

LAW	DEFINITIONS			TRIGGERS	
	LOANS SUBJECT TO THE LAW	DEFINITION OF POINTS AND FEES	DEFINITION OF TOTAL LOAN AMOUNT	APR TRIGGER	POINTS AND FEES TRIGGER
<p><b>North Carolina</b></p> <p>Restrictions and Limitations on High Cost Home Loans</p> <p>N.C. Gen. Stat. §§ 24-1.1E; § 24-10.2</p> <p>Effective Date (Section 24-1.1E): July 1, 2000</p> <p>Effective Date (Section 24-10.2): October 1, 1999</p> <p>Amended Date (Section 24-1.1E): October 1, 2003 (adding open-end lines of credit)</p> <p>Amended Date (Section 24-10.2): October 1, 2003 (adding open-end lines of credit)</p> <p>Amended Date (Section 24-1.1E (a)(5)): January 1, 2008 by 2007 HB 1817 (including back-end broker compensation in points and fees and adds Rate Spread Home Loans; applies to loans closed on or after that date)</p>	<p><u>Consumer Home Loan</u> A "consumer home loan" means a loan, including an open-end credit plan, in which:</p> <p>(i) the borrower is a natural person,</p> <p>(ii) the debt is incurred by the borrower primarily for personal, family, or household purposes, and</p> <p>(iii) the loan 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.</p> <p>A consumer home loan does not include a reverse mortgage loan.</p> <p>N.C. Gen Stat. § 24-10.2.</p> <p><u>High Cost Home Loan</u> A high-cost home loan is a loan where:</p> <p>(i) the principal amount of the loan, or initial maximum</p>	<p>Points and fees means:</p> <p>(i) All items required to be disclosed under 12 C.F.R. Sections 226.4(a) and (b) of Regulation Z, as amended from time to time, except interest or the time-price differential;</p> <p>(ii) All charges under 12 C.F.R. Section 226.4(c)(7) (<u>See</u> Endnote NC3), but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate (<u>See</u> Endnote NC4) of the lender;</p> <p>(iii) All compensation paid to a mortgage broker not otherwise included above, including compensation paid to a mortgage broker in a table funded transaction (<u>See</u> Endnote NC5); and</p> <p>(iv) The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents.</p> <p>For open end lines of credit, the term includes those points and fees described in paragraphs (i) through (iii) above that are charged at or before loan closing; plus:</p> <p>(i) the minimum additional fees the borrower would be required to pay to draw down an amount equal to</p>	<p>Total loan amount for a closed end loan has the same meaning as under federal Regulation Z for HOEPA loans.</p> <p>N.C. Gen. Stat. § 24-1.1E(a)(7).</p> <p>Total loan amount for HOEPA loans is defined as:</p> <p>Amount Financed (as disclosed on the Final TIL)</p> <ul style="list-style-type: none"> <li>- 4(c)(7) charges that are (i) points and fees and (ii) financed by the creditor (<u>See</u> Endnote)</li> <li>- "Credit Insurance" included as a point and fee financed by the creditor</li> </ul> <p>Total Loan Amount</p> <p>12 CFR Official Staff Commentary § 226.32(a)(1)(ii)(l).</p> <p>For purposes of the above, "Credit Insurance" is defined as premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt cancellation coverage (whether or not the debt cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of loss of life, health, or income or in the case of accident, written in connection with the credit transaction.</p> <p>"Total loan amount" for an open-end line of credit means the borrower's initial maximum credit limit.</p>	<p><u>First-Lien Loans</u> The rate at consummation exceeds by more than 8 percentage points for <u>first-lien loans</u> the yield on Treasury securities having comparable periods of maturity as of the 15<sup>th</sup> day of the month immediately preceding the month in which the creditor receives the application for the extension of credit.</p> <p><u>Subordinate-Lien Loans</u> The rate at consummation exceeds by more than 10 percentage points for <u>subordinate-lien loans</u> the yield on Treasury securities having comparable periods of maturity as of the 15<sup>th</sup> day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor.</p> <p>(<u>See</u> Endnote NC6).</p> <p>N.C. Gen. Stat. § 24-1.1E(a)(6).</p> <p><b>HOEPA Comparison</b> North Carolina's threshold is the same as HOEPA.</p> <p><b>PREPAYMENT FEE TRIGGER</b></p> <p>Note that North Carolina also has a third threshold for prepayment fees.</p> <p><u>Closed-End</u></p>	<p><u>First- and Subordinate-Lien Loans</u> Total points and fees for both first- and subordinate-lien loans payable by the consumer at closing exceeds:</p> <p>(i) five percent of the total loan amount for loans in a principal amount of \$20,000 or more; or</p> <p>(ii) the lesser of eight percent or \$1,000 for loans in a principal amount of less than \$20,000.</p> <p>N.C. Gen. Stat. § 24-1.1E(a)(6).</p> <p><b>HOEPA Comparison</b> The threshold for North Carolina loans is three percent less than for HOEPA loans for loans in a principal amount of \$20,000 or more. For loans in a principal amount of less than \$20,000 the threshold is the same as HOEPA except that the floor is \$1,000.</p> <p><u>Id.</u></p> <p>Lenders may exclude from the calculation of points and fees certain "bona fide loan discount points" (<u>See</u> below)</p>

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	<p>credit limit for open end lines of credit, does not exceed the <u>lesser of</u>: (a) the conforming loan size limit for a single family dwelling as established by Fannie Mae (<u>see</u> Endnote NC1); or (b) \$300,000;</p> <p>(ii) the borrower is a natural person;</p> <p>(iii) the debt is incurred by the borrow primarily for personal, family or household purposes;</p> <p>(iv) the loan is secured by either: (a) a security interest in a manufactured home (<u>see</u> Endnote NC2) which is or will be occupied by the borrower as the borrower's principal dwelling; or (b) a mortgage or deed of trust on real estate upon which there is located or will 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; and</p> <p>(v) the terms of the loan exceed the APR, points and fee, or prepayment fee threshold. (See Triggers Column)</p> <p>A high-cost home loan does not include reverse mortgage loans.</p>	<p>the total loan amount; and</p> <p>(ii) the maximum prepayment fees that may be charged or collected under the terms of the loan documents.</p> <p>Points and fees do not include:</p> <p>(i) 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; and</p> <p>(ii) 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; fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys' fees (if the borrower has the right to select the attorney from an approved list or otherwise); notary fees; escrow charges, so long as not otherwise included as a finance charge; title insurance premiums; and premiums for insurance against loss or damage to property, including insurance and flood insurance premiums, provided that the conditions in 12 C.F.R. Section 226.4(d) of Regulation Z are met.</p>	N.C. Gen. Stat. § 24-1.1E(a)(7).	<p>A closed-end loan is a high cost home loan if the loan documents permit the lender to charge or collect prepayment fees or penalties more than 30 months after the loan closing or which exceed, in the aggregate, more than two percent of the amount prepaid.</p> <p>N.C. Gen. Stat. § 24-1.1E(a)(6).</p> <p><u>See</u> Endnote NC7.</p> <p><u>Open-End</u> An open-end credit plan is a high cost home loan if the loan documents permit the lender to charge or collect prepayment fees or penalties:</p> <p>(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 a portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time;</p> <p>(ii) if the borrower has a right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time, more than 30 months after the date the borrower</p>	<p>and certain prepayment fees.</p> <p><b><u>Prepayment Fees</u></b> <u>Closed-End loans</u> For closed-end loans, excludable prepayment fees are those that may be charged or collected under the terms of the closed-end loan documents that do not exceed one percent of the amount prepaid and may not be collected more than 30 months after closing.</p> <p><u>Open-End Loans</u> For an open-end line of credit, excludable prepayment fees are those that may be charged or collected under the terms of the loan documents that do not exceed one percent of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees:</p> <p>(i) more than 30 months after the loan closing if the borrower has no right or option under the loan documents to repay all or any portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time or;</p> <p>(ii) if the borrower has a right or option under</p>

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	<p>N.C. Gen. Stat. § 24-1.1E(a)(4).</p> <p><u>Rate Spread Home Loan (see Endnote NC12)</u></p> <p>A rate spread home loan is a “home loan” that meet the APR triggers (see APR trigger column, Rate Spread Home Loans). A “home loan” is a loan that:</p> <p>(i) is not an equity line of credit, a construction loan or a reverse mortgage transaction (see Endnote NC13);</p> <p>(ii) the borrower is a natural person;</p> <p>(iii) the debt is incurred by the borrower for personal, family or household purposes;</p> <p>(iv) the principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time for Fannie Mae (see Endnote NC1);</p> <p>(v) the loan is secured by real property in NC that is (a) a security interest in a manufactured home (as defined in GS 143-147(7) which is or will be occupied by the borrower as the borrower’s principal dwelling; (b) a mortgage or deed of trust upon which there is located an existing structure designed principally for occupancy of from 1 to 4 families that is or will be occupied by the borrower as the</p>	<p>N.C. Gen. Stat. § 24-1.1E(a)(5).</p>		<p>voluntarily exercises that right or option; or</p> <p>(iii) which exceed, in the aggregate, more than two percent of the amount prepaid.</p> <p>N.C. Gen. Stat. § 24-1.1E(a)(6).</p> <p><u>See</u> Endnote NC8.</p> <p><u>Rate Spread Home Loans</u></p> <p>A Rate Spread Home Loan is a “home loan” which <u>both</u> provisions apply:</p> <p>(i) The difference between the APR for the loan and the yield on U.S. Treasury securities having comparable periods of maturity is either equal to or greater than (a) 3 percentage points if the loan is secured by a first lien or 5 percentage points if the loan is secured by a subordinate-lien; <u>and</u></p> <p>(ii) The difference between the APR for the loan and the Conventional mortgage rate is either equal to or greater than (a) 1.75 percentage points, if the loan is a first lien, or 3.75 percentage points if the loan is a subordinate-lien.</p> <p>“Conventional mortgage rate” means the most recent daily contract interest rate on commitments for fixed-rate first</p>	<p>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.</p> <p><b><u>Bona Fide Discount Points</u></b> A lender can exclude: (i) up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan’s interest rate will be discounted does not exceed by more than one percentage point 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; and (ii) up to and including one bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan’s interest rate will be discounted does not exceed by more than two percentage points the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either</p>

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	<p>borrower's principal dwelling; or (iii) a mortgage or deed of trust on property upon which there is to be constructed using the proceeds a structure(s) designed for 1-4 family occupancy and, when completed, will be occupied as the borrower's principal dwelling; and</p> <p>(vi) the loan purpose is to (a) purchase the dwelling, (b) construct, repair or improve the dwelling or the real property on which it is located; (c) satisfy and replace an existing obligation secured by the same real property; or (d) consolidate existing consumer debts into a new home loan.</p>			<p>mortgages published by the Federal Reserve Board in Statistical Release H.15 or any publication that may supercede it during the week preceding the week in which the interest rate for the loan is set.</p>	<p>Fannie Mae or Freddie Mac, whichever is greater.</p> <p>N.C. Gen. Stat. § 24-1.1E(a)(6)(b).</p> <p>A bona fide loan discount point means 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-priced 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.</p> <p>N.C. Gen. Stat. § 24-1.1E(a)(3).</p>

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	RESCISSION	CIVIL PENALTIES	CRIMINAL PENALTIES	ASSIGNEE LIABILITY	CORRECTIVE ACTION/ SAFE HARBOR	STATUTE OF LIMITATIONS
<p><b>North Carolina</b></p> <p>Restrictions and Limitations on High Cost Home Loans</p> <p>N.C. Gen. Stat. §§ 24-1.1E; § 24-10.2</p> <p>Effective Date (Section 24-1.1E): July 1, 2000</p> <p>Effective Date (Section 24-10.2): October 1, 1999</p> <p>Amended Date (Section 24-1.1E): October 1, 2003 (adding open-end lines of credit)</p> <p>Amended Date (Section 24-10.2): October 1, 2003 (adding open-end lines of credit)</p> <p>Amended Date (Section 24-1.1E (a)(5)): January 1, 2008 (including back-end broker compensation in points and fees and adds Rate Spread Home Loans; applies to loans closed on or after that date)</p>	<p><u>High Cost Home Loans and Consumer Home Loans</u></p> <p>In a suit instituted by the Attorney General under Chapter 15 (Unfair and Deceptive Practices), the court may order the restoration of any money and the cancellation of any contract.</p> <p>N.C. Gen Stat. § 75-15.1; <u>See</u> Endnote NC11.</p>	<p><u>High Cost Home Loans and Consumer Home Loans</u></p> <p>A loan that violates Section 24-1.1E or 24-10.2 is declared usurious and unlawful as an unfair and deceptive act (under Chapter 75).</p> <p>A consumer may recover damages under the interest and usury chapter or Chapter 75, but not both.</p> <p>N.C. Gen. Stat. § 24-1.1E(d), 24-10.2(e).</p> <p>A mortgage broker who brokers a high cost home loan or a consumer loan in violation of Section 24-1.1E(b) or (c) will be jointly and severally liable with the lender.</p> <p><u>Id.</u> § 24-1.1E(g) (as amended by 2007 HB 1817).</p> <p><u>Rate Spread Home Loans</u></p> <p>A rate spread home loan that violates Section 24-1.1F(b) or (c) is declared usurious and any prepayment penalty in violation of the section will be unenforceable. The Attorney General, the Commissioner of Banks, or any party to a rate spread home loan may enforce the provisions of the section. A</p>	<p><u>High Cost Home Loans and Consumer Home Loans</u></p> <p>The Attorney General has the authority to indict and prosecute persons for violating Chapter 75.</p> <p>N.C. Gen. Stat. § 75-13.</p>	<p><u>High Cost Home Loans, Consumer Home Loans and Rate Spread Home Loans</u></p> <p>Sections 24-1.1E, 24-1.1F, and 24-10.2 do not expressly provide for assignee liability.</p> <p>State courts have held that the usury penalty is effective against assignees. <u>See e.g., Faison v. Grandy</u>, 126 N.C. 827, 36 S.E. 276 (1900), rehearing allowed, 128 N.C. 438, 38 S.E. 897 (1901) (“The forfeiture of interest is the declaration of the law, and it accompanies the debt into whatsoever hands it may come.”); <u>Swindell v. Federal Nat’l Mortgage Ass’n</u>, 330 N.C. 153, 409 S.E. 2d 892 (N.C. 1991).</p> <p><u>See also</u> Rescission Column.</p> <p>Notwithstanding the above, an assignee may be able to claim protection as a holder in due course. Under the UCC, the right of a holder in due course to enforce the obligation of a party to pay the negotiable instrument is subject to the following defenses:</p> <p>(i) infancy of the obligor to the extent it is a defense to a simple contract;</p> <p>(ii) <u>duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor</u>;</p> <p>(iii) fraud that induced the obligor</p>	<p><u>High Cost Home Loans</u></p> <p><u>Corrective Action</u> Lenders will not be deemed to have violated Section 24-1.1E if the lender established that within 30 days of the loan closing and prior to the institution of any action, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (a) make the high-cost home loan satisfy the prohibited acts and practices for such loans, or (b) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of Section 24-1.1E.</p> <p><u>Safe Harbor</u> Lenders will not be deemed to have violated Section 24-1.1E if the compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, and within 60 days after the discovery of the compliance failure and prior to the institution of any action or the receipt of written notice of the compliance failure, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the</p>	<p>Any action seeking the forfeiture of interest on the note must be brought within two years of consummation of the note. Any action seeking return of two times interest paid must be brought within two years from the date of payment.</p> <p>In an action to recover the penalty for usury, including an action regarding the financing of usurious points, usurious fees, or other usurious charges, the two-year period accrues with each payment made and accepted on the loan.</p> <p>N.C. Gen. Stat. § 1-53, as amended by N.C. HB 1374, effective August 17, 2007.</p> <p>Civil actions must be brought under Chapter 75 within four years.</p> <p><u>Id.</u> § 75-16.</p>

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		<p>mortgage broker who brokers a rate spread home loan that violates the provisions of the section will be jointly and severally liable.</p> <p><u>Id.</u> § 24-1.1F(d) (as amended by 2007 HB 1817).</p> <p><u>Usury</u> In any usury action the borrower may seek to recover twice the amount of interest paid and the forfeiture of the entire interest.</p> <p><u>See</u> Endnote NC9 for a discussion of case law relating to usury holdings in North Carolina and the availability of attorneys fees.</p> <p>N.C. Gen. Stat. § 24-2.</p> <p><u>Chapter 75</u> Damages assessed pursuant to Section 75-1.1 are automatically trebled. <u>See Pinehurst, Inc. v. O'Leary Bros. Realty</u>, 79 N.C. App. 51, 338 S.E.2d 918 (1986).</p> <p>Specifically, for civil actions brought under Chapter 75 "such person, firm or corporation so injured shall have a right of action on account of such injury done, and if damages are assessed in such case</p>		<p>to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms; or</p> <p>(iv) discharge of the obligor in insolvency proceedings.</p> <p>Usury violations have been found to constitute "other law," under the terms of the statute, and where state law voids the entire obligation as a result of usury, illegality from usury has been recognized as a valid defense against a holder in due course. However, secondary sources report that in those states that provide only for the forfeiture of interest as a result of usury, the obligation is merely voidable and illegality from usury has <u>not</u> been considered a valid defense against a holder in due course.</p> <p>Thus, North Carolina law extends liability for the forfeiture of interest, under common law principles, to an assignee or holder in due course. The North Carolina UCC, however, on its face, makes usury a defense against a holder in due course if the obligation is "entirely null and void." No guidance exists to determine whether North Carolina's common law principles also apply to a holder in due course under the UCC or whether these common law principles are still viable in light of the UCC. Without clear precedence on the issue, however, the state of assignee liability for usury violations in North Carolina is unresolved.</p>	<p>borrower, (a) make the high-cost home loan satisfy the prohibited acts and practices for such loans; or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section.</p> <p>Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.</p> <p>N.C. Gen. Stat. § 24-1.1E(e).</p> <p><u>Rate Spread Home Loans</u></p> <p><u>Corrective Action</u> Lenders will not be deemed to have violated Section 24-1.1F if the lender established that within 90 days of the loan closing and prior to the institution of any action, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (a) make the rate spread home loan satisfy the prohibited acts and practices for such loans, or (b) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a rate spread loan subject to the provisions of Section 24-1.1F.</p>	

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		<p>judgment shall be rendered in favor of the plaintiff and against the defendant for treble the amount fixed by the verdict.”</p> <p><u>Id.</u> § 75-16.</p> <p><u>See</u> Endnote NC11 for a discussion of case law and the availability of attorneys fees and Attorney General actions.</p> <p>Effective 1/1/2008, the NC Banking Commissioner has rulemaking authority to implement and interpret the law.</p>			<p><u>Safe Harbor</u></p> <p>Lenders will not be deemed to have violated Section 24-1.1F if the compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, and within 120 days after the discovery of the compliance failure and prior to the institution of any action or the receipt of written notice of the compliance failure, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (a) make the rate spread home loan satisfy the prohibited acts and practices for such loans; or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a rate spread home loan subject to the provisions of this section.</p> <p>Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.</p> <p><u>Id.</u> § 24-1.1F(f) (as amended by 2007 HB 1817).</p> <p><u>Consumer Home Loans</u></p>	

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					Section 24-10.2 does not provide for corrective action or safe harbor for violations of Section 24-10.2.	

## NC1 - Fannie Mae Conforming Loan Amounts

### First Lien

2008 - 417,000\*  
2007 - \$417,000  
2006 - \$417,000  
2005 - \$359,650  
2004 - \$333,700  
2003 - \$322,700  
2002 - \$300,700

### Second Lien

2008 – 208,500  
2007 - \$208,500  
2006 - \$208,500  
2005 - \$179,825  
2004 - \$166,850  
2003 - \$161,350  
2002 - \$150,350

\*The Economic Stimulus Act of 2008, H.R. 5140 110th Cong. (2008), which was signed into law on February 13, 2008, establishes temporary increases to Fannie Mae's and Freddie Mac's conventional loan limits for first lien mortgage loans in high-cost areas, as defined by the U.S. Department of Housing and Urban Development. For loans made in high-cost areas, the conforming loan limits may rise on a temporary basis to 125 percent of the area median home price, not to exceed \$729,750, as listed here: [www.ofheo.gov/media/hpi/AREA\\_LIST.pdf](http://www.ofheo.gov/media/hpi/AREA_LIST.pdf). In situations where 125 percent of the area median home price is less than \$417,000, the loan limit will remain at \$417,000. Although the temporary jumbo conforming loan limits apply to loans originated from July 1, 2007 to December 31, 2008, we do not believe that jurisdictions will apply these conforming loan limits retroactively for purposes of calculating high-cost, predatory loans. We have not, however, confirmed this view with the state regulators, but could do so upon request.

## NC2 – Manufactured Home

"Manufactured home" is defined as a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. "Manufactured home" includes any structure that meets all of the requirements herein except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of HUD and complies with the standards required by law.

For manufactured homes built before June 15, 1976, "manufactured home" means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. "Manufactured home" also means a double-wide manufactured home, which is two or more portable manufactured housing units designed for transportation on their own chassis that connect on site for placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. N.C. Gen. Stat. § 143-145(7).

## NC3 – Section 226.4(c)(7)

Those charges identified in Section 226.4(c)(7) are as follows: (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

performed prior to closing, including fees related to pest-infestation or flood hazard determinations; and (v) amounts required to be paid into escrow and trustee accounts if the amounts would not otherwise be included in the finance charge. 12 C.F.R. § 226.4(c)(7).

#### NC4 - Affiliate

"Affiliate" means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), as amended from time to time.

#### NC5 – Broker Compensation

A bona fide sale of a loan in the secondary mortgage market shall not be considered a table-funded transaction, and a table-funded transaction shall not be considered a secondary market transaction. Prior to the amendments contained in 2007 HB 1817 only broker compensation paid directly by the borrower to a mortgage broker was included in the definition of points and fees. As amended, both direct and indirect broker compensation should be included in the points and fees calculation. For purposes of this provision, a mortgage broker is, as defined in N.C. Gen. Stat. § 53-243.01(14), a person who acts, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by accepting or offering to accept an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage loan commitments or interest rate guarantee agreements to borrowers, or engaging in tablefunding of mortgage loans, whether such acts are done through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers. N.C. Gen. Stat. § 24-1.1E(a) (4a); id. § 53-243.01(1) and (14).

“A table-funded transaction is a loan 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 contemporaneously or within one business day of the funding of the loan to the person that advanced the funds.” Id. § 24-1.1E(a)(5a).

#### NC6 – APR

"Annual percentage rate" means the annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated thereunder by the Federal Reserve Board (as said Act and regulations are amended from time to time).

#### NC7 – Prepayment Fees – Closed End

As worded, contracting for any prepayment fee more than 30 months after loan closing could make the loan a high cost home loan. Moreover, contracting for more than 2% of the prepaid amount in prepayment fees and penalties regardless of when the loan is prepaid could make the loan a high cost home loan. Prepayment fees are prohibited on first-lien, closed-end loans of \$150,000 or less, and, thus, the prepayment threshold should not come into consideration on such loans. For first-lien, closed-end loans over \$150,000, North Carolina law does not prohibit the lender and borrower from contracting for a prepayment fee or the prepayment period over which the prepayment fee can be imposed. However, for a residential one-to-four family, first-lien mortgage of more than \$150,000 and up to \$300,000 contracting for a prepayment fee on such loan (i) after 30 months have elapsed from the time of its origination, or (ii) that exceeds 2 percent of the amount prepaid, makes the loan a high cost home loan, even though a prepayment fee on such loan is not otherwise prohibited by North Carolina law.

#### NC8 – Prepayment Fees – Open-End

Note that prepayment fees are prohibited under North Carolina law for “equity lines of credit.” Equity lines of credit are defined as an agreement in writing between a lender and a borrower for an extension of credit pursuant to which:

- (i) at any time within a specified period not to exceed 30 years the borrower may request and the lender is obligated to provide, by honoring negotiable instruments drawn by the borrower or otherwise, advances up to an agreed limit;
- (ii) any repayments of principal by the borrower within the specified period will reduce the amount of advances counted against the aggregate limit; and

- (iii) the borrower's obligation to the lender is secured by a mortgage or deed of trust relating to real property which mortgage or deed of trust shows on its face the maximum principal amount which may be secured at any one time and that it secures an equity line of credit governed by the provisions of Article 9 of Chapter 45.

Arguably, the prepayment fee trigger will apply to loans where the lender otherwise has authority to impose prepayment fees.

#### NC9 – Prohibited Practices and Required Conduct

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

- (1) No call provision. -- No high-cost home loan may contain a provision which permits the lender, in its sole discretion, to accelerate the indebtedness. This provision does not apply when repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule.
- (2) No balloon payment. -- No high-cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.
- (3) No negative amortization. -- No high-cost home loan may contain a payment schedule with regular periodic payments that cause the principal balance to increase.
- (4) No increased interest rate. -- No high-cost home loan may contain a provision which increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.
- (5) No advance payments. -- No high-cost home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.
- (6) No modification or deferral fees. -- A lender may not charge a borrower any fees to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan.

The following acts and practices are prohibited in the making of a high-cost home loan:

- (1) No lending without home-ownership counseling. -- A lender may not make a high-cost home loan without first receiving certification from a counselor approved by the North Carolina Housing Finance Agency that the borrower has received counseling on the advisability of the loan transaction and the appropriate loan for the borrower.
- (2) No lending without due regard to repayment ability. -- As used in this subsection, the term "obligor" refers to each borrower, co-borrower, cosigner, or guarantor obligated to repay a loan. A lender may not make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan). An obligor shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the obligor's total monthly debts, including amounts owed under the loan, do not exceed fifty percent (50%) of the obligor's monthly gross income as verified by the credit application, the obligor's financial statement, a credit report, financial information provided to the lender by or on behalf of the obligor, or any other reasonable means; provided, no presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that, at the time the loan is consummated, the obligor's total monthly debts (including amounts owed under the loan) exceed fifty percent (50%) of the obligor's monthly gross income.
- (3) No financing of fees or charges. -- In making a high-cost home loan, a lender may not directly or indirectly finance:
- Any prepayment fees or penalties payable by the borrower in a refinancing transaction if the lender or an affiliate of the lender is the noteholder of the note being refinanced;
  - Any points and fees; or
  - Any other charges payable to third parties.
- (4) No benefit from refinancing existing high-cost home loan with new high-cost home loan. -- A lender may not charge a borrower points and fees in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same lender as noteholder.

(5) Restrictions on home-improvement contracts. -- A lender may not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan other than (i) by an instrument payable to the borrower or jointly to the borrower and the contractor, or (ii) at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the disbursement.

(6) No shifting of liability. -- A lender is prohibited from shifting any loss, liability, or claim of any kind to the closing agent or closing attorney for any violation of this section.

N.C. Gen. Stat. § 24-1.1E.

The following are prohibited practices for consumer home loans:

(1) Credit Insurance Premiums. It shall be unlawful for any lender in a consumer home loan to finance, directly or indirectly, any credit life, disability, or unemployment insurance, or any other life or health insurance premiums; provided, that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender.

(2) Flipping. No lender may knowingly or intentionally engage in the unfair act or practice of "flipping" a consumer home loan. "Flipping" a consumer loan is the making of a consumer home loan to a borrower which refinances an existing consumer home loan when 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. This provision shall apply regardless of whether the interest rate, points, fees, and charges paid or payable by the borrower in connection with the refinancing exceed those thresholds specified for high cost home loans.

(3) Encouraging Default. No lender shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a consumer home loan that refinances all or any portion of such existing loan or debt.

N.C. Gen. Stat. § 24-10.2.

#### NC10 - Usury Claims

Below is a summary of the penalties and remedies available in the event a person seeks damages or penalties under the "usury" theory. Note that, except as indicated otherwise, the remedy or damage discussed applies to both high cost home loans and consumer home loans.

- **Forfeiture of Interest** – The knowing, taking, receiving, reserving or charging of a greater rate of interest than permitted under the Interest Chapter results in a forfeiture of interest on the loan.

Usurious interest is deemed to be "charged" when the borrower agrees or promises to pay it. See e.g. Haanebrink v. Meyer, 47 N.C. App. 646 (N.C. Ct. App. 1980). Thus, upon the borrower's signing of a note that calls for usurious interest (which a violation of Section 24-1.1E is statutorily determined to be) the lender is "charging" usurious interest for purposes of the statute. See id.

"Interest" here is interpreted to mean all of the interest on the loan, and not just that amount of interest that exceeds the usury ceiling. As such, pursuant to this penalty, all of the interest charged on the loan is forfeited. See e.g. Faison v. Grandy, 126 N.C. 827 (N.C. 1900) ("The forfeiture now is the interest only, whereas before 1876 the forfeiture was the interest and the debt, because the contract was void"); Wilkens v. Commercial Fin. Co., 237 N.C. 396 (N.C. 1953) ("[U]sury does not invalidate a contract. It simply works as a forfeiture of the entire interest.")

Although it is generally true that to prevail on a charge of usury, the borrower must show that the charging of a usurious rate was willful, here where the statute simply declares the loan usurious, there appears to be no burden on the borrower to prove intent.

- **Two Times Interest Paid** – In those cases where a greater rate of interest has been paid, the person or his legal representative, may recover back twice the amount of interest paid. This remedy is available in addition to the forfeiture of interest. See e.g. Wilkens v. Commercial Fin. Co., 237 N.C. 396 (N.C. 1953).

Here, the remedy is not triggered upon the "charging" of interest. Rather, the borrower must actually pay a usurious rate of interest, which, for purposes of the covered loans appears to be mere payment of the loan irrespective of the rate of interest charged, since the entire loan is declared usurious.

The court in Ragan v. Stephens, 178 N.C. 101 (N.C. 1919) made clear the distinction between this remedy and the forfeiture remedy, “[a]s to the first, the penalty is the elimination of the usury and the forfeiture of the interest, and as to the second, when usurious interest is actually paid, the additional penalty of recovery of double the amount of the usury . . . . It is well settled that the penalty is not incurred by the *charging* of usurious interest; it is by the *taking* the usury that the party incurs the penalty, and that no action lies therefore until it is paid.”

The amount of interest that is then doubled is the entire amount of interest paid – not just that amount over the applicable usury ceiling. The court in Taylor v. Parker, 137 N.C. 418 (N.C. 1905) held “[t]he payment of \$156.04 on 20 March 1899, was a usurious transaction, for the legal interest then due was only \$106.04 . . . . Under the clear terms of the statute the plaintiff is entitled to recover back double the entire interest paid at that time, *i.e.*, \$312.08, not merely double the usurious excess.

- **Costs and Attorney’s fees** – Generally speaking, the parties to a usury suit cannot collect court costs (into which attorney’s fees are generally subsumed). N.C. Gen. Stat. § 6-25. Thus, unless expressly provided for by statute, a party cannot recover court costs when bringing action under a usury theory.

With respect to consumer home loans, such express authority is provided. The presiding judge may, at his or her discretion, allow reasonable attorneys’ fees, upon a finding that:

- (i) the party charged with the violation has willfully engaged in the act or practice, and there was unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit; or
- (ii) the party instituting the action knew, or should have known, that the action was frivolous and malicious.

## NC11 – Chapter 75 Claims

### 1. *Remedies Available Exclusively to Attorney General*

- **Voiding of Loan** – For any suit that is initiated by the Attorney General, the court may order restoration of money and cancellation of the obligation.
- **Attorney General Suit** – The Attorney General may recover, for knowing violations, a civil penalty of up to \$5,000 per violation. The Attorney General also may indict and prosecute violators.

In determining the amount of the civil penalty, the court must consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting the violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken.

### 2. *Remedies Available to Any Party*

- **Treble Damages** – Damages assessed pursuant to Section 75-1.1 are automatically trebled.

Where the automatic trebling of damages is already punitive in nature, North Carolina courts have found that punitive damages are not available for UDAP claims. See Pinehurst, Inc. v. O’Leary Bros. Realty, 79 N.C. App. 51, 338 S.E.2d 918 (1986) (Because an award of treble damages under Chapter 75 is bottomed upon ‘private enforcement’ and ‘punitive measure’ considerations, we believe an additional award of punitive damages would necessarily be duplicative, to the extent that the treble damage award consists of a punitive element); Jennings Glass Co. v. Brummer, 88 N.C. App. 44 (N.C. 1987) (Once a Chapter 75 violation is shown, trebling of damages is automatic . . . We therefore hold that plaintiff is entitled to have its actual damages trebled and to an appropriate award of attorney’s fees . . . . [A] plaintiff in a case such as this is not entitled to recover both punitive damages and treble damages . . . . The award of punitive damages shall be stricken, and plaintiff’s actual damages shall be trebled.)

- **Attorney’s Fees** – The prevailing party may recover attorney’s fees.

In the court's discretion, the presiding judge may allow reasonable attorney's fees to the attorney representing the prevailing party to be included as part of the court costs upon a finding that: (i) the party charged with the violation has willfully engaged in the act or practice, and there was an unwarranted refusal by such party to fully resolve the matter that constitutes the basis of the suit; or (ii) the party instituting the suit knew, or should have known, the action was frivolous and malicious.

#### NC12 – Rate Spread Home Loans

The following requirements apply to a rate spread home loan:

(i) No prepayment fees or penalties shall be charged or collected.

(ii) No lender shall make a rate spread home loan unless the lender reasonably and in good faith believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, has the ability to repay the loan according to its terms and to pay applicable real estate taxes and hazard insurance premiums. If the lender making a rate spread home loan knows that one or more mortgage loans secured by the same real property will be made contemporaneously to the same borrower with the rate spread home loan being made by that lender, the lender making the rate spread home loan must document the borrower's ability to repay the combined payments of all loans on the same real property.

(1) A lender's analysis of an obligor's ability to repay a rate spread home loan according to the loan terms and to pay related real estate taxes and insurance premiums shall be based on a consideration of the obligor's credit history, current and expected income, current obligations, employment status, and other financial resources other than the obligor's equity in the real property that secures repayment of the rate spread home loan.

(2) In determining an obligor's ability to repay a rate spread home loan, the lender shall take reasonable steps to verify the accuracy and completeness of information provided by or on behalf of the obligor using tax returns, payroll receipts, bank records, reasonable alternative methods, or reasonable third-party verification.

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

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

#### NC13 - Equity Line of Credit

An equity line of credit means a loan, other than an exempt loan, that satisfies all of the following conditions:

a. The lender is a bank.

b. The loan is a revolving line of credit, open-end loan, revolving credit plan, or revolving credit card plan, and the loan is secured by a mortgage or deed of trust on real property.

c. At any time within a specified period not to exceed 30 years the borrower may request and the lender is obligated to provide credit advances up to the agreed aggregate credit limit. As used in this sub-subdivision, "lender is obligated" means that the lender is contractually bound to provide credit advances. However, the equity line of credit and the lender's obligation to make credit advances shall be subject to the provisions of section 226.5b(f) of Title 12 of the Code of Federal Regulations and the official commentaries and rulings issued pursuant thereto, as the same may be amended from time to time, without regard to whether that section of the Code of Federal Regulations would otherwise apply to the loan.

d. Any repayments of principal by the borrower within the specified time will reduce the amount of advances counted against the aggregate credit limit.

e. The initial loan amount is \$10,000 or more. On January 1, 2008, and on January 1 every five years thereafter, the minimum initial loan amount sufficient to qualify a loan closed on or after that date as an equity line of credit under this section shall be increased by \$1,000. For example, a loan closed on or after January 1, 2008, but prior to January 1, 2013, shall not be considered an equity line of credit unless the initial loan amount is \$11,000 or more, and a loan closed on or after January 1, 2013, but prior to January 1, 2018, shall not be considered an equity line of credit unless the initial loan amount is \$12,000 or more.

An equity line of credit shall cease being an equity line of credit subject to the provisions of this section from and after the date the loan amount is reduced below the equity line of credit's initial loan amount unless (i) the loan amount was reduced for one or more of the reasons or pursuant to one or more of the methods specified in section 226.5b(f)(2) or section 226.5b(f)(3)(vi) of Title 12 of the Code of Federal Regulations and the official commentaries and rulings issued pursuant thereto, as the same may be amended from time to time, without regard to whether that section of the Code of Federal Regulations would otherwise apply to the loan, or (ii) the loan amount 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 loan amount of the equity line of credit is no greater than the difference between the loan amount secured by the refinancing mortgage and the outstanding principle balance of the loan being refinanced.

An "exempt loan" is a loan in which: (1) The loan amount is \$300,000 or more; or (2) The borrower is a person other than a natural person; or (3) The loan is obtained by a natural person primarily for a purpose other than a personal, family, or household purpose. 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 all regulations and rulings issued pursuant to that Act, as the same may be amended from time to time. N.C. Stat. Ann § 24-9(a)(2), (3).

A "bank" means a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States. However, 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. Id. §§ 24-9(a)(1).

Therefore, as of January 1, 2008, an open-end loan that is not made by a bank, or where its initial loan limit is less than \$11,000 would not be exempt from the definition of a rate spread home loan. Further, a loan that meets the definition of an "exempt" loan would not be exempt from the definition of a rate spread home loan.