

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)

Senator JOSEPH P. CRYAN

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

As reported by the Senate Commerce Committee with technical review.



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

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

3

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

6

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

9 3. As used in this act:

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

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

15 (1) Knowingly paid by the borrower;

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

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

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

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

35 "Commissioner" means the Commissioner of Banking and
36 Insurance.

37 "Conventional mortgage rate" means the most recently published
38 annual yield on conventional mortgages published by the Board of
39 Governors of the Federal Reserve System, as published in
40 Statistical Release H.15 or any publication that may supersede it, as
41 of the applicable time set forth in 12 C.F.R. §226.32(a)(1)(i).

42 "Conventional prepayment penalty" means any prepayment
43 penalty or fee that may be collected or charged in a home loan, and
44 that is authorized by law other than by this act, provided the home
45 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.

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

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

22 "Department" means the Department of Banking and Insurance.

23 "Entitled person" means a person liable for payment or
24 performance of the obligation secured by the real property
25 described in a mortgage, the landowner, or any person with a
26 recorded interest in the property.

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

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

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

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

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

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

15 "Points and fees" means:

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

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

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

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

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

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

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

43 "Points and fees" shall not include the following items: title
44 insurance premiums and fees, charges and premiums paid to a
45 person or entity holding an individual or organization insurance
46 producer license in the line of title insurance or a title insurance
47 company, as defined by subsection c. of section 1 of P.L.1975,
48 c.106 (C.17:46B-1); taxes, filing fees, and recording and other

1 charges and fees paid or to be paid to public officials for
2 determining the existence of or for perfecting, releasing, or
3 satisfying a security interest; and reasonable fees paid to a person
4 other than a creditor or an affiliate of the creditor or to the mortgage
5 broker or an affiliate of the mortgage broker for the following,
6 provided that the conditions in 12 C.F.R. s.226.4(c)(7) are met: fees
7 for tax payment services; fees for flood certification; fees for pest
8 infestation and flood determinations; appraisal fees; fees for
9 inspections performed prior to closing; fees for credit reports; fees
10 for surveys; attorneys' fees; notary fees; escrow charges; and fire
11 and flood insurance premiums, provided that the conditions in 12
12 C.F.R. s.226.4(d)(2) are met.

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

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

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

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

32 (a) 4.5% of the total loan amount if the total loan amount is
33 \$40,000 or more; or

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

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

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

43

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 subsection.
- 2 (2) A notification is given by:
- 3 (a) depositing it with the United States Postal Service with first-
- 4 class postage paid or with a commercially reasonable delivery
- 5 service with cost of delivery provided, properly addressed to the
- 6 recipient's address for receiving a notification;
- 7 (b) sending it by facsimile transmission, electronic mail, or
- 8 other electronic transmission to the recipient's address for receiving
- 9 a notification, but only if the recipient agreed to receive notification
- 10 in that manner; or
- 11 (c) causing it to be received at the recipient's address for
- 12 receiving a notification within the time that it would have been
- 13 received if given pursuant to subparagraph (a) of this paragraph.
- 14 (3) A notification given pursuant to paragraph (2) of this
- 15 subsection shall be effective:
- 16 (a) the day after it is deposited with a commercially reasonable
- 17 delivery service for overnight delivery;
- 18 (b) three days after it is deposited with the United States Postal
- 19 Service, first class mail with postage prepaid, or with a
- 20 commercially reasonable delivery service for delivery other than by
- 21 overnight delivery;
- 22 (c) the day it is given, if given pursuant to subparagraph (b) of
- 23 paragraph (2) of this subsection; or
- 24 (d) the day it is received, if given by a method other than as
- 25 provided in subparagraphs (a) or (b) of paragraph (2) of this
- 26 subsection.
- 27 (4) The person asserting that notification was given in
- 28 accordance with the provisions of this subsection shall have the
- 29 burden of proof with respect to that assertion.
- 30 (cf: P.L.2004, c.84, s.3)
- 31
- 32 3. This act shall take effect immediately.