

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 40

Session of  
2007

INTRODUCED BY THOMAS, CALTAGIRONE, BLACKWELL AND JAMES,  
JANUARY 30, 2007

REFERRED TO COMMITTEE ON COMMERCE, JANUARY 30, 2007

AN ACT

1 Amending the act of January 30, 1974 (P.L.13, No.6), entitled  
2 "An act regulating agreements for the loan or use of money;  
3 establishing a maximum lawful interest rate in the  
4 Commonwealth; providing for a legal rate of interest;  
5 detailing exceptions to the maximum lawful interest rate for  
6 residential mortgages and for any loans in the principal  
7 amount of more than fifty thousand dollars and Federally  
8 insured or guaranteed loans and unsecured, noncollateralized  
9 loans in excess of thirty-five thousand dollars and business  
10 loans in excess of ten thousand dollars; providing  
11 protections to debtors to whom loans are made including the  
12 provision for disclosure of facts relevant to the making of  
13 residential mortgages, providing for notice of intention to  
14 foreclose and establishment of a right to cure defaults on  
15 residential mortgage obligations, provision for the payment  
16 of attorney's fees with regard to residential mortgage  
17 obligations and providing for certain interest rates by banks  
18 and bank and trust companies; clarifying the substantive law  
19 on the filing of and execution on a confessed judgment;  
20 prohibiting waiver of provisions of this act, specifying  
21 powers and duties of the Secretary of Banking, and  
22 establishing remedies and providing penalties for violations  
23 of this act," further providing for definitions; providing  
24 for prohibited acts and practices with respect to residential  
25 mortgages; further providing for attorney fees; and providing  
26 for foreclosure and other legal actions.

27 The General Assembly of the Commonwealth of Pennsylvania  
28 hereby enacts as follows:

29 Section 1. Section 101 of the act of January 30, 1974

1 (P.L.13, No.6), referred to as the Loan Interest and Protection  
2 Law, amended October 5, 1978 (P.L.1100, No.258), October 5, 1978  
3 (P.L.1127, No.264) and April 6, 1979 (P.L.15, No.4), is amended  
4 to read:

5 Section 101. Definitions.--As used in this act:

6 "Actual settlement costs" means reasonable sums paid for:

7 (a) Any insurance premiums which have been approved by the  
8 Insurance Commissioner of the Commonwealth.

9 (b) Title examination and search, and examination of public  
10 records.

11 (c) The preparation and recording of any or all documents  
12 required by law or custom for settlement.

13 (d) Appraisal and/or survey of property securing the loan.

14 (e) A single service charge, which shall include any  
15 consideration paid by the residential mortgage debtor and  
16 received and retained by the residential mortgage lender for or  
17 related to the acquisition, making, refinancing or modification  
18 of a residential mortgage loan, plus any consideration received  
19 by the residential mortgage lender for making a mortgage  
20 commitment, whether or not an actual loan follows such  
21 commitment.

22 The service charge shall not exceed one per cent of the  
23 original bona fide principal amount of the loan, except that in  
24 the case of a construction loan, the service charge shall not  
25 exceed two per cent of the original bona fide principal amount  
26 of the loan.

27 (f) Charges and fees that are reasonable and necessary for  
28 [or related to] the transfer of the property or the closing of  
29 the residential mortgage loan, paid by the residential mortgage  
30 debtor and received by any party other than the residential

1 mortgage lender, whether or not paid by the residential mortgage  
2 debtor directly to the third party or to the residential  
3 mortgage lender for payment to the third party.

4 "Discount points" means any charges, whether or not actually  
5 denominated as "discount points," which are paid by the seller  
6 of residential real property to a residential mortgage lender  
7 which directly or indirectly affects the ability of the buyer of  
8 the real estate to secure a residential mortgage.

9 "Finance charge" means the total cost of a loan or charge for  
10 the use of money, including any extensions or grant of credit  
11 regardless of the characterization of the same and includes any  
12 interest, time price differential, points, premiums, finder's  
13 fees, and other charges levied by the residential mortgage  
14 lender or residential mortgage intermediary, either directly or  
15 indirectly, against the person obtaining the loan or against the  
16 seller, lender, mortgagee or any other party to the transaction  
17 except any actual settlement costs. The finance charges plus the  
18 actual settlement costs charged by the residential mortgage  
19 lender shall include all charges made by the residential  
20 mortgage lender or residential mortgage intermediary to the  
21 residential mortgage debtor other than the principal of the  
22 loan. In computing finance charge on any mortgage which does not  
23 require the full amount of the first year's interest to be paid  
24 during the first year and on a variable interest rate mortgage  
25 interest shall be calculated at the rate applicable to the first  
26 year of the loan.

27 "Loan yield" means the annual rate of return obtained by a  
28 residential mortgage lender from a residential mortgage debtor  
29 over the term of the loan and shall be determined in accordance  
30 with regulations issued by the Secretary of Banking. Such

1 regulations shall establish the method for calculating such rate  
2 of return and shall provide that the finance charge be amortized  
3 over the contract term of the loan. In computing loan yield on  
4 any mortgage which does not require the full amount of the first  
5 year's interest to be paid during the first year and on a  
6 variable interest rate mortgage interest shall be calculated at  
7 the rate applicable to the first year of the mortgage.

8 "Monthly Index of Long Term United States Government Bond  
9 Yields" means the monthly unweighted average of the daily  
10 unweighted average of the closing bid yield quotations in the  
11 over the counter market for all outstanding United States  
12 Treasury Bond issues, based on available statistics, which are  
13 either maturing or callable in ten years or more. This index is  
14 expressed in terms of percentage interest per annum.

15 "Mortgage commitment" means a legally binding obligation to  
16 lend money on the security of a residential mortgage.

17 "Person" means an individual, corporation, business trust,  
18 estate trust, partnership or association or any other legal  
19 entity, and shall include but not be limited to residential  
20 mortgage lenders.

21 "Residential mortgage" means an obligation to pay a sum of  
22 money [in an original bona fide principal amount of fifty  
23 thousand dollars (\$50,000) or less,] evidenced by a security  
24 document and secured by a lien upon real property intended to be  
25 used as the residence of the obligor and located within this  
26 Commonwealth, containing two or fewer residential units or on  
27 which two or fewer residential units are to be constructed, and  
28 shall include such an obligation on a residential condominium  
29 unit.

30 "Residential mortgage debtor" means a non-corporate borrower

1 who is obligated to a residential mortgage lender to repay in  
2 whole or in part a residential mortgage and a successor record  
3 owner of the property, if any, who gives notice thereof to the  
4 residential mortgage lender.

5 "Residential mortgage intermediary" means a real estate  
6 broker, mortgage broker or other person receiving directly or  
7 indirectly from a residential mortgage lender or residential  
8 mortgage debtor a finder's fee, commission, placement fee,  
9 service charge or other similar compensation other than actual  
10 settlement costs in conjunction with the issuance of a  
11 residential mortgage or mortgage commitment. Residential  
12 mortgage intermediary shall not mean an employee of a  
13 residential mortgage lender.

14 "Residential mortgage lender" means any person who lends  
15 money or extends or grants credit and obtains a residential  
16 mortgage to assure payment of the debt. The term shall also  
17 include the holder at any time of a residential mortgage  
18 obligation.

19 "Residential mortgage servicer" means a person who collects  
20 payments from a residential mortgage debtor on behalf of the  
21 holder of a residential mortgage obligation.

22 "Residential real property" means real property located  
23 within this Commonwealth containing not more than two  
24 residential units or on which not more than two residential  
25 units are to be constructed and includes a residential  
26 condominium unit.

27 "Security document" means a mortgage, deed of trust, real  
28 estate sales contract or other document creating upon  
29 recordation a lien upon real estate.

30 Section 2. The act is amended by adding a section to read:

1     Section 402.1. Prohibited Acts and Practices with Respect to  
2     Residential Mortgages.--The following acts and practices are  
3     prohibited:

4     (1) No residential mortgage shall include, within the  
5     original principal of the loan, finance charges, not including  
6     prepaid interest, which, together with any service charge,  
7     exceeds three per cent of the original principal.

8     (2) No residential mortgage lender shall finance, directly  
9     or indirectly, any credit life, credit disability, credit  
10    unemployment or credit property insurance product or any other  
11    life or health insurance, or any payments directly or indirectly  
12    for debt cancellation or suspension agreement or contract,  
13    except that insurance premiums or debt cancellation or  
14    suspension fees calculated and paid on a monthly basis shall not  
15    be considered to be financed by the lender.

16    (3) A residential mortgage lender shall not make a  
17    residential mortgage based on the residential mortgage debtor's  
18    home equity without due regard to the debtor's ability to make  
19    the scheduled payments, as determined by the documented and  
20    verified current and expected income, current obligations and  
21    employment status of the residential mortgage debtor. A  
22    residential mortgage debtor shall be presumed to be able to make  
23    the scheduled payments to repay the obligation if, at the time  
24    the loan is consummated, the debtor's monthly housing payments  
25    (including the scheduled payment, reasonably anticipated real  
26    estate taxes, homeowner's insurance and other mortgage payments)  
27    do not exceed fifty per cent of the documented, verified and  
28    available monthly income. Notwithstanding the foregoing  
29    presumption, a residential mortgage debtor shall be presumed to  
30    be unable to make the scheduled payments if the debtor lacks

1 sufficient "residual income," as defined in the Department of  
2 Veterans Affairs' residual income guidelines established in 38  
3 CFR 36.4337(e) (relating to underwriting standards, processing  
4 procedures, lender responsibility, and lender certification), to  
5 pay essential monthly expenses after paying the scheduled  
6 payments. The Secretary of Banking shall, from time to time,  
7 publish the Department of Veterans Affairs' residual income  
8 guidelines and may, by regulation, update or modify those  
9 guidelines as they apply to this paragraph.

10 (4) A residential mortgage lender shall not refinance a  
11 special mortgage originated, subsidized or guaranteed by or  
12 through a state, tribal or local government or nonprofit  
13 organization which either bears a below-market interest rate at  
14 the time the loan was originated or has nonstandard payment  
15 terms beneficial to the borrower, such as payments that vary  
16 with income or are limited to a percentage of income, or where  
17 no payments are required under specified conditions, and where,  
18 as a result of refinancing, the borrower will lose one or more  
19 of the benefits of the special mortgage, unless the agency or  
20 organization that provided or services the special mortgage  
21 determines, at its discretion, that the refinancing provides a  
22 reasonable, tangible net benefit to the residential mortgage  
23 debtor or a nonprofit housing counseling agency, certified by  
24 either the United States Department of Housing and Urban  
25 Development or the Pennsylvania Housing Finance Agency, reviews  
26 the proposed refinancing, provides counseling to the residential  
27 mortgage debtor and independently determines that the proposed  
28 transaction provides a reasonable, tangible net benefit to the  
29 residential mortgage debtor. For purposes of this paragraph, a  
30 mortgage obtained by the Pennsylvania Housing Finance Agency to

secure homeowner's emergency assistance granted under the act of  
December 22, 1989 (P.L.687, No.90), known as the "Mortgage  
Bankers and Brokers and Consumer Equity Protection Act," shall  
be considered a special mortgage.

(5) No residential mortgage shall contain a provision that  
permits the residential mortgage lender, in its sole discretion,  
to accelerate the indebtedness: Provided, That this paragraph  
does not prohibit acceleration, in accordance with this act, due  
to the residential mortgage debtor's failure to abide by the  
material terms of the loan. No residential mortgage shall  
contain a contractual balloon payment under circumstances where  
the residential mortgage lender knows or should know that the  
residential mortgage debtor has no reasonable likelihood of  
being able to pay the balloon when due.

(6) No person shall recommend or encourage default on an  
existing residential mortgage or other debt prior to and in  
connection with the closing or planned closing of a residential  
mortgage that refinances all or any portion of the existing loan  
or debt.

(7) In addition to the prohibitions contained in section  
2(4) of the act of December 17, 1968 (P.L.1224, No.387), known  
as the "Unfair Trade Practices and Consumer Protection Law," no  
person shall, in connection with a residential mortgage  
transaction, make any false or misleading representations,  
either explicit or implied, regarding:

(i) the monthly housing expense being assumed by the  
residential mortgage debtor;

(ii) the economic benefits or advantages produced by the  
transaction;

(iii) any future refinancing or payment reduction; or

1     (iv) the value of the collateral.

2     For purposes of this paragraph, a monthly housing expense shall  
3     include the scheduled payment and one-twelfth of the reasonably  
4     anticipated real estate taxes and homeowners' insurance premium.

5     (8) In making, arranging or closing a home loan, a  
6     residential mortgage lender, residential mortgage intermediary  
7     or provider of any real estate settlement service may not accept  
8     or give any fee, kickback, thing of value, portion, split or  
9     percentage of charges, other than as payment for goods or  
10    facilities that were actually furnished or services that were  
11    actually performed. The amount of the payment must be reasonably  
12    related to the value of the goods or facilities that were  
13    actually furnished or services that were actually performed.

14    (9) No finance charge shall be paid to a residential  
15    mortgage intermediary as part of a residential mortgage  
16    transaction unless the residential mortgage intermediary  
17    functioned as the agent of the residential mortgage debtor in  
18    arranging, obtaining or otherwise participating in the mortgage  
19    transaction and the charge is consistent with a written agency  
20    agreement that is signed by and furnished to the residential  
21    mortgage debtor at least three days in advance of the  
22    application for the residential mortgage.

23    (10) Late charges may be imposed if the mortgage documents  
24    authorize the charge, but only if the payment is past due for  
25    fifteen days or more and the charge does not exceed five per  
26    cent of the amount of the late payment. A late payment charge  
27    may not be imposed more than once with respect to a particular  
28    late payment. Each and every payment shall be posted on the same  
29    date it was received at the address provided to the residential  
30    mortgage debtor.

1     (11) No charge may be imposed for informing or transmitting  
2 to any person the balance due to pay off or reinstate a  
3 residential mortgage or to prepare or provide a release upon  
4 prepayment. Payoff balances and reinstatement breakdowns shall  
5 be provided within five business days after they are requested.

6     (12) No charge may be imposed for furnishing residential  
7 mortgage debtors a legally required notice, or for responding to  
8 a legally authorized request for account information.

9     (13) Force-placed insurance may be purchased when a  
10 residential mortgage debtor fails to maintain adequate hazard  
11 insurance that includes a mortgagee loss provision as required  
12 by the residential mortgage servicer. No reimbursement  
13 obligation shall be imposed on the residential mortgage debtor  
14 regarding force-placed insurance unless thirty-day advance  
15 written notice stating an intent to purchase such insurance,  
16 together with instructions for providing proof of insurance, is  
17 provided to the residential mortgage debtor and provided that  
18 the residential mortgage debtor shall retain the right to obtain  
19 insurance and thereby cancel any force-placed insurance  
20 reimbursement obligation for the future period during which  
21 insurance is maintained.

22     (14) A violation of this section shall be deemed to be a  
23 violation of the "Unfair Trade Practices and Consumer Protection  
24 Law."

25     Section 3. Section 406 of the act is amended to read:

26     Section 406. Attorney's Fees Payable.--With regard to  
27 residential mortgages, no residential mortgage lender or  
28 servicer shall contract for, demand or receive attorney's fees  
29 or costs from a residential mortgage debtor except as follows:

30     (1) Reasonable and nonduplicative fees for services included

1 in actual settlement costs.

2 (2) Upon commencement of foreclosure or other legal action  
3 with respect to a residential mortgage, only attorney's fees and  
4 costs which are reasonable and actually incurred by the  
5 residential mortgage lender may be charged to the residential  
6 mortgage debtor.

7 (3) Prior to commencement of foreclosure or other legal  
8 action attorneys' fees which are reasonable and actually  
9 incurred not in excess of fifty dollars (\$50) provided that no  
10 attorneys' fees may be charged for legal expenses incurred prior  
11 to or during the thirty-day notice period provided in section  
12 403 of this act.

13 Section 4. The act is amended by adding a section to read:

14 Section 409. Foreclosure and Other Legal Actions.--(a)  
15 Notwithstanding the in rem character of an action in mortgage  
16 foreclosure, a defendant residential mortgage debtor may assert  
17 a claim or defense in law or equity, including a violation of  
18 this act, and may join any other party that would be permitted  
19 in any other action to collect a debt.

20 (b) In any proceeding pertaining to a residential mortgage,  
21 the court shall have the power to determine the reasonableness  
22 and necessity of fees and costs claimed by any party to the  
23 proceeding in accordance with the provisions of this act.

24 Section 5. This act shall take effect in 60 days.