

**Summary of
North Carolina Mortgage
Debt Collection and
Servicing Act, N.C.G.S.
Chapter 45, Article 10***

Effective April 1, 2008

I. New Act Covers “Home Loans” and “Servicers” (§ 45-85)

- “Home loan” defined as a loan secured by North Carolina real property used or intended to be used by an individual borrower (or borrowers) as a dwelling, regardless of whether the loan is consumer-purpose.
- “Servicer” defined as in RESPA 12 U.S.C. § 2605(i), wherein the term means the entity responsible for servicing the loan, including the original lender or current holder, if that entity services the loan.
 - “Servicing” is defined in RESPA as “receiving any scheduled periodic payments from a borrower pursuant to the terms of the loan” (including escrows) and making the payments of principal and interest and such other payments with respect to amounts received from the borrower as may be required under the loan.

II. New Restrictions on Fees and Application of Payments (§ 45-86)

- As per Section 45-86 (a)(1), any fee incurred by the servicer with respect to a home loan must be –
 - Assessed within 45 days of the date incurred, provided that attorney fees, trustee fees and costs incurred as a result of foreclosure shall be assessed within 45 days of the date charged by the attorney or the trustee to the servicer.
 - Explained clearly and conspicuously in a statement mailed to the borrower at least 30 days after assessing the fee.

*Prepared by Donald C. Lampe, of the Firm’s Charlotte office, who represented industry trade groups in the enactment of the legislation. Email d Lampe@wcsr.com. This summary is for general information purposes only and is not intended, nor should it be relied upon, as legal advice.

- If the servicer fails to either charge the fee or provide the information as required under this subsection, the fee is waived.
- The servicer must accept and credit (or treat as credited) amounts received from the borrower within one business day of the date received, provided that the borrower has made the full contractual payment and provided “sufficient information” to credit his or her account (§ 45-86(a)(2)).
 - However, if the servicer uses the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date must be credited no later than the due date.
 - If any payment is received and not credited (or treated as credited, the servicer must give notice to the borrower by mail of the disposition of the payment, the reason the payment was not credited (or treated as credited) to the account and any actions necessary by the borrower to bring the account current.
- All fees charged by the servicer must be permitted by applicable law and the contracts between the parties.

III. Obligation of Servicer to Handle Escrows (§ 45-87)

- Any servicer that collects escrows on a home loan for insurance, taxes and other property related charges must collect and make all payments from the escrow account “so as to ensure that no late penalties are assessed or other negative consequences result.”
- These provisions apply even if the loan is delinquent or in default unless “the servicer has a reasonable basis to believe that recovery of these funds will not be possible or the loan is more than 90 days in default.”

IV. Borrower Requests For Information (§ 45-88)

- Borrower is granted right to request loan-level information from the servicer in two different scenarios (in addition to RESPA), i.e., (1) request for specific current loan information, and (2) request for historical loan information.
- In either scenario, (1) the servicer must make reasonable attempts to comply with the borrower’s request for information and to respond to any dispute initiated by the borrower about the loan, and (2) the borrower must submit a written request to the servicer that (x) “includes or otherwise enables the servicer to identify the name and account of the borrower (y) “includes a statement that the account is or

- may be in error or otherwise provides sufficient detail to the servicer regarding information sought by the borrower.”
- If the borrower submits a written request for specific loan information, the servicer must within 10 business days of receipt provide the borrower with written statement that includes the following information if requested –
 - Whether the account is current or, if the account is not current, an explanation of the default and the date of the default.
 - The current balance due on the loan, (including principal), the amount of funds held in a suspense account, the amount of the escrow balance known by the servicer and whether there are any escrow deficiencies or shortages known to the servicer.
 - The identity, address and other “relevant information” about the current holder, owner or assignee of the loan.
 - Telephone number and mailing address of a servicer representative with the information and authority to answer questions and resolve disputes.
- The borrower is entitled to one specific loan information statement in any 6-month period free of charge; the servicer shall provide additional statements if the borrower pays the servicer a reasonable charge for preparing and furnishing the statement not to exceed \$25.
- If the borrower submits a written request for historical loan information, the servicer must, within 25 business days of receipt, provide the borrower with the following information -
 - A copy of the original note or, if unavailable, an affidavit of lost note.
 - A statement that identifies and itemizes all fees and charges assessed under the loan transaction and provides a full payment history, identifying in a clear and conspicuous manner, all debts, credits, application and disbursement of payments received from or for the benefit of the borrower, and “other activity on the home loan including escrow account activity, if any.”
 - The period of the account history must cover at a minimum the 2-year period prior to the date of receipt of the request.
 - If the servicer has not serviced the loan for this entire 2-year time period, the servicer shall go back to the time the servicer begun servicing the home loan.

- If the servicer claims any delinquent or outstanding sums are owed prior to the 2-year (or lesser) period, the servicer must provide an account history beginning with the month that the servicer claims any outstanding sums are owed on the loan up to the date of the request.
- The borrower is entitled to one such statement in any 6-month period; the servicer must provide additional statements if the borrower pays the servicer “a reasonable charge for preparing and furnishing the statement” not to exceed \$50.
- The servicer has a duty of correction in connection with either type of notice from the borrower – the servicer must “correct any errors relating to the allocation of payments, the statements of account, or the payoff balance” identified in any of these notices [sic] from the borrower or “discovered through the due diligence of the servicer or other means.”

V. Remedies (§ 45-89)

- Any borrower injured by any violation of the Act may bring an action for recovery of actual damages. This is in addition to any equitable or legal remedies.
- The Commissioner of Banks, Attorney General and any party to a home loan may bring an action.
- As to private actions by a borrower, there are notification and cure provisions as follows –
 - The borrower (or the borrower’s representative) must give written notice to the servicer, at least 30 days prior to instituting an action for damages, of any claimed errors or disputes regarding the borrower’s home loan that forms the basis of the action, this notice shall not include a complaint or summons.
 - A servicer will not be in violation of the Act if a servicer shows, by a preponderance of the evidence, that –
 - The (alleged) violation was not intentional or the result of bad faith; and
 - Within 30 days of the notification from the borrower (or otherwise discovering the error), and prior to the institution of legal action by the borrower, the servicer “corrected the error and compensated the borrower for any fees or charges incurred by the borrower as a result of the violation.”
- These remedies in the Act do not limit the rights of the borrower to “enjoin a civil action, or make a counterclaim, cross-claim, or plead a defense in a civil action.”