

§ 24-10.2. Consumer protections in certain home loans.

(a) For purposes of this section, the term "consumer home loan" means a loan, including an open-end credit plan but excluding a reverse mortgage transaction, in which (i) the borrower is a natural person, (ii) the debt is incurred by the borrower primarily for personal, family, or household purposes, and (iii) the loan is secured by a mortgage or deed of trust upon real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(b) Notwithstanding the provisions of G.S. 58-57-35(b), it shall be unlawful for any lender in a consumer home loan to finance, directly or indirectly, any credit life, disability, or unemployment insurance, or any other life or health insurance premiums; provided, that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender.

(c) No lender may knowingly or intentionally engage in the unfair act or practice of "flipping" a consumer home loan. "Flipping" a consumer loan is the making of a consumer home loan to a borrower which refinances an existing consumer home loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances. This provision shall apply regardless of whether the interest rate, points, fees, and charges paid or payable by the borrower in connection with the refinancing exceed those thresholds specified in G.S. 24-1.1E(a)(6).

(d) No lender 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 consumer home loan that refinances all or any portion of such existing loan or debt.

(e) The making of a consumer home loan which violates the provisions of this section is hereby declared usurious in violation of the provisions of this Chapter and unlawful as an unfair or deceptive act or practice in or affecting commerce in violation of the provisions of G.S. 75-1.1. The Attorney General, the Commissioner of Banks, or any party to a consumer home loan may enforce the provisions of this section. Any person seeking damages or penalties under the provisions of this section may recover damages under either this Chapter or Chapter 75, but not both.

(f) In any suit instituted by a borrower who alleges that the defendant violated this section, the presiding judge may, in the judge's discretion, allow reasonable attorneys' fees to the attorney representing the prevailing party, such attorneys' fees to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that:

- (1) The party charged with the violation has willfully engaged in the act or practice, and there was unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit; or
- (2) The party instituting the action knew, or should have known, that the action was frivolous and malicious.

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

(h) A mortgage broker who brokers a consumer home loan that violates the provisions of this section shall be jointly and severally liable with the lender. (1999-332, s. 5; 2003-401, s. 4; 2007-352, s. 5.)