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Will North Carolina's Predatory Home Lending Act Protect Borrowers From the Vulnerability Caused by the Inadequacy of Federal Law?

I. INTRODUCTION

North Carolina's Attorney General, Mike Easley, defined predatory lending as the use of "high-rate, high-fee loans targeted to borrowers...with cash flow problems" which are more likely to lead to foreclosures. The volume of these loans has soared in recent years, resulting in economic and psychological devastation for many low-income, elderly, minority, and un-

3. See Alex M. Johnson Jr., Critiquing the Foreclosure Process: An Economic Approach: Based on the Paradigmatic Norms of Bankruptcy, 79 VA. L. REV. 959, 966-67 (1993). Borrowers usually lose all equity in the event of a foreclosure because the lender has no reason to bid any more for a house than the amount of the debt. See id. at 968-71. In the five country region of Chicago, the number of foreclosures grew from 2,074 in 1993 to 3,964 in 1998, an increase of 91%. See Bill Rumbler and Alex Rodriguez, Mortgage Foreclosures Here Go Through The Roof, THE CHICAGO SUN-TIMES, Mar. 28, 1999, at 28A. Suburban area, as opposed to rural area, accounted for the biggest growth of foreclosures. See id. In 1993, subprime lenders accounted for only 1% of all foreclosures but by 1998, subprime loans comprised 36% of all foreclosures. See id. Individuals who lose their homes are likely to be psychologically devastated as well. See Eldon Killian, Effect of Geriatric Transfers on Mortality Rates, SOCIAL WORK, Jan. 1970, at 19, 25. This can be seen in a study about the effects of involuntary relocation on elderly residents. See id. Of those who were displaced from their homes, the mortality rate within the first year ranged from five to nine times higher than those who were able to stay put. See id. Another study focused on the effects of displacing tenants out of the Boston slums as part of an urban renewal project. See Marc Fried, Grieving for a Lost Home: Psychological Costs of Relocation, URBAN RENEWAL: THE RECORD AND THE CONTROVERSY, 359, 359-61 (James Q. Wilson ed., 1966). Even though many of these tenants were relocated to housing that improved living conditions, many of these tenants suffered from the psychological effects of losing their homes. See id.
sophisticated homeowners.\textsuperscript{7}

Simply put, predatory lending is the use of one or more unfair practices by lenders to gain an unfair advantage over borrowers.\textsuperscript{8} For instance, some borrowers are issued high-interest, high-fee loans in which the loan principal varies little over time.\textsuperscript{9}


5. See Equity Predators: Stripping, Flipping, and Packing Their Way to Profits: Hearing Before the Senate Special Committee on Aging, 105th Cong. 80-99 (1998) (Statement of William J Brennan, Jr., Director, Home Defense Program, Atlanta Legal Aid Society, Atlanta, Ga.) [hereinafter Brennan Statement]. At the Federal Trade Commission (FTC) press conference on July 29, 1999, FTC Chairman Robert Pitofsky stated that the elderly are the most vulnerable target for predatory lenders. See Seven Home Equity Lenders to Pay $500,000 to settle FTC Allegations, 73 Banking Rep. (BNA) 247 (Aug. 9, 1999). At the same press conference, Ann Harvey, Director of Program Development Services for the American Association of Retired People, stated that the elderly “are popular targets of fraudulent home repair financing schemes” because they have significant equity and also are more likely to need home repairs. Id. Predatory lenders target older homeowners because they have significant equity in their homes and substantial needs for money. See GOLDSTEIN, supra note 4, at 16.

6. See GOLDSTEIN, supra note 4, at 20. Minorities are being targeted for high rate loans by finance companies. See Timmons, supra note 1.

7. See Lehman Interview, supra note 4. A lack of sophistication can be defined as not having enough information to make a prudent decision. See Robin Morris, Consumer Debt and Usury: A New Rationale for Usury, 15 PEPP. L. REV. 151, 170-73 (1988). This can be caused by misrepresentation by the broker or quickly going through the paperwork without reviewing the loan terms with the borrower. See id.

8. See Interview with Ellen Schloemer, Communications Director, Self-Help Credit Union, in Durham, N.C. (Oct. 19, 1999) [hereinafter Schloemer Interview].

9. See Prime Time Live: Debt Reckoning (ABC television broadcast, April 23, 1997). One reported case showed that an independent broker suggested a $50,000 home equity loan to an elderly African-American couple to pay off some debt. See id. The husband was disabled and the wife worked part time. See id. The terms of the loan included an interest rate of 15%, finance fees of 5%, and credit life insurance that they did not request or know about. See id. This practice of charging for a service or product that is not requested by the borrower is known as packing. See id. Despite making payments totaling $128,000 over 15 years, there was a $47,000 lump-sum payment (balloon) due at the end of the 15th year, for which they had no ability to pay. See id. The elderly couple then faced the possibility of foreclosure. See id. Bill Brennan, a legal aide lawyer in Atlanta, reported that predatory lenders such as The Associates Financial Services target low income neighborhoods and locate houses that have high owner equities by looking up houses in the deed book and figuring out the balance owed on these houses. See id. It was reported that The Associates Financial Services, a subprime lending subsidiary of Ford Motor Com-
Often existing loans are repeatedly refinanced in which additional fees are charged, siphoning off the owner's home equity. Some lenders use a sense of trust to avoid disclosing the terms of a loan or rush through the borrower's review of voluminous loan paperwork, leaving little time to ask questions. Also, some financially unsophisticated borrowers with poor credit history but high equity are targeted for loans, knowing that the loan cannot be repaid.

Predatory lending is seen in both consumer and home lending transactions and is practiced in both the conventional and the subprime lending markets; however, a more substantial

pany, forecloses on about two percent of its loans, the same as the national average. However, homeowners who's debt exceeds their equity are encouraged to sign over their deeds to The Associates, thereby avoiding the appearance of another foreclosure on its records. Ford's consumer finance operations held 350,000 mortgage loans, with a profit of $857 million in 1996, making it one of the largest mortgage lenders in the country.

10. See CBS Evening News: Eye on America (CBS television broadcast, March 16, 1998). An elderly white man, who wanted to purchase meat on credit, ended up mortgaging his whole house for $50,000 with an interest rate of 19%. Within four years, the Associates flipped his loan 11 times, each time with a 10% finance fee. Eventually, half of his loan was comprised of finance fees.

11. See Fox 5 News Investigation: Borrowing Trouble (WAGA-TV television broadcast, May 4, 1998). A partially disabled white man suffering from diabetes got a home equity loan of $36,000 at a rate of 16.5%. In just four months, his loan was refinanced in which a $5,000 credit life insurance premium was tacked on, reflecting $76,000 worth of insurance coverage, despite the fact that his loan was for only $43,000. He did not recall having purchased this insurance nor did he have any family members to justify such a purchase.

12. See Your Money (CNN television broadcast, May 23, 1998). A middle-aged single white woman had $150,000 worth of equity in her home and a debt of $70,000 for which she needed a loan. Despite having knowledge of her poor credit history and a limited income, a subprime lender persistently called her at nights and on weekends to convince her to get a home equity loan against the value of her home. Within a year she was sold five different loans by the same lender and was in danger of losing her home because of her inability to make the monthly payments.

13. See Schloemer Interview, supra note 8. Self-Help Credit Union is a non-
portion of the subprime lending market engages in this practice.\textsuperscript{14} The subprime market provides loans to many individuals who were rejected by lenders in the conventional market as a result of poor credit history \textsuperscript{15} or because of excessive debt obligations.\textsuperscript{16} Surprisingly, some people qualify for conventional loans but are not placed in these loans by brokers who stand to make a greater profit from issuing a subprime loan.\textsuperscript{17}

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\textsuperscript{14} See Amal Sabi, Tiff Surrounds Big Bank's Subprime Efforts, TRIANGLE BUS. J., May 28, 1999 at 9. Martin Eakes, President of the Self-Help Credit Union in Durham and leader of the Coalition for Responsible Lending, estimated that 25% of all subprime loans are made in a predatory manner. See id. The Community Reinvestment Association of North Carolina estimates that predatory lending comprises 50% of the subprime market, using a definition of predatory as any abusive practice listed in William Brennan's testimony before the United States Senate Special Committee on Aging Hearing on March 16, 1998. See Telephone Interview with Jeanette Bradley, Program Director, Community Reinvestment Association of North Carolina, in Raleigh, N.C. (Nov. 4, 1999) [hereinafter Bradley Telephone Interview]. This list includes 32 definitions of predatory lending practices, divided into three loan categories; origination, servicing, and collection. See Brennan Statement, supra note 5.


\textsuperscript{16} See Carol Frey, \textit{Subprime Time for Borrowers Isn't Now as Credit Tightens}, NEWS & OBSERVER (Raleigh), October 30, 1998, at 1D (citing Jeffrey Zeltzer, Executive Director of the National Home Equity Mortgage Association). Most home loans are secured on the conventional market where lenders compete for the least risky borrowers in return for the most favorable interest rates that generally range from 2 to 3 percentage points above the rate on comparable-maturity Treasury bonds. See Schloemer Interview, supra note 8. Treasury bills are government securities used to finance the government debt, backed by the full faith and credit of the federal government. See BLACK'S LAW DICTIONARY, 1507 (7th ed. 1999). Treasury bond rates vary depending on the maturity length of a given bond. See Money Rates, WALL ST. J., Nov. 1, 1999, at C17. For example, the interest rate on a 30-year bond effective November 1, 1999 was 6.0%, compared to the rate on a 1-year bond of 5.50%. See id. Depository institutions borrow their money from the Federal Reserve by paying the discount rate, 4.75% on November 1, 1999. See id. The lowest market lending rates are those provided to the best corporate customers by 70% of the nation's largest 30 banks. See id. Effective November 1, that rate was 8.25%. See id.

\textsuperscript{17} See Interview with Susan Lupton, Project Director, Coalition for Responsible Lending, in Durham, N.C. (Nov. 8, 1999) [hereinafter Lupton Interview].
Predatory lenders use aggressive and deceptive marketing techniques to earn the trust of consumers who often lack an ongoing relationship with a depository institution. In addition, subprime borrowers are less likely to be well-informed than conventional borrowers. Even well-informed subprime borrowers may take on too much debt if they cannot imagine any risk based on past experience, such as a foreclosure. Moreover, borrowers tend to perceive a financial disaster as probable only if it occurs frequently or if it is highly publicized. This underestimation also renders many borrowers vulnerable to predatory techniques.

For those borrowers with an undesirable credit history, the subprime lending market provides an opportunity to obtain credit albeit for higher interest rates and finance fees. Sub-

18. See id. Elderly consumers are more likely to be vulnerable to the aggressive marketing tactics because many of them are at home during the day when door-to-door salesman and telemarketers are more likely to call. See Monroe Friedman, Confidence Swindles of Older Consumers, 26 J. OF CONSUMER AFF. 20 (1992).

19. See GOLDSTEIN, supra note 4, at 29. A 1997 survey by the Federal Home Loan Mortgage Corporation (FHLMC) indicated 29% of subprime borrowers did not search for the best interest rate, while only 13% of prime borrowers failed to conduct such a search. See id. FHLMC was established as a governmental agency to purchase loans from lenders and insure them against the risk of borrower default. See id.

20. See id.


22. See id. at 387-392.

23. See Frey, supra note 16. It is estimated that 25% of Americans have undesirable credit history. See id. Borrowers are categorized into tiers of risk from “A” to “D.” See Schloemer Interview, supra note 8. The conventional market serves primarily the top tier of these categories, known as “A” borrowers. See id. Conventional loans are less costly to borrowers than subprime loans. See Sabi, supra note 14. “A” borrowers as defined by FHLMC as those that have a good credit history; no late mortgage payments; only minimal or credit card late payments; and a debt ratio maximum of 38%, with no more than 38% of income used to pay off total debt. See Telephone Interview with Stella Adams, Executive Director, North Carolina Housing Center, Durham, N.C. (Oct. 13, 1999). Although it is estimated that at least one-third of “A-” subprime borrowers would qualify for “A” quality conventional loans, many of them are steered towards subprime loans instead. See id. These “A-” borrowers are defined as having a history of only one to two mortgage payments 30 days late; no more than one 60 day late payment on revolving or installment credit; and a debt-to-income ratio of 40%. See id. The worst rated “D” borrower has frequent late mortgage payments, but never more than 120 days late; a debt ratio of
prime lenders charge more for their loans than conventional lenders do because of the increased risk of borrower default and because these borrowers usually have no alternative lending sources.\textsuperscript{25} Also, subprime lenders have additional expenses because they must closely monitor their loans to ensure receipt of monthly payments.\textsuperscript{26}

Unlike subprime lenders, many conventional lenders have customer deposits as a ready-made and cheap source for loan funding.\textsuperscript{27} Conventional lenders make money from the spread between the low interest they pay their depositors and the interest they receive from conventional borrowers.\textsuperscript{28} Subprime lenders typically have no such deposits.\textsuperscript{29} Instead, they must borrow money at a higher rate from other financial institutions or in the capital markets.\textsuperscript{30} To avoid having continually to borrow capital to fund more consumer loans, many subprime lenders sell off existing loans to investors.\textsuperscript{31} The proceeds from these sales provide a revolving pool of funds to make more loans.\textsuperscript{32} For those who sell off loans, the chief income source is derived from finance fees.\textsuperscript{33} Whether they sell off loans or fund them, subprime lend-
ers have a "win-win situation."\textsuperscript{34} If their loan is brokered to another institution, the higher finance fees are an immediate and sizeable profit.\textsuperscript{35} If the loan is retained, the lender receives a considerable return from the higher interest rate.\textsuperscript{36} If the borrower defaults, the lender can foreclose on the house to recover the outstanding loan.\textsuperscript{37}

The impetus for statutory action came not only from the tactics employed by lenders who use predatory practices, but also from the rapidly increasing volume of loans that had predatory characteristics.\textsuperscript{38} In 1994, the total outstanding loans in the U.S. residential market stood at $768 billion.\textsuperscript{39} Subprime lending constituted only $25 billion or 3\% of that market.\textsuperscript{40} By 1998, the outstanding loans in the U.S. residential market totaled approximately $1.2 trillion, and subprime loans had risen to about $160 billion or 13\% of that market.\textsuperscript{41}

Aside from the excessively high rates and fees, some of the many tactics employed by predatory lenders include: (1) using prepayment penalties to discourage borrowers from paying off loans, thus preventing refinancing or selling the home; (2) using balloon payments in which monthly payment amounts are so small that there is little or no reduction of the loan principal at the end of the loan period; (3) using negative amortization in which the scheduled monthly payments are so low that they fail

\textsuperscript{34} United Companies Lending Corp. v. McGehee, 686 So. 2d 1171, 1177 (Ala. 1996) (quoting Steven D. Caley, Atlanta Legal Aid Society, Inc).
\textsuperscript{35} See id.
\textsuperscript{36} See id.
\textsuperscript{37} See id.
\textsuperscript{39} See 1999 HOME EQUITY LENDING DIRECTORY, supra note 2.
\textsuperscript{40} See id.
\textsuperscript{41} See id. Assuming that predatory loans comprise 25\% of the subprime market, these loans grew from over $6 billion to roughly $40 billion. See Sabi, supra note 14. This increase in loan activity exceeded 500\% in just a four-year period. See 1999 HOME EQUITY LENDING DIRECTORY, supra note 2. To entice more borrowers, predatory lenders contact current mortgagors of their own, purchase borrower lists from other financial companies or advertise on the open market. See Lehman Interview, supra note 4. Potential customers are solicited by means of telemarketing, direct mail, home visits and television ads promising to consolidate bills, lower monthly payments or generate extra cash to pay off other debts. See id.
to pay off the accrued interest and thereby increase the amount of the principal; (4) financing credit life insurance premiums wherein all future premiums are lumped together and assessed in present dollars; and (5) repeated refinancing into larger loans with no benefit to the borrower, known as flipping. With each flip, origination and closing costs become part of the amount financed, thereby increasing the debt and decreasing the owner's equity.

This article will explain the practice of predatory lending, its consequences, and the extent to which the new predatory lending statute (hereinafter North Carolina Act) addresses the problems of predatory lending.

II. RELEVANT FEDERAL STATUTES

For over thirty years, federal statutes were layered upon each other to cover gaps that allowed unfair lending practices to occur. Because of this lack of statutory controls, litigation dur-
ing this time showed an emerging trend of some courts across the country to assess penalties against predatory lenders,\textsuperscript{48} based on established principles of law, such as fraud, and on policy grounds.\textsuperscript{49}

Relevant federal housing statutes can be categorized as those that address the disclosure of loan information and restrict abusive practices;\textsuperscript{50} those that promote home equity loans as a preferred method of extending consumer credit;\textsuperscript{51} and those that prevent discriminatory practices.\textsuperscript{52}

\textsuperscript{48} See Seven Home Equity Lenders to Pay $500,000 to settle FTC Allegation, supra note 5. The FTC announced on July 29, 1999 that it had charged seven subprime lenders with violating the Home Ownership Equity Protection Act of 1994 as a result of alleged abusive lending practices. See id. See also Glenn Kalinoski, Lender Groups Oppose Unconscionable Fees, NATIONAL MORTGAGE NEWS, June 7, 1999 (citing a court holding that prohibited a lender from charging points above 5%). See also Heather Timmons, Lender Apposes Activists with $100 Million Pledge, AM. BANKER, May 11, 1999, at 30 (reporting a pledge by Associates First Capital Corporation to provide $100 million in low-rate loans in response to predatory lawsuit threats).

\textsuperscript{49} See infra notes 122-161 and accompanying text.

\textsuperscript{50} See infra notes 53-77 and accompanying text.

\textsuperscript{51} See infra note 78-105.

\textsuperscript{52} See 42 U.S.C. §3601 (1994). Between 1968 and 1977, a patchwork of federal statutes was enacted to prevent discriminatory home lending practices such as redlining; the systematic act of refusing loans to protected classes and low income neighborhoods. See id. To prevent discriminatory practices with respect to housing, Title VIII of the 1968 Civil Rights Act was enacted. See id. In addition, the Fair Housing Act Amendments of 1988 became effective on March 13, 1989. See id. at §§ 3601-3631. This statute outlaws housing discrimination based on race, color, religion, sex or national origin. See id. at § 3604(a),(b). It also forbids discriminatory residential real estate transactions and brokerage services. See id. at § 3605(b). The prevention of discriminatory credit and lending practices on the basis of age and marital status was addressed in 1974 when Congress passed the Equal Credit Opportunity Act (ECOA). See 15 U.S.C. § 1691 (1994). Currently, ECOA prohibits a creditor from discriminating against an applicant because of race, color, sex, national origin, marital status, age and religion when awarding credit. See id. at §
A. Disclosures and Restrictions

Federal legislation aimed at disclosure and restrictions started with the Truth in Lending Act (TILA). Enacted in 1968, TILA requires disclosure about the costs and terms of consumer credit transactions. This applies to elements of loans such as the annual percentage rate, loan fees, service fees and premiums for insurance. TILA includes a right of rescission that allows consumers three days to cancel a loan contract. It also gives the borrower up to three years to cancel the loan if certain loan information, disclosed to the borrower by the lender, is inaccurate or omitted. The purpose of this feature is to help ensure that borrowers are well informed about their use of credit. In some cases, this right has had narrow yet excessive effects.

The lender must disclose to the borrower the finance charge and the annual percentage rate. See id. at § 1601.

54. This included the disclosure of both open-end credit and closed-end credit transactions. See id. at § 1602(e),(i).
55. See id. at §§ 1605(a), 1631.
56. See id. at § 1635(a).
57. See id. at § 1635(f). The lender must disclose to the borrower the finance charge and the annual percentage rate. See id.
58. See id. at § 1601.
59. See Rodash v. AIB Mortgage Co., 16 F.3d 1142 (11th Cir. 1994). If the lender failed to disclose even minor charges, such as the fee for a courier delivery, there were grounds for invoking a right of rescission on the part of the consumer, under TILA. See id. at 1148-1149.
the complete loan transaction.60

TILA was amended in 1994 to include the Home Ownership and Equity Protection Act (HOEPA), another step towards eliminating predatory lending practices.61 HOEPA targets a special category of regulated, closed-end loans that use above market interest rates and excessive fees.62 Within this category, HOEPA requires additional disclosures,63 extends potential liability, creates new penalties,64 and restricts or prohibits certain abusive loan terms used in high-cost home equity loans.65 To trigger HOEPA restrictions and prohibitions, the annual percentage rate of a loan must be 10% higher than a Treasury bond of comparable maturity,66 or the finance points and fees exceed the greater of

60. See id. Following Rodash, there was a rash of litigation focused on taking advantage of minor infractions of lenders as a reason to nullify the complete loan. See Mondor, supra note 47, at 145.

61. See Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1601 (1994) (amending the Truth in Lending Act). Numerous HOEPA restrictions do not apply to reverse mortgages, first time home financing, or open-ended transactions in which the terms of the loan may vary during the life of the loan. See id. at § 1602(aa)(1). See also Schloemer Interview, supra note 8. An example of an open-ended transaction is a home equity line of credit. See Forrester, supra note 21, at 445.


63. See 15 U.S.C. § 1639(b)(2) (1994). HOEPA requires lenders to disclose the terms of the loan anytime they change those terms. See id. Lenders must also make specific disclosures when issuing mortgage loans. See id. at § 1639(a). This includes a written statement that informs prospective borrowers that signing an application does not require that they go through with the loan and also that if the loan obligations are not met, they could lose the home. See id. In addition, if the loan has a fixed interest rate, the annual percentage rate and the regular monthly payment must be disclosed. See id. If the loan does not have a fixed rate, in addition to the annual percentage rate and the monthly payments, the lender must instruct the borrower that the monthly payments may increase to a given maximum rate. See id. Finally, HOEPA provides, but does not require, the use of a model disclosure form to facilitate compliance with the disclosure requirement. See id. at § 1604(b).

64. See id. at § 1640(a). HOEPA permits both individual and class actions. See id. A violation of any provision of this Act brings civil liability for actual damages, statutory damages, and attorney fees and costs. See id.

65. See id. at § 1639. Balloon payments with terms of less than five years, certain prepayment penalties, negatively amortized loans, extension of credit without regard to the borrower's ability to repay the loan, and advance payments of more than two payments are among the prohibited practices under HOEPA. See id.

66. See id. at § 1602(aa)(1)(A). The interest rate trigger of 10% is criticized for being too high for permitting abusive lenders to use the ceiling to establish their rates, just under the HOEPA limit. See Goldstein, supra note 4, at 27. Treasury bill
8% of the loan or $400. For example, if the term of a loan is 10 years and the 10-year Treasury bond rate was 5.7%, then HOEPA coverage is be triggered only by transactions in which the annual percentage rate of the loan is greater than 15.7%. Disclosure requirements on real estate transactions were established in the Real Estate Settlement Procedures Act of 1974 (RESPA). Specifically, a "good faith estimate" of settlement charges must be shown on a uniform settlement statement form in which all charges in the real estate transaction must be itemized and details of the loan servicing process must be disclosed. In addition, RESPA restricts the assessment of fees for services not rendered.

To allow a means for disclosing and tracking lending data across the country, the Home Mortgage Disclosure Act of 1975 (HMDA) was enacted. It requires all federally regulated depository institutions such as banks, savings and loans, and credit unions to furnish yearly data on loan applications if they meet certain requirements for asset size and number of loans made within the metropolitan area in which they extend loans. Non-depository institutions have requirements that are less strict. Also, the reporting institutions must compile data about race, gender, income, and the ultimate status of each loan application. Also, HMDA does not require the collection of data about interest rates or other loan terms, thus eliminating the possibility

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68. See id. The restrictions of HOEPA are considerable, but they are not triggered unless a home equity loan has particularly high rates or fees. See Forrester, supra note 21, at 445.
70. Id. at § 2604(c).
71. See id. at § 2603.
72. See id. at § 2607(c).
74. See id. at §§ 2801, 2803(a). Depository institutions that must adhere to these regulations were defined by the Board of Governors of the Federal Reserve System. See id. at § 2802(2).
75. See Bradley Telephone Interview, supra note 14.
76. See id.
of conducting any predatory lending analysis.\footnote{77}

B. Promotion

Federal law has encouraged the use of home equity loans\footnote{78} by allowing a tax deduction for home mortgage interest.\footnote{79} For some thirty years following the enactment of the Internal Revenue Code of 1954,\footnote{80} federal tax law treated most interest paid by individuals as deductible.\footnote{81} However, the Tax Reform Act of 1986 limited the deductibility of consumer interest to home, education and medical expenses.\footnote{82} In 1987, this limitation was dropped in favor of a $100,000 cap on home equity indebtedness,\footnote{83} thus permitting home equity loan proceeds to be used for any reason.\footnote{84} Although using the

\footnote{77. See id. The reporting of racial data is sparse, so meaningful conclusions cannot be made about redlining practices. See id. According to a study conducted by the Community Reinvestment Association of North Carolina in 1996, only a third of the loans recorded in North Carolina deeds of trust, made by mortgage and finance companies, were reported in the HMDA loan data. See id.

78. See Forrester, supra note 21, at 393.


81. See Internal Revenue Code of 1954, 26 U.S.C. § 163 (1956) (repealed 1986). There were some exceptions in the 1954 Code to the general deductibility of interest. See id. at §§ 264-267. See also, Forrester, supra note 21, at 410-411 (explaining features of the Internal Revenue Code of 1954). However, in 1984, this deduction came under scrutiny when former President Reagan asked for a tax reform package that would bring "fairness, simplicity and incentives for growth." Id. at 411. As part of this package, the President originally considered eliminating all interest deductions, but later decided to limit only the deductibility of consumer interest. See id.

82. See Tax Reform Act of 1986, Pub. L. No. 99-514, § 511(b)(4), 100 Stat. 2085, 2247-49 (codified as amended at I.R.C. § 163(h)(3) (1988)). This reform allowed an interest deduction for both a "taxpayer's principle residence and one other residence...up to the amount of the taxpayer's basis in the residence...." Forrester, supra note 21, at 412-13 n.209. The reform also permitted a deduction on the interest arising from certain medical and educational debt, but the total home, medical and educational debt could not exceed the fair market value of the residence. See id. at 412-13.


84. See Forrester, supra note 21, at 413-415. The elimination of the consumer interest deduction and the flexibility to use home equity loan proceeds, for any reason, encouraged consumers to use the home equity loan as a way of getting funds
deduction makes economic sense for some consumers, it can be a pitfall for unsophisticated borrowers because their homes are placed at risk. 85

The increased volume of home loans was accompanied by the preemption of state interest rate control in the Depository Institution Deregulation and Monetary Control Act of 1980 (DIDMCA). 86 DIDMCA was created to preempt state control of interest rates for home loans provided by first liens. 87 Each state had three years to opt out of this deregulatory measure. 88 North Carolina opted out, thus retaining control over its usury laws. 89

Two years later, the arsenal of home loan products was expanded under the Alternative Mortgage Transaction Parity Act of 1982 (AMTPA). 90 AMTPA was created to allow borrowers access to a broad range of lending products. 91 It also was created to provide a level playing field for all types of lenders, so that a state could not discriminate against any one type of lender in light of the high inflationary environment. 92 AMTPA allows alternative mortgage financing arrangements such as balloon payments, negative amortizing loans and adjustable rate mortgages. 93 Another feature of AMTPA is that both first and

that would have otherwise been unsecured or secured by some other form of collateral. See id.

85. See id. at 414-416. Senator Bumpers said: "[W]e will be encouraging home-owners to take second and third mortgages on their homes, which I question as a public policy. I predict that we’ll soon see checking accounts and credit card accounts based on home mortgages." 132 CONG. REC. 13,602 (1986) (statement of Sen. Bumpers).


87. See Forrester, supra note 21, at 399 n.137. DIDMCA did away with interest rate limits on savings and loan deposits and also gave the flexibility to savings and loans to make non-mortgage investments. See id.

88. See Lehman Interview, supra note 4. See also Forrester, supra note 21, at 399-400 (explaining that sixteen states opted out of this usury preemption).

89. See Lehman Interview, supra note 4. Usury is "the charging of an illegal rate of interest" or "an illegally high rate of interest." BLACK'S LAW DICTIONARY, 1543 (7th ed. 1999).


91. See id. at § 3801(a),(b).

92. See id.

93. See Forrester, supra note 21, at 419. A balloon payment is defined as a large principal remaining at the end of the loan, usually equal to 85% of the original
second home liens are preempted from state control of finance arrangements.\textsuperscript{94} States were allowed to opt out of AMTPA's pre-emptory coverage,\textsuperscript{95} but North Carolina failed to do so.\textsuperscript{96} As a result, out-of-state brokers claimed a federal preemption to use prepayment penalties as part of an adjustable rate mortgage, in spite of a state law that forbids the use of such penalties.\textsuperscript{97} The tax deductibility of home equity loans, the absence of interest rate regulation under DIDMCA, and the deregulation of alternative mortgage financing under AMTPA resulted in an unprecedented economic opportunity for many consumers, who could not otherwise get loans.\textsuperscript{98} This fueled a significant increase in predatory lending practices.\textsuperscript{99} In response, various legislative initiatives ensued, aimed at creating a more comprehensive reform of federal statutes.\textsuperscript{100} One of the initiatives, the Mortgage Reform Working Group (MRWG), was comprised of representatives from twenty industry groups and five consumer groups around the country.\textsuperscript{101} The MRWG determined that there were six essential issues that needed to be included in the reform of RESPA and TILA; disclosure, protection from abuse, foreclosure relief, referral fees, penalties and remedies, and state law preemption.\textsuperscript{102}

loan principal, as a result of structuring low monthly payments not designed to sufficiently pay down the principal. \textit{See} Golstein, \textit{supra} note 4, at 13. Negative amortization is defined as the structuring of a loan in a way that the monthly payments do not pay off all the accrued interest, thereby increasing the principal. \textit{See id.} Adjustable rate mortgages are defined in AMTPA as a consumer loan that is secured by a lien on a one to four family dwelling unit in which the creditor may change the interest rate. \textit{See} 12 U.S.C. § 3806(a)(2) (1994). A mere rate change following the default of a loan constitutes an adjustable rate mortgage. \textit{See} Interview with Eric Stein, Vice President, Self-Help Credit Union, in Durham, N.C. (Oct. 19, 1999) [hereinafter Stein Interview].

94. \textit{See} Forrester, \textit{supra} note 21, at 419.
97. \textit{See} Lehman Interview, \textit{supra} note 4.
98. \textit{See id.}
99. \textit{See id.}
100. \textit{See} Mondor, \textit{supra} note 47, at 146. Comprehensive reform was favored to address the inadequacy of federal regulations. \textit{See id.} at 147.
101. \textit{See id.} at 146.
102. \textit{See id.} at 146-147. The MRWG was initiated by United States Representa-
Despite the work of MRWG and the attempts of consumer advocacy groups to persuade the Department of Housing and Urban Development (HUD) to prohibit predatory practices, no progress was made. Because of the unsuccessful efforts to garner support in Washington for the enactment of a federal statute to comprehensively address the predatory lending issue, consumer groups moved their battles to state legislatures, with North Carolina and New York being the first ones to take up the issue.

Due to the frustration experienced by victims and their concerned communities, consumer advocacy groups in North Carolina grew into an exceptionally organized and influential political force. This force was bolstered by the work of the North Carolina Department of Justice, which investigated a growing number of consumer complaints about abusive lending practices.

III. RELEVANT NORTH CAROLINA STATUTES

North Carolina’s state statutes have also been inadequate for stopping predatory lending because they are not designed to address the recent generation of deceptive practices aimed at side

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103 See Sichelman, supra note 38. These predatory practices included equity-stripping, flipping, and packing. See id. “[M]ortgage business...leaders have been able to convince HUD Secretary Andrew Cuomo that only a small minority of lenders are guilty of unscrupulous tactics.” Id.

104 See Bill Merrick, NFCDCU Lauded for Transforming Lives, CREDIT UNION MAGAZINE, Aug. 1, 1999 at 77.

105 See Poonkulali Thangavelu, North Carolina Has First Law to Police Predatory Lending, ORIGINATION NEWS, Aug. 1, 1999, at 1, available in 1999 WL 11126452. Attorney General Mike Easley indicated that his office received over 50 complaints against Associates First Capital for allegedly taking part in predatory lending and he stated that “we are prepared to take whatever action is necessary to stop predatory lending.” Id. Mr. Easley also indicated in April of 1999 that he was investigating five predatory lenders operating in North Carolina. See Timmons, supra note 1.
stepping the law. Many out-of-state lenders have found a profitable niche as evidenced by the increasing number of predatory loans issued to North Carolinians. As a result, there is a heightened awareness of the need for statutory change. Moreover, the lack of a significant common law precedent in the area of predatory lending causes difficulty in applying any restrictions.

Most instances of usury in home loans are not likely to be covered by the North Carolina state usury statute. A contract is usurious only if the lender purposely and intentionally charges and receives a greater rate of interest than that allowed by law. However, there is no limit on finance charges or points and there is no regulation of rates for first mortgages.

The North Carolina unfair and deceptive practices statute also has a limited effect on predatory lending, because it uses...
language written in general terms.\textsuperscript{112} For example, although there is heightened concern over the many types of fees that appear in home loans, there are no specific regulations regarding these fees.\textsuperscript{113} This has led to a widespread practice of duplicative charges or fees for illusory services.\textsuperscript{114} The purpose of the statute is to apply “ethical standards” in business transactions to “promote good faith,”\textsuperscript{115} and to protect “the consuming public.”\textsuperscript{116} An act of unfairness is “judged by viewing it against the background of actual human experience and by determining its intended and actual effects upon others.”\textsuperscript{117} Because of this abstract language and lack of case law relating to lending practices, the unfair trade practices statute has been inadequate to address predatory lending problems.\textsuperscript{118}

The North Carolina statute relating to the registration of mortgage lenders and brokers governs the registration requirements for these professions.\textsuperscript{119} However, there are no private

\textsuperscript{112} See Lehman Telephone Interview of Jan. 31, 2000, \textit{supra} note 106 (referring to N.C. GEN. STAT. § 75-1 (1999)). At common law, agreements that prejudice “the public by unduly or unreasonably restricting competition or restraining trade are illegal.” Rose v. Vulcan Materials Co., 282 N.C. 643, 656, 194 S.E.2d 521, 530-31 (1973).

\textsuperscript{113} See Lehman Telephone Interview of Jan. 31, 2000, \textit{supra} note 106.

\textsuperscript{114} See id.


\textsuperscript{116} Lindner v. Durham Hosiery Mills, Inc., 761 F.2d 162, 167 (4th Cir. 1985). In order to establish a prima facie claim, the plaintiff must show that the defendants committed an unfair and deceptive act or practice in or affecting commerce, and the plaintiff was injured thereby. First Atl. Management Corp. v. Dunlea Realty Co., 131 N.C. App. 242, 252, 507 S.E.2d 56, 63 (1998) (citing Canady v. Mann, 107 N.C. App. 252, 260, 419 S.E.2d 597, 602 (1992)).


\textsuperscript{118} See Lehman Telephone Interview of Jan. 31, 2000, \textit{supra} note 106.

\textsuperscript{119} See Lehman Telephone Interview of Jan. 31, 2000, \textit{supra} note 106 (referring
remedies under this statute and the administrative enforcement authority is limited to the Commissioner of Banks.\textsuperscript{120}

The lack of statutory scope in addressing a variety of lending abuses, the lack of specificity of statutory language and the lack of preventative controls and prohibitions has rendered the existing North Carolina statutes inadequate in addressing the practice of predatory lending.\textsuperscript{121}

IV. RECENT LITIGATION

Most instances of predatory lending are not litigated because it is easy for lenders to conform to federal law.\textsuperscript{122} As long as lenders disclose the terms of a loan in writing, keep the loan terms within HOEPA's generous limits, give the borrower a three-day cooling-off period for an opportunity to rescind the lending agreement, and do not discriminate based on gender, age, race, color, national origin or religion, there are no grounds to sue the lender.\textsuperscript{123} In addition, borrowers of predatory loans do not usually have the resources to pay the costs of litigation.\textsuperscript{124}

The inadequacy of federal and local laws in limiting predatory lending practices can be seen in cases such as DeBerry v. First Government Mortgage and Investors Corp.\textsuperscript{125} In DeBerry, the borrower inherited a home that she refinanced six times in a four year period; four times through the defendant and twice through another lender.\textsuperscript{126} The plaintiff alleged that in financing two of

\textsuperscript{120} See N.C. GEN. STAT. § 53-235 (1999). The Commissioner may order a mortgage banker or broker to "cease and desist" from violating this statute. \textit{Id.} However, if such party fails to make an appeal and continues to violate the statute, the Commissioner may issue a fine of $1000 and/or revoke the registration. \textit{See id.}

\textsuperscript{121} See Lehman Telephone Interview of Jan. 31, 2000, \textit{supra} note 106.

\textsuperscript{122} See Stock Telephone Interview, \textit{supra} note 11.

\textsuperscript{123} See \textit{id.}

\textsuperscript{124} See Schloemer Interview, \textit{supra} note 8.

\textsuperscript{125} 170 F.3d 1105 (D.C.Cir. 1999). The tension between public policy and the freedom to contract was exposed in Merritt v. Knox, 94 N.C. App. 340, 380 S.E.2d 160 (1989) where the court penalized the lender and gave relief to the borrower even though there were no statutory penalties available for the lender's charging of excessively high interest rates, bargained for by the borrower. \textit{See McAllister, supra} note 109, at 1021-22.

\textsuperscript{126} See DeBerry, 170 F.3d at 1106.
the remaining four loans, the defendant violated the Consumer Protection Procedures Act of the District of Columbia (CPPA)\textsuperscript{127} by engaging in unlawful trade practices.\textsuperscript{128} The plaintiff alleged that the finance fees in one of her loans added up to over 25% of the total loan amount, and that the loans were unconscionable and constituted predatory lending.\textsuperscript{129} The defendant conceded that real estate mortgage transactions might have been covered under a CPPA provision outlawing trade practices that misrepresent material facts, but the defendant pointed out that the CPPA's language prohibiting unconscionable trade practices applied only to the sale or lease of goods or services,\textsuperscript{130} thus leading to an ambiguous interpretation of the CPPA.\textsuperscript{131} In its holding, the United States Court of Appeals certified to the District of Columbia Court of Appeals the issue of whether the CPPA applied to real estate mortgage transactions.\textsuperscript{132} The District of Columbia Court of Appeals later held that the CPPA "applies to real estate mortgage finance transactions" and that the exploitation of "the consumer's inability to make payment in full or otherwise protect her interests" constituted a violation of the unconscionability provisions of the CPPA.\textsuperscript{133}

Aside from instances of statutory inadequacy, there have also been isolated instances in which courts have adopted tests extracted from common law or general principles that appear to be directed toward public policy considerations.\textsuperscript{134} In \textit{United Companies Lending Corp. v. Sargeant},\textsuperscript{135} the plaintiff alleged that

\begin{footnotesize}
\begin{enumerate}
\item See De Berry, 170 F.3d at 1106.
\item See id. at 1107.
\item See id. at 1109-11. This certification was based on newly resurrected local case law and a City Council amendment to the CPPA. See id. In addition, the District of Columbia Court of Appeals was to determine if the attorney fees with respect to discovery were recoverable, regardless of the outcome of the case. See DeBerry, 170 F.3d at 1111.
\item See id. at 1108.
\item See id. at 1111.
\item See supra notes 122-133 and accompanying text; infra notes 135-161 and accompanying text.
\end{enumerate}
\end{footnotesize}
United issued her a loan of approximately $134,700 to be applied to two previous mortgages, home improvements and a credit card payoff.\textsuperscript{136} As part of that loan, she paid over $23,000 in closing costs and fees, which included over $13,000 as the broker fee.\textsuperscript{137} The initial annual percentage rate charged was 13.56\%.\textsuperscript{138} As a result of the plaintiff falling behind in her loan payments, United started foreclosure proceedings.\textsuperscript{139} In response, the plaintiff counter claimed that the transaction was unfair or deceptive under the Massachusetts statutory law regarding unfair and deceptive trade practices.\textsuperscript{140} United argued that even though the state lending regulations were in force, they were void because the state’s definition of unfair and deceptive was inconsistent with the three prong test of the Federal Trade Commission (FTC).\textsuperscript{141} Also, Massachusetts common law was used to determine whether the defendant’s actions were unconscionable, based on the elements of unfair surprise and oppression.\textsuperscript{142}

The U. S. District Court in Massachusetts held that a state unfair and deceptive practices regulation was enforceable, based on trade practice.\textsuperscript{143} With this holding, the plaintiff was awarded the United broker fee, because the points charged differed significantly from state industry practice and the state disclosure requirements were violated.\textsuperscript{144} No reason was given as to why HOEPA was not discussed in the court’s holding.\textsuperscript{145} Regarding the common law question of unconscionability, even though the attorney general did not pursue this issue further, the court awarded the plaintiff attorney fees and also a six-month window of opportunity to be discharged from the loan by paying off the

\begin{footnotes}
\item[136] See id. at 196.
\item[137] See id. at 197.
\item[138] See id. at 196.
\item[139] See id., at 197.
\item[140] See id.
\item[141] See id. at 198.
\item[142] See id. at 209.
\item[143] See id. at 209.
\item[144] See id.
\item[145] See id. at 209-210.
\end{footnotes}
remaining balance.\textsuperscript{146}

The FTC had previously used its policy-based test earlier in \textit{Federal Trade Comm. v. Sperry & Hutchinson Company.}\textsuperscript{147} Sperry & Hutchinson was a large trading stamp company alleged to have violated the FTC Act pertaining to unfair methods of competition by attempting to suppress the free and open exchange of its coupons on the market.\textsuperscript{148} This three-factor unfairness analysis was used to detect if there had been a substantial injury caused to the consumer, a violation of public policy, and an unethical, oppressive or unscrupulous practice.\textsuperscript{149}

The Court of Appeals indicated that it was not necessary to establish all three factors in order to prove there had been a violation of the FTC regulations.\textsuperscript{150} However, as a result of FTC's failure to articulate any rational connection between the facts and the charges made, the Court of Appeals set aside FTC's charges.\textsuperscript{151} This ruling was affirmed by the United States Supreme Court, which saw the FTC test as being too narrow.\textsuperscript{152} The Supreme Court preferred general criteria for determining unfair methods of competition and unfair or deceptive acts or practices, in order to prevent violators from escaping liability after committing unfair trade practices.\textsuperscript{153}

Another example of a common law and policy-based court decision is seen in \textit{United Companies Lending Corporation v. McGehee.}\textsuperscript{154} In McGehee, an out-of-state lender, not approved by the National Housing Act (NHA), fraudulently told a borrower that it was approved by the NHA and that it had the authority to charge points in excess of the state limit of 5\%.\textsuperscript{155} The Supreme

\textsuperscript{146} See id.
\textsuperscript{147} F.T.C. v. Sperry & Hutchinson Co., 405 U.S. 233, 244-245 (1972).
\textsuperscript{148} See id. at 235-36. These coupons were sold to retailers who issued them to customers as an incentive to purchase goods from them and then exchange the coupons for a free gift at a Sperry & Hutchinson redemption center. See id.
\textsuperscript{149} See id. at 235.
\textsuperscript{150} See id. at 245-46.
\textsuperscript{151} See id. at 248-249.
\textsuperscript{152} See id. at 249-50.
\textsuperscript{153} See id.
\textsuperscript{154} United Companies Lending Corp. v. McGehee, 686 So.2d 1171 (Ala. 1996).
\textsuperscript{155} See id. The defendants knew that their representations to the plaintiffs
Court of Alabama held that because the out-of-state defendant was not an approved mortgagee under the Fair Housing Act, the mortgagee could not be exempted from the Alabama Consumer Credit Act.\textsuperscript{156} However, the Credit Act did not regulate mortgage lenders or brokers.\textsuperscript{157} Despite this absence of applicable state regulations, the court granted a summary judgment for the plaintiffs because of the fraudulent conduct by the defendant.\textsuperscript{158} The Alabama Supreme Court took into account both internal and external factors in making its determination that the lender operated in an unscrupulous manner to defraud and mislead homeowners - particularly elderly, low income and unsophisticated homeowners - who typically resided in redlined neighborhoods.\textsuperscript{159} To do this, the court considered that United had made a practice of targeting homes with high equity values; many states had deregulated usury rates;\textsuperscript{160} the redlining of neighborhoods was becoming more prevalent within the lending community; and some states were not supervising the foreclosure process.\textsuperscript{161}
V. THE NORTH CAROLINA ACT

Enacted on July 22, 1999, as a result of overwhelming support in the North Carolina State Legislature, the North Carolina Act is the first and only state statute to specifically address the practice of predatory lending. This Act represents a compromise between the consumer advocacy interests, banking interests, and the Attorney General's office. The impetus for this statute is due largely to the leadership of Martin Eakes, President of the Coalition for Responsible Lending (CRL). Un-
der his guidance, advocacy groups called for stricter provisions creating lower ceilings on interest rates and financial fees.¹⁶⁶

In general, the North Carolina Act applies to “home loans”¹⁶⁷ secured by a first lien with a principal loan amount of less than $300,000 for single family dwelling units.¹⁶⁸ However, the heart of the Act lies in the restrictions imposed on “high-cost home loans”¹⁶⁹ in order to discourage their use.¹⁷⁰ High-cost

The Coalition currently includes 73 organizations whose memberships total over three million, as well as others who have joined as individuals: 120 CEOs of financial institutions, and leaders from 185 housing, community development, consumer and religious organizations from across the state. See id.

¹⁶⁶ See Schloemer Interview, supra note 8. The financial sector was represented by the North Carolina Bankers Association, the North Carolina Mortgage Bankers Association, the North Carolina Credit Union Network, the North Carolina Association of Financial Institutions, and the North Carolina Association of Mortgage Bankers. See id. Regarding the legislative process, Senate Bill 1149 was sponsored by State Senate Majority Leader Roy Cooper. See Lehman Interview, supra note 4. There were two major banking groups in North Carolina, the North Carolina Bankers Association (representing commercial banks and savings and loans) and The North Carolina Association of Financial Institutions, representing the five largest banks in North Carolina. See id. The work of the banking associations, CRL, and the Attorney General’s office was a consensus effort to meet the needs of consumers and the lending industry, with the understanding that most of the lending industry was competitive and worked for most of the people. See id. A sector of the industry was carved out in an effort to make lending more competitive and fair so that borrowers with bad credit history and unsophisticated borrowers would have some form of protection. See id.

¹⁶⁷ N.C. GEN. STAT. § 24-1.1A(e) (1999). A home loan is defined as one with a principal amount less than $300,000 that is “secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located one or more single family dwellings or dwelling units.” Id. This Act specifically excludes open-end credit plans. See id. Equity lines of credit are a commonly used form of open-end credit. See Schloemer, supra note 8.

¹⁶⁸ N.C. GEN. STAT. § 24-1.1A(e) (1999). The definition of home loans excludes open credit plans, such as equity lines of credit. See id. at §§ 24-1.1A(a)(4), (e).

¹⁶⁹ See id. at § 24-1.1E(a)(4)(a-e). High-cost home loans are loans in which the borrower is a natural person, using the home for personal, family or household purposes. See id. The principle amount of the loan does not exceed the greater of $300,000 or the FNMA limit, and is secured by a security interest in the borrower’s principle place of residence, including manufactured housing and the loan exceeds one of the three thresholds. See id. This definition applies to both first and second liens, as opposed to home loans that allow first liens only. See id. To calculate the total loan amount, the costs financed as part of the loan, including points and fees, are subtracted from the amount financed. See id. at § 24-1.1E(a)(b)(1-3). The discount points or prepayment penalties paid by the borrower are also subtracted from the amount financed. See id.

¹⁷⁰ See Memorandum to Commissioner of Banks from L. McNeil Chestnut, Assistant Attorney General of North Carolina, Office of Banking and Finance (Sep. 25, 1999) (on file with author).
home loans are a form of home loans in which the interest rate, the points and fees or the prepayment penalties exceed a certain threshold, thus triggering those restrictions.\textsuperscript{171}

This Act is broken down into eight sections.\textsuperscript{172} These sections can be classified into five themes: (1) rates and fees, (2) threshold tests to identify high-cost mortgage loans, (3) restrictions on high-cost home loans, (4) prohibitions and protections, and (5) violations of the Act.\textsuperscript{173}

The new statute clears up ambiguities from the existing law as to what rates and fees may be charged and collected.\textsuperscript{174} Lenders may still charge for origination fees, commitment fees and points without regulation as to the amount.\textsuperscript{175} Fees for loan

\textsuperscript{171} See N.C. GEN. STAT. \S 24-1.1E(a)(4)(e) (1999).
\textsuperscript{172} See id. at \S 24-1.1A. The first two Sections of the Act comprise over three-quarters of its text. Section 1 defines home loans. See \textit{id}. It disallows prepayment penalties on home loans of $150,000 or less. See \textit{id}. Loan fees and modification fees are permitted if they do not exceed the fee threshold. See \textit{id}. Fees for deferring interest payments cannot be charged unless they are part of the loan agreement. See \textit{id}. Section 2 defines key terms of the Act such as high-cost home loans and the thresholds used for interest rates, points and fees, and prepayment penalties. See \textit{id}. at \S 24-1.1E. Formulas for calculating points and fees and the total loan amount are provided. See \textit{id}. The restrictions, triggered by high-cost home loans, are explained. See \textit{id}. Also, the consequences for violating those restrictions are listed, along with a safe harbor provision. See \textit{id}. Section 3 defines brokers and bankers as lenders. See \textit{id}. at \S 24-2.5. Section 4 addresses permissible pass-through fees, including fees going to public officials, bona fide loan related products of third parties and reasonable compensation to third parties as a result of the loan transaction. See \textit{id}. at \S 24-8. Section 5 provides for consumer protection from practices such as the financing of single credit life insurance, flipping, encouraging default, and usury. See \textit{id}. at \S 24-10.2. Section 5 also allows for the recovery of attorney fees for prevailing parties. See \textit{id}. Section 6 provides for the funding of public education to encourage responsible borrowing behavior by consumers. See \textit{id}. Section 7 commissions a legislative study to measure the affect of the North Carolina Act. See \textit{id}. Section 8 outlines the effective dates of each section of the North Carolina Act. See \textit{id}.

\textsuperscript{173} See L. McNeil Chestnut & Philip A. Lehman, Assistant Attorneys General, North Carolina Department of Justice, Workshop Presentation for Housing Counselors and Senior Service Providers, (Sep. 29, 1999) (on file with authors).
\textsuperscript{174} See Donald Lampe, \textit{supra} note 163.
\textsuperscript{175} See N.C. GEN. STAT. \S 24-1.1A(c), (g) (1999). However, fees may not include taxes, filing fees, recording charges and other fees and charges due to public officials. See \textit{id}. at \S 24-1.1E(a)(5)(e). Also, points and fees may not include fees paid to a person other than a lender or mortgage broker or an affiliate of either for a variety of fees including, appraisals, inspections, credit reports, title insurance premiums, and notary services. See \textit{id}.
modifications and loan deferrals are authorized but limited.\textsuperscript{176} Modification fees include charges for changing the terms of a loan and involve similar types of services as used in loan fees.\textsuperscript{177} Deferral fees include charges for delaying interest payments.\textsuperscript{178}

To be identified as a high-cost home loan, there are several requirements relating to loan size, borrower status, dwelling purpose, and type of security.\textsuperscript{179} In addition, the terms of the home loan must exceed one of three distinct thresholds relating either to the annual percentage rate, the points and fees, or a prepayment penalty.\textsuperscript{180} The annual percentage rate threshold is 10\% above the current Treasury bond security rate of comparable maturity.\textsuperscript{181} The points and fees threshold is the greater of 5\% of the total amount (if the loan is $20,000 or more) or the lesser of $1,000 or 8\% of the total loan amount (for loans under $20,000).\textsuperscript{182} The prepayment penalty threshold is the charging or collection of a prepayment penalty or fee more than thirty months after the close of a loan or in an amount equal to 2\% of the amount prepaid.\textsuperscript{183}

If a loan exceeds one of the threshold tests listed above and meets the other criteria for a high-cost home loan, numerous restrictions are triggered.\textsuperscript{184} First, call provisions are prohibited, meaning the payments are unilaterally accelerated so that all the

\textsuperscript{176} See id. at § 24-1.1A(c1).
\textsuperscript{177} See id. at § 24-1.1A(c2).
\textsuperscript{178} See id. at § 24-1.1A(g)(1-2).
\textsuperscript{179} See id. at § 24-1.1E(a)(4). The home loan principle must not exceed the lesser of the FNMA single family dwelling limit or $300,000; the borrower must be a natural person; the debt must be incurred by the borrower for primarily personal, family or household purposes; and the loan must be secured by either a secured interest in a manufactured home or occupied by the borrower as the principal dwelling or a mortgage or deed of trust for real estate on which the dwelling will stand. See id.
\textsuperscript{180} See id.
\textsuperscript{181} See id. at § 24-1.1E(a)(6)(a).
\textsuperscript{182} See id. at § 24-1.1E(a)(6)(b).
\textsuperscript{183} See id. at § 24-1.1E(a)(6)(c). Some discount points are excluded from the calculation of total points and fees paid by the borrower in order to give credit for the lowering of the interest rate. See id. at § 24-1.1E(a)(6)(b)(1-2). Also, a limited amount of prepayment penalties can also be excluded if they are assessed early in the life of the loan. See id. at § 24-1.1E(a)(6)(b)(3).
\textsuperscript{184} See id. at § 24-1.1E(b).
payments immediately become due from the borrower.185 Second, with narrow exceptions,186 the structuring of loans so that the final payment is at least twice the amount of a regular payment is no longer permitted.187 These sorts of payments are known as balloon payments.188 Third, lenders can no longer design loans with payments so low that the consequence is a higher loan principal,189 resulting in negative amortization.190 Fourth, loans that require an increased interest rate in the event that the borrower misses a payment are no longer permitted.191 Fifth, a requirement that more than two payments be combined and paid in advance of the loan period is not permitted.192 Sixth, fees for modifying terms of a loan or deferring interest payments can no longer be assessed by the lender.193

Additionally, certain practices are prohibited in the granting of high-cost home loans.194 Loans cannot be made without considering the borrower’s ability to pay195 and without proof of having received loan counseling to assure awareness of the advisability of the loan.196 Also, lenders may not include the cost of any fees, penalties, points, or third party charges in the amount of the loan.197 This enables the borrower to avoid stripping the

185. See id. at § 24-1.1E(b)(1).

186. See id. at § 24-1.1A(a)(4). Sections One and Two of the North Carolina Act create exceptions that allow balloon payments in the following three scenarios. See id. With respect to first mortgages, state licensed lenders may not use balloon payments any longer than six months into a loan. See id. at § 24-1.1A(a)(4). Second, the prohibition of balloon payments does not apply to equity lines of credit. See id. Third, under mortgage loans in general, the prohibition does not apply to payment schedules that are adjusted to the irregular or seasonal income of the borrower. See id. at § 24-1.1E(b)(2).

187. See id.

188. See id.

189. See id. at § 24-1.1E(b)(3).

190. See id.

191. See id. at § 24-1.1E(b)(4).

192. See id. at § 24-1.1E(b)(5).

193. See id. at § 24-1.1E2(b)(6).

194. See id. at § 24-1.1E(c).

195. See id. at § 24-1.1E(c)(2). The borrower’s ability to pay is based on income, obligations, employment status and other financial sources. See id.

196. See id. at § 24-1.1E(c)(1).

197. See id. at § 24-1.1E(c)(3).
value of the equity in his home. That is, the borrower’s equity cannot be used to finance those fees.\textsuperscript{198} Fourth, a lender cannot charge for points or fees when refinancing the loan of a current borrower.\textsuperscript{199} Finally, payments to home improvement contractors must come directly from the borrower or an escrow agent.\textsuperscript{200}

Aside from the above prohibitions, the North Carolina Act creates three consumer home loan protections that apply to all loans without regard to the amount of the loan or whether it is secured by a first or second lien.\textsuperscript{201} To be eligible for the protection, the dwelling must be occupied by the borrower as the borrower’s principal dwelling.\textsuperscript{202} These protections outlaw the flipping of loans;\textsuperscript{203} unfair practices of financing single premium credit insurance as opposed to making separate premium payments on a monthly basis;\textsuperscript{204} and encouraging loan defaults as a means to refinance debt.\textsuperscript{205} Consumer home loans that violate any provision of these consumer protections are subject to usury and unfair trade practice remedies under North Carolina law.\textsuperscript{206} Also, attorneys’ fees may be awarded in appropriate cases.\textsuperscript{207}

It is not unlawful to grant high-cost home loans.\textsuperscript{208} How-

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{198} See Telephone Interview with Philip A. Lehman, Assistant Attorney General of North Carolina, Office of Consumer Protection (Nov. 5, 1999) [hereinafter Lehman Telephone Interview of Nov. 5, 1999].
\item \textsuperscript{199} See N.C. GEN. STAT. § 24-1.1E(c)(4) (1999).
\item \textsuperscript{200} See id. at § 24-1.1E(c)(5).
\item \textsuperscript{201} See id. at § 24-10.2(a).
\item \textsuperscript{202} See id. The home must be designed for the occupancy of one to four families and used as the borrower’s principal dwelling. See id. The home must also be used for personal, family or household purposes and the borrower must be a natural person with a secured loan. See id.
\item \textsuperscript{203} See id. at § 24-10.2(c). This part of the statute represents the broadest and most immediate affect on residential mortgage loan refinancing transactions. See Donald Lampe, \textit{supra} note 163.
\item \textsuperscript{204} See N.C. GEN. STAT. § 24-10.2(b) (Effective July 1, 2000).
\item \textsuperscript{205} See id. at § 24-10.2(d).
\item \textsuperscript{206} See id. at § 24-10.2(e).
\item \textsuperscript{207} See id. at § 24-8(d). Attorneys’ fees are identified as a loan-related good, product, or service. See id. Lenders may collect charges for bona fide loan-related goods, products, and services from third parties, such as attorneys. See id. However, any unreasonable compensation or compensation from non loan-related or nominal goods, products or services may not be charged by third parties. See id.
\item \textsuperscript{208} See N.C. GEN. STAT. § 24-1.1E(d) (1999). High-cost home loans are not prohibited anywhere in the North Carolina Act. See id. However, restrictions and limi-
\end{itemize}
\end{footnotesize}
ever, if the restrictions are violated, the lender will be declared guilty of usury and an unfair business practice. The Attorney General, the Commissioner of Banks, or any party to a high-cost home loan may bring an enforcement action. Lenders are also prohibited from structuring their loans as open-end credit or multiple loans in order to escape the provisions of the North Carolina Act. Violations of the high-cost home loan section of the North Carolina Act are subject to either usury penalties or Chapter 75 penalties. "Lenders who violate the Act unintentionally or through bona fide error will be given an opportunity to bring the loan into compliance with the law."

The high-cost home loan provision and the prohibition on the financing of single premium credit insurance take effect on July 1, 2000. The remaining portions of the North Carolina Act took effect on October 1, 1999.

A. Application of the North Carolina Act

The examples of predatory lending practices discussed in the introduction section could have been prevented or resolved by a statute containing the provisions of the North Carolina Act. One of these examples featured a partially disabled single male without any family who had a $36,000 home equity loan at an interest rate of 16.5%. This loan was refinanced within just four months and it included a $75,000 life insurance provision of which the borrower had no knowledge nor any family member

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209. See id. at § 24-1.1E(d).
210. See id.
211. See id.
212. See id. Usury penalties include the forfeiture of interest and the return of twice the amount of interest paid. See L. McNeil Chestnut & Philip A. Lehman, Assistant Attorneys General, N.C. Dep't. of Justice, Workshop Presentation for Housing Counselors and Senior Service Providers, at 4 (Sep. 29, 1999) (on file with authors). Chapter 75 penalties include treble damages. See id.
213. Id. at 4.
215. See id.
216. See supra notes 9-12 and accompanying text.
217. See supra note 11.
to act as beneficiaries of such coverage.\textsuperscript{218}

Based on the North Carolina Act, if the comparable Treasury bill rate at the time of the loan had been less than 6.5\%, the high-cost home loan provisions would have been triggered. If the finance fees had exceeded 5\% of $36,000 ($1,800), these same provisions would also have been triggered.\textsuperscript{219}

Under these provisions, the lender would have been held liable for violating several restrictions pertaining specifically to high-cost home loans.\textsuperscript{220} Such violations would include the absence of homeowner counseling, no consideration of the borrower's inability to repay the loan, the financing of points or fees, and the charging of a finance fee for refinancing an existing loan.\textsuperscript{221} Also, effective July 1, 2000, the lender could be held liable for financing the life insurance policy.\textsuperscript{222} Aside from being a high-cost loan, the lender violated the consumer protection prohibitions of flipping and encouraging default as well.\textsuperscript{223}

\textbf{B. Concerned Voices}

Lender and broker groups have raised several areas of concern to the North Carolina Department of Justice in regard to the North Carolina Act.\textsuperscript{224} These concerns include flipping, discount points, the 5\% fee threshold, and prepayment penalties.\textsuperscript{225}

In regard to the flipping of loans, lenders desire a bright line test of what constitutes flipping.\textsuperscript{226} For example, some lend-

\begin{itemize}
\item \textsuperscript{218} See \textit{id}.
\item \textsuperscript{219} See \textsc{N.C. Gen. Stat.} \textsc{§} 24-1.1E(a)(6) (1999). The calculation of these fees would exclude taxes and filing fees paid to public officials, as well as fees paid to persons other than the lender or affiliate. \textit{See id.} at \textsc{§} 24-1.1E(a)(5)(e).
\item \textsuperscript{220} See \textit{id.} at \textsc{§} 24-1.1E(c).
\item \textsuperscript{221} See \textit{id.} (including several violations of the high-cost home loan limitations).
\item \textsuperscript{222} See \textit{id.} at \textsc{§} 24-10.2(b).
\item \textsuperscript{223} See \textit{id.} at \textsc{§} 24-10.2(c), (d).
\item \textsuperscript{224} See Lehman Telephone Interview of Nov. 5, 1999, \textit{supra} note 198.
\item \textsuperscript{225} See \textit{id}.
\item \textsuperscript{226} See \textit{id}. The new statutory definition for flipping is as follows:

\begin{quote}
Flipping...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
\end{quote}
ers expect that borrowers will use the accusation of flipping as a defense against a foreclosure action on any loan that has been refinanced in hopes of avoiding the foreclosure. But borrowers will have difficulty in establishing both that there was unfairness and that the refinancing arrangement was of no benefit to them.

Discount points represent another problem area for first mortgage lenders. If these points are paid upfront in return for lower interest rates, then they are permitted. However, some lenders are concerned because they may have difficulty proving that a borrower derived a benefit from a discount fee charged by a broker, who is outside the lender's immediate purview. For instance, a broker may tell a borrower that the lender's rate is 9% and that he is willing to come down to 8% in return for the borrower paying discount points, despite the fact that the lender's rate was already 8%. Under this scenario, without enjoying any benefit, the lender takes on the liability for the broker's actions. For this reason, some lenders believe that brokers should not be permitted to charge a discount point since the broker is not the one extending the loan.

Some brokers expressed concern about the 5% fee threshold. Brokers are worried that this may not give them the sort of profit to which they have been accustomed in the past. These added fees may not have any relationship to services ren-

new and refinanced loans, the cost of the new loan, and the borrower's circumstances.
N.C. GEN. STAT. § 24-10.2(c) (1999).
227. See Lehman Telephone Interview of Nov. 5, 1999, supra note 198.
228. See id.
229. See id.
230. See id.
231. See id.
232. See id.
233. See id. Aside from discount points, some brokers are compensated by a method known as yield-spread premiums in which the broker receives a fee from the lender for making a loan at a higher interest rate than required by the lender. See id.
234. See N.C. GEN. STAT. § 24-1.1E(a)(6)(b) (1999). The threshold for points and fees is 5% for home loans equal to or greater than $20,000. See id.
dered. Merely using labels to justify additional expenses is not permitted under the North Carolina Act. To make loans more attractive, some brokers will break down their fees so that the terms will appear competitive. They may move origination costs to other labels, knowing that when the borrower compares the rates of other brokers, the borrower will most likely only compare the stated interest rate and the origination fee, even though there may be other fees under the loan. Legitimate third party fees coming from surveys, appraisal fees, or attorneys fees are permissible.

Over the last two years, common consumer complaints received by the North Carolina Department of Justice have included the use of high fees, flipping, packing, bait and switch, and prepayment penalties.

Of the complaints reviewed by the North Carolina Department of Justice, some loans carried annual percentage rates in excess of 10% and fees up to 10%, excluding bona fide third party fees. In regard to flipping, much of this practice is due to the aggressive marketing practices that influence consumers to refinance their loans with added fees. Additionally, some lenders engage in the practice of packing, in which charges are assessed for credit insurance which are not affirmatively re-

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236. See Lehman Telephone Interview of Nov. 5, 1999, supra note 198. Additional fees and charges for loans or modifying loans, no matter what they are called, cannot exceed the greater of $150 or .25% of the balance of the loan at the time of the transaction. See Prohibit Predatory Lending, N.C. GEN. STAT. § 24-1.1A(c)(1)(f) (1999). If an additional fee or charge pertains to a loan modification, there must be a written, signed, and contemporaneous agreement that states the amount of the fee or charge at the time of the specific modification. See id. at § 24-1.1A(c)(2), (e). Modifications include renewals, extensions and amendments of loan terms. See id.

237. See Lehman Telephone Interview of Nov. 5, 1999, supra note 198.

238. See id.

239. See Prohibit Predatory Lending, N.C. GEN. STAT. § 24-1.1A(c)(1),(2) (1999). Payments for bona fide loan-related goods, products, and services from third parties and payments for taxes, filing fees, and recording fees going to public officials are permitted. See id.

240. See Lehman Telephone Interview of Nov. 5, 1999, supra note 198.

241. See id.

242. See id.
quested by the borrower.\textsuperscript{243} When this happens, it puts borrowers at a significant disadvantage because the equity in their homes is used to finance the high premiums for life insurance.\textsuperscript{244} This practice is known as equity stripping.\textsuperscript{245}

The Office of the Commissioner of Banks handles the vast majority of predatory lending complaints.\textsuperscript{246} Over the past three years, the number of written complaints concerning predatory lending practices has risen drastically.\textsuperscript{247} The most frequent complaint is bait and switch by brokers, in which predatory brokers quote a low rate for borrowers with credit problems.\textsuperscript{248} Then the loan closing is delayed until the borrowers are desperate, at which time the broker reveals the true interest rates and fees.\textsuperscript{249}

\textsuperscript{243} See id. During the process of investigating a complaint, the Department of Justice may discover that packing has occurred without the borrower knowing it. See id.

\textsuperscript{244} See id.

\textsuperscript{245} See id. For example, one loan of $28,000 was investigated that included a total insurance premium of $4,000. See id. Another loan of $76,000 included a total insurance premium of $11,000. See id.

\textsuperscript{246} See Lehman Telephone Interview of Nov. 5, 1999, supra note 198.

\textsuperscript{247} See Telephone Interview with George King, Ombudsman, Office of the Commissioner of Banking, (Nov. 5, 1999) [hereinafter King Telephone Interview]. In 1996, there were approximately 150 such complaints, but in 1997, the number rose to about 300. See id. The 1998 figure was approximately 600, and the 1999 volume is likely rise to over 700 written complaints. See id.

\textsuperscript{248} See id. These consumers had credit ratings of "B" and "C," based on the borrower credit categories. See id.

\textsuperscript{249} See id. Aside from high interest rates, discount fees (used to buy down the interest rate, thus lowering the amount of monthly payments) and origination fees (used to cover the incidental costs of processing a loan), some predatory mortgage brokers charge for other fees and list them separately as loan review, document preparation, loan underwriting, appraisal review, and processing fees for which no services are rendered. See id. These other fees are called junk fees because they attach to the loan without services rendered. See id. Another popular complaint category involves the use of yield-spread premiums. See id. Mortgage lenders and brokers sometimes agree to split the difference in profit when the broker is able to sell a loan in excess of the interest rate the lender normally demands. See id. Balloon payments occur frequently because it is so easy to hide this loan feature in the paperwork; there are commonly between 25 to 40 documents that must be signed by the borrower at a loan-closing meeting. See id. Since the interest rates have begun to rise in recent months, some predatory mortgage lenders and brokers have closed their operations, due to decreased consumer demand for loans. See id. However, the barriers to entering the loan broker business are very low. See id. It costs just $500 to apply for a state registration issued by the Office of the Commissioner of Banks. See id. The yearly registration fee is $250. See id. The only other
Some members of the banking community do not expect much effect, if any, on the conventional lending market from the enforcement of the North Carolina Act, while others fear anticipated consequences.

Even though the North Carolina Act will restrain some predatory practices, the Coalition for Responsible Lending contends that predatory lending will not be eliminated unless stronger broker licensing requirements are enacted into law. The need for such action has arisen because brokers are feebly regulated, thus making it difficult to track those brokers who are guilty of improper conduct. Aimed at requiring more responsible broker practices, Senate Bill 866 was introduced in Spring 1999 but was deferred until the 2000 session. Perhaps the most

requirements are a $25,000 surety bond and an unaudited financial statement that indicates a positive net worth. See id. Unfortunately, by the time the Banking Commission receives complaints, the broker usually cannot be found to investigate those complaints, due to the sudden relocation of its operations. See id. If a complaint is received on a registrant, an administrative hearing is conducted, giving the broker the opportunity to show cause why its registration should not be revoked. See id. Following this process, the Department of Justice can evaluate the case for possible prosecution. See id. Criminal prosecution or civil action may be taken against violators. See id.

250. See Telephone Interview with Ed Aycock, Senior Vice President and Regulatory Counsel, North Carolina Bankers Association (Nov. 5, 1999) [hereinafter Aycock Telephone Interview]. Most observers within the North Carolina Bankers Association contend that the non-regulatory lenders are the main culprits for predatory lending. See id. Mr. Aycock stated that "the litany of horror stories are not coming from the savings and loan institutions or bank, which are highly regulated." Id. The North Carolina Bankers Association and the North Carolina Association of Financial Institutions, representing the largest banks in North Carolina, merged in October of 1999 under the name of the former. See id. The purpose of the North Carolina Act was to address the non-legitimate lenders who are not part of the competitive lending market. See id. Because of this, Mr. Aycock stated that "members of depository institutions are not anticipating any adverse result from the legislation." Id.

251. See electronic mail letter from William Finley, Vice-President and Assistant General Counsel for First Union Corporation (Jan. 3, 2000) [hereinafter Finley Letter]. William Finley indicated that some North Carolina banks did express concerns that Senate Bill 1149, the predatory lending statutory proposal, could produce unintended systems and financial impacts, though their severity is as yet undetermined. See id.

252. See Lupton Interview, supra note 17.

253. See id.

254. See Predatory Lending and Proposed Broker Licensing Legislation: Workshop on Consumer Fraud Scams Targeting Seniors, 1999 State Conference on Aging (Nov. 3, 1999) (on file with the Coalition for Responsible Lending). North Carolina Senate Bill 866 was referred to the Commerce Committee on April 13, 1999. See
impressive outcome of the Act was the collaborative process demonstrated by consumer advocacy groups, the financial community, and the State Department of Justice.255

VI. CONCLUSION

The North Carolina Act represents a critical step in encouraging more responsible lending practices and it addresses several gaps in the federal law. However, North Carolina is still hampered with numerous federal laws that unintentionally encourage risky lending and serve as a destructive force in communities, as seen in the use of redlining and reverse redlining.256 Because of this, HMDA must be enforced vigorously so that predatory lending practices can be statistically monitored with some precision to determine how best to address unchecked predatory practices which evolve in the future.

In regard to future state legislation, a cooperative effort between industry, regulators, and consumer advocates should be focused on creating across-the-board prohibitions on deceptive lending practices, as predatory lenders find ways to side-step the new laws. On the immediate horizon, the triggering thresholds for high-rate rates and fees should be calibrated using some logical rationale, and mortgage brokers should be licensed in order to promote more responsible lending in their ranks.

A more efficient and reasonable balance between competitive loan fees and lender incentives should be used in the interest of homeowner stability. This can be accomplished by adding the average percentage cost for servicing a subprime loan to the conventional rate instead of using the current 5% threshold.257 A similar methodology could be used for determining the interest rate threshold as well.

Even more important than rate and fee thresholds, abusive lending practices tie the hands of borrowers and contribute to the likelihood of devastation for many borrowers and their

N.C. Senate Bill 866 (1999-2000 Session). No further action has been taken. See id.
255. See Lehman Interview, supra note 4.
256. See GOLDSTEIN, supra note 4, at 16.
257. See DeZube, supra note 26.
families. Because of this, the wide latitude currently enjoyed by mortgage brokers must be bridled by establishing a code of fiduciary responsibilities for them. Senate Bill 866-Committee Substitute provides for the licensure of certain mortgage lenders and brokers; it clarifies the duties of a mortgage broker to the client; and it prohibits yield-spread premiums in which the broker gets a fee for making a loan with a higher interest rate. The bill also provides for enforcement mechanisms, including the use of civil penalties against mortgage lenders and brokers without licenses.

As a final note, the Legislative Research Commission is expected to evaluate the alleged benefits of financing single-premium credit life insurance, as required. This insurance product is frequently sold to borrowers who think that loan approval is contingent upon their acceptance of the insurance. The added premiums deplete a borrower’s equity and therefore increase the amount of principal to be financed. Instead, insurance products should be sold separately on a monthly basis so that homeowners can control the duration of the coverage, and so that there is no confusion over whether the insurance is a contingency for credit approval. Unfortunately, the North Carolina Act provides a window in which the provisions relating to the prohibition on the sale of financed insurance products could be

258. See Lupton Interview, supra note 17.
260. See id. Specifically, the broker would have to make a reasonable effort to put the borrower into a favorable loan; disclose information about the best loan terms offered by the lender; and also disclose broker fees charged to the borrower and fees paid by the lender to the broker. See id. In addition, the broker’s commission should be included in the overall loan fee in order to trigger predatory restrictions at lower levels. See id. This provision would also make it more difficult for a broker to hide his commission. See id.
261. See N.C. GEN. STAT. § 24-10.2(g) (1999). Under the North Carolina Act, a lender will be prohibited from directly or indirectly financing any credit life, disability, or unemployment insurance, or any other life or health insurance premiums in connection with a consumer home loan. See id. at § 24-10.2(b).
262. See Lupton Interview, supra note 17.
263. See id.
264. See id.
altered. Such an action would lead to increased hardship for many unsophisticated borrowers and therefore must be prevented.

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