

**NORTH CAROLINA BANKERS ASSOCIATION**  
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**LEGAL MEMORANDUM**

September 10, 2003

Vol. 35, No. 7

TO: *LEGAL MEMORANDUM* MAILING LIST

RE: 2003 NCBA North Carolina Interest Rates

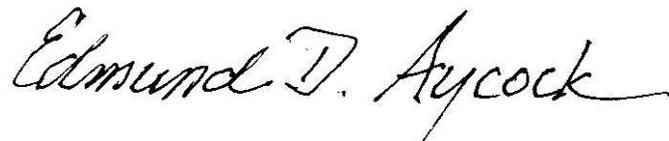
In August, 2003, House Bill 1182 was signed into law by Governor Easley. The Act, developed and supported by the NCBA, amends the interest rate and fee provisions of Chapter 24 of the North Carolina General Statutes. The amendments diminish or remove many of the statutory rate and fee limitations applicable to extensions of credit by banks and savings institutions. The Act's amendments are reviewed in detail in *Legal Memoranda*, Volume 35, Number 6, dated August 20, 2003.

Consistent with the important changes made by H. 1182 in the state's usury laws, we have amended the NCBA chart of North Carolina Interest Rates. The revised chart, attached below, incorporates the changes made by the Act, including the exemption of certain loans made by banks and savings associations from all statutory restrictions on interest rates, fees, and other charges. Please note that the Act's provisions and the chart become effective on October 1, 2003. Also note that the chart applies to North Carolina banks and savings institutions. It does not apply to other lenders.

The North Carolina Interest Rates chart is a copyrighted publication of the North Carolina Bankers Association. However, the NCBA waives the copyright for Association members and it may be copied or otherwise reproduced by members for their own use.

Please call Paul Stock or me if you have any questions concerning the rate chart.

Sincerely,



Edmund D. Aycock  
Senior Vice President and Regulatory Counsel

# NORTH CAROLINA INTEREST RATES (REVISED, 2003)

Source: N.C. General Statutes, Chapter 24



North Carolina  
Bankers  
Association

THIS PUBLICATION OF THE NORTH CAROLINA BANKERS ASSOCIATION IS DESIGNED TO PROVIDE ACCURATE AND AUTHORITATIVE INFORMATION IN REGARD TO THE SUBJECT MATTER COVERED. IT IS DISTRIBUTED WITH THE UNDERSTANDING THAT THE PUBLISHER IS NOT ENGAGED IN RENDERING LEGAL, ACCOUNTING OR OTHER PROFESSIONAL SERVICE. IF LEGAL ADVICE OR OTHER EXPERT ASSISTANCE IS REQUIRED, THE SERVICES OF A COMPETENT PROFESSIONAL PERSON SHOULD BE SOUGHT.

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The following charts reflect provisions applicable to Banks and Savings Institutions. They may not apply to other lenders.

## EXEMPT LOANS

Loans noted below are exempt from all North Carolina statutes governing interest rates, fees and other charges, including Chapter 24. Such Exempt Loans are governed solely by the written agreement of the parties.

<b>Exempt Loans</b>	<ul style="list-style-type: none"><li>• Loans to any entity other than a natural person; or</li><li>• Loans to a natural person for <u>other than</u> personal, family or household purposes; or</li><li>• Loans of \$300,000 or more in amount; or</li><li>• Credit card plans offered by a North Carolina bank or savings institution and not secured by real property.</li></ul>
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## REGULATED LOANS

The following chart applies only to loans of less than \$300,000 made to natural persons for personal, family, or household purposes. If all those criteria are not met, the loan is exempt.

TYPE OF LOAN	AMOUNT	CODE LETTER PROVISIONS	MAXIMUM INTEREST RATE	STATUTORY AUTHORITY
(1) First Mortgage Home Loan	Less than \$300,000	A, B, F, G, H, P	No Limit	§24-1.1A
(2) First Mortgage On Real Estate Not Qualifying As A "First Mortgage Home Loan" (Closed-end credit)	\$0 — \$25,000	B, C, D, E, F, H, O, P	Commissioner's Rate *	§24-1.1(a)(1)
	\$25,001 to \$299,999	B, C, D, E, F, H, O, P	No Limit	§24-1.1(a)(2)
(3) Secondary Or Junior Mortgages on Real Estate (Closed-end credit)	\$0 — \$25,000	B, C, E, F, H, M, O, P	Commissioner's Rate *	§24-1.1(a)(1)
	\$25,001 to \$299,999	B, C, E, F, H, M, O, P	No Limit	§24-1.1(a)(2)
(4) Loans Not Secured By Real Property (Closed-end credit)	\$0 — \$25,000	B, C, E, H, K, O	Commissioner's Rate *	§24-1.1(a)(1)
	\$25,001 to \$299,999	B, C, E, H, K, O	No Limit	§24-1.1(a)(2)
(5) Equity Line Of Credit Loans **	0 --- \$9,999	B, F, I, L, O, P	Commissioner's Rate *	§24-1.2A
	\$10,000 to \$299,999	B, I	No Limit	§24-9
(6) Credit Cards Secured by Real Property	Less than \$300,000	J, N	1.25% per month	§24-11
(7) Other Revolving Credit	0 --- \$299,999	N	1.5%/month-unsecured 1.25%/month-secured by personal property	§24-11

**\*Commissioner's Rate** — The greater of 16% or the rate announced by the Commissioner of Banks on the 15<sup>th</sup> day of the previous month.

**\*\*Equity Line of Credit Loans** --- The \$10,000 threshold that currently distinguishes the categories of equity lines subject to the limitations of G.S. 24-1.2A and those not subject to that section will increase to \$11,000 on January 1, 2008, and by \$1,000 every five years thereafter.

## CODE LETTER REFERENCES

- A. A **HOME LOAN** is a loan of less than \$300,000 secured by a first lien on real estate upon which one or more single-family dwellings or dwelling units are or will be located. It does not include open-end credit. G.S. §24-1.1A(e). **See discussion of High Cost Home Loans and Restrictions on Certain Consumer Home Loans on back cover.** At **origination** lenders may charge application, origination, commitment, and interest rate lock fees, and bona fide discount points as agreed upon by the parties, together with additional fees or charges not exceeding the greater of \$150 or ¼ of 1% of the principal amount of the loan. Fees to administer a construction loan or a construction/permanent loan, including inspection and loan conversion fees, may be charged at origination as agreed upon by the parties. G.S. §24-1.1A(c)(1). For **modifications** (not including deferrals, see Note "H" below) including renewal, extension or amendment of a loan, lender may charge bona fide discount points as agreed upon by the parties and, if set forth in a contemporaneous written agreement and if no conversion fees are charged, additional fees or charges not exceeding the greater of \$150 or ¼ of 1% of the loan balance outstanding at the time of the modification. Fees not exceeding ¼ of 1% of the loan amount may be charged for conversion of a variable rate loan to a fixed rate loan, a fixed rate loan to a variable rate loan, a closed-end loan to an open-end loan, or an open-end loan to a closed-end loan where the principal amount is less than \$150,000. Where the loan amount is \$150,000 or more, a conversion fee of up to 1% may be charged. In addition, at **origination** or for **modifications**, lenders may charge assumption fees permitted under G.S. §24-10(d); appraisal fees permitted under G.S. §24-10(h); fees to third parties and public officials; and fees to federal, state, or local governments or agencies in connection with a loan made pursuant to a loan program sponsored by or offered through the government or agency. G.S. §§24-1.1A(c). & 24-8(d).
- B. Parties must contract in writing.
- C. **PREPAYMENT PENALTIES** (other than home loans; for home loans, see "A" above) - G.S. §24-10(b). On loans of \$100,000 or less a maximum penalty of 2% may be charged if prepayment is made within 3 years after the first payment of principal. After 3 years, no prepayment penalty allowed. No prepayment penalty allowed on construction loans as defined in G.S. §24-10(c). Lender may require 30 days notice of prepayment. On loans exceeding \$100,000, the penalty is negotiable.
- D. **REAL ESTATE FEES** (other than home loans; for home loans, see "A" above) – G.S. §24-10(a).
1. If construction loan (as defined in G.S. §24-10(c)) on other than one or two family dwelling, 2%
  2. Any other type of loan, 1%; however, a single lender making both the construction loan and the permanent loan utilizing one note may collect the fees as if they were two separate loans (Total fees = 3%).
- E. "... [I]nterest shall not be deemed in excess of the rates provided where interest is computed monthly on the outstanding principal balance and is collected not more than 31 days in advance of its due date." G.S. §24-1.1
- F. **ASSUMPTION FEES** – Lender may charge a party assuming a loan secured by real property a fee of up to \$125; if the original borrower is released and the loan contains a due-on-sale clause, up to \$400 may be charged. G.S. §24-10(d)(1).
- G. Parties may contract to defer payments and for payment of interest on deferred interest. Deferred interest may be added to the remaining principal balance of the loan. Deferral fees may be charged as agreed upon by the parties, unless the loan meets the definition of a "consumer home loan" in G.S. §24-10.2 (see back page). A deferral fee may be charged for deferring the payment of all or part of one or more regularly scheduled payments, regardless of whether the deferral results in an extension of the maturity date or the date a balloon payment is due. A modification or extension of the maturity date or the balloon payment due date which is not incident to the deferral of a scheduled payment is considered a modification or extension as described in Note "A" above.
- H. **LATE FEES** – Lender may charge 4% of amount of a payment which is past due for 15 days or more. If interest is paid in advance, payment must be 30 days past due or more. G.S. §24-10.1.
- I. **EQUITY LINES OF CREDIT --- MAY BE SECURED BY FIRST OR JUNIOR MORTGAGE.**
1. If equity line is less than \$10,000 --- It may be prepaid without penalty; when the balance is zero, mortgage must be cancelled upon request of borrower; security instrument must show on its face that it secures an equity line of credit. G.S. §45-81.
  2. If equity line is \$10,000 or more --- Banks and savings institutions may charge "interest at any rate and fees and other charges in any amount" subject only to the following limitations: line is subject to restrictions on High Cost Home Loans and to Consumer Protections in Certain Home Loans (see back cover); upon borrower's exercise of right to repay all or portion of outstanding balance of variable rate equity line at a fixed rate over a specified period of time, lender may charge prepayment penalty not exceeding 2% in the aggregate on portion of the balance the borrower agrees to pay at a fixed rate; no penalty may be charged for prepayments made more than 30 months after borrower's exercise of right to repay balance at a fixed rate. G.S. §24-9(a)(2) and G.S. §24-9(c).
- J. An annual fee not exceeding \$24 may be assessed on credit cards only. If lender does not impose an annual charge on credit cards, it may impose a service charge not to exceed \$2 per month on the balance of any account that is not paid in full within 25 days of the billing date. G.S. §24-11(a), (a1).
- K. **ORIGINATION FEES** — Origination fees may be charged not to exceed the greater of ¼ of 1% or \$50. G.S. §24-1.1(e).
- L. Fees may be charged on equity lines of credit, which in the aggregate, over the life of the loan, do not exceed 1% of the maximum credit for a first lien, or 2% of the maximum credit limit for a junior lien. G.S. §§24-1.2A(b), 24-10(a), (g).
- M. Financial institutions may charge fees or discounts, which in the aggregate do not exceed 2%. G.S. §24-10(g).
- N. **LATE FEES** — For a payment past due 30 days or more, a late fee may be charged not to exceed \$5.00 if the outstanding balance is less than \$100, and \$10 if the outstanding balance is \$100 or more; however, in no case shall the late charge exceed the outstanding balance. G.S. §24-11(d1).
- O. **MODIFICATION FEES** — Fees may be charged for the modification, renewal, extension or amendment of any terms of the loan not to exceed the greater of \$50 or ¼ of 1% of the outstanding balance at that time. G.S. §24-1.1(d) and 24-1.2A(b). For modification fees applicable to home loans, see "A" above.
- P. **APPRAISAL FEES** – Lender may charge a reasonable fee as agreed upon by the parties for appraisal performed by lender's employee. If lender collects a fee from the borrower, lender must provide a copy of the appraisal to the borrower at no additional charge. G.S. §24-10(h).

## **HIGH COST HOME LOANS (G.S. 24-1.1E)**

<b>IF a home loan meets ALL of the criteria in this column:</b>	<b>THEN ALL of the restrictions in this column apply to it:</b>
<ul style="list-style-type: none"> <li>• Principal amount does not exceed the lesser of (1) \$300,000 or (2) the conforming loan size limit set by Fannie Mae.</li> <li>• The borrower is a natural person.</li> <li>• The loan is for personal, family, or household purposes.</li> <li>• The loan is secured by the borrower's principal dwelling which may be manufactured housing or real estate with 1-4 family structure(s).</li> <li>• <b>One</b> of these three high cost home loan thresholds is exceeded:               <ul style="list-style-type: none"> <li>• When <b>APR</b> at consummation exceeds by more than 10 points the yield on Treasury securities of comparable maturity as of the fifteenth day of the month preceding the month in which the application is received.</li> <li>• When the total amount of <b>points and fees</b> payable by the borrower at or before the loan closing is greater than 5 percent of the total loan amount if the total loan amount is \$20,000 or more, <b>OR</b> the lesser of \$1,000 or 8% of the total loan amount for loans under \$20,000.</li> <li>• When the loan documents permit <b>prepayment penalties</b> more than 30 months after the loan closing <b>OR</b> the prepayment penalties exceed, in the aggregate, more than 2% of the amount prepaid.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• No call provision.</li> <li>• No balloon payment.</li> <li>• No negative amortization.</li> <li>• No increase in interest rate after default.</li> <li>• No more than 2 periodic payments may be required to be paid in advance at closing.</li> <li>• No modification or deferral fees.</li> <li>• Homeownership counseling required.</li> <li>• Loan may not be made without due regard to borrower's ability to repay.</li> <li>• Lender may not finance either directly or indirectly points and fees, <b>OR</b> any other charges payable to third parties, <b>OR</b> any prepayment penalties payable by the borrower in a refinancing transaction if the lender or an affiliate of the lender is the holder of the note being refinanced.</li> <li>• Lender may not charge 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.</li> <li>• In a home improvement contract, proceeds must be payable to the borrower, jointly to the borrower and the contractor, or, at the borrower's election, through a third party escrow agent.</li> <li>• Lender may not shift any loss, liability, or claim to closing agent or closing attorney for violation of above restrictions.</li> </ul>

## **CONSUMER PROTECTIONS IN CERTAIN HOME LOANS (G.S. 24-10.2)**

<b>IF a home loan meets ALL of the criteria in this column:</b>	<b>THEN ALL of the restrictions in this column apply to it:</b>
<ul style="list-style-type: none"> <li>• the borrower is a natural person,</li> <li>• the debt is incurred by the borrower primarily for personal, family, or household purposes, and</li> <li>• 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.</li> </ul> <p>[Home loans meeting all of the criteria set forth above are "consumer home loans."]</p>	<ul style="list-style-type: none"> <li>• No financing of single premium credit insurance.</li> <li>• No flipping, which is defined as "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 of the loans and borrower.</li> <li>• No encouraging default on an existing loan or other debt prior to and in connection with a consumer home loan that refinances all or any portion of such existing loan or debt.</li> <li>• Deferral fees subject to these limitations: (1) must be a contemporaneous agreement and, if installment to be deferred is 15 days or more past due, the agreement must be signed by at least one of the borrowers; (2) fee may not exceed the greater of \$50 or 5% of each installment deferred, multiplied by number of complete months in deferral period; (3) lender may not pyramid deferral fees; and (4) no late payment charge may be imposed if a deferred payment is paid as agreed upon.</li> </ul>