



# NC BANKERS

NORTH CAROLINA BANKERS ASSOCIATION

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## Legal Memorandum

August 27, 2013

Vol. 45, No. 3

TO: *Legal Memorandum* Mailing List

RE: North Carolina Usury Law Materials

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The primary source of state law on permissible rates of interest and fees on loans by banks and savings institutions is found in Chapter 24 of the North Carolina General Statutes. As anyone who has tried to read that chapter can attest, the laws are incredibly complex. Even the most experienced bankers and attorneys can be driven to frustration trying to understand these laws. With further modifications made to state law this year, a comprehensive *Legal Memorandum* was much needed. It is truly a Herculean task to organize and explain how the various statutes interact with each other. Jim Creekman with the Ward and Smith law firm took on this challenge and has prepared the attached materials to help you navigate this landscape. I encourage you to share the materials with members of your staff.

Sincerely,

A handwritten signature in black ink that reads 'Nathan'.

Nathan R. Batts  
Senior Vice President & Counsel

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August 26, 2013

Mr. Nathan R. Batts  
Senior Vice President & Counsel  
North Carolina Bankers Association  
Post Office Box 19999  
Raleigh, NC 27619-9916

RE: North Carolina Usury Law Materials  
Our File 680000-00015

Dear Mr. Batts:

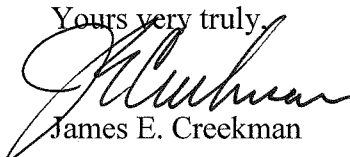
In the closing days of the 2013 legislative session, the North Carolina General Assembly enacted House Bill 692, entitled "An Act To Amend The North Carolina Anti-predatory Lending Law, And To Limit The Provisions Of State Mortgage Lending Law To Being No More Restrictive Than Federal Law." Last week, the Governor signed the bill into law as Session Law 2013-399. It becomes effective on October 1, 2013.

Earlier this year I had the privilege of making a presentation to members of the North Carolina Bankers Association on North Carolina's usury laws. I have updated the materials I used in that presentation to incorporate the changes in Chapter 24 of the General Statutes that will become effective on October 1, 2013.

Three documents accompany this letter:

1. A brief outline entitled "North Carolina Usury Limitations" that explains the limited scope of the materials I prepared;
2. A more comprehensive "Summary of North Carolina Usury Laws"; and
3. A copy of Session Law 2013-399, which takes effect on October 1, 2013.

As you are well aware, our usury laws are very complex and difficult. Hopefully, the materials that accompany this letter will be useful as reference tools for your members.

Yours very truly,  
  
James E. Creekman

ASHEVILLE

GREENVILLE

NEW BERN

RALEIGH

WILMINGTON

**NORTH CAROLINA USURY LIMITATIONS**
**August 2013**

The charts that accompany this outline take a functional approach to North Carolina's complex usury laws, identifying the specific usury and other limitations applicable to different classes of direct loans made by banks, savings and loan associations, and savings banks in North Carolina. There are eight charts, each chart dealing with a separate category of loans. **You should use the following analysis in using the accompanying charts:**

**STEP 1.** Determine whether the loan is an “exempt” loan as described in Usury Chart #1. If it is, your inquiry is over **unless** the loan is an exempt loan only because the loan amount (or initial maximum credit limit) is \$300,000 or more and the loan is secured by either (i) a manufactured home that is or will be occupied by the borrower as the borrower's principal dwelling, or (ii) real property upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling, in which case you will still need to determine whether the loan is subject to any of the "special" consumer protection provisions identified in Usury Chart #8. The loan may be subject to one or more of the "special" consumer protection provisions identified in Usury Chart #8 even if the loan is otherwise exempt from North Carolina's usury laws because the loan amount (or initial maximum credit limit) is \$300,000 or more.

**STEP 2.** Unless you have determined that the loan is an exempt loan, determine if Usury Chart #2, 3, 4, 5, 6, or 7 applies. The chart you use will in large measure depend on the nature of the collateral and whether the loan is a closed-end or open-end (revolving) loan.

**STEP 3.** When appropriate, evaluate the loan in the context of the "special" consumer protection provisions described in Usury Chart #8. One or more of the "special" consumer protection provisions may apply to the loan even if it is otherwise exempt from the rate and fee limitations contained in North Carolina's usury laws because the loan amount is \$300,000 or more.

Usury Chart #1	Exempt Loans
Usury Chart #2	Closed-End Residential Loans
Usury Chart #3	Closed-End Loans Other than Closed-End Residential Loans
Usury Chart #4	Equity Lines of Credit that qualify for the limited usury exemption under G.S. 24-9
Usury Chart #5	Equity Lines of Credit that are subject to G.S. 24-1.2A because they DO NOT qualify for the limited usury exemption under G.S. 24-9
Usury Chart #6	Open-End Credit Card Plans that (i) are unsecured or secured by collateral other than real property, and (ii) qualify for the limited usury exemption under G.S. 24-9
Usury Chart #7	Open-End Credit Plans that are unsecured or secured by collateral other than real property, but that DO NOT qualify for the limited usury exemption under G.S. 24-9
Usury Chart #8	Consumer Protections for Loans Secured by the Borrower's Principal Dwelling

**I. KEY DEFINITIONS.** For purposes of this outline and the charts that accompany it:

- A. APR. Unless otherwise noted, the "APR" is the loan's annual percentage rate, calculated in accordance with the federal Truth in Lending Act and its implementing regulations as adopted by the Bureau of Consumer Financial Protection (Regulation Z, 12 C.F.R. Part 1026).
- B. CFPB. The "CFPB" is the Bureau of Consumer Financial Protection, the federal regulator created by the Dodd-Frank Wall Street Reform and Consumer Protection Act that now has general rulemaking authority for the federal Truth-in-Lending Act and other consumer protection statutes.
- C. Commissioner's Rate. The "Commissioner's Rate" is the interest rate announced and published on the 15<sup>th</sup> of each month by the North Carolina Commissioner of Banks. The announced rate is the maximum rate for loans made during the next calendar month (e.g., the rate published July 15 applies to loans made in August). The rate is the greater of (i) 16%, or (ii) the rate determined by rounding off the most recent six-month Treasury bill rate to the nearest .5% and adding 6%. On a fixed rate loan, the maximum rate in effect during the month the loan is made is the maximum rate for the life of the loan. On a variable rate loan, the maximum rate at any given time is the greater of the rate announced as the Commissioner's Rate by the Commissioner in the preceding calendar month or the calendar month preceding that in which the rate is varied or adjusted. G.S. 24-1.1(c)
- D. Construction Loan. A "construction loan" is a loan obtained to finance all or part of the cost of constructing buildings or other improvements on real property where (i) the loan proceeds are to be disbursed periodically under the terms of a written contract between the lender and the borrower as the construction work progresses, and (ii) the loan is payable in full no later than 18 months after the note is signed (if the loan amount is for \$25,000 or less) or 36 months (if the loan amount is more than \$25,000). A construction loan may include advances for the purchase price of the property upon which the improvements are to be constructed. G.S. 24-10(c)
- E. Loan Amount. The "loan amount" is (i) the original principal amount of the loan, if the loan is a closed-end loan, or (ii) the initial maximum credit limit, if the loan is an open-end (or revolving) loan.
- F. Reg Z. "Reg Z" is Regulation Z, the regulation that implements the federal Truth-in-Lending Act. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 amended the Truth-in-Lending Act and transferred all rulemaking authority and responsibility for the Act from the Federal Reserve Board to the CFPB. As originally adopted by the Federal Reserve Board over the years, Reg Z has been codified in 12 C.F.R. Part 226. The *new* Reg Z – i.e., Reg Z as adopted by the CFPB – is codified in 12 C.F.R. Part 1026. The CFPB has already made (and is continuing to make) sweeping revisions to the regulations governing consumer-purpose loans, many of which will not become effective until 2014 or later. As a result, references in Chapter 24 to the Truth-in-Lending Act and Reg Z as adopted by the Federal Reserve Board may now be outdated, are certainly suspect, and may already be very much "out of sync" with the corresponding Reg Z provisions, particularly those that have been newly adopted by the CFPB and that are not yet effective.

**II. FUNDAMENTAL PRINCIPLE – G.S. 24-8.** The fundamental principle that forms the basis for North Carolina's usury laws is simple: **Unless a loan is an exempt loan transaction or the rate or fee is expressly allowed, the rate or fee is prohibited.** However, this fundamental principle is subject to several qualifications and exceptions.

- A. The Rule. The fundamental principle is codified in G.S. 24-8(a), which provides that, if the principal amount of a loan is less than \$300,000, a lender may not charge or receive from the borrower or require the borrower, directly or indirectly, "to pay, deliver, transfer, or convey or otherwise confer upon or for the benefit of the lender or any other person, firm, or corporation any sum of money, thing of value, or other consideration other than that which is pledged as security or collateral to secure the repayment of the full principal of the loan, together with fees and interest provided for in this Chapter or Chapter 53 of the General Statutes."

- B. Qualification and Exceptions to the Rule. However, the rule described above is subject to several qualifications/exceptions:
1. When a loss occurs that is covered by an insurance policy, a lender may receive the insurance proceeds. G.S. 24-8(e)
  2. As long as the transaction is not made a condition or requirement for any loan, G.S. 24-8 does not prevent a borrower from selling, transferring, or conveying property other than security or collateral to anyone for a fair consideration. G.S. 24-8(c)
  3. Under the authority of G.S. 24-8(d), a lender may collect money from the borrower for the payment of the following:
    - (a) Taxes, filing fees, recording fees, and other charges and fees paid or to be paid to public officials;
    - (b) Fees payable to the federal government, any state or local government, or any federal, state, or local governmental agency in connection with a loan made pursuant to a loan program sponsored by or offered through the federal government, any state or local government or any federal, state or local government agency, including loan guarantee and tax credit programs; and
    - (c) Bona fide loan-related goods, products, and services provided or to be provided by third parties.

A third party to a loan transaction (that is, a party to the transaction other than the lender and the borrower) is prohibited by G.S. 24-8(d) from charging or receiving (i) any unreasonable compensation for loan-related goods, products, and services, or (ii) any compensation for which no loan-related goods and products are provided or for which no (or only nominal) loan-related services are performed.

The various fees and charges for loan-related goods, products, and services that are provided by third-parties may include, for example, the following:

- |   |   |
|---|---|
| • fees for tax payment services             | • costs of upkeep                             |
| • fees for flood certification              | • survey fees                                 |
| • fees for pest-infestation determinations, | • attorneys' fees                             |
| • mortgage brokers' fees                    | • notary fees                                 |
| • appraisal fees                            | • escrow charges                              |
| • inspection fees                           | • insurance premiums (including, for example, |
| • environmental assessment fees             | premiums for fire, title, life, accident and  |
| • fees for credit report services           | health, disability, unemployment, flood, and  |
| • assessments                               | mortgage insurance)                           |

Thus, any fees or charges imposed by third parties in a loan transaction must be reasonable in amount and in payment for bona fide loan-related goods and products that are actually provided or for bona fide loan-related services that are actually performed.

### **III. WHAT THIS OUTLINE AND THE CHARTS THAT ACCOMPANY IT COVER – AND DO NOT COVER**

This outline and the charts that accompany it are intentionally narrow in their scope. Their purpose is to identify the principal usury limitations contained in Chapter 24 of the North Carolina General Statutes that apply to direct loans that are subject to North Carolina law made by banks, savings and loan associations, and savings banks in North Carolina. Except when discussion of a matter is necessary for an understanding of North Carolina's usury structure, this outline and the charts that accompany it DO NOT COVER the following:

- Restriction imposed by federal consumer protection laws and regulations, including the federal Truth-in-Lending Act and Regulation Z.
- Usury limits and other restrictions applicable to lenders other than banks, savings and loan associations, and savings banks – such as credit unions or mortgage companies.
- Usury limits and other restrictions applicable to dealer finance and other indirect loans subject to the North Carolina Retail Installment Act, Chapter 25A of the General Statutes.
- Usury limits and other restrictions applicable to reverse mortgages.
- Usury limits and other restrictions applicable to licensees subject to Chapter 53, Article 15 of the General Statutes, the North Carolina Retail Consumer Finance Act. According to G.S. 53-191, those usury limits and restrictions do not apply to loans made by banks or savings and loan associations.
- Usury limits and other restrictions applicable to loans secured by subordinate liens on real property subject to Chapter 24, Article 2 of the General Statutes, the article entitled "Loans Secured by Secondary or Junior Mortgages." According to G.S. 24-16.1, those usury limits and restrictions do not apply to loans made by banks or savings and loan associations authorized to do business in North Carolina.
- Whether (and to what extent) North Carolina's usury limitations and consumer protection provisions are preempted by federal laws or regulations.
- Whether (and to what extent) a lender can ignore North Carolina usury limitations and consumer protection provisions if the lender is (i) a national bank or federal savings association that has its home office in North Carolina, (ii) a national bank, federal savings association, or lender chartered under the laws of another state that has its home office in a state other than North Carolina but that has one or more branches in North Carolina, (iii) a national bank, federal savings association, or lender chartered under the laws of another state that has its home office in a state other than North Carolina but that has no branches in North Carolina.
- Whether (and to what extent) lender can "export" rates and fees into North Carolina from a state in which the lender has a presence.
- The regulations adopted by federal regulators that govern the lending activities of the financial institutions they regulate.

In short – this outline and the charts that accompany it focus on the "nitty-gritty" of Chapter 24 of the North Carolina General Statutes, as that Chapter applies to banks, savings and loan associations, and savings banks, and little else.

#### **IV. THE ODD IMPLICATIONS OF PARITY – MAKING THE PLAYING FIELD LEVEL FOR BANKS, SAVINGS AND LOAN ASSOCIATIONS, AND SAVINGS BANKS**

##### **A. Background.**

Historically, all financial institutions were not created equal. Whether a financial institution was a bank, savings and loan association, or a savings bank made a difference, as did whether the financial institution held a federal charter or was a state-chartered institution. In more recent years, those distinctions have become blurred, in part because of specific legislation designed to give parity to state and federal banks, savings and loan associations, and savings banks. Thus, for example:

1. Banks and savings and loan associations chartered in North Carolina by the State of North Carolina or the federal government are authorized under G.S. 24-2.2 to charge interest on extensions of credit at the same rates permitted any other lender under North Carolina law, as long as the extension of credit is

governed by the restrictions or limitations contained in the authorizing statute. There are two exceptions to this parity rule: It does not apply to the rates authorized by Article 15 of Chapter 53 (the Consumer Finance Act), or to the rates that apply to credit unions under Subchapter III of Chapter 54.

2. Section 85 of the National Bank Act (12 U.S.C. § 85) (“§ 85”), Section 27 of the Federal Deposit Insurance Act (12 U.S.C. § 1831d) (“§ 27”), and Section 4(g) of the Home Owners' Loan Act (12 U.S.C. § 1463(g)) provide that national and state-chartered banks, federal savings associations, and state-chartered savings and loan associations and savings banks may charge interest at the *greater* of (i) the rate allowed by the laws of the state where the financial institution is “located,” or (ii) a rate that is one percent over the discount rate for 90-day commercial paper at the Federal Reserve Bank in the Federal Reserve District where the financial institution is “located.” For purpose of this “most favored lender” doctrine, a financial institution is “located” in its home state and in each state in which it has a branch.
3. North Carolina's banking statutes have several parity provisions that, taken together with the most favored lender doctrine, place federal and state-chartered lenders that have branches in North Carolina on equal footing:
  - (a) G.S. 53C-5-1 permits a North Carolina state-chartered bank to make any loan that could be made by a federally chartered institution doing business in North Carolina and to engage as principal in any activity permissible for a national bank or a federal savings association.
  - (b) Subject to such limitations or restrictions as may be prescribed by the Commissioner of Banks, G.S. 54B-195 permits a North Carolina savings and loan association to “make any loan or investment, or engage in any activity, which may be permitted for federal [savings] associations whose principal offices are located in this State.”
  - (c) Subject to such limitations or restrictions as may be prescribed by the Commissioner of Banks, G.S. 54C-145 permits a North Carolina savings bank “to make any loan or investment, or engage in any activity, which may be permitted under State law for banks or under the laws of the United States for federal [savings] associations or national banks whose principal offices are located within this State.”
  - (d) According to G.S. 53C-1-2, except as restricted by federal law, each federally chartered depository institution (i.e., each national bank and each federal savings association) that has a branch in North Carolina has “all of the rights, powers, and privileges and shall be entitled to the same exemptions and immunities” as banks chartered under the laws of North Carolina. Except as restricted by federal law or the law of its home state, G.S. 53C-1-2 affords similar benefits and protections to each bank chartered under the laws of another state that has a branch in North Carolina. Similarly, G.S. 54B-271 and G.S. 54C-205 provide that a savings and loan association or savings bank chartered under the laws of a state other than North Carolina that establishes a branch in North Carolina may “engage in all the activities authorized by North Carolina law” for an entity of that type “except to the extent that such activities have been expressly prohibited” by the law of the state in which the savings and loan association or savings bank was chartered or by the savings and loan association or savings bank's state supervisor.

B. “Bank” as Defined in Chapter 24.

The North Carolina usury laws are replete with provision that apply only if the lender is a bank or savings institution chartered under North Carolina law or the law of the United States. For example, in 2003, the North Carolina General Assembly expanded the category of loans totally exempt from North Carolina’s usury limitations and carved out two additional “limited” usury exemptions for certain credit card and home equity line of credit accounts. However, the two “limited” exemptions are available *only* if the lender is a “bank” as defined in G.S. 24-9. A “bank” is defined by G.S. 24-9 as a “bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States.” The term “bank” in G.S. 24-9 does not include a subsidiary or affiliate of a bank unless the subsidiary or

affiliate is itself a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States.

What of a bank, savings and loan association, or savings bank chartered under the laws of another state? This is where the parity issues discussed above may be relevant, but a word of caution is in order: **Any bank, savings and loan association, or savings bank chartered under federal law or the laws of a state other than North Carolina should consult with competent counsel to determine whether, and to what extent, it may rely on the most favored lender doctrine and principles of parity in claiming the benefits and protections afforded by North Carolina law to banks, savings and loan associations, and savings banks chartered under the laws of North Carolina.**

C. A Painful Example – Section 501 Loans.

An example should be sufficient to demonstrate the complexities of the parity issue. In 1980, Congress enacted the Depository Institutions Deregulation and Monetary Control Act, Public Law 96-221 (DIDMCA). Section 501 of that Act (as codified in 12 U.S.C § 1735f-7a) provides, in effect, that state laws limiting the rate or amount of interest, discount points, or other charges are preempted by federal law and do not apply to loans secured by a first lien on residential property. However, DIDMCA permitted states to "opt out" of section 501, which North Carolina promptly did when the General Assembly enacted G.S. 24-2.3 in 1983 (Session Law 1983-126). Thus, Section 501 of DIDMCA doesn't apply in North Carolina.

Or does it? In 1983, G.S. 24-1.4 was amended to read as follows by the same session law that opted out of section 501 of DIDMCA:

**§ 24-1.4. Interest rates for savings and loan associations.**

(a) Notwithstanding any other provision of law, a savings and loan association domiciled in North Carolina may charge interest or collect fees with respect to any loan to the same extent as if the provisions of section 501 of Public Laws 96-221, as interpreted by the Federal Home Loan Bank Board prior to the effective date of this section, were still in effect in North Carolina.

(b) Notwithstanding any other provision of law, any savings and loan association in North Carolina may contract for interest on any loan, purchase money loan, advance, commitment for a loan or forbearance at any rate permitted by federal law to a savings and loan association the accounts of which are insured by the Federal Savings and Loan Insurance Corporation.

Thus, the General Assembly simultaneously opted out of section 501 and at the same time elected to have section 501 apply, at least to savings and loan associations domiciled in North Carolina.

Now comes the ringer – if the parity provisions identified above effectively permit a bank to do anything and to charge any rates and fees that a savings and loan can, and a savings bank can do anything and charge any rates and fees that a bank can, doesn't it logically follow that the General Assembly's effort to opt out of section 501 doesn't apply to banks, savings and loan associations, or savings banks?

D. Assumptions. To keep matters simple (and unless otherwise noted), the remainder of this outline and the charts that accompany it ignore section 501 of DIDMCA and *assume* that the usury rules identified in the charts that accompany this outline (including the exemptions) apply equally to the following:

1. A bank, savings and loan association, or savings bank chartered under the laws of North Carolina;
2. A bank, savings and loan association, or savings bank chartered under the laws of the United States, but only if it has a branch in North Carolina and only with respect to activities conducted through its North Carolina branch; and



3. A bank, savings and loan association, or savings bank chartered under the laws of a state other than North Carolina, but only if it has a branch in North Carolina and only with respect to activities conducted through its North Carolina branch.



## SUMMARY OF NORTH CAROLINA USURY LAWS

**AUGUST 26, 2013**

The following charts summarize the provisions of the North Carolina usury laws contained in Chapter 24 of the North Carolina General Statutes, as in effect on August 26, 2013, as they pertain to various types of loans and extensions of credit. The summaries are general in nature and are intended only as a reference and not as a substitute for reviewing the usury statutes themselves. *You should refer to the full text of the relevant sections of Chapter 24 for a complete understanding of the limitations on interest and fees and other related requirements that apply to a particular loan or extension of credit.*

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## INTRODUCTION

The following charts take a functional approach to North Carolina's complex usury laws, identifying the specific usury and other limitations applicable to different classes of direct loans made by banks, savings and loan associations, and savings banks in North Carolina. There are eight charts, each chart dealing with a separate category of loans. **You should use the following analysis in using the accompanying charts:**

**STEP 1.** Determine whether the loan is an “exempt” loan as described in Usury Chart #1. If it is, your inquiry is over unless the loan is an exempt loan only because the loan amount (or initial maximum credit limit) is \$300,000 or more and the loan is secured by either (i) a manufactured home that is or will be occupied by the borrower as the borrower's principal dwelling, or (ii) real property upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling, in which case you will still need to determine whether the loan is subject to any of the "special" consumer protection provisions identified in Usury Chart #8. The loan may be subject to one or more of the "special" consumer protection provisions identified in Usury Chart #8 even if the loan is otherwise exempt from North Carolina’s usury laws because the loan amount (or initial maximum credit limit) is \$300,000 or more.

**STEP 2.** Unless you have determined that the loan is an exempt loan, determine if Usury Chart #2, 3, 4, 5, 6, or 7 applies. The chart you use will in large measure depend on the nature of the collateral and whether the loan is a closed-end or open-end (revolving) loan.

**STEP 2.** When appropriate, evaluate the loan in the context of the "special" consumer protection provisions described in Usury Chart #8. One or more of the "special" consumer protection provisions may apply to the loan even if it is otherwise exempt from the rate and fee limitations contained in North Carolina's usury laws because the loan amount is \$300,000 or more.

Usury Chart #1	Exempt Loans
Usury Chart #2	Closed-End Residential Loans
Usury Chart #3	Closed-End Loans Other than Closed-End Residential Loans
Usury Chart #4	Equity Lines of Credit that qualify for the limited usury exemption under G.S. 24-9
Usury Chart #5	Equity Lines of Credit that are subject to G.S. 24-1.2A because they DO NOT qualify for the limited usury exemption under G.S. 24-9
Usury Chart #6	Open-End Credit Card Plans that (i) are unsecured or secured by collateral other than real property, and (ii) qualify for the limited usury exemption under G.S. 24-9
Usury Chart #7	Open-End Credit Plans that are unsecured or secured by collateral other than real property, but that DO NOT qualify for the limited usury exemption under G.S. 24-9
Usury Chart #8	Consumer Protections for Loans Secured by the Borrower's Principal Dwelling

**USURY CHART #1**  
**EXEMPT LOANS (G.S. 24-9)**  
**August 2013**

The following loans are exempt loan transactions. Except as noted in Note 1, they are not subject to N.C. usury limitations, regardless of whether the loan is open-end or closed-end. Any borrower in an exempt loan transaction may agree to pay, and any lender may charge and collect from the borrower, interest at any rate and fees and other charges in any amount that the borrower agrees to pay. A claim or defense of usury is prohibited in an exempt loan transaction.

<u>EXEMPTION BASED ON</u>	<u>DESCRIPTION OF EXEMPTION</u>
<b>Loan Amount</b>	The loan amount is \$300,000 or more. See Note 1.
<b>Identity of Borrower</b>	The borrower is a person other than a natural person ( <i>e.g.</i> , the borrower is a corporation, LLC, or partnership).
<b>Loan Purpose</b>	The loan is obtained by a natural person primarily for a purpose <i>other than</i> a personal, family or household purpose. See Note 2.

**NOTES TO USURY CHART #1:**

1. Without regard to the loan amount or whether the loan is an open-end or closed-end loan, the loan should be evaluated using Usury Chart #8 if:
  - (a) The loan qualifies as an exempt loan transaction only because the loan amount is \$300,000 or more, and neither of the other grounds for declaring the loan to be an exempt loan transaction apply; and
  - (b) The loan is secured by a lien on
    - (i) A manufactured home that is or will be occupied by the borrower as the borrower's principal dwelling; or
    - (ii) Real property upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling.
  
2. 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 the regulations and rulings issued pursuant to that Act. The federal Truth-in-Lending Act and its implementing regulations (Regulation Z, 12 C.F.R. Part 1026) adopted by the Bureau of Consumer Financial Protection draw a distinction between a loan obtained by a natural person primarily for a personal, family or household purpose (*i.e.*, a consumer-purpose loan) and a loan obtained by a natural person primarily for business, commercial or agricultural purpose (*i.e.*, a business-purpose loan). Regardless of the amount of the loan, a loan that is obtained by a natural person primarily for a purpose *other than* a personal, family or household purpose is an exempt loan transaction for NC usury purposes.

**USURY CHART #2**  
**CLOSED-END RESIDENTIAL LOANS**  
**August 2013**

*A closed-end residential loan that is subject to the usury limitations contained in this chart should also be evaluated using Usury Chart #8 to determine whether the loan is subject to G.S. 24-10.2, G.S. 24-1.1E, and/or G.S. 24-1.1F, the “special” consumer protection statutes discussed in Usury Chart #8. If the loan is subject to one or more of the consumer protection statutes identified in Usury Chart #8, then the limitations, restriction, and prohibitions contained in the applicable consumer protection statute(s) control and override any corresponding limitations, restrictions and prohibitions contained in this chart.*

This Usury Chart #2 applies only if:

- The borrower is a natural person;
- The debt is incurred by the borrower primarily for personal, family or household purposes (i.e., the loan is a consumer-purpose loan);
- The loan is closed-end loan;
- The loan amount is \$300,000 or less; AND
- The loan is secured by a first or subordinate lien on real property upon which one or more single-family dwellings or dwelling units (including condominiums and manufactured homes) are or will be located.

	<u><b>LOAN IS SECURED BY FIRST LIEN</b></u> on real property upon which one or more single-family dwellings or dwelling units (including condominiums and manufactured homes) are or will be located	<u><b>LOAN IS SECURED BY SUBORDINATE LIEN</b></u> on real property upon which one or more single-family dwellings or dwelling units (including condominiums and manufactured homes) are or will be located
Loan Amount	\$0 - \$300,000	\$0 - \$25,000 / \$25,001 - \$300,000
Maximum Interest Rate	A	B / A
Prepayment Penalty	C, D	C, E
Fees at Origination	F	G
Passthrough Fees	H	H
In-House Appraisal Fees	I	I
Assumption Fees	J	J
Modification Fees	K	L
Deferral Fees	M	L
Late Charges	N	N
Other Requirements	O, P	None

**NOTES TO USURY CHART #2:**

**Maximum Interest Rate**

- A. There is no limit on the interest rate. G.S. 24-1.1(a), 24-1.1A(a)
- B. The interest rate may not exceed the Commissioner’s Rate. G.S. 24-1.1(a)

**Prepayment Penalty**

- C. Construction loans may be prepaid in part or in full at any time without penalty. G.S. 24-10(b). A “construction loan” is a loan to finance all or part of the cost of constructing buildings or other improvements on real property where (i) the loan proceeds are to be disbursed periodically under the terms of a written contract between the lender and the borrower as such construction work progresses, and (ii) the loan is payable in full no later than 18 months after the note is signed (if the

loan amount is for \$25,000 or less) or 36 months (if the loan amount is more than \$25,000). A construction loan may include advances for the purchase price of the property upon which the improvements are to be constructed. G.S. 24-10(c)

- D. Provided the loan is not a construction loan, the loan may be prepaid in part or in full at any time without penalty if (i) the loan amount is \$150,000 or less, and (ii) the loan is secured by a first lien on real property upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling; otherwise, a lender and a borrower may agree on any terms as to prepayment of the loan. G.S. 24-1.1A(b)(1) [Note: G.S. 24-1.1A(b)(2) expressly provides that the limitation on prepayment fees and penalties on home loans of \$150,000 or less does not apply to the extent state law limitations on prepayment fees and penalties are preempted by federal law or regulation.]
- E. Provided the loan is not a construction loan, if the original principal amount of the loan is \$100,000 or less, a maximum prepayment penalty of 2% of the outstanding balance may be charged if prepayment is made within three years after the first payment of principal. After three years, the loan may be prepaid in part or in full without penalty. Lender may require 30 days' notice of prepayment. On non-construction loans exceeding \$100,000, the prepayment penalty is fully negotiable. G.S. 24-10(b).

### **Fees at Origination**

- F. The following fees may be charged by agreement with the borrower at or before closing pursuant to G.S. 24-1.1A(c):
  - 1) Any amount for loan application, origination, commitment fees, and interest rate lock fees.
  - 2) Any amount to administer a construction loan or a construction/permanent loan, including inspection fees and loan conversion fees.
  - 3) Bona fide loan discount points.
  - 4) Passthrough fees (see Note H).
  - 5) In-house appraisal fees (see Note I).
  - 6) Assumption fees (see Note J).
  - 7) Additional fees, however denominated, payable to the lender that, in the aggregate, do not exceed the greater of (i) \$150, or (ii) 0.25% of the loan amount.
- G. Fees or discounts which, in the aggregate, do not exceed 2% of the loan amount may be charged by (i) any mortgagee approved by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Department of Veterans Affairs, a national mortgage association or any federal agency, and (ii) any local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan association and permitted by law to make home loans, credit union or insurance company, and (iii) any state or federal agency. G.S. 24-10(g)

### **Passthrough Fees**

- H. Pursuant to G.S. 24-8(d), a lender may collect money from the borrower for the payment of:
  - 1) Taxes, filing fees, recording fees, and other charges and fees paid to public officials.
  - 2) Fees paid to a governmental or a government agency to participate in a loan program sponsored or offered by the government or government agency, including loan guarantee and tax credit programs.
  - 3) Bona fide loan-related goods, products and services provided or to be provided by third parties, including fees for tax payment services, fees for flood certifications, fees for pest infestation determinations, mortgage broker fees, appraisal fees, inspection fees, environmental assessment fees, fees for credit report services, assessments, costs of upkeep, surveys, attorneys' fees, notary fees, escrow charges, and insurance premiums (including, for example, fire, title, life, accident and health, disability, unemployment, flood, and mortgage insurance).

However, no third party may charge or receive (i) any unreasonable compensation for loan-related goods, products, and services, or (ii) any compensation for which no loan-related goods and products are provided or for which no or only nominal loan-related services are performed.

### **In-House Appraisal Fees**

- I.** A bank, savings and loan association, savings bank, or credit union, or any subsidiary thereof organized under the laws of North Carolina or the United States, may charge a reasonable fee as agreed upon by the parties for an appraisal performed by an employee of the bank, savings and loan association, savings bank, or credit union, or any subsidiary or affiliate thereof. If a fee is collected for the appraisal from the borrower, a copy of the appraisal must be provided to the borrower at the borrower's request at no additional charge. G.S. 24-10(h)

### **Assumption Fees**

- J.** When a mortgage or deed of trust contains a due-on-sale clause and the original obligor is released from liability, an assumption fee up to \$400 is permitted. When a mortgage or deed of trust contains a due-on-sale clause and the original obligor is NOT released from liability, or when a mortgage or deed of trust does not contain a due-on-sale clause, an assumption fee up to \$125 is permitted. G.S. 24-10(d)

### **Modification Fees**

- K.** Pursuant to G.S. 24-1.1A(c), a lender may charge the following fees for any modification, renewal, extension, or amendment of the loan (other than deferral fees for deferral of loan payments – see Note M below):
  - 1) Bona fide discount points.
  - 2) Fees for the conversion of a variable rate loan to a fixed rate loan, of a fixed rate loan to a variable rate loan, of a closed-end loan to an open-end loan, or of an open-end loan to a closed-end loan, provided the fees do not exceed:
    - (a) 0.25% of the loan amount, if the principal loan amount is less than \$150,000.
    - (b) 1% of the loan amount, if the principal loan amount is \$150,000 or more.
  - 3) Passthrough fees (see Note H).
  - 4) In-house appraisal fees (see Note I).
  - 5) Assumption fees (see Note J).
  - 6) If no assumption fees are charged, additional fees, however denominated, payable to the bank which, in the aggregate, do not exceed the greater of \$150 or 0.25% of the outstanding balance. These additional fees may be charged only pursuant to a written agreement which states the amount of the fee and is made at the time the loan is modified, renewed, extended, or amended or at the time the specific modification, renewal, extension, or amendment is requested.
- L.** A bank or savings institution organized under the law of North Carolina or of the United States may charge a fee for the modification, renewal, extension or amendment of any terms of the loan. The fee may not exceed the greater of \$50 or 0.25% of the balance outstanding at that time. For loans of this type, the deferral of a payment will likely be considered a type of loan modification for which a bank may charge a modification fee. G.S. 24-1.1(d)

### **Deferral Fees**

- M.** G.S. 24-1.1A(g) controls. The parties may contract to defer payments, and for the payment of interest on deferred interest, as may be agreed upon by the parties, and the parties may agree that deferred interest may be added to the principal of the loan.

However, if the loan is secured by real property upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling, then the deferral fee is subject to the following limitations:

- 1) There must be a contemporaneous agreement stating the fee, and, if the installment to be deferred is 15 days or more past due, the agreement must be in writing and signed by at least one of the borrowers. An agreement will be considered a signed writing if the lender receives from at least one of the borrowers a facsimile or computer-generated message confirming or otherwise accepting the agreement.
- 2) The fee may not exceed the greater of \$50 or 5% of each installment deferred, multiplied by the number of complete months in the deferral period. A month is measured from the date an installment is due. The deferral period is that period during which no payment is required or made as measured from the date on which the deferred installment would otherwise have been due to the date the next installment is due under the terms of the note or the deferral agreement.

- 3) The bank may not pyramid deferral fees.
- 4) No late payment charge may be imposed if the deferred payment is paid as agreed.
- 5) 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 a deferral of a regularly scheduled payment is considered a modification or extension as described in Note M above.

### **Late Charges**

- N.** No late fee may be charged if all of the principal and interest are payable in a single payment (i.e., the loan is a "bullet" loan that is not payable in installments of interest or principal and interest). Otherwise a lender may charge a late fee of up to 4% of the amount of a payment which is past due for 15 days or more. If interest is paid in advance, the delinquent payment must be 30 days past due or more. The lender is required to notify the borrower within 45 days following the date the payment was due that a late payment charge has been imposed for a particular late payment. No late fee may be collected from the borrower if the borrower informs the lender that non-payment of an installment is in dispute and presents proof of payment within 45 days of receipt of the lender's notice of the late fee. G.S. 24-10.1(b)

### **Other Requirements**

- O.** Not later than the date of the home loan closing or three business days after the lender receives an application for a home loan, whichever is earlier, the lender must deliver or mail to the loan applicant information and examples of amortization of home loans reflecting various terms in a form made available by the Commissioner of Banks. Not later than three business days after the home loan closing, the lender must deliver or mail to the borrower an amortization schedule for the borrower's home loan. However, a lender is not be required to provide an amortization schedule unless the loan is a fixed rate home loan that requires the borrower to make regularly scheduled periodic amortizing payments of principal and interest. If the loan is a construction/permanent home loan, the amortization schedule must be provided only with respect to the permanent portion of the home loan during which amortization occurs. If the home loan transaction involves more than one natural person, the lender may deliver or mail the required materials to any one or more of the borrowers. G.S. 24-1.1A(a1)
- P.** The provisions of G.S. 24-1.1A as set forth in this Usury Chart #2 are not applicable to any loan regulated by G.S. 53C-5-3. G.S. 24-1.1A(d). As a consequence, the provisions of G.S. 24-1.1A do not apply to a real estate-secured loan made by a financial institution engaged in business in North Carolina if (i) the loan is insured or guaranteed by the Department of Housing and Urban Development, the Federal Housing Administration, a national mortgage association, or the Veterans Administration, or (ii) the loan is eligible and committed for sale to a national mortgage association, federal home loan bank, federal home loan mortgage corporation, or other agency or instrumentality of the United States.

G.S. 53C-5-3(g) further provides that no North Carolina law (i) prescribing the nature, amount, or form of security or requiring security upon which loans may be made, (ii) prescribing or limiting the rates or time of payment of the interest any obligation may bear, or (iii) prescribing or limiting the period for which loans may be made, shall apply to loans or investments made pursuant to G.S. 53C-5-3.



**USURY CHART #3**  
**CLOSED-END LOANS OTHER THAN CLOSED-END RESIDENTIAL LOANS**  
**August 2013**

This Usury Chart #3 applies *only if*:

- The borrower is a natural person;
- The debt is incurred by the borrower primarily for personal, family or household purposes (i.e., the loan is a consumer-purpose loan);
- The loan is a closed-end loan;
- The loan amount is less than \$300,000; **AND**
- The loan is (i) unsecured, (ii) secured by collateral other than real property, or (iii) secured by real property, but the loan is **NOT** secured by a first or subordinate lien on real property upon which one or more single-family dwellings or dwelling units (including condominiums and manufactured homes) are or will be located.

	<u>LOAN IS SECURED BY FIRST LIEN ON REAL PROPERTY other than real property upon which one or more single-family dwellings or dwelling units (including condominiums and manufactured homes) are or will be located</u>	<u>LOAN IS SECURED BY SUBORDINATE LIEN ON REAL PROPERTY other than real property upon which one or more single-family dwellings or dwelling units (including condominiums and manufactured homes) are or will be located</u>	<u>LOAN IS UNSECURED OR SECURED BY COLLATERAL OTHER THAN REAL PROPERTY</u>
Loan Amount	\$0 - \$25,000 / \$25,001 - \$300,000	\$0 - \$25,000 / \$25,001 - \$300,000	\$0 - \$25,000 / \$25,001 - \$300,000
Maximum Interest Rate	A / B	A / B	A / B
Prepayment Penalty	C / D	C / D	C / D
Fees at Origination	E	F	G
Passthrough Fees	H	H	H
In-House Appraisal Fees	I	I	No Fee Permitted
Assumption Fees	J	J	K
Modification Fees / Deferral Fees	K	K	K
Late Charges	L	L	L

**NOTES TO USURY CHART #3:**

**Maximum Interest Rate**

- A. The interest rate may not exceed the Commissioner’s Rate. G.S. 24-1.1(a)(1)
- B. There is no limit on the interest rate. G.S. 24-1.1(a)(2)

**Prepayment Penalty**

- C. Construction loans may be prepaid in part or in full at any time without penalty. G.S. 24-10(b). A “construction loan” is a loan to finance all or part of the cost of constructing buildings or other improvements on real property where (i) the loan proceeds are to be disbursed periodically under the terms of a written contract between the lender and the borrower as such construction work progresses, and (ii) the loan is payable in full no later than 18 months after the note is signed (if the loan amount is for \$25,000 or less) or 36 months (if the loan amount is more than \$25,000). A construction loan may include advances for the purchase price of the property upon which the improvements are to be constructed. G.S. 24-10(c)
- D. Provided the loan is not a construction loan, if the original principal amount of the loan is \$100,000 or less, a maximum prepayment penalty of 2% of the outstanding balance may be charged if prepayment is made within three years after the first payment of principal. After three years, the loan may be prepaid in part or in full without penalty. Lender may require 30 days’ notice of prepayment. On non-construction loans exceeding \$100,000, the prepayment penalty is fully negotiable. G.S. 24-10(b)

### **Fees at Origination**

- E.** For a construction loan on other than a one- or two-family dwelling, a lender can charge fees or discounts that, in the aggregate, do not exceed 2%. For other loans, a lender may charge fees or discounts which, in the aggregate, do not exceed 1%. However, if a lender makes both the construction loan and a permanent loan utilizing one note (i.e., a construction/permanent loan), the lender may collect the fees as if they were two separate loans. G.S. 24-10(a)
- F.** Fees or discounts which, in the aggregate, do not exceed 2% of the loan amount may be charged by (i) any mortgagee approved by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Department of Veterans Affairs, a national mortgage association or any federal agency, and (ii) any local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan association and permitted by law to make home loans, credit union or insurance company, and (iii) any state or federal agency. G.S. 24-10(g)
- G.** A bank or savings institution organized under the law of North Carolina or of the United States may charge an origination fee that does not exceed the greater of \$50 or 0.25% of the outstanding balance of the loan. If no funds are disbursed at closing, the lender may charge a \$50 fee. If funds are disbursed at closing, the lender may charge a \$50 fee or 0.25% of the outstanding principal balance of the loan, whichever is greater. G.S. 24-1.1(e)

### **Passthrough Fees**

- H.** Pursuant to G.S. 24-8(d), a lender may collect money from the borrower for the payment of:
  - 1) Taxes, filing fees, recording fees, and other charges and fees paid to public officials.
  - 2) Fees paid to a governmental or a government agency to participate in a loan program sponsored or offered by the government or government agency, including loan guarantee and tax credit programs.
  - 3) Bona fide loan-related goods, products and services provided or to be provided by third parties, including fees for tax payment services, fees for flood certifications, fees for pest infestation determinations, mortgage broker fees, appraisal fees, inspection fees, environmental assessment fees, fees for credit report services, assessments, costs of upkeep, surveys, attorneys' fees, notary fees, escrow charges, and insurance premiums (including, for example, fire, title, life, accident and health, disability, unemployment, flood, and mortgage insurance).

However, no third party may charge or receive (i) any unreasonable compensation for loan-related goods, products, and services, or (ii) any compensation for which no loan-related goods and products are provided or for which no or only nominal loan-related services are performed.

### **In-House Appraisal Fees**

- I.** A bank, savings and loan association, savings bank, or credit union, or any subsidiary thereof organized under the laws of North Carolina or the United States, may charge a reasonable fee as agreed upon by the parties for an appraisal performed by an employee of the bank, savings and loan association, savings bank, or credit union, or any subsidiary or affiliate thereof. If a fee is collected for the appraisal from the borrower, a copy of the appraisal must be provided to the borrower at the borrower's request at no additional charge. G.S. 24-10(h)

### **Assumption Fees**

- J.** When a mortgage or deed of trust contains a due-on-sale clause and the original obligor is released from liability, an assumption fee up to \$400 is permitted. When a mortgage or deed of trust contains a due-on-sale clause and the original obligor is NOT released from liability, or when a mortgage or deed of trust does not contain a due-on-sale clause, an assumption fee up to \$125 is permitted. G.S. 24-10(d)

### **Modification Fees / Deferral Fees**

- K.** A bank or savings institution organized under the law of North Carolina or of the United States may charge a fee for the modification, renewal, extension or amendment of any terms of the loan. The fee may not exceed the greater of \$50 or 0.25% of the balance outstanding at that time. G.S. 24-1.1(d)

For loans of these types, a loan assumption (if the loan is not secured by real property) or the deferral of a payment (regardless of the collateral) will likely be considered a loan modification for which the lender may charge a loan modification fee pursuant to G.S. 24-1.1(d).

### **Late Charges**

- L.** No late fee may be charged if all of the principal and interest are payable in a single payment (i.e., the loan is a "bullet" loan that is not payable in installments of interest or principal and interest). Otherwise a lender may charge a late fee of up to 4% of the amount of a payment which is past due for 15 days or more. If interest is paid in advance, the delinquent payment must be 30 days past due or more. The lender is required to notify the borrower within 45 days following the date the payment was due that a late payment charge has been imposed for a particular late payment. No late fee may be collected from the borrower if the borrower informs the lender that non-payment of an installment is in dispute and presents proof of payment within 45 days of receipt of the lender's notice of the late fee. G.S. 24-10.1(b)

**USURY CHART #4**  
**EQUITY LINES OF CREDIT THAT QUALIFY FOR THE LIMITED USURY EXEMPTION UNDER G.S. 24-9**  
**August 2013**

The regulation of equity lines of credit in North Carolina is particularly complex. Prior to October 2003, equity lines of credit were regulated by G.S. 24-1.2A. In 2003, the North Carolina legislature carved out a special “limited” usury exemption that applies to certain equity lines of credit made by banks. Equity lines of credit that qualify for the limited usury exemption are exempt from most rate and fee limitations pursuant to G.S. 24-9. Equity lines of credit that do not qualify for the limited exemption remain subject to G.S. 24-1.2A.

*However, regardless of whether an equity line of credit is subject to G.S. 24-9 or G.S. 24-1.2A, if the equity line of credit 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, then the equity line of credit is potentially subject to one or more of the consumer protection statutes discussed in Usury Chart #8 and should be evaluated using this chart and Usury Chart #8. If the loan is subject to one or more of the consumer protection statutes identified in Usury Chart #8, then the limitations, restriction, and prohibitions contained in the applicable consumer protection statute(s) control and override any corresponding limitations, restrictions and prohibitions contained in this chart.*

This Usury Chart #4 applies *only if*:

- The lender is a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States;<sup>1</sup>
- The borrower is a natural person;
- The debt is incurred by the borrower primarily for personal, family or household purposes (*i.e.*, the loan is a consumer-purpose loan);
- The loan is a revolving line of credit, open-end loan, revolving credit plan, or revolving credit card plan;
- The initial credit limit is \$12,000 or more, but less than \$300,000;<sup>2</sup>
- At any time within a specified period not to exceed thirty years, the borrower may request, and the lender is obligated to provide, credit advances up to the agreed aggregate credit limit;<sup>3</sup>
- Any repayments of principal within the specified time will reduce the amount of advances counted against the aggregate credit limit; **AND**
- The loan is secured by a first or subordinate mortgage or deed of trust on real property that shows on its face (i) the maximum principal amount that may be secured at any one time, and (ii) that it secures an equity line of credit governed by the provisions of Article 9 of Chapter 45 of the North Carolina General Statutes.<sup>4</sup>

**Limited Usury Exemption**

If the equity line of credit has all of the characteristics listed above, the equity line of credit qualifies for the limited usury exemption under G.S. 24-9, and the lending bank may charge and collect from the borrower interest at any rate and fees and other charges in any amount the borrower agrees to pay in connection with the equity line of credit.

However, even if an equity line of credit qualifies for the limited usury exemption under G.S. 24-9, the equity line of credit will be subject to the following, to the extent otherwise applicable:

<sup>1</sup> For an equity line of credit to be exempt under G.S. 24-9, the lender must be a “bank.” The term “bank” is defined in G.S. 24-9 as “a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States.” 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.

<sup>2</sup> As originally adopted in 2003, the initial credit limit had to be \$10,000 or more. However, on January 1, 2008, and on January 1 every five years thereafter, G.S. 24-9(a)(2)e. provides that the minimum initial credit limit required to qualify the equity line of credit for the limited usury exemption will be increased by \$1,000. This means, for example, that if the closing occurred on or after January 1, 2008, but prior to January 1, 2013, the initial credit limit had to be \$11,000 or more to qualify for the limited usury exemption. If the loan closes on or after January 1, 2013, but prior to January 1, 2018, the initial credit limit must be at least \$12,000 to qualify for the limited exemption. If the initial credit limit is \$300,000 or more, the loan is an exempt transaction pursuant to G.S. 24-9(a)(3)a. – see Usury Chart #1.

<sup>3</sup> The term “lender is obligated” means that the lender is contractually bound to provide credit advances – they may not be discretionary on the lender’s part. However, a lender may terminate the plan or suspend credit privileges if permitted under the Truth-in-Lending regulations that govern home equity lines of credit.

<sup>4</sup> The requirements for the mortgage or deed of trust to state on its face the maximum principal amount secured and that it secures an equity line of credit are not requirements that must be satisfied to qualify the equity line of credit for the limited usury exemption under G.S. 24-9. However, unless the requirements are satisfied, the mortgage or deed of trust will not qualify as an equity line security instrument under Article 9 of Chapter 45 of the General Statutes, and future advances will not have priority for lien purposes from the date the mortgage or deed of trust is recorded.

1. The provisions of G.S. 24-1.1E, the anti-predatory lending statute that regulates high-cost home loans. (See Usury Chart #8)
2. The provisions of G.S. 24-10.2, which provides consumer protections for certain home loans. (See Usury Chart #8)
3. Limitations on prepayment penalties. (See below)
4. Loss of exempt status if the borrower's credit limit is at any time reduced below the borrower's initial credit limit for any reason other than a permissible reason. (See below)

#### **Limitations on Prepayment Penalties**

Equity lines of credit that qualify for the limited usury exemption contained in G.S. 24-9 are subject to special limitations regarding prepayment penalties. The general rule under G.S. 24-9(c) is that no prepayment fees or penalties may be charged or collected by the bank with respect to an equity line of credit. However, there is one exception to this rule: A bank may charge and collect prepayment fees or penalties following the borrower's voluntary exercise of a right or option to repay all or any portion of the outstanding balance of a variable interest rate equity line of credit at a fixed interest rate over a specified period of time, subject to the following limitations:

1. Prepayment fees or penalties may be charged only with respect to the prepayment of that portion of the outstanding balance the borrower voluntarily agrees to repay at a fixed interest rate over a specified time;
2. No prepayment fees or penalties may be charged for prepayments made more than 30 months after the borrower voluntarily exercises the right or option to repay that portion of the outstanding balance of the equity line of credit at a fixed interest rate over a specified period of time; and
3. The prepayment fees or penalties charged with respect to that portion of the outstanding balance to be repaid at a fixed rate over a specified period of time may not exceed, in the aggregate, more than 2% of the amount prepaid.

#### **Reduction of Borrower's Credit Limit May Result in Loss of the Limited Usury Exemption**

If the borrower's credit limit is at any time reduced below the borrower's initial credit limit, the bank will lose its limited usury exemption (and the loan will thereafter be subject to the usury limitations in G.S. 24-1.2A described in Usury Chart #5) unless the credit limit is reduced because of one or more of the following<sup>5</sup>:

1. There is fraud or material misrepresentation by the consumer in connection with the plan.
2. The consumer fails to meet the repayment terms of the agreement for any outstanding balance.
3. Any action or inaction by the consumer adversely affects the bank's security for the plan, or any right the bank has in such security.
4. Federal law dealing with credit extended by the bank to its executive officers specifically requires that, as a condition of the plan, the credit shall become due and payable on demand, provided the bank includes such a provision in the initial agreement.
5. The value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan.
6. The bank reasonably believes that the consumer will be unable to fulfill the repayment obligations under the plan because of a material change in the consumer's financial circumstances.
7. The consumer is in default of any material obligation under the agreement.
8. The bank is precluded by government action from imposing the annual percentage rate provided for in the agreement.
9. The priority of the bank's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line.
10. The bank is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice.
11. The credit limit 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 credit limit of the equity line of credit is no greater than the difference between the loan amount secured by the refinancing mortgage and the outstanding principal balance of the loan being refinanced.

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<sup>5</sup> With the exception of reason no. 11, the justifications for reducing the borrower's credit limit are the same reasons a creditor may unilaterally reduce a borrower's credit limit in a home equity line of credit that is subject to Reg Z. In identifying the reasons a borrower's credit limit may be reduced without losing the limited usury exemption, G.S. 24-9(a)(2)e. refers specifically to section 5b of Reg Z, and in particular to 12 C.F.R. 226.5b(f)(2) and 12 C.F.R. 226.5b(f)(3)(vi), both of which were adopted by the Federal Reserve Board. Because the CFPB now has rulemaking authority and responsibility for the federal Truth-in-Lending Act, the regulations previously adopted by the Federal Reserve Board are now outdated. The corresponding regulations adopted by the CFPB are codified at 12 C.F.R. 1026.40(f)(2) and 12 C.F.R. 1026.40(f)(3)(vi).

**USURY CHART #5**  
**EQUITY LINES OF CREDIT THAT ARE SUBJECT TO G.S. 24-1.2A**  
**BECAUSE THEY DO NOT QUALIFY FOR THE LIMITED USURY EXEMPTION UNDER G.S. 24-9**  
**August 2013**

The regulation of equity lines of credit in North Carolina is particularly complex. Prior to October 2003, equity lines of credit were regulated by G.S. 24-1.2A. In 2003, the North Carolina legislature carved out a special “limited” usury exemption that applies to certain equity lines of credit made by banks. Equity lines of credit that qualify for the limited usury exemption are exempt from most rate and fee limitations pursuant to G.S. 24-9. Equity lines of credit that do not qualify for the limited exemption remain subject to G.S. 24-1.2A.

*However, regardless of whether an equity line of credit is subject to G.S. 24-9 or G.S. 24-1.2A, if the equity line of credit 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, then the equity line of credit is potentially subject to one or more of the consumer protection statutes discussed in Usury Chart #8 and should be evaluated using this chart and Usury Chart #8. If the loan is subject to one or more of the consumer protection statutes identified in Usury Chart #8, then the limitations, restriction, and prohibitions contained in the applicable consumer protection statute(s) control and override any corresponding limitations, restrictions and prohibitions contained in this chart.*

This Usury Chart #5 applies *only if*:

- The borrower is a natural person;
- The debt is incurred by the borrower primarily for personal, family or household purposes (*i.e.*, the loan is a consumer-purpose loan);
- The loan is an open-end (or revolving) line of credit;
- The credit limit is less than \$300,000;
- At any time within a specified period not to exceed thirty years, the borrower may request, and the lender is obligated to provide, credit advances up to the agreed aggregate credit limit;<sup>6</sup>
- Any repayments of principal within the specified time will reduce the amount of advances counted against the aggregate credit limit;
- The loan is secured by a first or subordinate mortgage or deed of trust on real property that shows on its face (i) the maximum principal amount that may be secured at any one time, and (ii) that it secures an equity line of credit governed by the provisions of Article 9 of Chapter 45 of the North Carolina General Statutes; AND
- For whatever reason, the equity line of credit does not qualify for the limited usury exemption under G.S. 24-9.

	Equity Line of Credit Secured by <i>FIRST OR SUBORDINATE LIEN</i> on real property
<b>Initial Credit Limit</b>	\$0 - \$300,000
<b>Maximum Interest Rate</b>	A
<b>Prepayment Penalty</b>	B
<b>Fees at Origination / Life of Loan Limits</b>	C
<b>Passthrough Fees</b>	D
<b>In-House Appraisal Fees</b>	E
<b>Assumption Fees</b>	F
<b>Modification Fees / Deferral Fees</b>	G
<b>Late Charges</b>	None Permitted

**NOTES TO USURY CHART #5**

**Maximum Interest Rate**

- A. The interest rate may not exceed the Commissioner’s Rate as specified in G.S. 24-1.1(c). While the interest rate may be an adjustable or variable rate, the rate in effect for a given period may not exceed the maximum rate permitted under G.S. 24-1.1(c) for the same period. G.S. 24-1.2A(a)

<sup>6</sup> The term “lender is obligated” means that the lender is contractually bound to provide credit advances – they may not be discretionary on the lender’s part. The contract must set forth any events of default by the borrower, or other events not within the lender’s control, which may relieve the lender from the lender’s obligation, and must state whether or not the lender has reserved the right to cancel or terminate the obligation.

### **Prepayment Penalty**

- B.** Equity lines of credit subject to G.S. 24-1.2A may be prepaid in part or in full at any time without penalty. G.S. 45-82.4. When the balance is \$0, the lender must cancel the mortgage or deed of trust upon request. G.S. 45-81

### **Fees at Origination / Life of Loan Limits**

- C.** G.S. 24-1.2A(b) permits a lender to charge fees on equity lines of credit which, in the aggregate and over the life of the contract based on the maximum limit of the line of credit, do not exceed those permitted under G.S. 24-10. This provision is ambiguous because the following fees permitted by G.S. 24-10 are permitted only if the loan is made under G.S. 24-1.1. While it may be argued that the intent of G.S. 24-1.2A(b) is to permit lenders to charge the following fees even though the equity line of credit is made under G.S. 24-1.2A (and not G.S. 24-1.1), the ability of a lender to charge the following fees is uncertain:
- When the loan is secured by a first lien on real property
    - If the loan is a construction loan on other than one- or two-family dwellings (which is unlikely in the context of an equity line of credit), a lender may charge fees or discounts that, in the aggregate, do not exceed 2%.
    - If the loan is not a construction loan on other than one- or two-family dwellings, a lender may charge fees or discounts which, in the aggregate, do not exceed 1%.
    - If a lender makes both the construction loan and a permanent loan utilizing one note (i.e., a construction/permanent loan), a lender may collect the fees as if they were two separate loans. G.S. 24-10(a)
  - When the loan is secured by a subordinate lien on real property, fees or discounts which, in the aggregate, do not exceed 2% of the loan amount may be charged by (i) any mortgagee approved by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Department of Veterans Affairs, a national mortgage association or any federal agency, and (ii) any local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan association and permitted by law to make home loans, credit union or insurance company, and (iii) any state or federal agency. G.S. 24-10(g)

### **Passthrough Fees**

- D.** Pursuant to G.S. 24-8(d), a lender may collect money from the borrower for the payment of:
- 1) Taxes, filing fees, recording fees, and other charges and fees paid to public officials.
  - 2) Fees paid to a governmental or a government agency to participate in a loan program sponsored or offered by the government or government agency, including loan guarantee and tax credit programs.
  - 3) Bona fide loan-related goods, products and services provided or to be provided by third parties, including fees for tax payment services, fees for flood certifications, fees for pest infestation determinations, mortgage broker fees, appraisal fees, inspection fees, environmental assessment fees, fees for credit report services, assessments, costs of upkeep, surveys, attorneys' fees, notary fees, escrow charges, and insurance premiums (including, for example, fire, title, life, accident and health, disability, unemployment, flood, and mortgage insurance).

However, no third party may charge or receive (i) any unreasonable compensation for loan-related goods, products, and services, or (ii) any compensation for which no loan-related goods and products are provided or for which no or only nominal loan-related services are performed.

### **In-House Appraisal Fees**

- E.** A bank, savings and loan association, savings bank, or credit union, or any subsidiary thereof organized under the laws of North Carolina or the United States, may charge a reasonable fee as agreed upon by the parties for an appraisal performed by an employee of the bank, savings and loan association, savings bank, or credit union, or any subsidiary or affiliate thereof. If a fee is collected for the appraisal from the borrower, a copy of the appraisal must be provided to the borrower at the borrower's request at no additional charge. G.S. 24-10(h)

### **Assumption Fees**

- F.** When a mortgage or deed of trust contains a due-on-sale clause and the original obligor is released from liability, an assumption fee up to \$400 is permitted. When a mortgage or deed of trust contains a due-on-sale clause and the original obligor is NOT released from liability, or when a mortgage or deed of trust does not contain a due-on-sale clause, an assumption fee up to \$125 is permitted. G.S. 24-10(d)

### **Modification Fees / Deferral Fees**

- G.** A lender may charge a fee for the modification, renewal, extension or amendment of any terms of the loan. The fee may not exceed the greater of \$50 or 0.25% of the balance outstanding at that time. G.S. 24-1.2A(b). For an equity line of credit, the deferral of a payment will likely be considered a loan modification for which the lender may charge a loan modification fee pursuant to G.S. 24-1.2A(b).

**USURY CHART #6**  
**OPEN-END CREDIT CARD PLANS THAT:**  
**(1) ARE UNSECURED OR SECURED BY COLLATERAL OTHER THAN REAL PROPERTY,**  
**AND**  
**(2) QUALIFY FOR THE LIMITED USURY EXEMPTION UNDER G.S. 24-9**  
**August 2013**

*In 2003, the North Carolina General Assembly carved out an additional “limited” usury exemption for certain revolving credit card plans offered by banks. If the credit card plan satisfies the specific requirements of G.S. 24-9, the credit card plan will be subject to the limited usury exemption described in that statute. If the revolving line of credit does not satisfy all of the requirements for a bank credit card plan under G.S. 24-9, the revolving line of credit (if not otherwise exempt) is subject to the provisions of G.S. 24-11 and G.S. 24-11.1.*

This Usury Chart #6 applies only if:

- The lender is a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States;<sup>7</sup>
- The borrower is a natural person;
- The debt is incurred by the borrower primarily for personal, family or household purposes (*i.e.*, the loan is a consumer-purpose loan);
- The loan is an open-end (or revolving) credit card plan (*i.e.*, credit that can be accessed by use of a credit card);
- The initial credit limit is less than \$300,000; AND
- The loan is either unsecured or secured by collateral other than real property.<sup>8</sup>

#### Limited Usury Exemption

The Bank may charge and collect from any borrower interest at any rate, as well as fees and other charges in any amount that the borrower agrees to pay in connection with a revolving credit card plan that qualifies for the limited usury exemption under G.S. 24-9(d).

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<sup>7</sup> For credit card plan to be exempt under G.S. 24-9, the lender must be a "bank." The term "bank" is defined in G.S. 24-9 as "a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States." 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.

<sup>8</sup> The limited usury exemption for bank-issued credit card plans does not apply to a revolving credit card plan that is secured by a mortgage or deed of trust on real property. However, if the real-estate-secured credit card plan is not otherwise exempt, it may qualify for the limited usury exemption that applies to certain equity lines of credit – see Usury Chart # 4; otherwise, it will be subject to Usury Chart #5.

**USURY CHART #7**  
**OPEN-END CREDIT CARD PLANS THAT**  
**ARE UNSECURED OR SECURED BY COLLATERAL OTHER THAN REAL PROPERTY,**  
**BUT THAT**  
**DO NOT QUALIFY FOR THE LIMITED USURY EXEMPTION UNDER G.S. 24-9**  
**August 2013**

This Usury Chart #7 applies *only if*:

- The loan is an open-end (or revolving) line of credit [Note: It need not be a credit card plan];
- The credit limit is less than \$300,000;
- The borrower is a natural person;
- The debt is incurred by the borrower primarily for personal, family or household purposes (*i.e.*, the loan is a consumer-purpose loan);
- The loan is either unsecured or secured collateral other than real property; AND
- The loan is NOT a credit card plan that qualifies for the limited usury exemption under G.S. 24-9 (See Usury Chart #6).

	Open-end credit plans, including revolving credit card plans – but <u>excluding</u> direct loans under a check loan, check credit, or other such plan	Other revolving credit loans, including check loans, check credit or other revolving credit plans where lender makes direct loans to borrower
<b>Initial Credit Limit</b>	\$0 - \$300,000	\$0 - \$300,000
<b>Maximum Interest Rate / Annual or Monthly Charge</b>	A	B
<b>Prepayment Penalty</b>	None Permitted	None Permitted
<b>Fees at Origination</b>	C	C
<b>Passthrough Fees</b>	D	D
<b>Assumption, Modification, and Deferral Fees</b>	None Permitted	None Permitted
<b>Late Charges</b>	E	E
<b>Other Restrictions</b>	F, G	None

**NOTES TO USURY CHART #7**

**Maximum Interest Rate / Annual or Monthly Charge**

- A. This rule applies to any extension of credit under an open-end credit or similar plan, including revolving credit card plans and revolving charge accounts, but excluding any loan made directly by a lender under a check loan, check credit or other such plan.

If no service charge is imposed on the borrower if the account is paid in full within 25 days from the billing date, and either (ii) the lender charges an annual charge that does not exceed \$24, or (ii) if the lender chooses not to impose an annual charge, the lender imposes a service charge that does not exceed \$2.00 per month on the balance of any account which is not paid in full within 25 days from the billing date, then the lender may charge and collect interest, finance charges, or other fees at a rate in the aggregate that does not exceed 1.5% per month computed on the unpaid portion of the balance of the previous month less payments or credit within the billing cycle, or on the average daily balance outstanding during the current billing period.

However, if the open-end or similar plan charges a monthly periodic rate greater than 1.25%, then the account may not be secured by real or personal property or any other thing of value.

G.S. 24-11(a), (a1), and (c)



- B.** On revolving credit loans (including check loans, check credit or other revolving credit plans whereby a bank, banking institution or other lending agency makes direct loans to a borrower), if agreed to in writing by the borrower, the lender may collect interest and service charges by application of a monthly periodic rate computed on the average daily balance outstanding during the billing period. The rate may not exceed 1.5%.

However, if the open-end or similar plan charges a monthly periodic rate greater than 1.25%, then the account may not be secured by real or personal property or any other thing of value.

G.S. 24-11(b) and (c)

#### **Fees at Origination**

- C.** No person, firm or corporation may charge a discount or fee in excess of 6% of the principal amount of the accounts acquired from or through any vendors or others providing services who participate in such plan. Otherwise, no origination fees are contemplated or authorized.

#### **Passthrough Fees**

- D.** Pursuant to G.S. 24-8(d), a lender may collect money from the borrower for the payment of:

- 1) Taxes, filing fees, recording fees, and other charges and fees paid to public officials.
- 2) Fees paid to a governmental or a government agency to participate in a loan program sponsored or offered by the government or government agency, including loan guarantee and tax credit programs.
- 3) Bona fide loan-related goods, products and services provided or to be provided by third parties, including fees for tax payment services, fees for flood certifications, fees for pest infestation determinations, mortgage broker fees, appraisal fees, inspection fees, environmental assessment fees, fees for credit report services, assessments, costs of upkeep, surveys, attorneys' fees, notary fees, escrow charges, and insurance premiums (including, for example, fire, title, life, accident and health, disability, unemployment, flood, and mortgage insurance).

However, no third party may charge or receive (i) any unreasonable compensation for loan-related goods, products, and services, or (ii) any compensation for which no loan-related goods and products are provided or for which no or only nominal loan-related services are performed.

#### **Late Charges**

- E.** For a payment past due 30 days or more, the lender may charge
- If the outstanding balance is less than \$100, a late fee not to exceed \$5
  - If the outstanding balance is \$100 or more, a late fee not to exceed \$10.

However, in no case may the late charge exceed the outstanding principal balance.

G.S. 24-11(d1)

#### **Other Restrictions**

- F.** A lender may not impose an annual or service charge on an existing credit card account upon which the charge has not previously been imposed unless the lender (i) gives the cardholder at least 30 days prior notice of any new annual charge or service charge the lender proposes to charge, and (ii) advises the cardholder of his right not to accept the new charge. This notice shall be bold and conspicuous, and shall be on the face of the periodic billing statement or on a separate statement which is clearly noted on the face of the periodic billing statement provided to the cardholder. If the cardholder does not accept the new charge upon an existing credit card account, the lender may require that the cardholder make no further use of the account beyond the 30-day period in order to avoid paying the annual charge, but the cardholder shall be entitled to pay off any remaining balance according to the terms of the credit agreement. If, within 12 months of the initial imposition of an annual charge, the cardholder rescinds his credit card contract and surrenders all cards issued under the contract to the lender, the cardholder shall be entitled to a prorated refund of the annual fee previously charged, credited to the cardholder's credit card account.
- G.** Credit card accounts in North Carolina are subject to the disclosure requirements contained in G.S. 24-11.1. However, G.S. 24-11.1(c) provides as follows:

The form and content of the disclosures described in [G.S. 24-11.1] may be consistent with similar disclosures required by the federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., and Regulation Z, 12 C.F.R. 226. Any amendment to the Act or Regulation that addresses credit card disclosures shall to the extent it covers applications, solicitations, and other communications covered by this section, replace the disclosure requirements of this section for creditors subject to the Act.

References in G.S. 24-11.1 to Reg Z as codified in 12 C.F.R. 226 are now outdated and certainly suspect. Reg Z as promulgated by the CFPB is codified in 12 C.F.R. Part 1026.

**USURY CHART #8**  
**CONSUMER PROTECTIONS**  
**FOR**  
**LOANS SECURED BY THE BORROWER'S PRINCIPAL DWELLING**  
**August 2013**

**IMPORTANT NOTE:** This chart covers three important North Carolina statutes that afford consumers protection when a loan is secured by the borrower's principal dwelling:

- G.S. 24-10.2, which prohibits certain miscellaneous abusive lending practices, including "flipping";
- G.S. 24-1.1E, North Carolina's primary anti-predatory lending statute; and
- G.S. 24.1.1F, which is intended to curtail certain abusive sub-prime lending practices.

The three North Carolina statutes were not adopted in a vacuum – to the contrary, they were intended to broaden consumer protections then afforded by the federal Truth-in-Lending Act (TILA) and, in particular, the federal Home Ownership and Equity Protection Act (HOEPA), which was adopted by Congress as an amendment to TILA in 1994.

Because they were (at least in part) based on corresponding federal laws and regulations, G.S. 24.1.1E and G.S. 24.1.1F contain several references to TILA, HOEPA, and Reg Z, the implementing regulation adopted by the Federal Reserve Board, which then had TILA rulemaking authority.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 amended TILA/HOEPA and transferred all rulemaking authority and responsibility for TILA/HOEPA from the Federal Reserve Board to the Bureau of Consumer Financial Protection (CFPB). The CFPB has already made (and is continuing to make) sweeping revisions to the regulations governing home loans, many of which will not become effective until 2014. As a result, references in the North Carolina usury and consumer protection statutes to TILA, HOEPA, and Reg Z as adopted by the Federal Reserve Board may now be outdated, are certainly suspect, and are already very much "out of sync" with the corresponding Reg Z provisions, particularly those that have been newly adopted by the CFPB and that are not yet effective.

To further complicate matters, in adopting Session Law 2013-399 in the closing days of the 2013 legislative session, the General Assembly amended G.S. 24-1.1E and G.S. 24.1.1F. The changes noted in the charts become effective October 1, 2013.

*Even if a loan is an exempt loan because the loan amount is \$300,000 or more, every consumer-purpose open-end or closed-end loan to an individual should be tested against each of these three consumer protection statutes if the loan is secured by a lien on (i) a manufactured home that is or will be occupied by the borrower as the borrower's principal dwelling, or (ii) real property upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling. The following chart provides guidance as to the universe of loans potentially subject to each statute.*

**In using this Usury Chart #8 for each statute:**

- **STEP 1:** Determine whether the loan is within the universe of loans to which the statute may apply. If it is not, you may proceed to the next statute.
- **STEP 2:** If the loan is within the universe of loans to which the statute may apply, determine whether the specific terms of the loan exceed one or more of the thresholds. If the loan terms do not exceed any threshold, you may proceed to the next statute.

- **STEP 3:** If the terms of the loan exceed one or more of the thresholds, then the loan is subject to the limitations, restrictions, and prohibitions imposed by that statute in addition to any restrictions that otherwise apply to the loan under North Carolina law or Reg Z.

**Loans with the following characteristics should be evaluated using this Usury Chart #8:**

	<b>G.S. 24-10.2 Protections in Certain Consumer Home Loans</b>	<b>G.S. 24-1.1E High-Cost Home Loans</b>	<b>*G.S 24-1.1F Rate Spread Home Loans</b>
<b>Borrower</b>	Natural person	Natural person	Natural person
<b>Loan Purpose</b>	Consumer-purpose	Consumer-purpose	Consumer-purpose
<b>Loan Type</b>	Open-end or closed-end loan	Open-end or closed-end loan	Open-end or closed-end loan
<b>Loan Amount</b>	No limit specified	Not more than the lesser of  (i) \$300,000, or  (ii) Fannie Mae's conforming loan size limit for a single-family dwelling (currently \$417,000 to \$625,500 in NC, depending on the county)	Does not exceed Fannie Mae's conforming loan size limit for a single-family dwelling (currently \$417,000 to \$625,500 in NC, depending on the county)
<b>Collateral</b>	Loan secured by a mortgage or deed of trust on real estate upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling	Loan secured by either:  (i) A security interest in a manufactured home that is or will be occupied by the borrower as the borrower's principal dwelling, or  (ii) A mortgage or deed of trust on real estate upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling	Loan secured by:  (i) A security interest in a manufactured home that is or will be occupied by the borrower as the borrower's principal dwelling,  (ii) A mortgage or deed of trust on real property upon which there is located a existing 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling, or  (iii) A mortgage or deed of trust on real property upon which there is to be constructed using the loan proceeds a 1-4 family residential structure which, when completed, will be occupied by the borrower as the borrower's principal dwelling
<b>The loan is NOT</b>	A reverse mortgage transaction	A reverse mortgage transaction	An equity line of credit, construction loan, reverse mortgage transaction, or bridge loan with a term of 12 months or less

\* Session Law 2013-399 completely rewrote G.S. 24-1.1F effective October 1, 2013. This column identifies the universe of loans that may, depending on the loan's annual percentage rate, be considered rate spread home loans under NC law, but only if the loan is closed *before* October 1, 2013. Beginning October 1, 2013, G.S. 24-1.1F redefines a "rate spread home loan" as "a loan that has an annual percentage rate that exceeds the limits set out in 15 U.S.C. § 1639c(c)(1)(B)(ii) and any regulations promulgated thereunder," effectively adopting the federal test used to determine whether a loan is a higher-priced mortgage loan for Reg Z purposes.

## G.S. 24-10.2 – PROTECTIONS IN CERTAIN CONSUMER HOME LOANS

**STEP 1:** The universe of loans that may be "consumer home loans" subject to the consumer protection provisions of G.S. 24-10.2 includes both open-end credit plans and closed-end home loans that have all of the following attributes:

<b>Identity of Borrower</b>	A natural person
<b>Loan Purpose</b>	Debt is incurred primarily for personal, family, or household purposes (i.e., the loan is a consumer-purpose loan)
<b>Loan Type</b>	Open-end or closed-end loan, but <b>NOT</b> a reverse mortgage transaction
<b>Loan Amount</b>	Any amount
<b>Collateral</b>	Loan secured by a mortgage or deed of trust on real estate upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling

**STEP 2:** There are no specific tests or thresholds that apply to loans that have the attributes identified above – all are considered "consumer home loans" subject to the restrictions described in Step 3.

**STEP 3:** Consumer home loans are subject to the following limitations, restrictions, and prohibitions:

***No Financing Credit Insurance Premiums.*** A lender may not finance, directly or indirectly, any credit life, disability, or unemployment insurance, or any other life or health insurance premiums. However, insurance premiums calculated and paid on a monthly basis are not be considered financed by the lender.

***Prohibition Against "Flipping."*** A lender may not knowingly or intentionally engage in the unfair act or practice of "flipping" a consumer home loan. "Flipping" occurs when a lender makes new consumer home loan to a borrower that refinances an existing consumer home loan under circumstances in which 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. The prohibition against "flipping" applies without regard as to whether the interest rate, points, fees, and charges paid or payable by the borrower in connection with the refinancing would render the loan a high-cost home loan under G.S. 24-1.1E.

***Prohibition Against Counseling Default.*** Prior to and in connection with the closing or planned closing of a consumer home loan that will refinance all or any portion of a borrower's existing loan or debt, a lender may not (i) recommend to the borrower that the borrower default on the existing obligation, or (ii) encourage the borrower to default on an existing obligation.

## G.S. 24-1.1E - NORTH CAROLINA'S HIGH COST HOME LOAN STATUTE

**NOTE:** *G.S. 24-1.1E is North Carolina's primary anti-predatory lending statute. The corresponding provisions in Reg Z are those sections that regulate what in Reg Z parlance have been called "HOEPA loans," "Section 32 loans," or "high-cost mortgages." Reg Z as adopted by the CFPB consistently identifies these loans as "high-cost mortgages." Once all the new CFPB regulations become effective, high-cost mortgages will be subject to Reg Z sections 31, 32, 34, 36, and 43.*

**STEP 1:** The universe of loans that may be considered "high-cost home loans" subject to the restrictions and limitations imposed by G.S. 24-1.1E includes both open-end and closed-end home loans that have all of the following attributes:

<b>Identity of Borrower</b>	A natural person
<b>Loan Purpose</b>	Debt is incurred primarily for personal, family, or household purposes (i.e., the loan is a consumer-purpose loan)
<b>Loan Type</b>	Open-end or closed-end loan, but <b>NOT</b> a reverse mortgage transaction
<b>Loan Amount</b>	Not more than the lesser of (i) \$300,000, or (ii) Fannie Mae's conforming loan size limit for a single-family dwelling (currently \$417,000 to \$625,500 in NC, depending on the county)
<b>Collateral</b>	Loan secured by either: (i) A security interest in a manufactured home that is or will be occupied by the borrower as the borrower's principal dwelling, or (ii) A mortgage or deed of trust on real estate upon which there is located or there is to be located a 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling

**STEP 2:** Determine whether the specific terms of the loan exceed one or more of the following thresholds:

**APR Threshold.** The APR threshold under G.S. 24-1.1E reads as follows:

Without regard to whether the loan transaction is or may be 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 from time to time), the annual percentage rate of the loan at the time the loan is consummated is such that the loan is considered a "mortgage" under section 152 of the Home Ownership and Equity Protection Act of 1994 (Pub. Law 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from time to time, and regulations adopted pursuant thereto by the Federal Reserve Board, including section 226.32 of Title 12 of the Code of Federal Regulations, as the same may be amended from time to time.

Under the current rules, a loan is a high-cost home loan for purposes of G.S. 24-1.1E if the APR at closing exceeds by more than 8 percentage points for first-lien loans, or by more than 10 percentage points for subordinate-lien loans, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the 15<sup>th</sup> day of the month immediately preceding the month in which the lender receives the credit application.

However, the language in G.S. 24-1.1E has not kept pace with recent changes to HOEPA made by the Dodd-Frank Wall Street Reform and Consumer Protection Act, which introduced a new and different formula for determining whether a loan is a high-cost mortgage under Reg Z. The CFPB regulations introducing the new formula were adopted in January 2013 but do not become effective until January 10, 2014. It is likely (but not certain) that the APR

threshold test in G.S. 24-1.1E will be interpreted in a manner consistent with the recent revisions to HOEPA and the new CFPB regulation. The Reg Z APR threshold test that takes effect January 10, 2014, is as follows:

The loan is a high-cost mortgage if the APR (as determined under the rule described below) exceeds the "average prime offer rate" for a comparable transaction by more than:

- 6.5 percentage points for a first-lien transaction, other than a first-lien transaction in which the dwelling is personal property and the loan amount is less than \$50,000;
- 8.5 percentage points for a first-lien transaction if the dwelling is personal property and the loan amount is less than \$50,000; or
- 8.5 percentage points for a subordinate-lien transaction.

The "average prime offer rate" is an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The CFPB publishes the average prime offer rates for a broad range of types of transactions in a table updated at least weekly.

For purposes of the applying the APR threshold test, the APR for a closed- or open-end credit transaction is based on the following:

- For a transaction in which the APR will not vary during the term of the loan or credit plan, the interest rate in effect as of the date the interest rate for the transaction is set;
- For a transaction in which the interest rate may vary during the term of the loan or credit plan in accordance with an index, the interest rate that results from adding the maximum margin permitted at any time during the term of the loan or credit plan to the value of the index rate in effect as of the date the interest rate for the transaction is set, or the introductory interest rate, whichever is greater; and
- Except for those transactions described above, for any other transaction in which the interest rate may or will vary during the term of the loan or credit plan, the maximum interest rate that may be imposed during the term of the loan or credit plan.

***Prepayment Penalty Threshold.***

- ***Closed-End Loan.*** If the loan is a closed-end loan, the loan is a high-cost home loan if the loan documents permit the lender to charge or collect prepayment fees or penalties (i) more than 30 months after the loan closing, or (ii) that exceed, in the aggregate, more than 2% of the amount prepaid.
- ***Open-End Loan.*** If the loan is an open-end credit plan, the loan is a high-cost home loan if the loan documents permit the lender to charge or collect prepayment fees or penalties (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; (ii) if the borrower has the 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 voluntarily exercises that right or option; or (iii) that exceed, in the aggregate, more than 2% of the amount prepaid.

***Total Points and Fees Threshold.***<sup>9</sup> Subject to the special rules regarding discount points and prepayment penalties described below, the loan is a high-cost home loan if the total "points and fees" (defined below) payable by the borrower at or before the loan closing exceed 5%<sup>10</sup> of the "total loan amount" (defined below) if the total loan amount is \$20,000 or more, or the lesser of \$1,000 or 8% of the total loan amount if the total loan amount is less than \$20,000.

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<sup>9</sup> Session Law 2013-399 modified the Total Points and Fees Threshold effective October 1, 2013.

<sup>10</sup> Session Law 2013-399 increased this percentage amount from 4% to 5% effective October 1, 2013. If the total loan amount is \$20,000 or more and the loan is closed ***before October 1, 2013***, then the loan is a high-cost home loan if the total "points and fees" payable by the borrower at or before the loan closing exceed 4% (not 5%) of the "total loan amount." If closed ***on or after October 1, 2013***, then the loan is a high-cost home loan if the total "points and fees" payable by the borrower at or before the loan closing exceed 5% (not 4%) of the "total loan amount."

- **Total Loan Amount.** For a closed-end loan, the term "total loan amount" has the same meaning as is set forth in 12 C.F.R. 226.32 and should be calculated according to the Federal Reserve Board's Official Commentary for section 32.<sup>11</sup> For an open-end credit plan, the term "total loan amount" means the borrower's initial maximum credit limit.
- **Points and Fees.** Subject to the special rules for discount points and prepayment penalties described below, the term "points and fees" includes all of the following:
  1. All items paid by a borrower at or before closing that are required to be disclosed as part of the finance charge under 12 C.F.R. 226.4(a) and 12 C.F.R. 226.4(b)<sup>12</sup> of Reg Z, except for the following:
    - Interest and any time-price differential;
    - Effective October 1, 2013, any up-front fees collected and paid to the Federal Housing Administration, the Veterans' Administration, or the U.S. Department of Agriculture to insure or guarantee a home loan<sup>13</sup>;
    - 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; or
    - Fees 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 for the following:
 

<ul style="list-style-type: none"> <li>➤ Fees for tax payment services</li> <li>➤ Appraisal fees</li> <li>➤ Surveys</li> <li>➤ Fees for pest infestation and flood determinations</li> <li>➤ Fees for flood certification</li> <li>➤ Credit reports</li> <li>➤ Notary fees</li> <li>➤ Fees for inspections performed prior to closing</li> <li>➤ Title insurance premiums</li> </ul>	<ul style="list-style-type: none"> <li>➤ Attorneys' fees (provided the borrower has the right to select the attorney from an approved list or otherwise)</li> <li>➤ Escrow charges, so long as not otherwise included in the calculation of points and fees under 12 C.F.R. 226.4(a) and 12 C.F.R. 226.4(b) of Reg Z</li> <li>➤ Premiums for insurance against loss or damage to property, including hazard insurance and flood insurance premiums, provided the conditions in 12 C.F.R. 226.4(d)(2)<sup>14</sup> of Reg Z are met</li> </ul>
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<sup>11</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 amended the Truth-in-Lending Act and transferred all rulemaking authority and responsibility for the Act from the Federal Reserve Board to the CFPB. The corresponding regulation adopted by the CFPB is 12 C.F.R. 1026.32.

<sup>12</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 amended the Truth-in-Lending Act and transferred all rulemaking authority and responsibility for the Act from the Federal Reserve Board to the CFPB. The corresponding regulations adopted by the CFPB are 12 C.F.R. 1026.4(a) and 12 C.F.R. 1026.4(b).

<sup>13</sup> Session Law 2013-399 amended G.S. 24-1.1E(a)(5) a.2 effective October 1, 2013. For loans closed before October 1, 2013, G.S. 24-1.1E(a)(5) a.2 provided that the term "points and fees" did not include (a) that portion of the up-front fees collected and paid to the Federal Housing Administration, the Veterans' Administration, or the U.S. Department of Agriculture to insure or guarantee a home loan that exceeds 1.25% of the total loan amount, or (b) that portion of any up-front private mortgage insurance premium, charge, or fee that exceeds 1.25% of the total loan amount, but only if (i) the private mortgage insurance premium, charge, or fee is required to be refundable on a prorated basis, (ii) the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan, and (iii) the borrower has the right to request or receive a prorated refund in accordance with state or federal law. For loans closed on or after October 1, 2013, G.S. 24-1.1E(a)(5) a.2 provides that the term "points and fees" does not include any up-front fees collected and paid to the Federal Housing Administration, the Veterans' Administration, or the U.S. Department of Agriculture to insure or guarantee a home loan.

<sup>14</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 amended the Truth-in-Lending Act and transferred all rulemaking authority and responsibility for the Act from the Federal Reserve Board to the CFPB. The corresponding regulation adopted by the CFPB is 12 C.F.R. 1026.4(d)(2).



2. All charges paid by a borrower at or before closing and that are for items listed under 12 C.F.R. 226.4(c)(7)<sup>15</sup> of Reg Z, 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 in the calculation of points and fees.

The following are the fees enumerated in section 4(c)(7) of Reg Z: (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 or trustee accounts if the amounts would not otherwise be included in the finance charge.

3. To the extent not otherwise included in 1 or 2 above, all compensation paid from any source to a mortgage broker, including compensation paid to a mortgage broker in a table-funded transaction.

A "table-funded transaction" is a loan transaction 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 to the person that advanced the funds contemporaneously or within one business day of the funding of the loan. A bona fide sale of a loan in the secondary mortgage market is not be considered a table-funded transaction, and a table-funded transaction shall is be considered a secondary market transaction.

4. The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents.
5. For open-end credit plans, the term "points and fees" also includes the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total loan amount.

- ***Special Rules Regarding Discount Points.*** "Bona fide loan discount points" are 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-price 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. The following bona fide loan discount points payable by the borrower may be excluded for the calculation of points and fees:

1. Up to and including two bona fide loan discount points, 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 (1%) 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.
2. Up to and including one bona fide loan discount point, 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 (2%) 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.

- ***Special Rule Regarding Prepayment Penalties.*** The following prepayment penalties may be excluded for the calculation of points and fees:

1. For a closed-end loan, prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, but only if the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than 30 months after the loan closing.
2. For an open-end credit plan, prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, but only if the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than (i) 30 months after the loan closing if the borrower has no right or option under the loan documents to repay all or any

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<sup>15</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 amended the Truth-in-Lending Act and transferred all rulemaking authority and responsibility for the Act from the Federal Reserve Board to the CFPB. The corresponding regulation adopted by the CFPB is 12 C.F.R. 1026.4(c)(7).

portion of the outstanding balance of the open-end credit plan at a fixed interest rate over a specified period of time or, (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, 30 months after the date the borrower voluntarily exercises that right or option.

**STEP 3:** If the terms of the loan exceed one or more of the thresholds, then the loan is considered a "high-cost home loan" and is subject to the following limitations, restrictions, and prohibitions:

**No Call Provision.** The loan documents may not contain a provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This restriction 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.

**No Balloon Payment.** The loan documents may not require a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This restriction does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.

**No Negative Amortization.** The loan documents may not contain a payment schedule with regular periodic payments that cause the principal balance to increase.

**No Default Interest Rate.** The loan documents may not contain a provision that increases the interest rate after default. This restriction 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.

**No Advance Payments.** The loan documents may not contain 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.

**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.

**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.

**No Lending Without Due Regard to Repayment Ability.** 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 (i.e., a borrower, co-borrower, cosigner, or guarantor obligated to repay the loan), 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 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 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. However, no presumption of inability to make the scheduled payments to repay the obligation arises 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.

**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 note holder of the note being refinanced;
- Any points and fees; or
- Any other charges payable to third parties.

**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 note holder.

**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.

## G.S. 24-1.1F - NORTH CAROLINA'S RATE SPREAD HOME LOAN STATUTE

**NOTE:** While G.S. 24-1.1E was adopted to curb certain predatory lending practices, G.S. 24-1.1F was adopted to curb certain abusive sub-prime lending practices. To distinguish them from "high-cost home loans" – that is, predatory loans subject to G.S. 24-1.1E, North Carolina's anti-predatory lending statute – G. S. 24-1.1F uses the term "rate spread home loan" to identify sub-prime loans deemed in need of strict regulation, but not so strict as is required for predatory loans.

The corresponding provisions of Reg Z use different terminology: predatory loans are identified in Reg Z as "high-cost mortgages," while sub-prime loans are identified in Reg Z as "higher-priced mortgage loans."

Session Law 2013-399 rewrote G.S. 24-1.1F in its entirety effective October 1, 2013. Beginning October 1, 2013, the annual percentage rate test North Carolina will use to determine whether a loan is a rate spread home loan is identical to the annual percentage rate test imposed by Reg Z to determine whether a loan is a higher-priced mortgage loan.

As amended effective October 1, 2013, G.S. 24-1.1F provides the following:

- A "rate spread home loan" is a loan that has an annual percentage rate that exceeds the limits set out in 15 U.S.C. § 1639c(c)(1)(B)(ii) and any regulations promulgated thereunder.<sup>16</sup> The annual percentage rate thresholds set out in 15 U.S.C. § 1639c(c)(1)(B)(ii) are the same thresholds used in Reg Z section 1026.35 to identify a higher-priced mortgage loan:

A "higher-priced mortgage loan" means a closed-end consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set:

- (i) By 1.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that does not exceed the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac;
- (ii) By 2.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac \_i.e., a "jumbo" loan; or
- (iii) By 3.5 or more percentage points for loans secured by a subordinate lien.

The "average prime offer rate" is an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The CFPB publishes the average prime offer rates for a broad range of types of transactions in a table updated at least weekly.

- The making of a rate spread home loan that violates 15 U.S.C. § 1639c(a) (which addresses the borrower's ability to repay a residential mortgage loan) and any regulations promulgated thereunder is declared to be usurious in violation of [Chapter 24 of the General Statutes].

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<sup>16</sup> Unfortunately, G.S. 24-1.1F as rewritten effective October 1, 2013 does not identify with precision the universe of loans that will be considered "rate spread home loans" if the annual percentage rate for the loan exceeds the annual percentage rate thresholds specified in 15 U.S.C. § 1639c(c)(1)(B)(ii). As written, we cannot presume that G.S. 24-1.1F will be limited in its application to closed-end consumer credit transactions secured by the consumer's principal dwelling, as is the case with Reg Z section 1026.35.

- Any prepayment penalty that violates 15 U.S.C. § 1639c(c) and any regulations promulgated thereunder is unenforceable. [The "regulations promulgated thereunder" include CFPB's limitations on prepayment penalties contained in 12 C.F.R. 1026.32, 12 C.F.R. 1026.35, and 12 C.F. R. 1026.43.]

As a practical matter, once all of the new CFPB regulations become effective, higher-priced mortgage loans (and thus rate spread home loans) will be subject to Reg Z sections 31, 35, 36, and 43.

**THUS:**

- **FOR LOANS CONSUMMATED BEFORE OCTOBER 1, 2013, NORTH CAROLINA'S "OLD" (i.e., pre-October 1, 2013) RATE SPREAD HOME LOAN STATUTE CONTINUES TO APPLY.**
- **FOR LOANS CONSUMMATED ON OR AFTER OCTOBER 1, 2013, THE PROVISIONS OF REG Z SECTIONS 31, 35, 36, AND 43 WILL LIKELY APPLY TO DETERMINE WHETHER A LOAN IS A RATE SPREAD HOME LOAN UNDER NORTH CAROLINA LAW.**

**The following "rate spread home loan" analysis and rules apply only if the loan is consummated before October 1, 2013:**

**STEP 1:** The universe of loans that may be considered "rate spread home loans" subject to the restrictions and limitations imposed by G.S. 24-1.1F before October 1, 2013 is limited to closed-end home loans that have all of the following attributes:

<b>Identity of Borrower</b>	A natural person
<b>Loan Purpose</b>	Debt is incurred primarily for personal, family, or household purposes (i.e., the loan is a consumer-purpose loan)
<b>Loan Type</b>	Any type, but the loan is <b>NOT</b> any of the following: <ul style="list-style-type: none"> <li>• An equity line of credit as defined in G.S. 24-9. For what constitutes an "equity line of credit" under G.S. 24-9, refer to Usury Chart # 4.</li> <li>• A construction loan as defined in G.S. 24-10 – i.e., a loan to finance all or part of the cost of constructing buildings or other improvements on real property where (i) the loan proceeds are to be disbursed periodically under the terms of a written contract between the lender and the borrower as such construction work progresses, and (ii) the loan is payable in full no later than 18 months after the note is signed (if the loan amount is for \$25,000 or less) or 36 months (if the loan amount is more than \$25,000). A construction loan may include advances for the purchase price of the property upon which the improvements are to be constructed.</li> <li>• A reverse mortgage transaction.</li> <li>• A bridge loan with a term of 12 months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within 12 months.</li> </ul>
<b>Loan Amount</b>	Not more than Fannie Mae's conforming loan size limit for a single-family dwelling (currently \$417,000 to \$625,500 in NC, depending on the county)
<b>Collateral</b>	Loan secured by: <ul style="list-style-type: none"> <li>• A security interest in a manufactured home that is or will be occupied by the borrower as the borrower's principal dwelling,</li> <li>• A mortgage or deed of trust on real property upon which there is located an existing 1-4 family residential structure that is or will be occupied by the borrower as the borrower's principal dwelling, or</li> <li>• A mortgage or deed of trust on real property upon which there is to be constructed using the loan proceeds a 1-4 family residential structure which, when completed, will be occupied by the borrower as the borrower's principal dwelling</li> </ul>

**STEP 2:** The loan is a rate spread home loan if the loan's APR exceeds **EACH** of the following:

**Prime Offer Rate Test.** The loan's APR exceeds the "average prime offer rate" for a comparable transaction as of the date the interest rate for the loan is set by (i) 1.5% or more, if the loan is secured by a first lien mortgage or deed of trust, or (ii) 3.5% or more, if the loan is secured by a subordinate lien mortgage or deed of trust.

For purposes of this calculation, G.S. 24-1.1F defines the "average prime offer rate" as an APR "published by the Federal Reserve Board and that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics."

Because the rulemaking authority for TILA has been transferred from the Federal Reserve Board to the CFPB, the definition of "average prime rate" appearing in G.S. 24-1.1F is now outdated. The definition of the "average prime offer rate" as it currently appears in section 12 C.F.R. 1026.35 of the CFPB's Reg Z provides follows:

“Average prime offer rate” means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The [CFPB] publishes average prime offer rates for a broad range of types of transactions in a table updated at least weekly as well as the methodology the [CFPB] uses to derive these rates.

**Conventional Mortgage Rate Test.** The loan's APR exceeds the "conventional mortgage rate" by (i) 1.75% or more, if the loan is secured by a first lien mortgage or deed of trust, or (ii) 3.75% or more, if the loan is secured by a subordinate lien mortgage or deed of trust.

For purposes of this calculation, the "conventional mortgage rate" is the most recent daily contract interest rate on commitments for fixed-rate first mortgages published by the Board of Governors of the Federal Reserve System in its Statistical Release H. 15, or any publication that may supersede it, during the week preceding the week in which the interest rate for the loan is set.

**Treasury Securities Yield Test.** The loan's APR exceeds the yield on U.S. Treasury securities having comparable periods of maturity by (i) 3% or more, if the loan is secured by a first lien mortgage or deed of trust, or (ii) 5% or more, if the loan is secured by a subordinate lien mortgage or deed of trust.

For purposes of this calculation and without regard to whether the loan is subject to or reportable under the provisions of the Home Mortgage Disclosure Act 12 U.S.C. § 2801, et seq. (HMDA), the difference between the loan's APR and the yield on Treasury securities having comparable periods of maturity is determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirements of HMDA, as those procedures and calculation methods are amended from time to time. However, the yield on Treasury securities used in the calculation is the yield determined as of the 15th day of the month prior to the application for the loan.

**STEP 3:** If the loan's APR exceeds ALL THREE of the standards described above, then the loan is considered a "rate spread home loan" and is subject to the following limitations, restrictions, and prohibitions:

**No Prepayment Penalty.** No prepayment fees or penalties may be charged or collected on a rate spread home loan.

**No Lending Without Due Regard to Repayment Ability.** A lender may not make a rate spread home loan to a borrower based on the value of the borrower's collateral without due regard to the borrower's repayment ability as of loan consummation, including the borrower's current and reasonably expected income, employment, assets other than the collateral, current obligations, and mortgage-related obligations.

The test the lender should apply to evaluate the borrower's repayment ability is, at best, uncertain at present. G.S. 24-1.1F provides as follows:

Without regard to whether the loan is a "higher-priced mortgage loan" as defined in section 226.35 of Title 12 of the Code of Federal Regulations, the methodology and standards for the determination of a borrower's repayment ability set forth in section 226.34(a)(4) of Title 12 of the Code of Federal Regulations and the related Federal Reserve Board's Official Staff Commentary on Regulation Z, as the regulation and commentary may be amended from time to time, shall be applied to determine a lender's compliance with this requirement.

Because the rulemaking authority for TILA has been transferred from the Federal Reserve Board to the CFPB, the methodology described in G.S. 24-1.1F is now outdated. The current methodology for evaluating the borrower's repayment ability appears in 12 C.F.R. 1026.34(a)(4), section 34(a)(4) of Reg Z as adopted by the CFPB. Beginning in January 2014, the methodology for evaluating a borrower's repayment ability will change radically – the new rules regarding ability to repay will be codified in 12 C.F.R. 1026.34(a)(4) for open-end high-cost mortgages, and in 12 C.F.R. 1026.43 (a new Reg Z section) for closed-end loans.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013**

**SESSION LAW 2013-399  
HOUSE BILL 692**

AN ACT TO AMEND THE NORTH CAROLINA ANTI-PREDATORY LENDING LAW,  
AND TO LIMIT THE PROVISIONS OF STATE MORTGAGE LENDING LAW TO  
BEING NO MORE RESTRICTIVE THAN FEDERAL LAW.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 24-1.1E(a)(5) reads as rewritten:

"(5) "Points and fees" is defined as provided in this subdivision.

a. The term includes all of the following:

1. All items paid by a borrower at or before closing and that are required to be disclosed under sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential. However, the meaning of the term "points and fees" shall not include either (i) the portion of the any up-front fees collected and paid to the Federal Housing Administration, the Veterans' Administration, or the U.S. Department of Agriculture to insure or guarantee a home loan ~~loan that exceeds one and one quarter percent (1.25%) of the total loan amount or (ii) the portion of any up-front private mortgage insurance premium, charge, or fee that exceeds one and one quarter percent (1.25%) of the total loan amount, provided that the private mortgage insurance premium, charge or fee is required to be refundable on a prorated basis, the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan, and the borrower has the right to request or receive a prorated refund in accordance with state or federal law.~~
2. All charges paid by a borrower at or before closing and that are for items listed under 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".
3. To the extent not otherwise included in sub-subdivision a.1. or a.2. of this subdivision, all compensation paid from any source to a mortgage broker, including compensation paid to a mortgage broker in a table-funded transaction. 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.
4. The maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents.

b. Notwithstanding the remaining provisions of this subdivision, the term does not include (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 (ii) fees 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 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 under sub-subdivision a. of this subdivision; title insurance premiums; and premiums for insurance against loss or damage to property, including hazard insurance and flood insurance premiums, provided that the conditions in section 226.4(d)(2) of Title 12 of the Code of Federal Regulations are met.

- c. For open-end credit plans, the term includes those points and fees described in sub-subdivisions a.1. through a.3. of this subdivision, plus (i) the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total loan amount, and (ii) the maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents."

**SECTION 2.** G.S. 24-1.1E(a)(6) reads as rewritten:

"(6) "Thresholds" means:

- a. Without regard to whether the loan transaction is or may be 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 from time to time), the annual percentage rate of the loan at the time the loan is consummated is such that the loan is considered a "mortgage" under section 152 of the Home Ownership and Equity Protection Act of 1994 (Pub. Law 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from time to time, and regulations adopted pursuant thereto by the Federal Reserve Board, including section 226.32 of Title 12 of the Code of Federal Regulations, as the same may be amended from time to time;
- b. The total points and fees, as defined in G.S. 24-1.1E(a)(5), exceed ~~four percent (4%)~~ five percent (5%) of the total loan amount if the total loan amount is twenty thousand dollars (\$20,000) or more, or (ii) the lesser of eight percent (8%) of the total loan amount or one thousand dollars (\$1,000), if the total loan amount is less than twenty thousand dollars (\$20,000); provided, the following discount points and prepayment fees and penalties shall be excluded from the calculation of the total points and fees payable by the borrower:
  - 1. 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 (1%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either Fannie Mae or the Federal Home Loan Mortgage Corporation, whichever is greater;
  - 2. 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 (2%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either Fannie Mae or the Federal Home Loan Mortgage Corporation, whichever is greater;

3. For a closed-end loan, prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than 30 months after the loan closing;
  4. For an open-end credit plan, prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than (i) 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, (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, 30 months after the date the borrower voluntarily exercises that right or option; or
- c. If the loan is a closed-end loan, 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 (2%) of the amount prepaid. If the loan is an open-end credit plan, the loan documents permit the lender to charge or collect prepayment fees or penalties (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, (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 voluntarily exercises that right or option, or (iii) which exceed, in the aggregate, more than two percent (2%) of the amount prepaid."

**SECTION 3.** G.S. 24-1.1F reads as rewritten:

**"§ 24-1.1F. Rate spread home loans.**

- (a) ~~Definitions.—The following definitions apply for purposes of this section:~~
- (1) ~~Annual percentage rate.—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 that Act and regulations are amended from time to time.~~
  - (2) ~~Average prime offer rate.—An annual percentage rate published by the Federal Reserve Board and that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low risk pricing characteristics.~~
  - (3) ~~Repealed by Session Laws 2009 457, s. 2, effective October 1, 2009.~~
  - (4) ~~Mortgage broker.—A mortgage broker as defined in G.S. 53 243.01.~~
  - (5),(6) ~~Repealed by Session Laws 2009 457, s. 2, effective October 1, 2009.~~
  - (7) ~~Rate spread home loan.—A loan in which all the following apply:~~
    - a. ~~The loan is not (i) an equity line of credit as defined in G.S. 24 9, (ii) a construction loan as defined in G.S. 24 10, (iii) a reverse mortgage transaction, or (iv) a bridge loan with a term of 12 months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within 12 months.~~
    - b. ~~The borrower is a natural person.~~

- e. ~~The debt is incurred by the borrower primarily for personal, family, or household purposes.~~
- d. ~~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 by Fannie Mae.~~
- e. ~~The loan is secured by (i) a security interest in a manufactured home, as defined in G.S. 143-145, in the State which is or will be occupied by the borrower as the borrower's principal dwelling, (ii) a mortgage or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling, or (iii) a mortgage or deed of trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families which, when completed, will be occupied by the borrower as the borrower's principal dwelling.~~
- f. ~~The loan's annual percentage rate exceeds each of the following:~~
  - 1. ~~The average prime offer rate for a comparable transaction as of the date the interest rate for the loan is set by (i) one and one half percentage points (1.5%) or more, if the loan is secured by a first lien mortgage or deed of trust or (ii) three and one half percentage points (3.5%) or more, if the loan is secured by a subordinate lien mortgage or deed of trust.~~
  - 2. ~~The conventional mortgage rate by (i) one and three quarters percentage points (1.75%) or more, if the loan is secured by a first lien mortgage or deed of trust, or (ii) three and three quarters percentage points (3.75%) or more, if the loan is secured by a subordinate lien mortgage or deed of trust. For purposes of this calculation, the "conventional mortgage rate" means the most recent daily contract interest rate on commitments for fixed rate first mortgages published by the Board of Governors of the Federal Reserve System in its Statistical Release H. 15, or any publication that may supersede it, during the week preceding the week in which the interest rate for the loan is set.~~
  - 3. ~~The yield on U.S. Treasury securities having comparable periods of maturity by (i) three percentage points (3%) or more, if the loan is secured by a first lien mortgage or deed of trust, or (ii) five percentage points (5%) or more, if the loan is secured by a subordinate lien mortgage or deed of trust. Without regard to whether the loan is subject to or reportable under the provisions of the Home Mortgage Disclosure Act 12 U.S.C. § 2801, et seq. (HMDA), the difference between the annual percentage rate and the yield on Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirements of HMDA, as those procedures and calculation methods are amended from time to time, provided that the yield on Treasury securities shall be determined as of the fifteenth day of the month prior to the application for the loan.~~

(a1) A rate spread home loan is a loan that has an annual percentage rate that exceeds the limits set out in 15 U.S.C. § 1639c(c)(1)(B)(ii) and any regulations promulgated thereunder.

(b) No prepayment fees or penalties shall be charged or collected on a rate spread home loan.

(b1) The making of a rate spread home loan that violates 15 U.S.C. § 1639c(a) and any regulations promulgated thereunder is hereby declared usurious in violation of the provisions of this Chapter.

(c) No lender shall make a rate spread home loan to a borrower based on the value of the borrower's collateral without due regard to the borrower's repayment ability as of consummation, including the borrower's current and reasonably expected income, employment, assets other than the collateral, current obligations, and mortgage related obligations. Without regard to whether the loan is a "higher priced mortgage loan" as defined in section 226.35 of

~~Title 12 of the Code of Federal Regulations, the methodology and standards for the determination of a borrower's repayment ability set forth in section 226.34(a)(4) of Title 12 of the Code of Federal Regulations and the related Federal Reserve Board's Official Staff Commentary on Regulation Z, as the regulation and commentary may be amended from time to time, shall be applied to determine a lender's compliance with this requirement.~~

~~(c1) Any prepayment penalty in violation of 15 U.S.C. § 1639c(c) and any regulations promulgated thereunder shall be unenforceable.~~

~~(d) The making of a rate spread home loan which violates subsection (b) or (e) of this section is hereby declared usurious in violation of the provisions of this Chapter. In addition, any prepayment penalty in violation of this section shall be unenforceable. However, a borrower shall not be entitled to recover twice for the same wrong. The Attorney General, the Commissioner of Banks, or any party to a rate spread home loan may enforce the provisions of this section. This section establishes specific consumer protections in rate spread home loans in addition to other consumer protections that may be otherwise available by law. A mortgage broker who brokers a rate spread home loan that violates the provisions of this section shall be jointly and severally liable with the lender.~~

~~(d1) Notwithstanding the foregoing, a borrower shall not be entitled to recover twice for the same wrong. The Attorney General, the Commissioner of Banks, or any party to a rate spread home loan may enforce the provisions of this section. This section establishes specific consumer protections in rate spread home loans in addition to other consumer protections that may be otherwise available by law. A mortgage broker who brokers a rate spread home loan that violates the provisions of this section shall be jointly and severally liable with the lender.~~

....."

**SECTION 4.** This act becomes effective October 1, 2013.

In the General Assembly read three times and ratified this the 23<sup>rd</sup> day of July, 2013.

s/ Louis M. Pate, Jr.  
Deputy President Pro Tempore of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Pat McCrory  
Governor

Approved 10:48 a.m. this 23<sup>rd</sup> day of August, 2013