11 and G.S. 24-11.1 (see Usury Chart #8).

This Usury Chart #7 applies only if:

- The lender is a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States;¹
- The borrower is a natural person;
- The debt is incurred by the borrower primarily for personal, family, or household purposes (*i.e.*, the loan is a consumer-purpose loan);
- The loan is an open-end (or revolving) credit card plan (*i.e.*, credit that can be accessed by use of a credit card);
- The initial credit limit is less than \$300,000; AND
- The loan is either unsecured or secured by collateral other than real property.²

Limited Usury Exemption

The Bank may charge and collect from any borrower interest at any rate, as well as fees and other charges in any amount that the borrower agrees to pay in connection with a revolving credit card plan that qualifies for the limited usury exemption under G.S. 24-9(d).

¹ For credit card plan to be exempt under G.S. 24-9, the lender must be a "bank." The term "bank" is defined in G.S. 24-9 as "a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States." The term 'bank' does not include any subsidiary or affiliate of a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States that is not itself a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States.

What about financial institutions that not chartered under the laws of North Carolina or the United States? May they offer equity lines of credit that are exempt under G.S. 24-9? Federal law and state laws governing interstate banking may hold the answer to this question. For example, if a bank chartered under the laws of another state establishes and maintains one or more branches in North Carolina, then G.S. 53-226.15 permits that bank to conduct any activities in its North Carolina branch or branches that are authorized under the laws of North Carolina for a North Carolina state-chartered bank, except to the extent such activities may be prohibited by other laws, regulations, or orders applicable to the out-of-state bank.

² The limited usury exemption for bank-issued credit card plans does not apply to a revolving credit card plan that is secured by a mortgage or deed of trust on real property. However, if the real-estate-secured credit card plan is not otherwise exempt, it may qualify for the limited usury exemption that applies to certain equity lines of credit – see Usury Chart # 5; otherwise, it will be subject to Usury Chart #6 or Usury Chart #8.



USURY CHART #8
OPEN-END CREDIT PLANS THAT
DO NOT QUALIFY FOR THE LIMITED USURY EXEMPTION UNDER G.S. 24-9
AND
ARE NOT HOME EQUITY LINES OF CREDIT
October 2015

If an open-end credit plan is secured by a mortgage or deed of trust upon real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one-to-four families which is or will be occupied by the borrower as the borrower's principal dwelling, then the credit plan is potentially subject to one or more of the consumer protection statutes discussed in Usury Chart #9 and should be evaluated using this chart and Usury Chart #9. If the credit plan is subject to one or more of the consumer protection statutes identified in Usury Chart #9, then the limitations, restrictions, and prohibitions contained in the applicable consumer protection statute(s) control and override any corresponding limitations, restrictions, and prohibitions contained in this chart.

This Usury Chart #8 applies only if:

- The loan is an open-end (or revolving) line of credit [Note: It need not be a credit card plan];
- The credit limit is less than \$300,000;
- The borrower is a natural person;
- The debt is incurred by the borrower primarily for personal, family, or household purposes (*i.e.*, the loan is a consumer-purpose loan); AND
- The loan is NOT a credit card plan that qualifies for the limited usury exemption under G.S. 24-9 (See Usury Chart #7) or a home equity line of credit (see Usury Chart #5 and Usury Chart #6).

	Open-end credit plans, including revolving credit card plans and revolving charge accounts – but <u>excluding</u> direct loans under a check loan, check credit, or other such plan	Other revolving credit loans, including check loans, check credit, or other revolving credit plans where lender makes direct loans to borrower
Initial Credit Limit	Less than \$300,000	Less than \$300,000
Maximum Interest Rate / Annual or Monthly Charge	A	B
Prepayment Penalty	None Permitted	None Permitted
Fees at Origination	None Permitted	None Permitted
Passthrough Fees	C	C
In-House Appraisal Fees	D	D
Assumption Fees	E	E
Modification and Deferral Fees	None Permitted	None Permitted
Late Charges	F	F
Other Restrictions	G, H, I	G



NOTES TO USURY CHART #8

Maximum Interest Rate / Annual or Monthly Charge

- A. This rule applies to any extension of credit under an open-end credit or similar plan, including revolving credit card plans and revolving charge accounts, but excluding any loan made directly by a lender under a check loan, check credit or other such plan.

Subject to the following limitations, a lender may charge and collect interest, finance charges, or other fees at a rate in the aggregate that does not exceed 1.5% per month computed on either (i) the unpaid portion of the balance of the previous month less payments or credit within the billing cycle, or (ii) the average daily balance outstanding during the current billing period. The limitations that apply are as follows:

- The lender may not impose a service charge on the consumer or debtor if the account is paid in full within 25 days from the billing date. However, the lender may charge either (i) an annual charge that does not exceed \$24, or (ii) a service charge that does not exceed \$2.00 per month on the balance of any account that is not paid in full within 25 days from the billing date.
- If the open-end or similar plan charges a monthly periodic rate greater than 1.25%, then the account may not be secured by real or personal property or any other thing of value.

G.S. 24-11(a), (a1), and (c)

- B. On revolving credit loans (including check loans, check credit or other revolving credit plans whereby a bank, banking institution or other lending agency makes direct loans to a borrower), if agreed to in writing by the borrower, the lender may collect interest and service charges by application of a monthly periodic rate computed on the average daily balance outstanding during the billing period. The rate may not exceed 1.5%.

However, if the open-end or similar plan charges a monthly periodic rate greater than 1.25%, then the account may not be secured by real or personal property or any other thing of value.

G.S. 24-11(b) and (c)

Passthrough Fees

- C. Pursuant to G.S. 24-8(d), a lender may collect money from the borrower for the payment of:

- 1) Taxes, filing fees, recording fees, and other charges and fees paid to public officials.
- 2) Fees paid to a governmental or a government agency to participate in a loan program sponsored or offered by the government or government agency, including loan guarantee and tax credit programs.
- 3) Bona fide loan-related goods, products and services provided or to be provided by third parties, including fees for tax payment services, fees for flood certifications, fees for pest infestation determinations, mortgage broker fees, appraisal fees, inspection fees, environmental assessment fees, fees for credit report services, assessments, costs of upkeep, surveys, attorneys' fees, notary fees, escrow charges, and insurance premiums (including, for example, fire, title, life, accident and health, disability, unemployment, flood, and mortgage insurance).

However, no third party may charge or receive (i) any unreasonable compensation for loan-related goods, products, and services, or (ii) any compensation for which no loan-related goods and products are provided or for which no or only nominal loan-related services are performed.

In-House Appraisal Fees

- D. A bank, savings and loan association, savings bank, or credit union, or any subsidiary thereof organized under the laws of North Carolina or the United States, may charge a reasonable fee as agreed upon by the parties in a loan secured by real property for an appraisal performed by an employee of the bank, savings and loan association, savings bank, or credit union, or any subsidiary or affiliate thereof. If a fee is collected for the appraisal from the borrower, a copy of the appraisal must be provided to the borrower at the borrower's request at no additional charge. G.S. 24-10(h). Otherwise, a lender may not charge or receive a fee for an in-house appraisal. G.S. 24-8(a)



Assumption Fees

- E. When a mortgage or deed of trust in a loan secured by real property contains a due-on-sale clause and the original obligor is released from liability, an assumption fee up to \$400 is permitted. When a mortgage or deed of trust in a loan secured by real property contains a due-on-sale clause and the original obligor is NOT released from liability, or when a mortgage or deed of trust does not contain a due-on-sale clause, an assumption fee up to \$125 is permitted. G.S. 24-10(d). Otherwise, a lender may not charge or receive loan assumption fee. G.S. 24-8(a)

Late Charges

- F. For a payment past due 30 days or more, the lender may charge
- If the outstanding balance is less than \$100, a late fee not to exceed \$5.00
 - If the outstanding balance is \$100 or more, a late fee not to exceed \$10.00.

However, in no case may the late charge exceed the outstanding principal balance.

If a late payment charge has been once imposed with respect to a late payment, no late charge may be imposed with respect to any future payment which would have been timely and sufficient but for the previous default.

G.S. 24-11(d1)

Other Restrictions

- G. No person, firm or corporation may charge a discount or fee in excess of 6% of the principal amount of the accounts acquired from or through any vendors or others providing services who participate in such plan. G.S. 24-11(a2)
- H. A lender may not impose an annual or service charge on an existing credit card account upon which the charge has not previously been imposed unless the lender (i) gives the cardholder at least 30 days prior notice of any new annual charge or service charge the lender proposes to charge, and (ii) advises the cardholder of his right not to accept the new charge. This notice shall be bold and conspicuous, and shall be on the face of the periodic billing statement or on a separate statement which is clearly noted on the face of the periodic billing statement provided to the cardholder. If the cardholder does not accept the new charge upon an existing credit card account, the lender may require that the cardholder make no further use of the account beyond the 30-day period in order to avoid paying the annual charge, but the cardholder shall be entitled to pay off any remaining balance according to the terms of the credit agreement. If, within 12 months of the initial imposition of an annual charge, the cardholder rescinds his credit card contract and surrenders all cards issued under the contract to the lender, the cardholder shall be entitled to a prorated refund of the annual fee previously charged, credited to the cardholder's credit card account.
- I. Credit card accounts in North Carolina are subject to the disclosure requirements contained in G.S. 24-11.1, while charge card accounts are subject to the disclosure requirements contained in G.S. 24-11.2. However, G.S. 24-11.1(c) and G.S. 24-11.2(c) both provide as follows:

The form and content of the disclosures described in [subsection (b) of this section] may be consistent with similar disclosures required by the federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., and Regulation Z, 12 C.F.R. 226. Any amendment to the Act or Regulation that addresses credit card disclosures shall to the extent it covers applications, solicitations, and other communications covered by this section, replace the disclosure requirements of this section for creditors subject to the Act.

References in G.S. 24-11.1 to Reg Z as codified in 12 C.F.R. 226 are now outdated and certainly suspect. Reg Z as promulgated by the CFPB is codified in 12 C.F.R. Part 1026.

USURY CHART #9
CONSUMER PROTECTIONS
FOR
LOANS SECURED BY THE BORROWER'S PRINCIPAL DWELLING
October 2015

IMPORTANT NOTE: This chart covers three important North Carolina statutes that afford consumers protection when a loan is secured by the borrower's principal dwelling:

- G.S. 24-10.2, which prohibits certain miscellaneous abusive lending practices, including "flipping";
- G.S. 24-1.1E, North Carolina's primary anti-predatory lending statute; and
- G.S. 24.1.1F, which is intended to curtail certain abusive sub-prime lending practices.

These statutes were not adopted in a vacuum – to the contrary, they were intended to broaden consumer protections then afforded by the federal Truth-in-Lending Act (TILA) and, in particular, the federal Home Ownership and Equity Protection Act (HOEPA), which was originally adopted by Congress as an amendment to TILA in 1994.

Because they were (at least in part) based on corresponding federal laws and regulations, G.S. 24.1.1E and G.S. 24.1.1F contain several references to TILA, HOEPA, and Regulation Z ("Reg Z"), the implementing regulation adopted by the Federal Reserve Board, which then had TILA/HOEPA rulemaking authority.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 amended TILA/HOEPA and transferred all rulemaking authority and responsibility for TILA/HOEPA from the Federal Reserve Board to the Consumer Financial Protection Bureau (CFPB). The CFPB has made sweeping revisions to the regulations governing home loans. As a result, references in the North Carolina usury and consumer protection statutes to Reg Z as adopted by the Federal Reserve Board are now be outdated, are certainly suspect, and may be very much "out of sync" with the corresponding Reg Z provisions adopted by the CFPB.

Even if a loan is an exempt loan because the loan amount is \$300,000 or more, every consumer-purpose open-end or closed-end loan to an individual should be tested against each of these three consumer protection statutes if the loan is secured by a lien on (i) a manufactured home that is or will be occupied by the borrower as the borrower's principal dwelling, or (ii) real property upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling. The following chart provides guidance as to the universe of loans potentially subject to each statute.

In using this Usury Chart #9 for each statute:

- **STEP 1:** Determine whether the loan is within the universe of loans to which each of the three statutes may apply. If it is not within the universe of loans covered by any of the three statutes, you may disregard this Usury Chart #9. However, if the loan falls within the universe of any one or more of the three statutes, proceed to Step 2.
- **STEP 2:** If the loan is within the universe of loans to which a statute may apply, determine whether the specific terms of the loan exceed one or more of the thresholds for that statute. If the loan terms do not exceed any threshold for that statute, proceed to the next statute that may apply. Remember that a loan may be subject to more than one of the consumer protection statutes.
- **STEP 3:** If the terms of the loan exceed one or more of the thresholds, then the loan is subject to the limitations, restrictions, and prohibitions imposed by that statute in addition to any restrictions that otherwise apply to the loan under North Carolina law or Reg Z.



Loans with the following characteristics should be evaluated using this Usury Chart #9:

	G.S. 24-10.2 Protections in Certain Consumer Home Loans	G.S. 24-1.1E High-Cost Home Loans	*G.S 24-1.1F Rate Spread Home Loans
Borrower	Natural person	Natural person	Natural person
Loan Purpose	Consumer-purpose	Consumer-purpose	Consumer-purpose
Loan Type	Open-end or closed-end loan	Open-end or closed-end loan	Closed-end loan
Loan Amount	No limit specified	Not more than the lesser of (i) \$300,000, or (ii) Fannie Mae's conforming loan size limit for a single-family dwelling (currently \$417,000 to \$625,500 in NC, depending on the county)	No limit specified
Collateral	Loan secured by a mortgage or deed of trust on real estate upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling	Loan secured by either: (i) A security interest in a manufactured home that is or will be occupied by the borrower as the borrower's principal dwelling, or (ii) A mortgage or deed of trust on real estate upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling	Loan secured by the borrower's principal dwelling. A "dwelling" is a residential structure that contains one to four units, whether or not the structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, or trailer, if used as a residence
The loan is NOT	A reverse mortgage transaction	A reverse mortgage transaction	

* Session Law 2013-399 completely rewrote G.S. 24-1.1F effective October 1, 2013. G.S. 24-1.1F now defines a "rate spread home loan" as "a loan that has an annual percentage rate that exceeds the limits set out in 15 U.S.C. § 1639c(c)(1)(B)(ii) and any regulations promulgated thereunder." The new definition effectively adopted the federal test used to determine whether a loan is a "higher-priced mortgage loan" for Reg Z purposes as described in Reg Z section 1026.35. This table assumes that only loans subject to the CFPB's regulations covering higher-priced mortgage loans are subject to G.S. 24-1.1F.

G.S. 24-10.2 – PROTECTIONS IN CERTAIN CONSUMER HOME LOANS

STEP 1: The universe of loans that may be "consumer home loans" subject to the consumer protection provisions of G.S. 24-10.2 includes both open-end credit plans and closed-end home loans that have all of the following attributes:

Identity of Borrower	A natural person
Loan Purpose	Debt is incurred primarily for personal, family, or household purposes (i.e., the loan is a consumer-purpose loan)
Loan Type	Open-end or closed-end loan, but NOT a reverse mortgage transaction
Loan Amount	Any amount
Collateral	Loan secured by a mortgage or deed of trust on real estate upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling

STEP 2: There are no specific tests or thresholds that apply to loans that have the attributes identified above – all are considered "consumer home loans" subject to the restrictions described in Step 3.

STEP 3: Consumer home loans are subject to the following limitations, restrictions, and prohibitions:

No Financing Credit Insurance Premiums. A lender may not finance, directly or indirectly, any credit life, disability, or unemployment insurance, or any other life or health insurance premiums. However, insurance premiums calculated and paid on a monthly basis are not be considered financed by the lender.

Prohibition Against "Flipping." A lender may not knowingly or intentionally engage in the unfair act or practice of "flipping" a consumer home loan. "Flipping" occurs when a lender makes new consumer home loan to a borrower that refinances an existing consumer home loan under circumstances in which the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances. The prohibition against "flipping" applies without regard as to whether the interest rate, points, fees, and charges paid or payable by the borrower in connection with the refinancing would render the loan a high-cost home loan under G.S. 24-1.1E.

Prohibition Against Counseling Default. Prior to and in connection with the closing or planned closing of a consumer home loan that will refinance all or any portion of a borrower's existing loan or debt, a lender may not (i) recommend to the borrower that the borrower default on the existing obligation, or (ii) encourage the borrower to default on an existing obligation.



G.S. 24-1.1E - NORTH CAROLINA'S HIGH COST HOME LOAN STATUTE

NOTE: *G.S. 24-1.1E is North Carolina's primary anti-predatory lending statute. The corresponding provisions in Reg Z are those sections that regulate what in Reg Z parlance have historically been called "HOEPA loans," "Section 32 loans," or "high-cost mortgages." Reg Z as adopted by the CFPB consistently identifies these loans as "high-cost mortgages." High-cost mortgages are subject to Reg Z sections 2026.31, 1026.32, 1026.34, 1026.36, and 1026.43.*

STEP 1: The universe of loans that may be considered "high-cost home loans" subject to the restrictions and limitations imposed by G.S. 24-1.1E includes both open-end and closed-end home loans that have all of the following attributes:

Identity of Borrower	A natural person
Loan Purpose	Debt is incurred primarily for personal, family, or household purposes (i.e., the loan is a consumer-purpose loan)
Loan Type	Open-end or closed-end loan, but NOT a reverse mortgage transaction
Loan Amount	Not more than the lesser of (i) \$300,000, or (ii) Fannie Mae's conforming loan size limit for a single-family dwelling (currently \$417,000 to \$625,500 in NC, depending on the county)
Collateral	Loan secured by either: (i) A security interest in a manufactured home that is or will be occupied by the borrower as the borrower's principal dwelling, or (ii) A mortgage or deed of trust on real estate upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling

STEP 2: Determine whether the specific terms of the loan exceed one or more of the following thresholds:

APR Threshold.

The APR threshold under G.S. 24-1.1E(a)(6)a. reads as follows:

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.

When G.S. 24-1.1E was originally adopted in 1999, the statutory and regulatory references in G.S. 24-1.1E(a)(6)a. made sense, although the statutory reference to Public Law 103-25 was incorrect – the Home Ownership and Equity Protection Act of 1994 was enacted as Public Law 103-325, not Public Law 103-25. According to Reg Z section 226.32 as promulgated by the Federal Reserve Board (and which is still in effect), a loan is a high-cost home loan for purposes of G.S. 24-1.1E(a)(6)a. if the APR at closing exceeds by more than 8 percentage points for first-lien loans, or by more than 10 percentage points for subordinate-lien loans, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the 15th day of the month immediately preceding the month in which the lender receives the credit application.



However, the language in G.S. 24-1.1E(a)(6)a. has not kept pace with (i) changes to HOEPA made in 2010 by the Dodd-Frank Wall Street Reform and Consumer Protection Act, which introduced a new and different formula for determining whether a loan is a high-cost mortgage under federal law, or (ii) the regulations subsequently adopted by the CFPB pursuant to Dodd-Frank. As a result, the APR threshold stated in G.S. 24-1.1E(a)(6)a. no longer makes sense and is likely obsolete.

It is clear that G.S. 24-1.1E(a)(6)a. defers to federal law in determining the APR threshold that must be surpassed for a loan to be considered a "high-cost home loan" under North Carolina law. The new Dodd-Frank definition of "high-cost mortgage" is codified in 12 USC § 1602(bb), and the CFPB regulation that focuses on that definition is Reg Z section 1026.32. It is likely (but not certain) that the APR threshold test in G.S. 24-1.1E(a)(6)a. will be interpreted in a manner consistent with the recent revisions to HOEPA and the new CFPB regulation. According to the CFPB's regulations:

A loan is a high-cost mortgage if the APR (as determined under the rule described below) exceeds the "average prime offer rate" for a comparable transaction by more than:

- 6.5 percentage points for a first-lien transaction, other than a first-lien transaction in which the dwelling is personal property and the loan amount is less than \$50,000;
- 8.5 percentage points for a first-lien transaction if the dwelling is personal property and the loan amount is less than \$50,000; or
- 8.5 percentage points for a subordinate-lien transaction.

The "average prime offer rate" is an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The CFPB publishes the average prime offer rates for a broad range of types of transactions in a table updated at least weekly.

For purposes of applying the APR threshold test, the APR for a closed- or open-end credit transaction is based on the following:

- For a transaction in which the APR will not vary during the term of the loan or credit plan, the interest rate in effect as of the date the interest rate for the transaction is set;
- For a transaction in which the interest rate may vary during the term of the loan or credit plan in accordance with an index, the interest rate that results from adding the maximum margin permitted at any time during the term of the loan or credit plan to the value of the index rate in effect as of the date the interest rate for the transaction is set, or the introductory interest rate, whichever is greater; and
- Except for those transactions described above, for any other transaction in which the interest rate may or will vary during the term of the loan or credit plan, the maximum interest rate that may be imposed during the term of the loan or credit plan.

Prepayment Penalty Threshold.

- **Closed-End Loan.** If the loan is a closed-end loan, the loan is a high-cost home loan if the loan documents permit the lender to charge or collect prepayment fees or penalties (i) more than 30 months after the loan closing, or (ii) that exceed, in the aggregate, more than 2% of the amount prepaid.
- **Open-End Loan.** If the loan is an open-end credit plan, the loan is a high-cost home loan if 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; (ii) if the borrower has the 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) that exceed, in the aggregate, more than 2% of the amount prepaid.

Total Points and Fees Threshold.



Subject to the special rules regarding discount points and prepayment penalties described below, the loan is a high-cost home loan if the total "points and fees" (defined below) payable by the borrower at or before the loan closing exceed 5% of the "total loan amount" (defined below) if the total loan amount is \$20,000 or more, or the lesser of \$1,000 or 8% of the total loan amount if the total loan amount is less than \$20,000.

- **Total Loan Amount.** For a closed-end loan, the term "total loan amount" has the same meaning as is set forth in 12 C.F.R. 226.32¹ and should be calculated according to the Official Commentary for that section. For an open-end credit plan, the term "total loan amount" means the borrower's initial maximum credit limit.
- **Points and Fees.** Subject to the special rules for discount points and prepayment penalties described below, the term "points and fees" includes all of the following:
 1. All items paid by a borrower at or before closing that are required to be disclosed as part of the finance charge under 12 C.F.R. 226.4(a) and 12 C.F.R. 226.4(b)² of Reg Z, except for the following:
 - Interest and any time-price differential³;
 - 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;
 - Taxes, filing fees, recording and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest; or
 - Fees paid to a person other than the 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
 - Appraisal fees
 - Surveys
 - Fees for pest infestation and flood determinations
 - Fees for flood certification
 - Credit reports
 - Notary fees
 - Fees for inspections performed prior to closing
 - Title insurance premiums
 - Attorneys' fees (provided the borrower has the right to select the attorney from an approved list or otherwise)
 - Escrow charges, so long as not otherwise included in the calculation of points and fees under 12 C.F.R. 226.4(a) and 12 C.F.R. 226.4(b) of Reg Z
 - Premiums for insurance against loss or damage to property, including hazard insurance and flood insurance premiums, provided the conditions in 12 C.F.R. 226.4(d)(2)⁴ of Reg Z are met
 2. All charges paid by a borrower at or before closing and that are for items listed under 12 C.F.R. 226.4(c)(7)⁵ of Reg Z, 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 in the calculation of points and fees.

The following are the fees enumerated in section 4(c)(7) of Reg Z: (i) fees for title examination, abstract of title, title insurance, property survey, and similar purposes; (ii) fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents; (iii) notary and credit-report fees; (iv) property appraisal fees or fees for inspections to assess the value or condition of the property if the service is

¹ The corresponding CFPB regulation defining "total loan amount" is 12 C.F.R. 1026.32(b)(4).

² The corresponding CFPB regulations are 12 C.F.R. 1026.4(a) and 12 C.F.R. 1026.4(b).

³ Time-price differential is the difference between the purchase price of a property and the higher total price paid if the purchase is financed. The time-price differential is not considered interest, but it is required to be included in the calculation of the finance charge in an installment sale contract.

⁴ The corresponding CFPB regulation is 12 C.F.R. 1026.4(d)(2).

⁵ The corresponding CFPB regulation is 12 C.F.R. 1026.4(c)(7).



performed prior to closing, including fees related to pest-infestation or flood-hazard determinations; and (v) amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

3. To the extent not otherwise included in 1 or 2 above, all compensation paid from any source to a mortgage broker, including compensation paid to a mortgage broker in a table-funded transaction.

A "table-funded transaction" is a loan transaction closed by a mortgage broker in the mortgage broker's own name with funds advanced by a person other than the mortgage broker in which the loan is assigned to the person that advanced the funds contemporaneously or within one business day of the funding of the loan. A bona fide sale of a loan in the secondary mortgage market is not considered a table-funded transaction, and a table-funded transaction is not considered a secondary market transaction.

4. The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents.
 5. For open-end credit plans, the term "points and fees" also includes the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total loan amount.
- **Special Rules Regarding Discount Points.** "Bona fide loan discount points" are loan discount points knowingly paid by the borrower for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the loan, provided the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry norms and practices for secondary mortgage market transactions. The following bona fide loan discount points payable by the borrower may be excluded for the calculation of points and fees:
 1. Up to and including two bona fide loan discount points, 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 Freddie Mac, whichever is greater.
 2. Up to and including one bona fide loan discount point, 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 Freddie Mac, whichever is greater.
 - **Special Rule Regarding Prepayment Penalties.** The following prepayment penalties may be excluded for the calculation of points and fees:
 1. 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, but only if 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.
 2. 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, but only if 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.

STEP 3: If the terms of the loan exceed one or more of the thresholds, then the loan is considered a "high-cost home loan" and is subject to the following limitations, restrictions, and prohibitions:

No Call Provision. The loan documents may not contain a provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This restriction 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.



No Balloon Payment. The loan documents may not require a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This restriction does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.

No Negative Amortization. The loan documents may not contain a payment schedule with regular periodic payments that cause the principal balance to increase.

No Default Interest Rate. The loan documents may not contain a provision that increases the interest rate after default. This restriction 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.

No Advance Payments. The loan documents may not contain 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.

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.

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.

No Lending Without Due Regard to Repayment Ability. 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 (i.e., a borrower, co-borrower, cosigner, or guarantor obligated to repay the loan), 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 is 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. However, no presumption of inability to make the scheduled payments to repay the obligation arises 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.

No Financing of Fees or Charges. In making a high-cost home loan, a lender may not directly or indirectly finance:

- Any prepayment fees or penalties payable by the borrower in a refinancing transaction if the lender or an affiliate of the lender is the note holder of the note being refinanced;
- Any points and fees; or
- Any other charges payable to third parties.

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 note holder.

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.

No Shifting of Liability. A lender may not shift any loss, liability, of claim of any kind to the closing agent or closing attorney for any violation of G.S. 24-1.1E.

The making of a high-cost home loan in violation of S. 24-1.1E is declared usurious in violation of Chapter 24 and unlawful as an unfair or deceptive act or practice in or affecting commerce in violation of G.S. 75-1.1. G.S. 24-1.1E(d). A mortgage broker that brokers a high-cost home loan that violates G.S. 24-1.1E is jointly and severally with the lender. G.S. 24-1.1E(g)



G.S. 24-1.1F - NORTH CAROLINA'S RATE SPREAD HOME LOAN STATUTE

NOTE: While G.S. 24-1.1E was adopted to curb certain predatory lending practices, G.S. 24-1.1F was adopted to curb certain abusive sub-prime lending practices. To distinguish them from "high-cost home loans" – that is, predatory loans subject to G.S. 24-1.1E, North Carolina's anti-predatory lending statute – G.S. 24-1.1F uses the term "rate spread home loan" to identify sub-prime loans deemed in need of strict regulation, but not so strict as is required for predatory loans.

The corresponding provisions of Reg Z use different terminology: predatory loans are identified in Reg Z as "high-cost mortgages," while sub-prime loans are identified in Reg Z as "higher-priced mortgage loans." Higher-priced mortgage loans are subject to Reg Z sections 2026.31, 1026.35, 1026.36, and 1026.43.

STEP 1: The universe of loans that may be considered "rate spread home loans" subject to the restrictions and limitations imposed by G.S. 24-1.1F includes closed-end home loans that have all of the following attributes:

Identity of Borrower	A natural person
Loan Purpose	Debt is incurred primarily for personal, family, or household purposes (i.e., the loan is a consumer-purpose loan)
Loan Type	Closed-end loan
Loan Amount	No limit specified
Collateral	Loan secured by the borrower's principal dwelling. A "dwelling" is a residential structure that contains one to four units, whether or not the structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, or trailer, if used as a residence

STEP 2: Determine whether the specific terms of the loan exceed the following APR threshold¹:

As amended effective October 1, 2013, G.S. 24-1.1F defines a "rate spread home loan" as "a loan that has an annual percentage rate that exceeds the limits set out in 15 U.S.C. § 1639c(c)(1)(B)(ii) and any regulations promulgated thereunder."² G.S. 24-1.1F(a1). The annual percentage rate thresholds set out in 15 U.S.C. § 1639c(c)(1)(B)(ii) are thresholds used in Reg Z section 1026.35 to identify a higher-priced mortgage loan:

A "higher-priced mortgage loan" means a closed-end consumer credit transaction secured by the consumer's principal dwelling with 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 for loans secured by a first lien with a principal obligation at consummation that does not exceed the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac;
- (ii) By 2.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac – i.e., a "jumbo" loan; or

¹ Session Law 2013-399 substantially rewrote G.S. 24-1.1F effective October 1, 2013. The annual percentage rate test North Carolina now uses to determine whether a loan is a rate spread home loan is identical to the annual percentage rate test imposed by Reg Z section 1026.35 to determine whether a loan is a higher-priced mortgage loan.

² Unfortunately, G.S. 24-1.1F no longer identifies with precision the universe of loans that will be considered "rate spread home loans" if the annual percentage rate for the loan exceeds the annual percentage rate thresholds specified in 15 U.S.C. § 1639c(c)(1)(B)(ii) – the statute ambiguously defines a "rate spread home loan" as "a loan" that has an annual percentage rate that exceeds the limits set forth in the federal statute. This outline assumes that G.S. 24-1.1F applies only to a loan if that loan would qualify as a "higher-priced mortgage loan" under Reg Z. section 1026.35 had the loan been made by a creditor subject to Reg Z. However, we cannot presume with absolute confidence that G.S. 24-1.1F will be limited in its application to closed-end consumer credit transactions secured by the consumer's principal dwelling, as is the case with loans subject to Reg Z section 1026.35.



(iii) By 3.5 or more percentage points for loans secured by a subordinate lien.

The “average prime offer rate” is an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The CFPB publishes the average prime offer rates for a broad range of types of transactions in a table updated at least weekly.

STEP 3: Rate spread home loans are subject to the following limitations, restrictions, and prohibitions:

Ability to Repay. The making of a rate spread home loan that violates 15 U.S.C. § 1639c(a) (which addresses the borrower’s ability to repay a residential mortgage loan) and any regulations promulgated thereunder is declared in G.S. 24-1.1F(b1) to be usurious in violation of Chapter 24 of the General Statutes. The “regulations promulgated thereunder” include the CFPB’s “ability to repay” regulations codified in Reg Z sections 1026.34(a)(4) and 1026.43.

Restrictions on Prepayment Penalties. Any prepayment penalty that violates 15 U.S.C. § 1639c(c) and any regulations promulgated thereunder is declared in G.S. 24-1.1F(c1) to be unenforceable. The “regulations promulgated thereunder” include CFPB’s limitations on prepayment penalties contained in Reg Z sections 1026.32 and 1026.43(g). A higher-priced mortgage loan may not contain a prepayment penalty. 12 U.S.C. 1026.43(g)(1)(ii)(C).

Banking 101

Presentation to the House Select Committee on Banking and
Loan Origination Fee Reform by
Commissioner of Banks Ray Grace and
Deputy Commissioner Katherine M.R. Bosken
September 24, 2018



north carolina
COMMISSIONER OF BANKS





What Other Laws Might Apply?

- State corporation laws
 - NCGS Ch. 55
- State commercial laws
 - UCC, NCGS Ch. 25
 - Especially Articles 3, 4, 4A, and 9.
- State lending laws
 - NCGS Ch. 24, and NCGS 24-1.1
- State foreclosure laws
 - NCGS Ch. 45
- State consumer protection laws
 - NCGS Ch. 75





NCCOB Staff

Composition

- NCCOB has 90 employees:
 - 39 depository examiners
 - 2 bank applications staff
 - 23 non-depository examiners
 - 8 non-depository licensing staff
 - 5 legal staff
 - 13 other personnel

Responsibilities

- Supervising, as of 2018, more than:
 - 45 financial institutions
 - 45 banking holding companies
 - 600 mortgage companies
 - 15,000 mortgage loan originators
 - 20 mortgage origination support registrants
 - 65 reverse mortgage lenders
 - 100 money transmitters
 - 70 consumer finance companies
 - 275 refund anticipation loan facilitators
 - 200 check cashers





State Banking Commission

Composition

- Commission has 15 members:
 - State Treasurer, by virtue of the office
 - 12 gubernatorial appointees
 - 3 practical bankers
 - 1 consumer finance licensee
 - 8 public members
 - 2 legislative appointees
 - Both practical bankers

Responsibilities

- “The Commission is authorized the supervise, direct, and review the exercise by the Commissioner of all powers, duties, and functions vested in or exercised by the Commissioner under the banking laws of this State.” NCGS 53C-2-1(e).
- Contested case hearings and appeals – 53C-2-6(b).
- “The Commission may conduct public hearings on matters within its purview.” NCGS 53C-2-6(d).
- Meet at least 1x every 3 months.





What does NCCOB do?

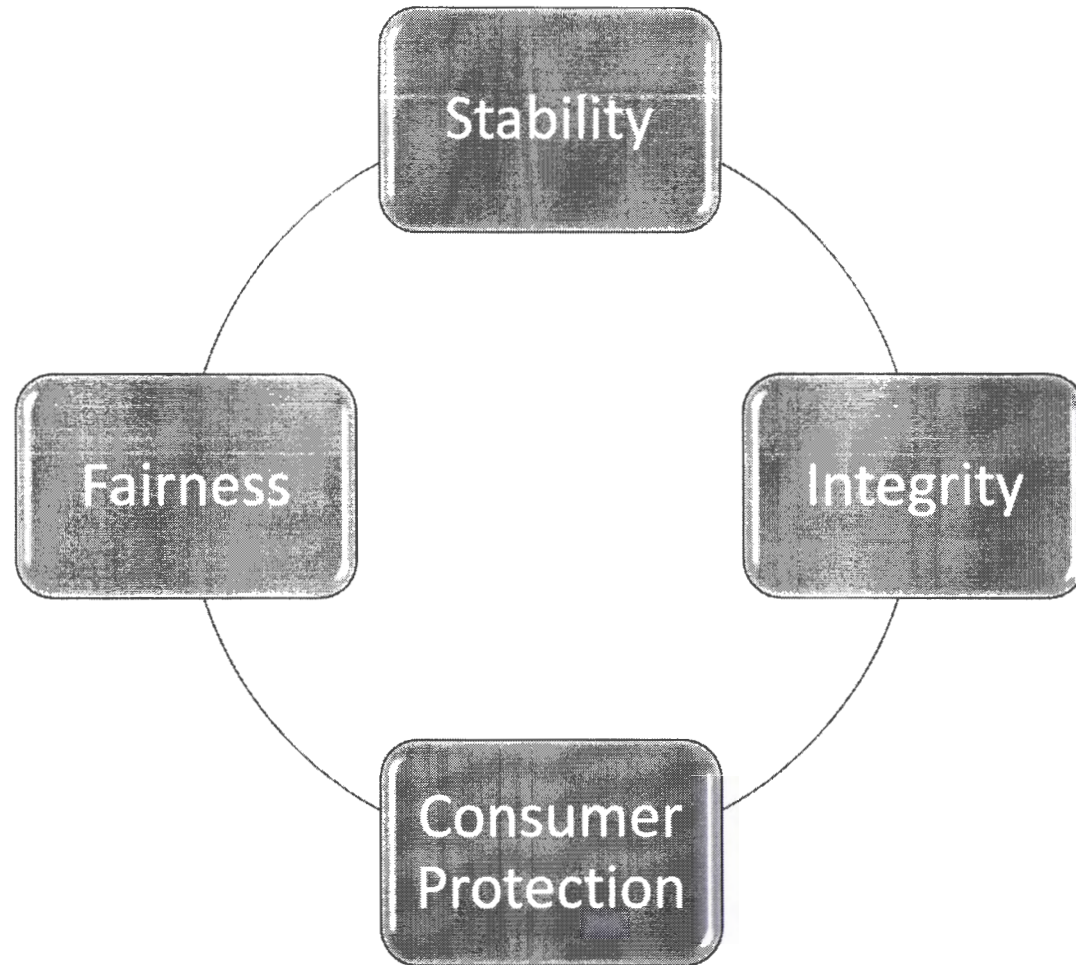
NCCOB licenses, supervises, and examines:

- Banks (including commercial banks and savings institutions)
- Consumer Finance lenders
- Residential mortgage lenders, brokers, originators, servicers, and mortgage origination support registrants
- Money Transmitters
- Check Cashers
- Reverse Mortgage lenders
- Refund Anticipation lenders
- Non-depository Trust companies



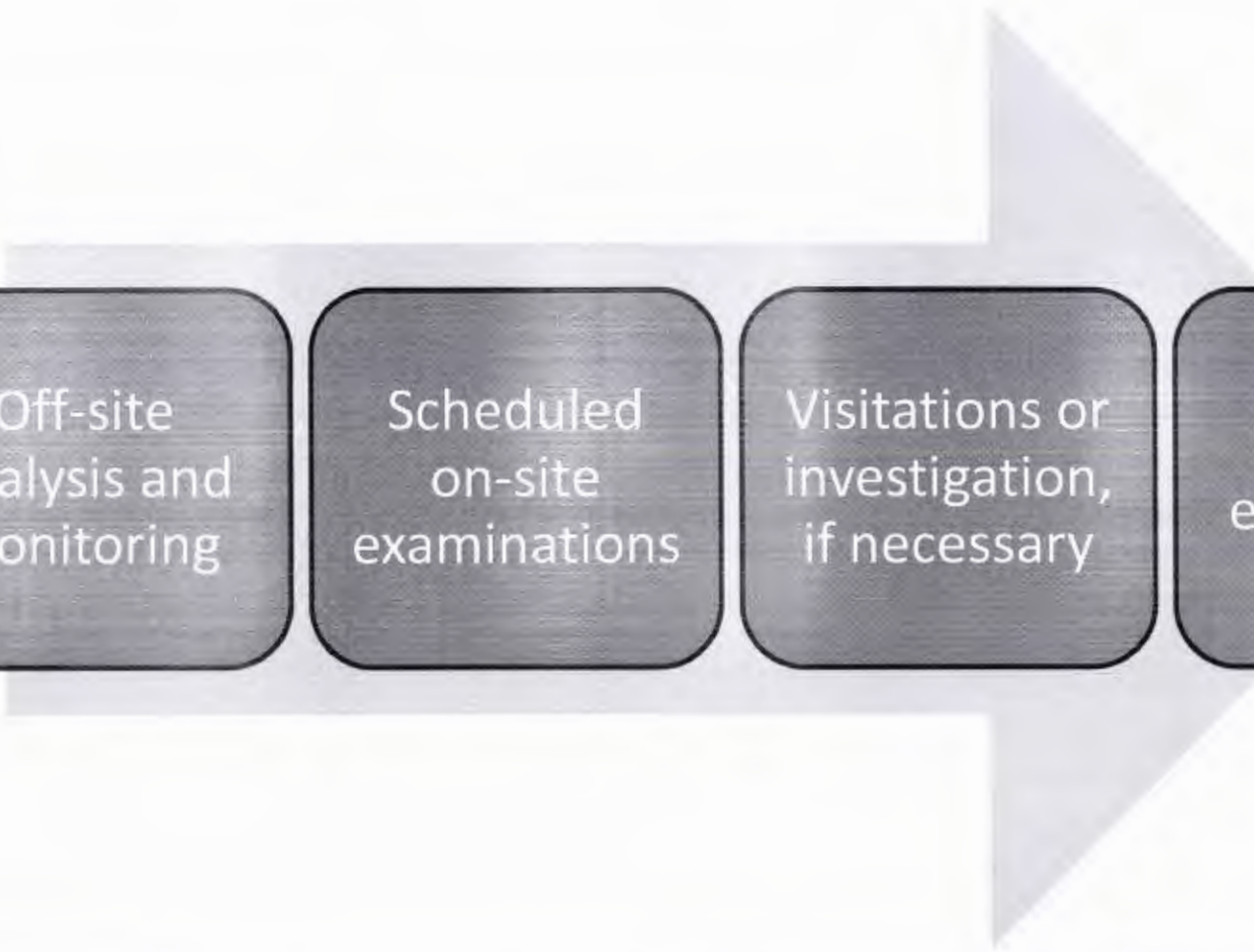


Why does NCCOB regulate all of this?





How does OCOB accomplish its work?



Off-site
analysis and
monitoring

Scheduled
on-site
examinations

Visitations or
investigation,
if necessary

Reports of
examination





History of State Financial Supervision in NC

- 1927 – Bank supervision added to Banking Department within Corporations Commission
- 1931 – Banking Department becomes its own agency
- 1961 – Consumer finance supervision added
- 1987 – Mortgage registration added
- 1989 – Refund anticipation loan facilitators added
- 1997 – Check cashing supervision added
- 2001
 - Savings institutions supervision transferred
 - Non-bank trust companies added
 - Mortgage supervision added
 - Money transmitter supervision added
- 2009 – Federally-compliant mortgage supervision added
- 2015 – Mortgage origination support registration added





Dual Banking System

- In the U.S., banking is regulated by both Federal and State governments.
 - Each government has its own set of laws, regulations, and policy statements.
 - Federal regulators generally issue joint regulations and policy statements, but each agency has its own examination manual.
- New banks must choose: National or State charter.
 - Banks are insured through FDIC.
 - Federal Reserve membership is optional.
 - Some banks will organize a holding company.





Types of Banking Institutions

National Charters

- National Bank – commercial banks
 - E.g. Wells Fargo, Bank of America, Citibank, JP Morgan
- Federal Savings Associations
 - E.g. AIG Federal Savings Bank, Synchrony, USAA
- Credit Unions
 - E.g. Navy Federal

State Charters

- Commercial Banks
 - E.g. BB&T, First-Citizens Bank, North State Bank
 - Suntrust, Fifth Third, South State (other states)
- Savings Banks
 - E.g. KS Bank, Roxboro Savings Bank
- Savings & Loan Associations
- Industrial Loan Companies
 - E.g. American Express Centurion, GE Capital, Sallie Mae
- Credit Unions
 - E.g. State Employees Credit Union, City of Raleigh Credit Union





Bank Holding Co., Financial Hold Co., & SIFIs

Bank holding companies

- A company that owns or controls one or more U.S. banks.
 - Usually called “Bancshares” or “Bancorp.”
 - “Source of strength” to the bank subsidiary.
 - No one (in their right mind) becomes a bank holding company by accident.
- Federal Reserve regulates bank holding companies.
 - Even if the bank is a non-member bank, Fed still has some oversight.
 - Bank holding companies are limited to activities “closely related to banking.”

Financial holding companies

- Bank holding company *plus*: Expanded universe of allowed activities.
- All Bank subs must be well-capitalized and well-managed, with satisfactory or better CRA rating.

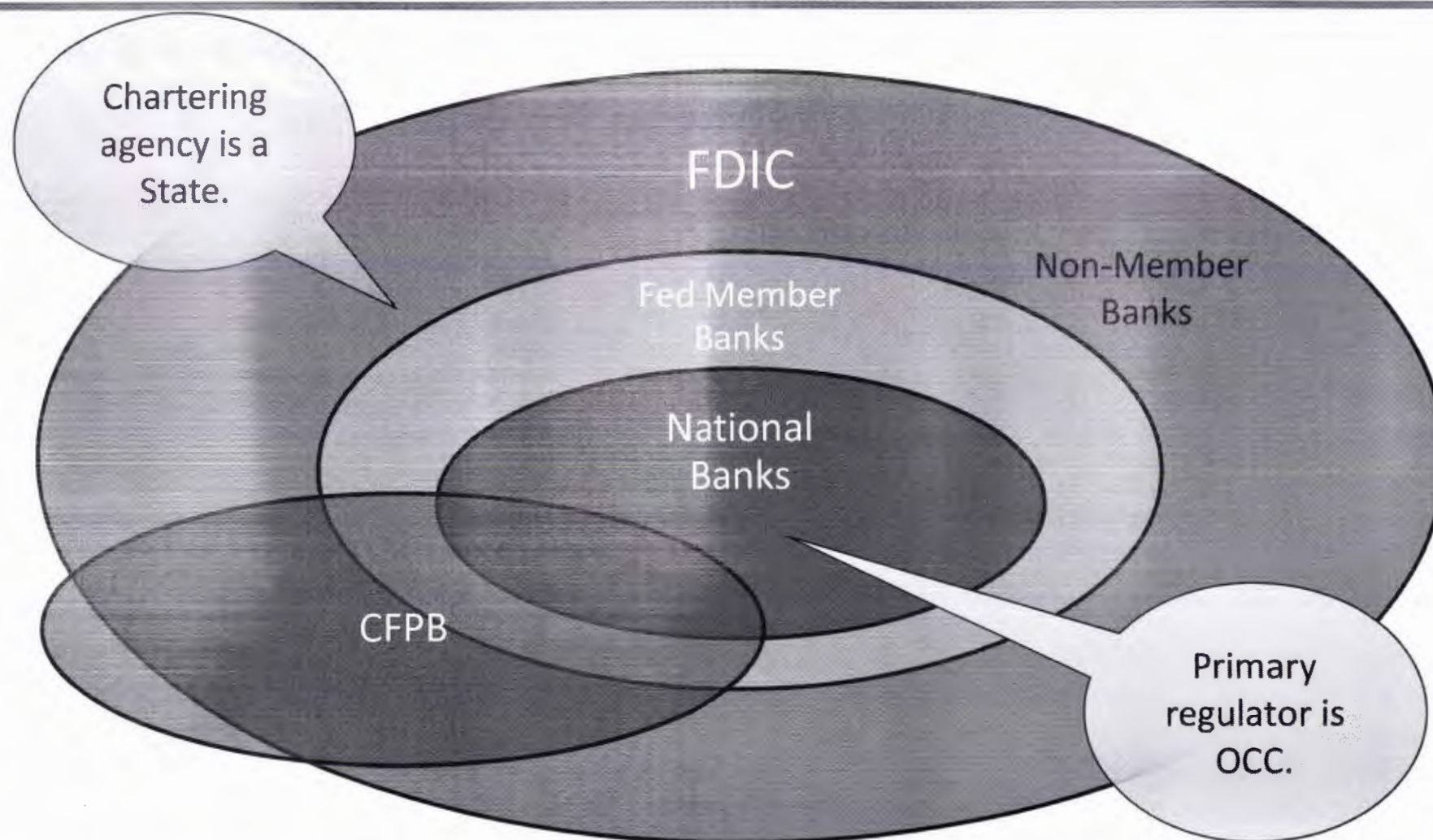
SIFIs (Systemically Important Financial Institutions)

- Bank and Non-bank organizations (mainly insurance companies) that will impact the economy if they fail.





Members, Non-Members, and the CFPB





What Do All These Regulators Do?

1. Examinations (N.C. Gen. Stat. § 53C-8-1, *et seq.*)
 - Banks are examined every 12 – 18 months for “safety and soundness.”
 - State or federal personnel, working jointly, physically visit the bank’s headquarters to review:
 - CAMELS!
 - » Capital, Asset Quality, Management, Earnings, Liquidity, and Sensitivity (to interest rate risk)
 - Consumer compliance exams are conducted separately.
2. Facilitate communication between bank and consumer.





What Law Applies to this Institution?

Institution Type	Primary State Law	Primary Federal Law
NC Chartered Commercial Banks	N.C. Gen. Stat. ch. 53C; 04 NCAC 03C	FDI Act, 12 U.S.C. 1811, et seq.; 12 CFR 300-399
NC Chartered Savings Banks	N.C. Gen. Stat. ch. 54C; 04 NCAC 16	FDI Act, 12 U.S.C. 1811, et seq.; 12 CFR 300-399
National Banks	State consumer protection laws.	National Bank Act, 12 U.S.C. 21, et seq., 12 CFR 1-128
National Savings Associations	State consumer protection laws.	Home Owners' Loan Act, 12 U.S.C. 1464, et seq.; 12 CFR 141 - 199
Other State-Chartered Institutions doing business in NC	State consumer protection laws.	FDI Act, 12 U.S.C. 1811, et seq., 12 CFR pt. 300-399
Holding Company	N.C. Gen. Stat. ch. 53c, art. 10	BHC Act of 1956, 12 U.S.C. 1841, et seq.; 12 CFR pt. 225





Where Can I Find Banking Laws?

North Carolina

- <http://www.nccob.gov/public/FinancialInstitutions/Banks/BanksLC.aspx>

FDIC

- <https://www.fdic.gov/regulations/laws/rules/>

Federal Reserve

- <http://www.federalreserve.gov/bankinforeg/reglisting.htm>

CFPB

- <http://www.consumerfinance.gov/regulations/>

NCUA

- <http://www.ncua.gov/Legal/Pages/default.aspx>





Other NCCOB Responsibilities

NCCOB also:

- Proposes new rules and rule modifications to implement NC statutes
- Facilitates resolution of consumer complaints against regulated entities
- Investigates violations of and administratively enforces the banking and financial services laws
- Provides education and financial literacy programs





2018-2019 Initiatives

- Streamline examinations and licensing process by leveraging computer-assisted analytics
- Increase efficiency through the use of off-site resources
- Coordinate extensively with sister states in examination and licensing multi-state entities
- Improve content and delivery of examiner training, and expedite paths to expertise
- Defend state legislative choices against broad federal preemption



