



State of North Carolina

Office of the Commissioner of Banks

Pat McCrory
Governor

Ray Grace
Commissioner of Banks

Memorandum

To: All Consumer Finance Licensees
From: Molly Sheehan, North Carolina Deputy Commissioner of Banks
Date: February 12, 2015
Subject: Court Costs in Voluntary Dismissals under the Consumer Finance Act

A handwritten signature in cursive script, reading "Molly Sheehan".

I am following up with all licensees because not all of you were able to attend our Town Hall meeting on January 21. Since that meeting, we have received a few questions about when court costs can be paid by borrowers. This memo is intended to clarify the Commissioner's position and to invite licensees to participate in a small working group to discuss non-performing loans. Section 53-178 of the Consumer Finance Act limits the fees that can be passed on to borrowers. Fees that are not expressly authorized are prohibited. For example, the Act authorizes loan processing fees under G.S. § 53-176(b), late fees under G.S. § 53-177(b)(2), and deferral charges under G.S. § 53-177(c).

We are trying to balance the prohibition in G.S. § 53-178 with the industry's need to recoup these costs from borrowers in default. We believe we can strike the correct balance by applying G.S. § 53-178's prohibition only to performing loans. Distinguishing performing from non-performing loans accomplishes our goal of ensuring that the industry can recover reasonable collection costs, while also ensuring that G.S. § 53-178 has meaning. Under this framework, reasonable collection fees would be permitted when the licensee no longer anticipates regular payments in the future and declares the loan in default. This happens when a licensee sues a borrower for collection. When, however, the borrower agrees to resume regular payments, even after suit is filed, the debt is reinstated. In this case, G.S. § 53-178 would bar collection of court costs because the licensee again anticipates regular future payments.

We are aware that some licensees may have received different advice from prior staff on court costs. Because of this variance, we are applying this guidance prospectively, beginning with any lawsuit filed after March 15, 2015. Court costs assessed to a borrower following voluntary dismissal of any lawsuit filed after **March 15, 2015** will need to be refunded to the borrower. After that date, court costs may not be paid by a borrower when a licensee agrees to voluntarily dismiss a collection lawsuit at the borrower's request. Licensees may continue to collect court costs after obtaining a judgment against a borrower.

We have been meeting with representatives of the industry to discuss how the Act might be revised in the upcoming legislative session to address third-party fees generally. Because there is no guarantee that the General Assembly will act on the recommended changes, we are exploring how to work with the Act in its current form.

This clarification regarding court costs is a first step. Finding the line between performing and non-performing loans is no easy task. We are interested in hearing from you about how your operation identifies loans in default and fees that arise in the course of collections.

We invite members of the industry to volunteer for a working group facilitated by our office to develop a definition of non-performing loan that will allow all of us to navigate these fee limitations with greater certainty. If you are interested in participating in the working group, please contact Lisa Johnson by email at ljohnson@nccob.gov and include "Consumer Finance Working Group" in the subject line of your message. In the coming weeks, we will set up a kick-off meeting with a call-in option for anyone who is unable to attend in person.

Thank you and please contact me if you have any questions.