SENATE, No. 743

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:
Senator PATRICK J. DIEGNAN, JR.
District 18 (Middlesex)
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District 20 (Union)

SYNOPSIS

Requires creditor to provide mortgage payoff balance on home loan within five business days after notification of request.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 7/27/2018)

AN ACT concerning mortgage payoff balances and amending P.L.2003, c.64.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 3 of P.L.2003, c.64 (C.46:10B-24) is amended to read as follows:

3. As used in this act:

"Affiliate" means any company that controls, is controlled by, or is under the common control with any company, as set forth in 12 U.S.C. s.1841 et seq.

"Bona fide discount points" means loan discount points which are:

(1) Knowingly paid by the borrower;

(2) Paid for the express purpose of reducing, and which result in a reduction of, the interest rate or time-price differential applicable to the loan;

(3) In fact reducing the interest rate or time-price differential applicable to the loan from an interest rate which does not exceed the conventional mortgage rate for a home loan secured by a first lien, by more than two percentage points, or for a home loan secured by a junior lien, by more than three and one half percentage points; and

(4) Recouped within the first five years of the scheduled loan payments. Loan discount points will be considered to be recouped within the first five years of the scheduled loan payments if the reduction in the interest rate that is achieved by the payment of the loan discount points reduces the interest charged on the scheduled payments such that the borrower's dollar amount of savings in interest over the first five years is equal to or exceeds the dollar amount of loan discount points paid by the borrower.

"Borrower" means any natural person obligated to repay the loan, including a coborrower, cosigner, or guarantor.

"Commissioner" means the Commissioner of Banking and Insurance.

"Conventional mortgage rate" means the most recently published annual yield on conventional mortgages published by the Board of Governors of the Federal Reserve System, as published in Statistical Release H.15 or any publication that may supersede it, as of the applicable time set forth in 12 C.F.R. s226.32(a)(1)(i).

"Conventional prepayment penalty" means any prepayment penalty or fee that may be collected or charged in a home loan, and that is authorized by law other than by this act, provided the home loan (1) does not have an annual percentage rate that exceeds the

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

conventional mortgage rate by more than two percentage points; and (2) does not permit any prepayment fees or penalties that exceed two percent of the amount prepaid.

"Creditor" means a person who extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments, and to whom the obligation is payable at any time. Creditor shall also mean any person brokering a home loan, which shall include any person who directly or indirectly solicits, processes, places, or negotiates home loans for others or who closes home loans which may be in the person's own name with funds provided by others and which loans are thereafter assigned to the person providing the funding of such loans, provided that creditor shall not include a person who is an attorney providing legal services to the borrower or a person or entity holding an individual or organization insurance producer license in the line of title insurance or a title insurance company, as defined by subsection c. of section 1 of P.L.1975, c.106 (C.17:46B-1), or any officer, director or employee thereof, providing services in the closing of a home loan who is not also funding the home loan and is not an affiliate of the creditor or an assignee that is subject to the provisions of section 6 of this act.

"Department" means the Department of Banking and Insurance.

<u>“Entitled person” means a person liable for payment or performance of the obligation secured by the real property described in a mortgage, the landowner, or any person with a recorded interest in the property.</u>

"High-cost home loan" means a home loan for which the principal amount of the loan does not exceed $350,000, which amount shall be adjusted annually to include the last published increase of the housing component of the national Consumer Price Index, New York- Northeastern New Jersey Region, in which the terms of the loan meet or exceed one or more of the thresholds as defined in this section.

"Home loan" means an extension of credit primarily for personal, family or household purposes, including an open-end credit plan, other than a reverse mortgage transaction, in which the loan is secured by:

(1) A mortgage or deed of trust on real estate in this State upon which there is located or there is to be located a one to six family dwelling which is or will be occupied by a borrower as the borrower's principal dwelling; or

(2) A security interest in a manufactured home which is or will be occupied by a borrower as the borrower's principal dwelling.

"Manufactured home" means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length or, when erected on site is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with a permanent

foundation when erected on land secured in conjunction with the real property on which the manufactured home is located and connected to the required utilities and includes the plumbing, heating, air-conditioning and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the federal National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. s.5401 et seq. Such term does not include rental property or second homes or manufactured homes when not secured in conjunction with the real property on which the manufactured home is located.

"Points and fees" means:

(1) All items listed in 15 U.S.C. s.1605(a)(1) through (4), except interest or the time- price differential;

(2) All charges listed in 15 U.S.C. s.1605(e);

(3) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table-funded transaction;

(4) The cost of all premiums financed by the creditor, directly or indirectly for any credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments financed by the creditor directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the creditor;

(5) The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents;

(6) All prepayment fees or penalties that are incurred by the borrower if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor, except that this paragraph shall not apply to a loan which refinances a previous loan made by the same broker and funded by another creditor; and

(7) For open-end loans, the points and fees are calculated by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the loan documents if prepayment penalties are authorized by law other than by this act, plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line.

"Points and fees" shall not include the following items: title insurance premiums and fees, charges and premiums paid to a person or entity holding an individual or organization insurance producer license in the line of title insurance or a title insurance company, as defined by subsection c. of section 1 of P.L.1975, c.106 (C.17:46B-1); taxes, filing fees, and 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 reasonable fees paid to a person other than a creditor or an affiliate of the creditor or to the mortgage broker or an affiliate of the mortgage broker for the following, provided that the conditions in 12 C.F.R. s.226.4(c)(7) are met: 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; fees for credit reports; fees for surveys; attorneys' fees; notary fees; escrow charges; and fire and flood insurance premiums, provided that the conditions in 12 C.F.R. s.226.4(d)(2) are met.

"Rate" means that annual percentage rate for the loan calculated at closing based on the points and fees set forth in this act and according to the provisions of 15 U.S.C. s.1601 et seq. and the regulations promulgated thereunder by the Federal Reserve Board.

"Threshold" means any one of the following two items, as defined:

(1) "Rate threshold" means the annual percentage rate of the loan at the time the loan is consummated such that the loan is considered a "mortgage" under section 152 of the federal "Home Ownership and Equity Protection Act of 1994," Pub.L.103-325 **[**(15 U.S.C. s.1602(aa))**]** 15 U.S.C. s.1602(bb), and the regulations promulgated by the Federal Reserve Board, including 12 C.F.R. s.226.32, without regard to whether the loan transaction is or may be a "residential mortgage transaction," as defined in 12 C.F.R. s.226.2(a)(24).

(2) "Total points and fees threshold" means that the total points and fees payable by the borrower at or before the loan closing, excluding either a conventional prepayment penalty or up to two bona fide discount points, exceed:

(a) 4.5% of the total loan amount if the total loan amount is $40,000 or more; or

(b) the lesser of 6% of the total loan amount or $1,000, if the total loan amount is less than $20,000, and 6% if the total loan amount is $20,000 or more but less than $40,000.

"Total loan amount" means the principal of the loan minus those points and fees as defined in this section that are included in the principal amount of the loan. For open-end loans, the total loan amount shall be calculated using the total line of credit allowed under the home loan.

(cf: P.L.2004, c.84, s.2)

2. Section 4 of P.L.2003, c.64 (C.46:10B-25) is amended to read as follows:

4. a. No creditor making a home loan shall finance, directly or indirectly, any credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or

any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis shall not be considered financed by the creditor.

b. (Deleted by amendment, P.L.2004, c.84).

c. No creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a home loan that refinances all or any portion of that existing loan or debt.

d. No creditor shall charge a late payment fee in relation to a home loan except according to the following rules:

(1) The late payment fee may not be in excess of 5% of the amount of the payment past due.

(2) The fee may only be assessed by a payment past due for 15 days or more.

(3) The fee may not be charged more than once with respect to a single late payment. If a late payment fee is deducted from a payment made on the loan, and such deduction causes a subsequent default on a subsequent payment, no late payment fee may be imposed for such default. If a late payment fee has been once imposed with respect to a particular late payment, no such fee shall be imposed with respect to any future payment which would have been timely and sufficient, but for the previous default.

(4) No fee shall be charged unless the creditor notifies the borrower within 45 days following the date the payment was due that a late payment fee has been imposed for a particular late payment. No late payment fee may be collected from any borrower if the borrower informs the creditor that nonpayment of an installment is in dispute and presents proof of payment within 45 days of receipt of the creditor's notice of the late fee.

(5) The creditor shall treat each and every payment as posted on the same date as it was received by the creditor, servicer, creditor's agent, or at the address provided to the borrower by the creditor, servicer, or the creditor's agent for making payments.

e. No home loan shall contain a provision that permits the creditor, in its sole discretion, to accelerate the indebtedness. This provision does not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.

f. (1) No creditor shall charge a fee for informing or transmitting to any person the balance due to pay off a home loan or to provide a release upon prepayment. **[**Payoff balances**]** An entitled person, or an agent authorized by an entitled person to request a payoff balance, may give to a creditor a written notification to request a payoff balance for a specified payoff date. The creditor shall **[**be provided**]** provide the payoff balance within **[**seven**]** five business days after the **[**request**]** notification becomes effective pursuant to the provisions of paragraph (3) of this

subsection.

(2) A notification is given by:

(a) depositing it with the United States Postal Service with first-class postage paid or with a commercially reasonable delivery service with cost of delivery provided, properly addressed to the recipient's address for receiving a notification;

(b) sending it by facsimile transmission, electronic mail, or other electronic transmission to the recipient's address for receiving a notification, but only if the recipient agreed to receive notification in that manner; or

(c) causing it to be received at the recipient's address for receiving a notification within the time that it would have been received if given pursuant to subparagraph (a) of this paragraph.

(3) A notification given pursuant to paragraph (2) of this subsection shall be effective:

(a) the day after it is deposited with a commercially reasonable delivery service for overnight delivery;

(b) three days after it is deposited with the United States Postal Service, first class mail with postage prepaid, or with a commercially reasonable delivery service for delivery other than by overnight delivery;

(c) the day it is given, if given pursuant to subparagraph (b) of paragraph (2) of this subsection; or

(d) the day it is received, if given by a method other than as provided in subparagraphs (a) or (b) of paragraph (2) of this subsection.

(4) The person asserting that notification was given in accordance with the provisions of this subsection shall have the burden of proof with respect to that assertion.

(cf: P.L.2004, c.84, s.3)

3. This act shall take effect immediately.

STATEMENT

This bill provides that, as to a home loan under the "New Jersey Home Ownership Security Act of 2002," P.L.2003, c.64 (C.46:10B-22 et seq.), a creditor shall provide an entitled person, or an entitled person's agent, with the mortgage payoff balance for the loan within five business days after the creditor effectively receives a written notification to request a payoff balance.

As defined in the bill, "entitled person" means a person liable for payment or performance of the obligation secured by the real property described in a mortgage, the landowner, or any person with a recorded interest in the property. The bill also establishes how

notification can be given to request a payoff balance, and when notification becomes effective so as to start the time frame of five business days in which the creditor must provide the payoff balance.