

CHAPTER 428

FIRST LIEN REAL ESTATE LOANS

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428.101 Applicability. This chapter applies to:

(1) Loans made on or after April 6, 1980 and prior to November 1, 1981, by a creditor other than a savings and loan association to a customer and which are secured by a first lien real estate mortgage or equivalent security interest if the amount financed is \$25,000 or less.

(2) Loans made prior to April 6, 1980, by a creditor other than a savings and loan association and loans made before November 1, 1981, by a savings and loan association to a customer and which are secured by a first lien real estate mortgage or equivalent security interest if the annual percentage rate does not exceed 12% per year and the amount financed is \$25,000 or less.

(3) Loans made on or after November 1, 1981, by a creditor to a customer and which are secured by a first lien real estate mortgage or equivalent security interest if the amount financed is \$25,000 or less.

History: 1973 c. 18; 1979 c. 110 s. 60 (13); 1979 c. 168; 1981 c. 45.

A second mortgage constitutes an equivalent security interest under this section when held by a savings and loan association that holds the first mortgage and there are no intervening liens. 63 Atty. Gen. 557.

Wisconsin consumer act—a critical analysis. Heiser, 57 MLR 389.

428.102 Definitions. In this chapter:

(1) “Amount financed” means that term as defined in the federal consumer credit protection act, as defined in s. 421.301 (19).

(2) “Creditor” means a person who regularly engages in, arranges for or procures from 3rd persons, loans within the scope of this chapter.

(3) “Customer” means a person other than an organization who seeks or acquires credit financing secured by a first lien real estate mortgage, or equivalent security interest, for personal, family, household or agricultural purposes.

(4) “Loan” means the creation of debt by the creditor’s payment of or agreement to pay money to the customer or to a 3rd party for the account of the customer, or a forbearance by a lender of a debt arising from a loan.

(5) “Organization” means organization as defined in s. 421.301 (28).

(6) “Person” means person as defined in s. 421.301 (31).

History: 1973 c. 18, 232.

428.103 Limitations. (1) The following limitations shall apply to all loans subject to this chapter:

(a) No delinquency charge may be collected on an installment which is paid in full on or before the 10th day after its scheduled due date even though an earlier maturing installment may not have been paid in full. For purposes of this section payments are applied first to current installments and then to delinquent installments.

(b) Any cosigner, other than the spouse of the customer, shall be given a notice substantially the same as that required by s. 422.305, and the cosigner shall be entitled to a copy of any document evidencing the obligation to pay the debt.

(c) With respect to debt collection:

1. No creditor shall engage in conduct of the type prohibited by s. 427.104 (1) (a) to (L).

2. The exemptions specified in s. 425.106 (1) (a) and (b), with respect to earnings and personal clothing and furnishings except as to fixtures, shall apply.

(d) No creditor may take a security interest in the household goods or furnishings, other than fixtures, of a customer.

(e) The creditor shall not contract for or charge its attorney fees to the customer except as follows:

1. Reasonable fees for opinions of title.

2. In foreclosure cases, 5% of the amount adjudged due the creditor; or if the dispute is settled prior to judgment, a reasonable fee based on the time, nature and extent of the work involved, but not to exceed 2–1/2% of the unpaid principal balance of the loan.

(2) A person who commits a violation of this section is liable to the customer in an amount equal to the greater of:

(a) Twice the amount of the interest to be charged on the transaction, except that the liability under this subsection shall not be less than \$100 nor greater than \$1,000; or

(b) The actual damages, including any incidental and consequential damages, sustained by the customer by reason of the violation.

History: 1973 c. 18; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); 1983 a. 92; 1991 a. 316; 1993 a. 80, 490.

428.104 Receipts, accounting. (1) Any time a payment is made in cash, or any other time the method of payment does not itself provide evidence of payment, the creditor shall furnish the customer, without request, a written receipt, evidencing such payment. The customer shall be entitled upon request, free of charge, to an annual statement of account showing receipts and disbursements. Upon payment in full of the customer’s obligation, the creditor shall release any mortgage by either recording the necessary instrument and forwarding the same to the customer, or by forwarding a satisfaction of such debt to the purchaser of the real property subject to such satisfied mortgage, or the creditor of such purchaser.

(2) A person who commits a violation of this section is liable to the customer in an amount equal to:

(a) Twenty–five dollars; and

(b) The actual damages, including any incidental and consequential damages, sustained by the customer by reason of the violation.

History: 1973 c. 18.

428.105 Pleadings. A complaint by a creditor to enforce a cause of action shall set forth specifically the facts constituting the alleged default of the customer, the amount to which the creditor is allegedly entitled and a summary of the figures necessary for computation of such amount, and shall be accompanied by an accurate copy of the writing evidencing the transaction.

History: 1973 c. 18.

428.106 Remedies. (1) Violations of this chapter may be enforced by a customer subject to this section and ss. 425.308 to 425.311.

(2) With respect to a loan subject to this chapter, if the court as a matter of law finds that any aspect of the transaction, any conduct directed against the customer, by the creditor, or any result

of the transaction is unconscionable, the court shall, in addition to the remedies and penalties set forth in this chapter, and a penalty not to exceed that specified in s. 428.103 (2), refuse to enforce the unconscionable aspect of the transaction or so limit the application of any unconscionable aspect or conduct to avoid any unconscionable result.

(3) Notwithstanding other provisions of this chapter, a customer shall not be entitled to recover the specific penalties provided in ss. 428.103 (2) (a) and 428.104 (2) (a) if the person violating this chapter shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such error.

(4) Any action brought by a customer to enforce rights under

sub. (1) shall be commenced within one year after the date of the last violation of this chapter, 2 years after consummation of the agreement or one year after the last payment, whichever is later. But in no event shall an action be commenced more than 6 years after the date of the last violation.

(5) The administrator specified in s. 426.103, solely through the department of justice, may on behalf of any customer institute an action to enforce this chapter and to recover the damages and penalties provided for this chapter. In such action the administrator may obtain an order restraining by temporary or permanent injunctions any violation of this chapter. This subsection shall not be construed to incorporate or grant to the administrator with respect to the enforcement of this chapter, any of the provisions of ch. 426.

History: 1973 c. 18; 1991 a. 316.