

04 NCAC 03M .0602 SELLER DISCOUNTS FOR USE OF AFFILIATED MORTGAGE LENDER OR BROKER

(a) A mortgage lender or mortgage broker shall not originate a mortgage loan if the use of that mortgage lender or mortgage broker is a condition for the borrower to receive a discount or thing of value from a seller affiliated with the mortgage lender or mortgage broker, unless:

- (1) the discount conditioned on the use of the mortgage lender or mortgage broker is disclosed on a separate document from any other discount provided by the seller in a written document that informs the borrower that the choice of a lender not affiliated with the seller will not affect any other concessions or discounts offered to the borrower for the purchase of the home, other than the incentive offered for the use of the affiliated lender;
- (2) the discount conditioned on the use of the mortgage lender or mortgage broker may be used to pay only the following:
 - (A) bona fide and reasonable closing costs associated with the loan as permitted under G.S. 24-8(d); and
 - (B) bona fide discount points, that are paid by the borrower for the purpose of reducing the interest rate below the market rate for that loan product and which in fact reduces the interest rate below the market rate for that loan product; and
- (3) the discount does not exceed three percent of the final sales price.

(b) For any discount used as described in Part (a)(2)(B) of this Rule, the following documents shall be maintained in the individual loan file:

- (1) the disclosure required under Subparagraph (a)(1) of this Rule;
- (2) the rate sheet used by the mortgage lender or mortgage broker to inform the borrower of the available interest rate of the loan; and
- (3) the signed lock-in agreement that demonstrates the below-market rate chosen by the borrower.

(c) For any discount used as described in Part (a)(2)(B) of this Rule, the mortgage lender shall maintain written policies and procedures related to the charging of discount points, which include the method of informing borrowers of the benefits and costs of discount points and a commercially reasonable method for determining the amount by which the interest rate will be reduced for the payment of a discount point.

(d) The discount provided in Paragraph (a) of this Rule shall not be applied in a manner that would exceed amounts that may be imposed under North Carolina or Federal law related to mortgage lending or mortgage servicing regardless of whether a party affiliated with the lender directly or indirectly pays for any portion of such charges.

History Note: *Authority G.S. 53-244.111(1); 53-244.111(8); 53-244.118(a);
Eff. April 1, 2011;
Readopted Eff. August 1, 2018.*