

1975 Senate Bill 135

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CHAPTER 387, Laws of 1975

AN ACT to repeal 215.21 (3) (b); to renumber 215.21 (3) (a); and to create 138.053, 138.055 and 138.057 of the statutes, relating to imposing limitations on the use of interest adjustment clauses and variable rate contracts in connection with certain first lien residential mortgage loans and creating a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 138.053, 138.055 and 138.057 of the statutes are created to read:

138.053 Regulation of interest adjustment provisions. (1) REQUIRED CONTRACT PROVISIONS. No contract between a borrower and a lender secured by a first lien real estate mortgage on, or an equivalent security interest in, an owner-occupied residential

property containing not more than 4 dwelling units may authorize the lender to increase the borrower's contractual rate of interest unless the contract provides that:

- (a) No increase may occur until 3 years after the date of the contract;
- (b) No increase may occur unless the borrower is given at least 4 months' written notice of the lender's intent to increase the rate of interest, during which notice period the borrower may repay his or her obligation without penalty;
- (c) The amount of the initial interest rate increase may not exceed \$1 per \$100 for one year computed upon the declining principal balance;
- (d) The amount of any subsequent interest rate increase may not exceed \$1 per \$200 for one year computed upon the declining principal balance;
- (e) The interest rate may not be increased more than one time in any 12-month period; and
- (f) The loan may be prepaid without penalty at any time at which the interest rate in effect exceeds the originally stated interest rate by more than \$2 per \$100 for one year computed upon the declining principal balance.

(2) **DISCLOSURES REQUIRED.** No lender may make a loan secured by a first lien real estate mortgage on, or an equivalent security interest in, an owner-occupied residential property containing not more than 4 dwelling units providing for prospective changes in the rate of interest unless it has clearly and conspicuously disclosed to the borrower in writing:

- (a) That the interest rate is prospectively subject to change;
- (b) That notice of any interest adjustment must be given 4 months prior to any increase; and
- (c) Any prepayment rights of the borrower upon receiving notice of such change.

(3) **NOTICE OF INTEREST ADJUSTMENT.** Notices provided under sub. (2) shall be mailed to the borrower at his or her last-known post-office address and shall clearly and concisely disclose:

- (a) The effective date of the interest rate increase;
- (b) The increased interest rate and the extent to which the increased rate will exceed the interest rate in effect immediately before the increase;
- (c) The amount of the borrower's contractual monthly principal and interest payment before and after the effective date of the increase;
- (d) Any right of the borrower to voluntarily increase his or her contractual principal and interest payment;
- (e) Whether as a result of the increase a lump sum payment may be necessary at the end of the loan term;
- (f) Whether an additional number of monthly payments may be required; and
- (g) The borrower's right to prepay within 4 months without a prepayment charge.

(4) **APPLICABILITY.** (a) This section does not apply to variable rate contracts, nor to loans or forbearances to corporations.

(b) This section applies only to transactions initially entered into on or after the effective date of this act (1975).

138.055 Variable rate contracts. (1) **REQUIRED CONTRACT PROVISIONS.** No contract between a borrower and a lender secured by a first lien real estate mortgage on, or an equivalent security interest in, an owner-occupied residential property containing not more than 4 dwelling units may contain a variable interest rate clause unless the contract provides that:

(a) When an increase in the interest rate is permitted by a movement upward of a prescribed index, a decrease in the interest rate is also required by a downward movement of the prescribed index subject to pars. (b) to (f);

(b) The rate of interest shall not change more than once during any 6-month period;

(c) Any singular change in the interest rate shall not exceed the rate of \$1 per \$200 for one year computed upon the declining principal balance and the total variance in such rate shall at no time exceed a rate equal to \$2.50 per \$100 for one year computed on the declining principal balance greater or lesser than the rate originally in effect;

(d) Decreases required by the downward movement of the prescribed index shall be mandatory. Increases permitted by the upward movement of the prescribed index shall be optional with the lender. Changes in the interest rate shall only be made when the prescribed index changes a minimum of one-tenth of one percent;

(e) The fact that a lender may not have invoked an increase, in whole or in part, shall not be deemed a waiver of the lender's right to invoke an increase at any time thereafter within the limits imposed by this section;

(f) The rate shall not change during the first semiannual period of the loan; and

(g) The borrower may prepay the loan in whole or in part within 90 days of notification of any increase in the rate of interest without a prepayment charge.

(2) **DISCLOSURES REQUIRED.** No lender may make a loan secured by a first lien real estate mortgage on, or an equivalent security interest in, an owner-occupied residential property containing not more than 4 dwelling units containing a variable interest rate provision unless it has clearly and conspicuously disclosed to the borrower in writing prior to execution of the loan documents:

(a) That the loan contract contains a variable interest rate;

(b) The index used in applying any variable interest rate changes contemplated in the note and its current base; and

(c) Any prepayment rights of the borrower upon receiving notice of any such change.

(3) **NOTICE OF INTEREST ADJUSTMENT.** When a change in the interest rate is required or permitted by a movement in the prescribed index, the lender shall give notice to the borrower by mail, addressed to the borrower's last-known post-office address, not less than 30 days prior to any change in interest rate, which notice shall clearly and concisely disclose:

(a) The effective date of the interest rate change;

(b) The interest rate change, and if an increase, the extent to which the increased rate will exceed the rate in effect immediately before the increase;

(c) The changes in the index which caused the interest rate change;

(d) The amount of the borrower's contractual monthly principal and interest payments before and after the effective date of the change in the interest rate;

(e) Whether as a result of an increase in the interest rate a lump sum payment may be necessary at the end of the loan term; and

(f) The borrower's right to prepay the loan within 90 days after said notice without a prepayment charge if the notice required an increase in interest rate.

(4) **INDEX.** In determining any variable interest rate changes permitted under this section, a lender shall use either the index published by the federal home loan

bank of Chicago based on the cost of all funds to Wisconsin member institutions or an index approved by:

(a) The commissioner of savings and loan, if the lender is a savings and loan association;

(b) The commissioner of credit unions, if the lender is a credit union;

(c) The commissioner of insurance, if the lender is an insurance company; or

(d) The commissioner of banking for all other lenders.

(5) **APPLICABILITY.** (a) This section does not apply to loans or forbearances to corporations.

(b) This section applies only to transactions initially entered into on or after the effective date of this act (1975).

138.057 Penalties. Any lender who intentionally violates s. 138.053 or 138.055 is liable to the borrower for all excess interest collected, plus interest thereon at the rate of 5% per year. In addition, the borrower may recover actual damages, including incidental and consequential damages, sustained by reason of the violation.

SECTION 2. 215.21 (3) (a) of the statutes is renumbered 215.21 (3).

SECTION 3. 215.21 (3) (b) of the statutes is repealed.
