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**Title 37 - Consumer Protection Code**

**CHAPTER 23.**

**HIGH-COST AND CONSUMER HOME LOANS**

**ARTICLE 1.**

**GENERAL PROVISIONS**

**SECTION 37-23-10.** Short title.

This chapter may be cited as the "South Carolina High-Cost and Consumer Home Loans Act".

**HISTORY:** 2003 Act No. 42, Section 1, eff January 1, 2004, and applying to loans for which the loan applications were taken on or after that date.

**SECTION 37-23-20.** Definitions.

For purposes of this chapter:

(1) "Affiliate" means a company that controls, is controlled by, or is under common control with another company, as described in the Bank Holding Company Act of 1956 (12 U.S.C. Section 1841 et seq.), as amended.

(2) "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. Section 1601, et seq.) and the regulations promulgated under it by the Federal Reserve Board, both as amended.

(3) "Broker" or "mortgage broker" means a person or organization in the business of soliciting, processing, placing, or negotiating mortgage loans for others or offering to process, place, or negotiate mortgage loans for others. A broker or mortgage broker also includes a person or organization who brings borrowers or lenders together to obtain mortgage loans or renders a settlement service as described in 24 CFR Part 3500.2(a)(16)(ii).

(4) "Consumer home loan" means a loan in which:

- (a) the borrower is a natural person;
  - (b) the debt is incurred by the borrower primarily for personal, family, or household purposes; and
  - (c) the loan is secured by a mortgage on real estate upon which is located or is to be located a structure designed principally for occupancy of from one to four families and that is or is to be occupied by the borrower as the borrower's principal dwelling.
- (5) "Conventional conforming discount points" 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 applicable to the loan, so long as the home loan has an annual percentage rate that does not exceed the conventional mortgage rate by more than one percentage point.
- (6) "Conventional mortgage rate" means the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater.
- (7) "Conventional prepayment penalty" means a prepayment penalty or fee that may be collected or charged in a home loan and that is authorized by law other than by this chapter, provided the home loan (a) does not have an annual percentage rate that exceeds the conventional mortgage rate by more than two percentage points; and (b) does not permit prepayment fees or penalties that exceed two percent of the amount prepaid.
- (8) "Flipping" a consumer home loan means the making of a consumer home loan that refinances within forty-two months an existing consumer home loan of the borrower when the new loan does not have a reasonable, tangible net benefit to the borrower, considering all the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances.
- (a) A rebuttable presumption of reasonable, tangible, net benefit to the borrower occurs when including, but not limited to, the following:
    - (i) at the time the home loan is consummated, the borrower's total monthly debts, including amounts due under the home loan, do not exceed fifty percent of the borrower's monthly income as verified by tax returns, payroll receipts, or other third-party income verification;
    - (ii) the borrower's monthly payment to pay the new consolidated debt is a minimum of twenty percent lower than the total of all monthly obligations being financed, taking into account costs and fees;
    - (iii) there is a beneficial change for the borrower in the duration of the loan;
    - (iv) the borrower receives a reasonable amount of cash in excess of and in relation to the cost and fees as part of the refinancing;
    - (v) the borrower's note rate of interest is reduced by at least two percent;
    - (vi) there is a change from an adjustable rate loan to a fixed rate loan, taking into account costs and fees and the costs can be recouped within two years; or
    - (vii) the borrower is able to recoup the costs of refinancing the loan within two years and reduces the interest rate by two points or the length of term by a minimum of five years.
  - (b) the home loan refinancing transaction is presumed to be a flipping if a home loan refinances an existing home loan that was consummated as a special mortgage originated, subsidized, or guaranteed by or through a state, tribal, or local government or a nonprofit organization, which either bears a below-market interest rate at the time the loan was originated or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or are not required at all under specified conditions, and if, as a result of the refinancing, the borrower loses one or more of the benefits of the special mortgage.
- (9) "High-cost home loan" means:
- (a) a loan, other than an open-end credit plan or a reverse mortgage transaction, in which the:
    - (i) principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association;

(ii) borrower is a natural person;

(iii) debt is incurred by the borrower primarily for personal, family, or household purposes;

(iv) loan is secured by either a security interest in a residential manufactured home, as defined in Section 37-1-301(24) which is to be occupied by the borrower as the borrower's principal dwelling, or a mortgage on real estate upon which there is located or there is to be located a structure designed principally for occupancy from one to four families and which is or is to be occupied by the borrower as the borrower's principal dwelling; and

(v) terms of the loan exceed one or more of the thresholds as defined in item (15) of this section; or

(b) an adjustable rate mortgage at the fully indexed rate assuming a fully amortizing repayment schedule that would exceed one or more of the thresholds as defined in item (15) of this section.

(10) "Lender" includes, but is not limited to, a mortgage broker originating a loan in a table-funded loan transaction in which the broker is identified as the original payee of the note.

(11) "Obligor" means each borrower, co-borrower, cosigner, or guarantor obligated to repay a loan.

(12) "Originator" or "loan originator" means an employee of a mortgage broker or mortgage lender whose primary job responsibilities include direct contact with or informing loan applicants of the rates, terms, disclosure, or other aspects of the mortgage. It does not mean an employee whose primary job responsibilities are clerical in nature, such as processing the loan.

(13) "Points and fees" means:

(a) items required to be disclosed pursuant to Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended, except interest or the time-price differential;

(b) charges for items listed in Section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, 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 within the meaning of the phrase "points and fees";

(c) compensation paid directly by the borrower to a mortgage broker not otherwise included in subitem (a) or (b) of this item;

(d) the maximum prepayment fees and penalties that may be charged or collected pursuant to the terms of the loan documents. Interest that may accrue in advance of payment in full of a loan made under a local, state, or federal government-sponsored mortgage insurance or guaranty program, including a Federal Housing Administration program, is not considered a prepayment fee or penalty;

(e) premiums or other charges paid at or before closing for credit life, accident, health, or loss-of-income insurance or debt-cancellation coverage that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident. This subsection does not apply after January 1, 2005; and

(f) "points and fees" does not include:

(i) taxes, filing fees, recording, and other charges and fees actually paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest;

(ii) bona fide and reasonable fees actually paid to a person, other than a lender or an affiliate of the lender or to the mortgage broker or an affiliate of the mortgage broker, who has received no direct or indirect compensation 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 before closing, credit reports, surveys, attorney's fees if the borrower has the right to select the attorney, notary fees, escrow charges, and flood insurance premiums not otherwise included pursuant to subitem (a) of this section;

(iii) premiums for insurance against title defects. Premiums for insurance against loss of or damage to property or against liability arising out of the ownership or use of property may be excluded from the points and fees if the insurance coverage may be obtained from a person of the borrower's choice and this fact is disclosed and if the coverage is obtained from or through the lender or its affiliate, the premium for the initial term of insurance coverage is disclosed. If the term of insurance is less than the term of the transaction, the term of insurance must be disclosed also. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone pursuant to Section 226.17(g) of Title 12 of the Code of Federal Regulations, and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage;

(iv) commissions and other compensation paid to licensed real estate brokers and agents;

(v) fees or charges payable or paid by a party in connection with a local, state, or federal government-sponsored mortgage insurance or guaranty program including, but not limited to, Federal Housing Administration, Veterans Administration, South Carolina Housing Finance and Development Authority programs, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank, or price adjustment;

(14) "Table-funded transaction" means a settlement at which a mortgage loan is funded by an advance of loan funds to a lender who closes the loan in his name followed by an assignment of the loan from the person identified as the lender in the loan documents to the person advancing the initial loan funds.

(15) "Threshold" means either (A) or (B) in a loan transaction, whichever is applicable:

(A) without regard to whether the loan transaction is 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, the annual percentage rate of the loan at the time the loan is consummated is such a rate that the loan is considered to be a "mortgage" pursuant to Section 152 of the Home Ownership and Equity Protection Act of 1994 (Pub. Law 103-25, [15 U.S.C. Section 1602(aa)]), as amended, and regulations adopted pursuant to it by the Federal Reserve Board, including Section 226.32 of Title 12 of the Code of Federal Regulations, as amended, except with regard to a mortgage or loan secured by a nonreal estate manufactured housing lien, the term "threshold" means the annual percentage rate of the nonreal estate secured manufactured housing lien at the time the mortgage or loan is consummated exceeds by more than ten percentage points the yield on United States Treasury securities having comparable periods of maturity as of the fifteenth day of the month immediately preceding the month in which the application of the extension of credit is received by the lender;

(B) the total points and fees payable by the borrower at or before the loan closing exceed:

(i) five percent of the total loan amount if the total loan amount is twenty thousand dollars or more;

(ii) the lesser of eight percent of the total loan amount or one thousand dollars if the total loan amount is less than twenty thousand dollars; or (iii) three percent of the total loan amount for nonreal estate secured manufactured housing transactions if the total loan amount in the nonreal estate secured housing transaction is twenty thousand dollars or more;

(C) except that the following discount points and prepayment fees and penalties are excluded from the calculation of the total points and fees payable by the borrower:

(i) up to and including two conventional conforming 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 is discounted does not exceed by more than one percentage point the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater; or

(ii) up to and including one conventional conforming 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 is discounted does not exceed by more than two percentage points the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;

(iii) a conventional prepayment penalty.

(16) "Total loan amount" means the same as the term "total loan amount" means in Section 226.32 of Title 12 of the Code of Federal Regulations and must be calculated in accordance with the Federal Reserve Board's Official Staff Commentary to that section.

(17) An adjustable rate mortgage (ARM) is a mortgage in which the interest rate and monthly payment may vary over time.

HISTORY: 2003 Act No. 42, Section 1, eff January 1, 2004, and applying to loans for which the loan applications were taken on or after that date; 2009 Act No. 67, Sections 4.D, 4.E, eff January 1, 2010.

### ARTICLE 3.

#### HIGH-COST HOME LOANS

**SECTION 37-23-30. High-cost home loan agreements.**

A high-cost home loan agreement may not contain:

- (1) a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This item does not apply when repayment of the loan is accelerated by default, or pursuant to a due-on-sale provision, or some other provision of the loan documents unrelated to the payment schedule;
- (2) a balloon payment provision that contains a scheduled payment 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) a negative amortization provision with a periodic payment schedule that causes the principal balance to increase;
- (4) a provision that 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, so long as the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness;
- (5) terms under which more than two periodic payments required pursuant to the loan are consolidated and paid in advance from the loan proceeds provided to the borrower;
- (6) charges to a borrower for fees to modify, renew, extend, or amend a high-cost home loan or to defer a payment due pursuant to the terms of a high-cost home loan; or
- (7) contain as a part of the loan agreement a choice of law provision identifying a state other than South Carolina, unless otherwise allowed under federal law.

**HISTORY:** 2003 Act No. 42, Section 1, eff January 1, 2004, and applying to loans for which the loan applications were taken on or after that date.

**SECTION 37-23-40. Lender limitations.**

The lender of a high-cost home loan may not:

- (1) make a high-cost home loan without first receiving a written certification from a counselor approved by the State Housing Finance and Development Authority that the borrower has received counseling on the advisability of the loan transaction and the appropriate loan for the borrower. The Department of Consumer Affairs shall specify the information that must be provided by the lender and reviewed by the consumer credit counselor;
- (2) 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, is 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 that secures repayment of the loan. If the loan is an adjustable rate mortgage (ARM), the analysis of the obligor must include an evaluation of the ability to repay by final maturity at the fully indexed rate assuming a fully amortizing repayment schedule. 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 pursuant to the loan including, but not limited to, principal, interest, current property taxes, and current insurance, do not exceed fifty percent of the obligor's monthly gross income as verified by the credit application, a credit report, and information provided to a lender by a third party, including the Internal Revenue Service (IRS). A presumption of inability to make the scheduled payments to repay the obligation does not 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 of the obligor's monthly gross income;
- (3) directly or indirectly finance:
  - (a) 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;
  - (b) points and fees exceeding two and one-half percent of the total loan amount;
- (4) 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; or

(5) pay a contractor pursuant to a home improvement contract from the proceeds of a high-cost home loan other than:

(a) by an instrument payable jointly to the borrower and the contractor; or

(b) 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 before the disbursement.

For purposes of this article, a home improvement contract does not include money for a new home construction loan or a purchase money loan for a home.

**HISTORY:** 2003 Act No. 42, Section 1, eff January 1, 2004, and applying to loans for which the loan applications were taken on or after that date; 2009 Act No. 67, Section 4.F, eff January 1, 2010.

**SECTION 37-23-45.** Disclosure; form.

(A) At the time the borrower receives the good faith estimate under the Real Estate Settlement and Procedures Act (RESPA) and before the scheduled closing of a high-cost home loan, the broker or mortgage broker of a loan must disclose in writing the amount being earned on the loan. The Department of Consumer Affairs shall provide a disclosure form to include the following:

(1) the dollar amount of the yield spread premium and the percentage of the yield spread premium in relation to the loan amount. For purposes of this item, "yield spread premium" is the amount paid to the broker by the lender based on the difference between the interest rate at which the broker originates the loan and the par, or market rate offered by a lender;

(2) an itemization of dollar amounts for points, fees, and commissions with a combined total given. A percentage of the combined total should be specified in relation to the loan amount; and

(3) a dollar amount total of items 37-23-45(A)(1) and (2) and a percentage of the total specified in relation to the total amount of the loan.

(4) for a loan that is an ARM as defined in Section 37-23-20(17), a listing of the schedule when the loan may be reset, for each and every reset, and a listing of the monthly payment that is owed for each change that is allowed by the terms of the contract. If the consumer escrows the insurance and taxes with each monthly payment, it must be reflected in the payment listed.

(B) The form must include a signature line for the borrower to acknowledge that he has received the disclosures, the disclosures have been explained to him, he understands them, and he voluntarily enters into the loan transaction.

**HISTORY:** 2003 Act No. 42, Section 1, eff January 1, 2004, and applying to loans for which the loan applications were taken on or after that date; 2009 Act No. 67, Section 4.G, eff January 1, 2010.

**SECTION 37-23-50.** Borrower's right in action for violations; penalties; statute of limitations; enforcement; costs; application of article.

(A) If a lender, or party charged with a violation, when making a high-cost home loan violates the provisions of this article, the borrower has a right in action, other than a class action, to recover from the lender or party charged with the violation actual damages and also a penalty in an amount determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars for each loan transaction. No borrower may bring a class action for a violation of this article. No borrower may bring an action for a violation of this article more than six years after the violation occurred and after the original scheduled maturity date of the debt. This section does not bar a borrower from asserting a violation of this article in an action to collect a debt which was brought more than six years from the date of the occurrence of the violation and after the original scheduled maturity date of the debt as a matter of defense by recoupment or set-off in such action;

(B)(1) If the court finds as a matter of law that the agreement or transaction violates the provisions of this article at the time it was made, the court may, in an action other than a class action:

(a) refuse to enforce the agreement, or a term, or part of the agreement or transaction that the court determines to have been unlawful at the time it was made;

(b) enforce the remainder of the agreement without the unlawful term or part, or limit the application of the unlawful term or part to avoid an unlawful result;

(c) rewrite or modify the agreement to eliminate an unlawful term, part, or result and enforce the new agreement; or

(d) award either one of the following:

(i) not more than the total amount of the loan finance charge and allow repayment of the unpaid balance of the loan without any finance charge; or

(ii) not more than double the amount of excess loan finance charge or other charges or fees actually received by the creditor or paid by the debtor to a third party.

(2) An action pursuant to this subsection may not be brought after the original scheduled maturity date of the debt.

(C) In an action in which it is found that a lender or party charged with a violation has violated this chapter, the court shall award to the debtor the costs of the action and to his attorneys their reasonable fees. In determining attorney's fees, the amount of the recovery on behalf of the debtor is not controlling.

(D) This article establishes specific consumer protections in consumer home loans in addition to other consumer protections that may be otherwise available by law.

(E) The provisions of this article apply to a person who in bad faith attempts to avoid the application of this article by:

(1) structuring a loan transaction as an open-end credit plan for the purpose and with the intent of evading the provisions of this article if the loan would be a high-cost home loan if it were structured as a closed-end loan;

(2) dividing a loan transaction into separate parts for the purpose and with the intent of evading the provisions of this article; or

(3) other subterfuge.

(F) The Administrator of the Department of Consumer Affairs, the Attorney General, the Commissioner of Banking, the Director of the Consumer Finance Division or any party to a high-cost home loan may enforce the provisions of this article. The penalties and remedies provided in this article are in addition to and cumulative of penalties and remedies available pursuant to other provisions of law.

HISTORY: 2003 Act No. 42, Section 1, eff January 1, 2004, and applying to loans for which the loan applications were taken on or after that date.

#### **SECTION 37-23-60. Bona fide error; restitution.**

A lender of a high-cost home loan who acts in good faith but through a bona fide unintentional error, notwithstanding the maintenance of procedures reasonably adapted to avoid errors, fails to comply with this article must make restitution to the borrower. Within forty-five days after the discovery of the compliance failure or receipt of written notice of the compliance failure, the lender must notify the borrower and make the necessary adjustments to the loan to make the high-cost home loan satisfy the requirements of Sections 37-23-30, 37-23-40, and 37-23-45. If the harm to the borrower cannot be remedied by compliance with the high-cost loan requirement of Sections 37-23-30, 37-23-40, and 37-23-45, the lender must change the terms of the loan in a manner beneficial to the borrower so that the loan is no longer considered a high-cost home loan subject to the provisions of this article. 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 pursuant to this article is not a bona fide error.

HISTORY: 2003 Act No. 42, Section 1, eff January 1, 2004, and applying to loans for which the loan applications were taken on or after that date.

### ARTICLE 5.

#### CONSUMER HOME LOANS

#### **SECTION 37-23-70. Prohibited acts; complaints; penalties; statute of limitations; enforcement; costs.**

(A) A lender may not engage knowingly or intentionally in the unfair act or practice of "flipping" a consumer home loan. This provision applies 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 in Section 37-23-20(15).

(B) It is unlawful, on or after January 1, 2005, for a lender in a consumer home loan to finance, directly or indirectly, credit life,

disability, debt cancellation, or unemployment insurance, or other life or health insurance premiums, except that insurance premiums calculated and paid on a monthly basis are not considered to be financed by the lender.

(C) A lender may not recommend or encourage default on an existing loan or other debt before and in connection with the closing or planned closing of a consumer home loan that refinances all or a portion of the existing loan or debt.

(D) At the time of application for a mortgage loan, the mortgage broker, originator, or employee shall provide the borrower with a document specifying the agency designated to receive complaints or inquiries about the origination and making of the loan, with the telephone number and address of the agency. The consumer shall sign a copy of the document acknowledging receipt of this disclosure and the copy must be maintained in the files of the mortgage broker or originator.

(E) Unless otherwise allowed under federal law, a consumer home loan agreement may not contain a choice of law provision identifying a state other than South Carolina.

(F) The making of a consumer home loan that violates this section is a violation of the provisions of this article and the borrower has a right in action, other than a class action, to recover from the lender or party charged with the violation actual damages and also a penalty in an amount determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars for each transaction. No borrower may bring a class action for a violation of this article. No borrower may bring an action for a violation of this article more than six years after the violation occurred and after the original scheduled maturity date of the debt. This subsection does not bar a borrower from asserting a violation of this article in an action to collect a debt which was brought more than six years from the date of the occurrence of the violation and after the original scheduled maturity date of the debt as a matter of defense by recoupment or set-off in such action.

(G)(1) If the court finds as a matter of law that the agreement or transaction violates the provisions of this article at the time it was made, the court may, in an action other than a class action:

(a) refuse to enforce the agreement, or a term, or part of the agreement or transaction that the court determines to have been unlawful at the time it was made;

(b) enforce the remainder of the agreement without the unlawful term or part, or limit the application of the unlawful term or part to avoid an unlawful result;

(c) rewrite or modify the agreement to eliminate an unlawful term, part, or result and enforce the new agreement; or

(d) award either one of the following:

(i) not more than the total amount of the loan finance charge and allow repayment of the unpaid balance of the loan without any finance charge; or

(ii) not more than double the amount of excess loan finance charge or other charges or fees actually received by the lender or paid by the borrower to a third party.

(2) An action pursuant to this subsection may not be brought after the original scheduled maturity date of the debt.

(H) In an action in which it is found that a lender has violated this chapter, the court shall award to the borrower the costs of the action and to his attorneys their reasonable fees. In determining attorney's fees, the amount of the recovery on behalf of the borrower is not controlling.

(I) This article establishes specific consumer protections in consumer home loans in addition to other consumer protections that may be otherwise available by law.

(J) The Administrator of the Department of Consumer Affairs, the Attorney General, the Commissioner of Banking, the Director of the Consumer Finance Division, or any party to a high-cost home loan may enforce the provisions of this article. The penalties and remedies provided in this article are in addition to and cumulative of penalties and remedies available pursuant to other provisions of law.

(K) Points and fees charged on consumer home loans and subject to this article are considered earned immediately and not subject to Section 37-3-201 and the rebate provisions of Sections 37-3-209 and 37-3-210; provided, that this section does not limit the borrower's right to prepay under Section 37-3-209.

HISTORY: 2003 Act No. 42, Section 1, eff January 1, 2004, and applying to loans for which the loan applications were taken on or after that date.



**SECTION 37-23-75.** Disclosure; form.

(A) At the time the borrower receives the good faith estimate under the Real Estate Settlement and Procedures Act (RESPA) and before the scheduled closing of a consumer home loan, the broker or mortgage broker of a loan must disclose in writing the amount being earned on the loan. The Department of Consumer Affairs shall provide a disclosure form to include the following:

(1) the dollar amount of the yield spread premium and the percentage of the yield spread premium in relation to the loan amount. For purposes of this item, "yield spread premium" is the amount paid to the broker by the lender based on the difference between the interest rate at which the broker originates the loan and the par, or market rate offered by a lender;

(2) an itemization of dollar amounts for points, fees, and commissions with a combined total given. A percentage of the combined total should be specified in relation to the loan amount; and

(3) a dollar amount total of items 37-23-75(A)(1) and (2) and a percentage of the total specified in relation to the total amount of the loan.

(4) for a loan that is an ARM as defined in Section 37-23-20(17), a listing of the schedule when the loan may be reset, for each and every reset, and a listing of the monthly payment that is owed for each change that is allowed by the terms of the contract. If the consumer escrows the insurance and taxes with each monthly payment, it must be reflected in the payment listed.

(B) The form must include a signature line for the borrower to acknowledge that he has received the disclosures, the disclosures have been explained to him, he understands them, and he voluntarily enters into the loan transaction.

HISTORY: 2003 Act No. 42, Section 1, eff January 1, 2004, and applying to loans for which the loan applications were taken on or after that date; 2009 Act No. 67, Section 4.H, eff January 1, 2010.

**SECTION 37-23-80.** Prepayment.

The debtor may prepay in full at any time without penalty the debt represented by a personal, family, or household purpose loan agreement that is secured in whole or in part by a first or junior lien on real estate if the aggregate of all sums advanced or contemplated by the parties in good faith to be advanced does not exceed one hundred fifty thousand dollars.

HISTORY: 2003 Act No. 42, Section 1, eff January 1, 2004, and applying to loans for which the loan applications were taken on or after that date.

**SECTION 37-23-85.** Compliance failure.

A lender of a consumer home loan who acts in good faith but fails to comply with this article does not violate this article if the lender establishes that either:

(1) within forty-five days of the loan closing and before the institution of an action pursuant to this article, the lender notifies the borrower of the compliance failure, makes appropriate restitution, and makes necessary adjustments to the loan to make the consumer home loan satisfy the requirements of Section 37-23-70, 37-23-75, or 37-23-80; or

(2) the compliance failure was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid those errors, and within ninety days after the discovery of the compliance failure and before the institution of an action pursuant to this article or the receipt of written notice of the compliance failure, the lender notifies the borrower of the compliance failure, makes appropriate restitution, and makes necessary adjustments to the loan to make the consumer home loan satisfy the requirements of Sections 37-23-70, 37-23-75, and 37-23-80. 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 pursuant to this article is not a bona fide error.

HISTORY: 2003 Act No. 42, Section 1, eff January 1, 2004, and applying to loans for which the loan applications were taken on or after that date.