

ARTICLE 9

CONSUMER CREDIT TRANSACTIONS MADE TO ACQUIRE REAL ESTATE OR SECURED BY FIRST-LIEN MORTGAGES

PART 1

GENERAL PROVISIONS

§9-101. Scope

This Article applies to all consumer credit transactions made by creditors that are not supervised financial organizations, that are made to finance or refinance the acquisition of real estate or the initial construction of a dwelling or that are secured by a first-lien mortgage on real estate and applies to the servicing of those transactions. [PL 2017, c. 106, §10 (AMD).]

SECTION HISTORY

PL 1987, c. 396, §12 (NEW). PL 2007, c. 273, Pt. A, §24 (AMD). PL 2007, c. 273, Pt. A, §41 (AFF). PL 2017, c. 106, §10 (AMD).

PART 2

LICENSING

§9-201. Authority to make or service supervised loans; licensing

The provisions of sections 2-301 to 2-304 control the authority of supervised lenders and mortgage loan servicers that are not supervised financial organizations to make or service loans governed by this Article. [PL 2017, c. 106, §11 (AMD).]

SECTION HISTORY

PL 1987, c. 396, §12 (NEW). PL 2017, c. 106, §11 (AMD).

PART 3

REGULATION OF AGREEMENTS AND PRACTICES

§9-301. Advertising

1. No creditor may engage in this State in false or misleading advertising concerning the terms and conditions of a consumer credit transaction subject to this article.
[PL 1987, c. 396, §12 (NEW).]

2. This section imposes no liability on the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.
[PL 1987, c. 396, §12 (NEW).]

SECTION HISTORY

PL 1987, c. 396, §12 (NEW).

§9-302. Terms and conditions of consumer credit transactions; rulemaking

1. In addition to other rule making authority that the administrator may have, he may adopt reasonable rules in accordance with this section governing agreements which are alternative mortgage transactions as defined in the Alternative Mortgage Transaction Parity Act of 1982, the United States Code, Title 12, Section 3802, subsection 1. In adopting any rule, the administrator shall take into consideration the terms of any similar rules adopted by the Superintendent of Financial Institutions for supervised financial organizations chartered under the laws of this State.

[PL 1987, c. 396, §12 (NEW); PL 2001, c. 44, §11 (AMD); PL 2001, c. 44, §14 (AFF).]

2. In any rule governing alternative mortgage transactions, the administrator may specify:

A. The maximum amount by which the annual percentage rate may change during a period of time and over the entire term of the agreement; [PL 1987, c. 396, §12 (NEW).]

B. The minimum notice that may be required to be given to the mortgagor prior to a change in the annual percentage rate; [PL 1987, c. 396, §12 (NEW).]

C. Acceptable indices that may be used by creditors for the purpose of determining when, and the amount by which changes in the annual percentage rate may occur and what effects, if any, the choice of index may have on the rate movement allowances specified in paragraph A; [PL 1987, c. 396, §12 (NEW).]

D. Appropriate hypothetical examples to illustrate the effects of changes in the annual percentage rate; [PL 1987, c. 396, §12 (NEW).]

E. Permissible variations in payment schedules, payment amounts, loan amortization and loan term resulting from rate variations or other contract terms; and [PL 1987, c. 396, §12 (NEW).]

F. Permissible limitations on refunds of prepaid finance charges and notice requirements for prepayment. [PL 1987, c. 396, §12 (NEW).]

[PL 1987, c. 396, §12 (NEW).]

SECTION HISTORY

PL 1987, c. 396, §12 (NEW). PL 2001, c. 44, §11 (AMD). PL 2001, c. 44, §14 (AFF).

§9-303. Consumer's choice of title attorney in consumer credit transactions secured by real estate

1. Every creditor, which accepts an application for consumer credit transaction involving one to 4 residential units and which requires that an attorney search the title of the subject real estate, shall permit the prospective mortgagor to select a qualified attorney of his own choice to search the title of the subject real estate and certify that title to the creditor or land title insurance company, provided that the creditor may require the prospective mortgagor's attorney to provide it with evidence of adequate liability insurance or land title insurance or such other written policy requirements as the creditor may deem necessary to protect its interests, provided that if all such requirements are met by the attorney chosen by the mortgagor, no additional legal costs may be assessed by the creditor against the mortgagor for review of the title search or any other relevant title documents by the creditor, its title company or attorney.

[PL 1987, c. 396, §12 (NEW).]

2. Every creditor subject to this section shall provide written notice to the prospective mortgagor that he has the right to select a qualified attorney of his own choice for the performance of title work. The notice shall inform the prospective mortgagor that if the attorney chosen by the mortgagor meets the creditor's requirements, then no additional fees may be charged to the mortgagor for title work. If the prospective mortgagor indicates on the written notice that he does not wish to exercise his right to select an attorney, then the creditor may recommend an attorney.

[PL 1987, c. 396, §12 (NEW).]

3. Nothing in this section may be construed to require certification of title to a creditor if that creditor does not so require, or to a land title insurance company if that company does not so require.

[PL 1987, c. 396, §12 (NEW).]

SECTION HISTORY

PL 1987, c. 396, §12 (NEW).

§9-304. Servicing requirements of assigned consumer credit transactions

No consumer credit transaction secured by a mortgage on real estate may be assigned under this article unless: [PL 1987, c. 396, §12 (NEW).]

1. The creditor entering into the agreement retains servicing of the account and either maintains a place of business in this State or maintains a toll-free telephone number or other free means of oral communication that is disclosed to mortgagors and staffed in the manner described in subsection 2; or [PL 1987, c. 396, §12 (NEW).]

2. The assignee or servicing agent retained to collect the account maintains a toll-free telephone number, or other free means of oral communication, that is disclosed to mortgagors in each coupon book or on each periodic billing notice or statement of account and that is staffed during normal business hours for mortgagors to use to communicate with the assignee or servicing agent concerning the consumer credit transaction.

[PL 1987, c. 396, §12 (NEW).]

SECTION HISTORY

PL 1987, c. 396, §12 (NEW).

§9-305. Interest to be paid on funds held in escrow

A creditor, including any of its assignees, that enters into consumer credit transactions secured by a mortgage on real estate and which holds funds of a mortgagor in an escrow account for the payment of taxes or insurance premiums, either on its own behalf or on behalf of another mortgagee, shall pay interest on those funds in accordance with Title 9-B, section 429. [PL 1987, c. 396, §12 (NEW).]

SECTION HISTORY

PL 1987, c. 396, §12 (NEW).

§9-305-A. Timely payments from escrow

A creditor, assignee or servicer that holds or controls funds of a consumer in an escrow account for the payment of taxes or insurance premiums shall make timely payments from that escrow account for a consumer credit transaction secured by a mortgage on real estate. A creditor, assignee or servicer is liable to the consumer for actual damages resulting from failure to make timely payments from that escrow account. The creditor, assignee or servicer shall also rectify the results of a failure to make timely payments, including causing corrections of the consumer's credit report and causing the discharge of any liens against the consumer's real estate. [PL 2005, c. 206, §3 (NEW).]

SECTION HISTORY

PL 2005, c. 206, §3 (NEW).

§9-305-B. Timely responses to requests for payoff figures

A creditor, assignee or servicer shall respond to a request for a payoff figure within 3 business days following receipt of such a request from a consumer or an agent of the consumer for a consumer credit transaction secured by a mortgage on real estate. The response must include a precise payoff figure as of a date certain and must contain information permitting the consumer or the consumer's agent to update that figure, such as providing a per diem rate from a date certain. A charge may not be assessed for the first 2 requests in any calendar year, and a charge for each subsequent request may not exceed \$5. [PL 2005, c. 206, §3 (NEW).]

SECTION HISTORY

PL 2005, c. 206, §3 (NEW).

§9-306. Notice of assignment

A consumer is not obligated to make payments on a consumer credit transaction to any creditor, other than the original creditor, until he receives notification of assignment of rights to payment and that payment is to be made to the assignee. A notification which does not clearly and conspicuously identify the rights assigned is ineffective. If requested by the consumer, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the consumer may pay the original creditor. [PL 1987, c. 396, §12 (NEW).]

SECTION HISTORY

PL 1987, c. 396, §12 (NEW).

§9-307. Receipts; statements of account; evidence of payment

1. The creditor shall give or send to a consumer, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a consumer credit transaction. Sending to the consumer a periodic statement showing a payment received by mail complies with this subsection, if it is sent to the debtor within 45 days after receipt of the payment.

[PL 1987, c. 396, §12 (NEW).]

2. Upon written request of a consumer, the person to whom an obligation is owed pursuant to a consumer credit transaction, shall provide a written statement of the dates and amounts of payments made within the past 15 months and the total amount unpaid. The statement shall be provided without charge once during each year of the term of the obligation. If additional statements are requested, the creditor may charge not in excess of \$1 for each additional statement.

[PL 1987, c. 396, §12 (NEW).]

3. Within 30 days after the consumer has fulfilled all obligations with respect to a consumer credit transaction, the person to whom the obligation was owed shall give or send to the consumer written evidence acknowledging payment in full of all obligations with respect to the transaction.

[PL 1987, c. 396, §12 (NEW).]

SECTION HISTORY

PL 1987, c. 396, §12 (NEW).

§9-308. Right to prepay

A consumer may prepay in full or in part the unpaid balance of a consumer credit transaction that is an alternative mortgage transaction, as defined in section 9-302, subsection 1, at any time without penalty. [PL 1995, c. 614, Pt. A, §16 (AMD).]

SECTION HISTORY

PL 1987, c. 396, §12 (NEW). PL 1995, c. 614, §A16 (AMD).

§9-309. Real estate appraisals; copies

A creditor that imposes a fee on a person for the cost of an appraisal of any real estate shall furnish to the person, at no cost, one copy of the appraisal upon request, if the request is made within 90 days after the creditor has provided notice of action taken on the application for credit or the date of the closing, whichever is later, or 90 days after the application is withdrawn. [PL 1999, c. 150, §7 (AMD).]

SECTION HISTORY

PL 1987, c. 396, §12 (NEW). PL 1999, c. 150, §7 (AMD).

§9-310. Privacy of consumer financial information

A creditor shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001), if the creditor is a financial institution as defined in those regulations. This section is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24. [RR 2001, c. 1, §14 (COR).]

SECTION HISTORY

RR 2001, c. 1, §14 (COR). PL 2001, c. 262, §A2 (NEW).

§9-311. Choice of accounting, tax or attest services provider

A creditor may not, in connection with the extension of credit, interfere with a purchaser's or borrower's free choice of an accounting, tax or attest services provider who is accredited as a certified public accountant, public accountant or enrolled agent, except that the creditor may require the provider chosen by the purchaser or borrower to provide adequate evidence of liability insurance or such other written policy requirements as the creditor may determine necessary to protect its interest. [PL 2007, c. 466, Pt. B, §7 (RPR); PL 2007, c. 466, Pt. B, §10 (AFF).]

SECTION HISTORY

PL 2007, c. 185, §2 (NEW). PL 2007, c. 273, Pt. A, §25 (NEW). PL 2007, c. 273, Pt. A, §41 (AFF). PL 2007, c. 466, Pt. B, §7 (RPR). PL 2007, c. 466, Pt. B, §10 (AFF).

§9-311-A. Real estate settlement procedures

A creditor and its mortgage loan originators shall comply with the provisions of the federal Real Estate Settlement Procedures Act of 1974, 12 United States Code, Section 2601 et seq. and its implementing regulation, Regulation X, 12 Code of Federal Regulations, Section 1024.1 et seq. [PL 2013, c. 464, §11 (AMD).]

SECTION HISTORY

PL 2007, c. 466, Pt. B, §8 (NEW). PL 2007, c. 466, Pt. B, §10 (AFF). PL 2011, c. 427, Pt. B, §12 (AMD). PL 2013, c. 464, §11 (AMD).

§9-312. False information on application for credit

A supervised lender, or any mortgage loan originator of a supervised lender, may not knowingly permit, encourage or assist a consumer to submit false information on any application for credit, nor may a supervised lender or mortgage loan originator of a supervised lender knowingly falsify such information on a consumer's application. [PL 2011, c. 427, Pt. B, §13 (AMD).]

SECTION HISTORY

PL 2007, c. 273, Pt. A, §26 (NEW). PL 2007, c. 273, Pt. A, §41 (AFF). PL 2011, c. 427, Pt. B, §13 (AMD).

§9-313. Rate locks

If a supervised lender charges a consumer a fee to lock in a certain interest rate for a certain length of time, that supervised lender shall: [PL 2007, c. 273, Pt. A, §27 (NEW); PL 2007, c. 273, Pt. A, §41 (AFF).]

1. Take steps that are necessary to actually secure or guarantee the specified rate for the appropriate length of time;

[PL 2007, c. 273, Pt. A, §27 (NEW); PL 2007, c. 273, Pt. A, §41 (AFF).]

2. Select a time period within which the loan can reasonably be expected to close; and
[PL 2007, c. 273, Pt. A, §27 (NEW); PL 2007, c. 273, Pt. A, §41 (AFF).]

3. Use good faith efforts to close the loan within the rate lock period.
[PL 2007, c. 273, Pt. A, §27 (NEW); PL 2007, c. 273, Pt. A, §41 (AFF).]

SECTION HISTORY

PL 2007, c. 273, Pt. A, §27 (NEW). PL 2007, c. 273, Pt. A, §41 (AFF).

§9-314. Prepayment penalty riders

A supervised lender may not impose a prepayment penalty provision through use of a rider or amendment to the loan contract if the terms of the loan contract state that no such prepayment penalty may be imposed or that such a penalty is not specifically authorized under state law. [PL 2007, c. 273, Pt. A, §28 (NEW); PL 2007, c. 273, Pt. A, §41 (AFF).]

SECTION HISTORY

PL 2007, c. 273, Pt. A, §28 (NEW). PL 2007, c. 273, Pt. A, §41 (AFF).

PART 4

REMEDIES AND PENALTIES

§9-401. Misrepresentation

A creditor or a person acting for him may not induce a consumer to enter into a consumer credit transaction by misrepresentation of a material fact with respect to the terms and conditions of the extension of credit. A consumer so induced may rescind the sale, lease or loan or recover actual damages, or both. [PL 1987, c. 396, §12 (NEW).]

SECTION HISTORY

PL 1987, c. 396, §12 (NEW).

§9-402. Unconscionability; inducement by unconscionable conduct

1. With respect to a consumer credit transaction, if the court as a matter of law finds:

A. The agreement to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or [PL 1987, c. 396, §12 (NEW).]

B. Any clause of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable clause, or may so limit the application of any unconscionable clause as to avoid any unconscionable result. [PL 1987, c. 396, §12 (NEW).]

[PL 1987, c. 396, §12 (NEW).]

2. If it is claimed or appears to the court that the agreement or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose and effect to aid the court in making the determination.
[PL 1987, c. 396, §12 (NEW).]

3. For the purpose of this section, a change or practice expressly permitted by this article is not in and of itself unconscionable in the absence of other practices and circumstances.
[PL 1987, c. 396, §12 (NEW).]

SECTION HISTORY

PL 1987, c. 396, §12 (NEW).

§9-403. Illegal, fraudulent or unconscionable conduct in attempted collection of debts

1. In attempting to collect an alleged debt arising from a consumer credit transaction, a person shall not:

A. Use or threaten force or violence; [PL 1987, c. 396, §12 (NEW).]

B. Threaten criminal prosecution; [PL 1987, c. 396, §12 (NEW).]

C. Disclose or threaten to disclose information affecting the debtor's reputation for credit worthiness with knowledge or reason to know that the information is false; [PL 1987, c. 396, §12 (NEW).]

D. Communicate more than twice or threaten to communicate more than twice to the debtor's employer information concerning the existence of a debt before or after obtaining final judgment against the debtor, except as permitted by law; [PL 1987, c. 396, §12 (NEW).]

E. Disclose or threaten to disclose to a person other than the debtor or his spouse, information affecting the debtor's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information, but this subsection does not prohibit the disclosure to another person of information permitted to be disclosed to him by law; [PL 1987, c. 396, §12 (NEW).]

F. Disclose or threaten to disclose information concerning the existence of a debt known to be disputed by the debtor without disclosing that fact; [PL 1987, c. 396, §12 (NEW).]

G. Claim, attempt or threaten to enforce a right that has been barred by law or a final order of the Supreme Judicial Court or a court of the United States; [PL 1987, c. 396, §12 (NEW).]

H. Use a communication which simulates legal or judicial process or which gives the appearance of being authorized, issued or approved by a government, government agency or attorney-at-law when it is not; or [PL 1987, c. 396, §12 (NEW).]

I. Engage in conduct in violation of a rule adopted and published by the administrator after like conduct has been restrained or enjoined by a final order of a court in a civil action by the administrator against any person pursuant to the provisions or injunctions against fraudulent or unconscionable agreements or conduct, section 6-111. [PL 1987, c. 396, §12 (NEW).]

[PL 1987, c. 396, §12 (NEW).]

SECTION HISTORY

PL 1987, c. 396, §12 (NEW).

§9-404. Stay of enforcement of judgment

At any time after the entry of a judgment in favor of a creditor against a consumer in an action arising from a consumer credit transaction, the court, for cause and upon motion of a party or on its own motion, while such court retains jurisdiction, may stay enforcement of the judgment by order upon

just and equitable conditions and continue, modify or revoke the order as the interests of justice may require. [PL 1987, c. 396, §12 (NEW).]

SECTION HISTORY

PL 1987, c. 396, §12 (NEW).

§9-405. Effect of violations on rights of parties

1. If a creditor, assignee or servicer has violated the provisions of this article applying to timely payments from escrow, section 9-305-A, timely responses to requests for payoff figures, section 9-305-B, misrepresentation, section 9-401, or illegal, fraudulent or unconscionable conduct in an attempted collection of debts, section 9-403, any aggrieved consumer has a right to recover actual damages from that person, or in lieu thereof any consumer named as a plaintiff in the complaint as originally filed has a right to recover from a person violating this article an amount determined by the court not less than \$250 nor more than \$1,000. No action pursuant to this subsection may be brought more than 2 years after the due date of the last scheduled payment.

[PL 2005, c. 206, §4 (AMD).]

2. A debtor is not obligated to pay a charge in excess of that allowed by this article and if he has paid an excess charge he has a right to a refund. A refund may be made by reducing the debtor's obligation by the amount of the excess charge. If the debtor has paid an amount in excess of the lawful obligation under the agreement, the debtor may recover the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against debtors arising from the debt.

[PL 1987, c. 396, §12 (NEW).]

3. If the creditor has contracted for or received a charge in excess of that allowed by this article, or if a debtor, is entitled to a refund and a person liable to the debtor refuses to make a refund within a reasonable time after demand, the debtor may recover from the creditor or the person liable an amount determined by the court not less than \$250 nor more than \$1,000. No action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made or the date the agreement was paid in full, whichever was earlier.

[PL 1987, c. 396, §12 (NEW).]

4. If a creditor has violated the provisions of this article applying to authority to make supervised loans, section 9-201, the debtor is not obligated to pay any application fee, prepaid finance charge or closing cost, nor the loan finance charge owed for the first 12 months of the loan. If the debtor has paid any part of the application fee, prepaid finance charge, closing cost or loan finance charge owed for the first 12 months of the loan, the debtor has a right to recover the payment from the person violating this article or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. No action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

[PL 1993, c. 496, §4 (AMD).]

5. Except as otherwise provided, no violation of this article impairs rights on a debt.

[PL 1987, c. 396, §12 (NEW).]

6. A creditor has no liability under subsections 1 or 3 if, within 60 days after discovering an error and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and corrects the error. If the violation consists of a prohibited agreement, giving the debtor a corrected copy of the writing containing the error is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund.

[PL 1987, c. 396, §12 (NEW).]

7. If the creditor establishes by a preponderance of evidence that a violation is unintentional and the result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, no liability is imposed under subsections 1 and 2, the validity of the transaction is not affected, and no liability is imposed under subsection 3, except for refusal to make a refund.

[PL 1993, c. 496, §4 (AMD).]

8. In an action in which it is found that a creditor has violated this article, the court shall award the debtor the costs of the action together with reasonable attorneys fees. Reasonable attorneys fees shall be determined by the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the debtor.

[PL 1987, c. 396, §12 (NEW).]

9. A creditor has no liability under subsection 1 or 3, or under section 6-113, subsection 2, for any act done or omitted in good faith in conformity with any rule or interpretation thereof by the administrator, notwithstanding that after such act or omission has occurred, the rule or interpretation is amended, rescinded or determined by judicial or other authority to be invalid for any reason.

[RR 2021, c. 2, Pt. A, §13 (COR).]

SECTION HISTORY

PL 1987, c. 396, §12 (NEW). PL 1993, c. 496, §4 (AMD). PL 2005, c. 206, §4 (AMD). RR 2021, c. 2, Pt. A, §13 (COR).

§9-406. Refunds and penalties as set-off to obligation

Refunds or penalties to which the consumer is entitled pursuant to this Part may be set off against the consumer's obligation and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by this Part. [PL 1987, c. 396, §12 (NEW).]

SECTION HISTORY

PL 1987, c. 396, §12 (NEW).

§9-407. Criminal penalties

Any creditor, any officer or employee of a creditor, or any other person who willfully and knowingly violates this article, or directly or indirectly counsels, aids or abets that violation, shall be punished by a fine of not more than \$2,500 for each offense or by imprisonment for not more than 6 months, or by both. [PL 1987, c. 396, §12 (NEW).]

SECTION HISTORY

PL 1987, c. 396, §12 (NEW).

§9-408. Violation of the Maine Unfair Trade Practices Act

Any violation of this article constitutes a violation of the Maine Unfair Trade Practices Act. [PL 2009, c. 402, §7 (NEW).]

SECTION HISTORY

PL 2009, c. 402, §7 (NEW).

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