

§ 24-10.1. Late fees.

(a) Subject to the limitations contained in subsection (b) of this section, any lender may charge a party to a loan or extension of credit governed by G.S. 24-1.1 or G.S. 24-1.1A a late payment charge as agreed upon by the parties in the loan contract.

(b) All of the following limitations apply to a late payment charge:

- (1) A late payment charge shall not exceed any of the following:
 - a. The amount disclosed with particularity to the borrower pursuant to the federal Consumer Credit Protection Act, Chapter 41 of Title 15 of the United States Code, (Truth in Lending Act) and the regulations adopted under it, if that act applies to the transaction.
 - b. For a loan or extension of credit that meets all of the following conditions, the greater of thirty-five dollars (\$35.00) or four percent (4%) of the amount of the payment past due:
 1. The loan or extension of credit is made by a bank or savings institution organized under the law of North Carolina or of the United States.
 2. The loan or extension of credit is not secured by real property.
 3. The loan or extension of credit is governed by G.S. 24-1.1.
 4. The loan or extension of credit has an original principal balance greater than or equal to one thousand five hundred dollars (\$1,500).
 - c. For any other type of loan or extension of credit governed by G.S. 24-1.1 or G.S. 24-1.1A, four percent (4%) of the amount of the payment past due.
- (2) Repealed by Session Laws 2019-10, s. 2, effective April 1, 2019, and applicable to contracts entered into, renewed, or modified on or after that date.
- (3) A late payment charge shall not be charged unless one of the following is true:
 - a. The payment is 30 days past due or more for a loan on which interest on each installment is paid in advance.
 - b. The payment is 15 days past due or more for any other loan.
- (4) A late payment charge shall not be charged more than once with respect to a single late payment. If a late payment charge is deducted from a payment made on the contract and the deduction results in a subsequent default on a subsequent payment, no late payment charge shall be imposed for the default. If a late payment charge has been once imposed with respect to a particular late payment, no late payment charge shall be imposed with respect to any future payment that would have been timely and sufficient but for the previous default. However, when a borrower fails to make an installment payment, and the terms of the loan agreement provide that subsequent payments shall first be applied to the past due balance, and the borrower resumes making installment payments but has not paid all past due installments, then the lender may enforce the contract according to its terms, imposing a separate late payment charge for each installment that becomes due until the default is cured.
- (5) A late payment charge shall not be charged on any loan that by its terms calls for repayment of the entire balance in a single payment and not for installments of interest or principal and interest.
- (6) A late payment charge shall not be charged unless the lender notifies 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 which late

payment must be paid unless the borrower can show that the installment was paid in full and on time. No late payment charge shall be collected from any 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 charge.

(c) The provisions of this subsection apply only to home loans made by lenders described in G.S. 24-1.1A(a)(2). Notwithstanding that the note or other loan document sets forth a late payment charge in excess of that permitted in this section, the loan is not unlawful if all of the following are true:

- (1) No late fee in excess of those permitted in this section has been assessed or collected by the lender.
- (2) One of the following is true:
 - a. If the loan is executed on or after July 14, 1993, the lender provides written notice to the borrower within 90 days of the date of execution of the loan documents that the late payment charge with respect to the loan shall be four percent (4%) or less.
 - b. If the loan was executed prior to July 14, 1993, the lender provides written notice to the borrower within six months of that date that the late payment charge with respect to the loan shall be four percent (4%) or less. (1985, c. 755, s. 1; 1987, c. 447; 1993, c. 339, s. 1; 2017-102, s. 8; 2019-10, s. 2.)