

MAXIMUM PREPAYMENT FEES ON NORTH CAROLINA RESIDENTIAL MORTGAGE LOANS

<u>Loan Type</u>	<u>Loan Amount</u>	<u>Maximum Prepayment Fee</u>	<u>Law</u>	<u>Note(s)</u>
Owner-occupied 1-4 Family First Lien	\$150,000 or less	PROHIBITED	G.S.24-1.1A(b)(1)	1, 3, 4, 5, 6
	More than \$150,000	As negotiated	G.S.24-1.1A(b)(1)	3, 4, 5, 6
Other First lien	\$100,000 or less	2%, during 1st 3 years after 1 st principal payment; PROHIBITED on construction loans	G.S.24-10(b)	2, 4, 5, 6
<i>or</i>				
Junior Lien	More than \$100,000	As negotiated, except PROHIBITED on construction loans	G.S.24-10(b)	2, 4, 5, 6
Equity Line of Credit (First or junior lien)	Any amount	PROHIBITED	G.S.45-81(c)	5, 6, 7

NOTES

1. The prohibition applies only if the loan (i) is to an individual (ii) is for personal, family or household purposes and (iii) was made on or after October 1, 1999 or later. Otherwise, refer to "Other First Lien".
2. Applies to purchase and refinance loans ONLY. Prohibited on construction loans (defined as a loan which is: (i) made to finance all or part of the cost of construction of building or other improvements and (ii) disbursed periodically as work progresses over not > 18 mos. (loans up to \$25,000) or 36 mos. (>\$25,000). Advances may include part or all of purchase price of real property. (See G.S.24-10(c)).
3. Applies to purchase, refinance and construction loans.
4. Regardless of the application of the preemption rules (see below), all or part of prepayment fee may be includable in the "Total Points and Fees" calculation for purposes of determining whether a loan is covered by the North Carolina "High Cost Loan Act" (See G.S.24-1.1E(a)(6)b.3).
5. Special prepayment fee rules apply to loans covered by the federal "Home Ownership and Equity Protection Act of 1994 ("HOEPA") (15 U.S.C.1639 and Section 32 of Federal Reserve Regulation "Z" (12 C.F.R.226.32).
6. Subject to possible preemption by federal law (see below), no prepayment fee is permitted on a brokered "mortgage loan" [a non-business purpose, residential mortgage loan to a natural person - see G.S. 53-243.01(15)] of \$150,000 or less if the brokerage activity occurred on or after July 1, 2002 (see G.S.53-243.11(5), 53-243.11(10) and G.S. 24-2.4)
7. If a variable rate equity line is converted by the borrower to a fixed rate loan repayable over a specified term, a bank lender may impose a fee of not more than 2% of the amount prepaid within 30 months after such conversion (*eff. 10/1/03, N.C.Session Law 2003-401*)

FEDERAL PREEMPTION

Under certain circumstances, the above limits may be preempted by federal law. In these cases, the lender may negotiate a higher prepayment fee than would be allowed by North Carolina law.

1. "Alternative" Mortgage Transactions - The "Alternative Mortgage Transactions Parity Act" (AMTPA)

Prepayment fees in any amount agreed to by the borrower may be negotiated in connection with "**alternative**" mortgage loans made by national banks, federal thrift institutions, state banks and thrifts and most state-chartered non depository lenders (e.g., finance companies). The rules vary by type of creditor and are summarized below. The rule which applies at the time the loan is made *may* continue to apply *even if* it is later assigned to a third party. Generally, "alternative" loans are those with adjustable rates, balloon features or other "...variations not common to traditional fixed rate, fixed term [loans]..." **Note the change in the law for loans made on and after 7/1/03 by certain non depository lenders.**

<u>Type of Lender</u>	<u>Permissible Prepayment Fee</u>	<u>Law</u>	<u>Applicability</u>
National bank	As negotiated, but only on adjustable rate loans	12 C.F.R. §34.23	Loans made 1/1/96 and after
Federal thrift	As negotiated	12 C.F.R. §560.34	Loans made 1/1/96 and after
State commercial bank	Same as national bank	12 U.S.C. §3803	Loans made 1/1/96 and after and 12 C.F.R. §34.23
State thrift.....	As negotiated	12 C.F.R. §§560.34 and G.S. 54c-145	Loans made 1/1/96 and after
State chartered Non-depository lender	As negotiated	12 C.F.R. §§560.34	Loans made between 9/30/96 and 6/30/03 only
	As permitted by NC law only	12 C.F.R. 560.220 (as amended, eff. 7/1/03).....	Loans made on or after 7/1/03

2. "Exportation" of Prepayment Fees By National and State Banks

National banks and FDIC-insured state banks without offices in North Carolina may negotiate prepayment fees on any type of loan to the extent permitted by the state in which the bank is "located". A determination of whether this "exportation" authority applies requires case-by-case factual and legal analysis by qualified legal counsel.

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