

## No.6

## AN ACT

SB 1255

Regulating agreements for the loan or use of money; establishing a maximum lawful interest rate in the Commonwealth; providing for a legal rate of interest; detailing exceptions to the maximum lawful interest rate for residential mortgages and for any loans in the principal amount of more than fifty thousand dollars and Federally insured or guaranteed loans and unsecured, noncollateralized loans in excess of thirty-five thousand dollars and business loans in excess of ten thousand dollars; providing protections to debtors to whom loans are made including the provision for disclosure of facts relevant to the making of residential mortgages, providing for notice of intention to foreclose and establishment of a right to cure defaults on residential mortgage obligations, provision for the payment of attorney's fees with regard to residential mortgage obligations and providing for certain interest rates by banks and bank and trust companies; clarifying the substantive law on the filing of and execution on a confessed judgment; prohibiting waiver of provisions of this act, specifying powers and duties of the Secretary of Banking, and establishing remedies and providing penalties for violations of this act.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

ARTICLE I  
Preliminary Provisions

Section 101. Definitions.—As used in this act:

“Actual settlement costs” means reasonable sums paid for:

- (a) Any insurance premiums which have been approved by the Insurance Commissioner of the Commonwealth.
- (b) Title examination and search, and examination of public records.
- (c) The preparation and recording of any or all documents required by law or custom for settlement.
- (d) Appraisal and/or survey of property securing the loan.
- (e) A single service charge, which shall include any consideration paid by the residential mortgage debtor and received and retained by the residential mortgage lender for or related to the acquisition, making, refinancing or modification of a residential mortgage loan, plus any consideration received by the residential mortgage lender for making a mortgage commitment, whether or not an actual loan follows such commitment.

The service charge shall not exceed one per cent of the original bona fide principal amount of the loan, except that in the case of a construction loan, the service charge shall not exceed two per cent of the original bona fide principal amount of the loan.

- (f) Charges and fees necessary for or related to the transfer of the property or the closing of the residential mortgage loan, paid by the residential mortgage debtor and received by any party other than the residential mortgage lender, whether or not paid by the residential mortgage debtor directly to the third party or to the residential mortgage lender for payment to the third party.

“Discount points” means any charges, whether or not actually denominated as “discount points,” which are paid by the seller of residential real property to a residential mortgage lender which directly or indirectly affects the ability of the buyer of the real estate to secure a residential mortgage.

“Finance charge” means the total cost of a loan or charge for the use of money, including any extensions or grant of credit regardless of the characterization of the same and includes any interest, time price differential, points, premiums, finder’s fees, and other charges levied by the residential mortgage lender directly or indirectly against the person obtaining the loan or against the seller, lender, mortgagee or any other party to the transaction except any actual settlement costs. The finance charges plus the actual settlement costs charged by the residential mortgage lender shall include all charges made by the residential mortgage lender to the residential mortgage debtor other than the principal of the loan.

“Loan yield” means the annual rate of return obtained by a residential mortgage lender from a residential mortgage debtor over the term of the loan and shall be determined in accordance with regulations issued by the Secretary of Banking. Such regulations shall establish the method for calculating such rate of return and shall provide that the finance charge be amortized over the contract term of the loan.

“Monthly Index of Long Term United States Government Bond Yields” means the monthly unweighted average of the daily unweighted average of the closing bid yield quotations in the over the counter market for all outstanding United States Treasury Bond issues, based on available statistics, which are either maturing or callable in ten years or more. This index is expressed in terms of percentage interest per annum.

“Mortgage commitment” means a legally binding obligation to lend money on the security of a residential mortgage.

“Person” means an individual, corporation, business trust, estate trust, partnership or association or any other legal entity, and shall include but not be limited to residential mortgage lenders.

“Residential mortgage” means an obligation to pay a sum of money in an original bona fide principal amount of fifty thousand dollars (\$50,000) or less, evidenced by a security document and secured by a lien upon real property located within this Commonwealth containing two or fewer residential units or on which two or fewer residential units are to be constructed and shall include such an obligation on a residential condominium unit.

“Residential mortgage debtor” means a non-corporate borrower who is obligated to a residential mortgage lender to repay in whole or in part a residential mortgage and a successor record owner of the property, if any, who gives notice thereof to the residential mortgage lender.

“Residential mortgage intermediary” means a real estate broker, mortgage broker or other person receiving directly or indirectly from a residential mortgage lender a finder’s fee, commission, placement fee, service charge or other similar compensation other than actual settlement costs in conjunction

with the issuance of a residential mortgage or mortgage commitment. Residential mortgage intermediary shall not mean an employee of a residential mortgage lender.

“Residential mortgage lender” means any person who lends money or extends or grants credit and obtains a residential mortgage to assure payment of the debt. The term shall also include the holder at any time of a residential mortgage obligation.

“Security document” means a mortgage, deed of trust, real estate sales contract or other document creating upon recordation a lien upon real estate.

## ARTICLE II

### Maximum Lawful Interest Rate

Section 201. Maximum Lawful Interest Rate.—Except as provided in Article III of this act, the maximum lawful rate of interest for the loan or use of money in an amount of fifty thousand dollars (\$50,000) or less in all cases where no express contract shall have been made for a less rate shall be six per cent per annum.

Section 202. Legal Rate of Interest.—Reference in any law or document enacted or executed heretofore or hereafter to “legal rate of interest” and reference in any document to an obligation to pay a sum of money “with interest” without specification of the applicable rate shall be construed to refer to the rate of interest of six per cent per annum.

## ARTICLE III

### Exceptions to Maximum Lawful Interest Rate

Section 301. Residential Mortgage Interest Rates.—(a) The General Assembly hereby finds that it is necessary and appropriate to establish a flexible maximum lawful interest rate for residential mortgages, as defined in this act, and that the Monthly Index of Long Term United States Government Bond Yields is the appropriate basis on which such a maximum rate of interest may be established and that the Monthly Index of such Long Term United States Government Bond Yields compiled by the Board of Governors of the Federal Reserve System and as published by said Board of Governors in the monthly Federal Reserve Bulletin accurately reflects this function.

(b) The maximum lawful rate of interest for residential mortgages, as defined in this act, entered into or contracted for during any calendar month shall be equal to the Monthly Index of Long Term United States Government Bond Yields for the second preceding calendar month plus an additional two and one-half per cent per annum rounded off to the nearest quarter of one per cent per annum.

(c) On or before the twentieth day of each month, the Secretary of Banking (i) shall determine, based on available statistics, the Monthly Index of Long Term United States Government Bond Yields for the preceding calendar month; and (ii) shall determine the maximum lawful rate of interest for residential

mortgages for the next succeeding month, as defined in subsection (b) of this section, and shall cause such maximum lawful rate of interest to be filed with the Legislative Reference Bureau for publication in the Pennsylvania Bulletin; such maximum lawful rate of interest to be effective on the first day of the next succeeding month.

(d) The loan yield obtained by a residential mortgage lender from the residential mortgage debtor shall not exceed the maximum lawful rate of interest for residential mortgages established in section 301 (b). A contract rate within the maximum lawful interest rate applicable to a residential mortgage at the time of the loan settlement shall be the maximum lawful interest rate for the term of the residential mortgage.

(e) In all proceedings and in all legal actions, the maximum lawful rate of interest for all residential mortgages, as defined in this act, as published in the Pennsylvania Bulletin by the Secretary of Banking shall be the maximum lawful rate of interest for residential mortgages, as defined in this act.

(f) The maximum lawful rate of interest set forth in this section and in section 201 of this act shall not apply to (i) an obligation to pay a sum of money in an original bona fide principal amount of more than fifty thousand dollars (\$50,000); (ii) an obligation to pay a sum of money in an original bona fide principal amount of fifty thousand dollars (\$50,000) or less, evidenced by a security document and secured by a lien upon real property, other than a residential mortgage as defined in this act; (iii) to a loan to a person subject to the act of April 27, 1927 (P.L.404, No.260), entitled "An act prohibiting corporations from pleading usury as a defense," section 313 of the act of May 5, 1933 (P.L.364, No.106), known as the "Business Corporation Law," or Title 15 Pa.S. section 7544; or (iv) an unsecured, noncollateralized loan in excess of thirty-five thousand dollars (\$35,000); or (v) business loans the principal amount of which is in excess of ten thousand dollars (\$10,000).

Section 302. Federally Guaranteed Loans.—The maximum lawful rate of interest prescribed in sections 201 and 301 of this act shall not apply to any loan insured or guaranteed in whole or in part by the Federal Housing Administration, the Veterans Administration or any other department or agency of the United States Government: Provided, That any such loan is subject to a maximum rate of interest established by law or by such department or agency.

Section 303. Commitments to Enter Into Residential Mortgages.—A residential mortgage commitment which provides for consummation within some future time following the issuance of the mortgage commitment may be consummated pursuant to the provisions, including interest rate, of such commitment notwithstanding the fact that the maximum lawful rate of interest at the time the residential mortgage is entered into is less than the commitment rate of interest, provided:

(1) The commitment rate of interest does not exceed the maximum lawful interest rate in effect on the date the mortgage commitment was issued;

(2) The mortgage commitment when agreed to by the borrower shall constitute a legally binding obligation on the part of the residential mortgage

lender to make a residential mortgage loan within a specified time period in the future at a rate of interest not exceeding the maximum lawful rate of interest effective as of the date of commitment offer.

#### ARTICLE IV Protective Provisions

Section 401. Disclosure Requirements.—(a) Any residential mortgage lender, simultaneous with the issuance of a mortgage commitment but in any event at least five business days prior to the loan settlement of a residential mortgage, shall disclose directly to the residential mortgage debtor, or send to the residential mortgage debtor under such circumstances that the disclosure would normally be received at least five business days prior to loan settlement of the residential mortgage, the finance charge, an estimated total of the actual settlement costs, as defined in this act, to be paid by the residential mortgage debtor at settlement, the anticipated actual settlement costs to be charged by the residential mortgage lender, plus the number, amount and due date or periods of payments scheduled to repay the entire indebtedness, and the sum of such payments using the term “total of payments,” and the existence, identity and compensation, if any, paid directly or indirectly by the residential mortgage lender to a residential mortgage intermediary.

(b) The disclosure provided for in this section shall be made in the manner provided by the Secretary of Banking by regulation. The disclosure shall clearly and conspicuously set forth all required disclosure information.

Section 402. Discount Points Prohibited.—With the exception of those residential mortgages guaranteed or insured in whole or in part by the Federal Government, or agency thereof, as enumerated in section 302 of this act, and with the exception of any actual settlement costs (but not discount points, as defined in this act) paid by a seller of real estate, it shall be unlawful for a residential mortgage lender to charge to or receive from a seller of real estate directly or indirectly any discount points.

Section 403. Notice of Intention to Foreclose.—(a) Before any residential mortgage lender may accelerate the maturity of any residential mortgage obligation, commence any legal action including mortgage foreclosure to recover under such obligation, or take possession of any security of the residential mortgage debtor for such residential mortgage obligation, such person shall give the residential mortgage debtor notice of such intention at least thirty days in advance as provided in this section.

(b) Notice of intention to take action as specified in subsection (a) of this section shall be in writing, sent to the residential mortgage debtor by registered or certified mail at his last known address and, if different, at the residence which is the subject of the residential mortgage.

(c) The written notice shall clearly and conspicuously state:

- (1) The particular obligation or real estate security interest;
- (2) The nature of the default claimed;
- (3) The right of the debtor to cure the default as provided in section 404 of

this act and exactly what performance including what sum of money, if any, must be tendered to cure the default;

(4) The time within which the debtor must cure the default;

(5) The method or methods by which the debtor's ownership or possession of the real estate may be terminated; and

(6) The right of the debtor, if any, to transfer the real estate to another person subject to the security interest or to refinance the obligation and of the transferee's right, if any, to cure the default.

(d) The notice of intention to foreclose provided in this section shall not be required where the residential mortgage debtor, has abandoned or voluntarily surrendered the property which is the subject of a residential mortgage.

Section 404. Right to Cure a Default.—(a) Notwithstanding the provisions of any other law, after a notice of intention to foreclose has been given pursuant to section 403 of this act, at any time at least one hour prior to the commencement of bidding at a sheriff sale or other judicial sale on a residential mortgage obligation, the residential mortgage debtor or anyone in his behalf, not more than three times in any calendar year, may cure his default and prevent sale or other disposition of the real estate and avoid acceleration, if any, by tendering the amount or performance specified in subsection (b) of this section.

(b) To cure a default under this section, a residential mortgage debtor shall:

(1) Pay or tender in the form of cash, cashier's check or certified check, all sums which would have been due at the time of payment or tender in the absence of default and the exercise of an acceleration clause, if any;

(2) Perform any other obligation which he would have been bound to perform in the absence of default or the exercise of an acceleration clause, if any;

(3) Pay or tender any reasonable fees allowed under section 406 and the reasonable costs of proceeding to foreclosure as specified in writing by the residential mortgage lender actually incurred to the date of payment.

(4) Pay any reasonable late penalty, if provided for in the security document.

(c) Cure of a default pursuant to this section restores the residential mortgage debtor to the same position as if the default had not occurred.

Section 405. Prepayment Penalty Prohibited.—Residential mortgage obligations contracted for on or after the effective date of this act may be prepaid without any penalty or other charge for such prepayment at any time before the end of the period of the loan.

Section 406. Attorney's Fees Payable.—With regard to residential mortgages, no residential mortgage lender shall contract for or receive attorney's fees from a residential mortgage debtor except as follows:

(1) Reasonable fees for services included in actual settlement costs.

(2) Upon commencement of foreclosure or other legal action with respect to a residential mortgage, attorney's fees which are reasonable and actually incurred by the residential mortgage lender may be charged to the residential mortgage debtor.

(3) Prior to commencement of foreclosure or other legal action attorneys' fees which are reasonable and actually incurred not in excess of fifty dollars (\$50)

provided that no attorneys' fees may be charged for legal expenses incurred prior to or during the thirty-day notice period provided in section 403 of this act.

Section 407. Confession of Judgment.—(a) As to any residential mortgage, a plaintiff shall not have the right to levy, execute or garnish on the basis of any judgment or decree on confession, whether by amicable action or otherwise, or on a note, bond or other instrument in writing confessing judgment until plaintiff, utilizing such procedures as may be provided in the Pennsylvania Rules of Civil Procedure, files an appropriate action and proceeds to judgment or decree against defendant as in any original action. The judgment by confession shall be changed as may be appropriate by a judgment, order or decree entered by the court in the action. After the above mentioned original action has been prosecuted and a judgment obtained, that judgment shall merge with the confessed judgment and the confessed judgment shall be conformed as to amount and execution shall be had on the confessed judgment. The parties to the action shall have the same rights as parties to other original proceedings. Nothing in this act shall prohibit a residential mortgage lender from proceeding by action in mortgage foreclosure in lieu of judgment by confession if the residential mortgage lender so desires.

(b) Any debtor who prevails in any action to remove, suspend or enforce a judgment entered by confession shall be entitled to recover reasonable attorney's fees and costs as determined by the court.

(c) Hereafter when any plaintiff has received payment in full for any judgment entered by confession he shall order the record in the proceeding marked satisfied within thirty days of the receipt thereof, and shall not require any action on the part of the defendant or any payment by him to cover the cost of satisfying the judgment.

Section 408. Waivers.—Notwithstanding any other law, the provisions of this act may not be waived by any oral or written agreement executed by any person.

## ARTICLE V Remedies and Penalties

Section 501. Excessive Interest Need Not Be Paid.—When a rate of interest for the loan or use of money, exceeding that provided by this act or otherwise by law shall have been reserved or contracted for, the borrower or debtor shall not be required to pay to the creditor the excess over such maximum interest rate and it shall be lawful for such borrower or debtor, at his option, to retain and deduct such excess from the amount of such debt providing the borrower or debtor gives notice of the asserted excess to the creditor.

Section 502. Usury and Excess Charges Recoverable.—A person who has paid a rate of interest for the loan or use of money at a rate in excess of that provided for by this act or otherwise by law or has paid charges prohibited or in excess of those allowed by this act or otherwise by law may recover triple the amount of such excess interest or charges in a suit at law against the person who has collected such excess interest or charges: Provided, That no action to recover

such excess shall be sustained in any court of this Commonwealth unless the same shall have been commenced within four years from and after the time of such payment. Recovery of triple the amount of such excess interest or charges, but not the actual amount of such excess interest or charges, shall be limited to a four-year period of the contract.

**Section 503. Reasonable Attorney's Fees Recoverable.**—(a) If a borrower or debtor, including but not limited to a residential mortgage debtor, prevails in an action arising under this act, he shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on his behalf in connection with the prosecution of such action, together with a reasonable amount for attorney's fee.

(b) The award of attorney's fees shall be in an amount sufficient to compensate attorneys representing debtors in actions arising under this act as provided in subsection (a) of this section. In determining the amount of the fee, the court may consider:

(1) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the case.

(2) The customary charges of the members of the bar for similar services.

(3) The amount involved in the controversy and the benefits resulting to the client or clients from the services.

(4) The contingency or the certainty of the compensation.

(c) Any time attorneys' fees are awarded pursuant to any provision of this act, a borrower or debtor shall not be entitled to duplicate recovery of attorneys' fees under this section, sections 407 or 504 or any other provision of this act.

**Section 504. Individual Actions Permitted.**—Any person affected by a violation of the act shall have the substantive right to bring an action on behalf of himself individually for damages by reason of such conduct or violation, together with costs including reasonable attorney's fees and such other relief to which such person may be entitled under law.

**Section 505. Penalties.**—Any person who knowingly and intentionally violates the provisions of this act shall be guilty of a misdemeanor of the third degree.

**Section 506. Enforcement.**—When the Attorney General has reason to believe that any person has violated the provisions of this act, or the regulations promulgated hereunder, he shall have standing to bring a civil action for injunctive relief and such other relief as may be appropriate to secure compliance with this act or the regulations promulgated hereunder.

**Section 507. Effect on Other Acts.**—The remedies and penalties provided in this act shall be supplementary to and shall not repeal or otherwise effect the remedies and penalties provided in any other act.

## ARTICLE VI General Provisions

**Section 601. Regulations.**—The Secretary of Banking shall prescribe regulations to carry out the purposes of this act. These regulations may contain



such classifications, differentiations, or other provisions, and may provide for such adjustments for any class of transactions, as in the judgment of the department are necessary or proper to effectuate the purposes of this act, to prevent circumvention or evasion thereof, to facilitate compliance therewith, to insure meaningful disclosure to the user of residential mortgage credit, and to insure their being supplemental to and not inconsistent with regulations under the Federal Consumer Credit Protection Act.

Section 602. Construction; Title of Purchaser.—No provision of this act shall be construed to adversely affect the title of a bona fide purchaser of real estate who purchases such real estate in good faith without notice of any deficiency in the procedures provided herein.

Section 603. Repeals.—The act of May 28, 1858 (P.L.622, No. 557), entitled "An act Regulating the Rate of Interest," is hereby repealed.

Section 604. Effect on Inconsistent Acts.—If any maximum lawful rate of interest provided for in this act is inconsistent with the provision of any other act establishing, permitting or removing a maximum interest rate, or prohibiting the use of usury as a defense, then the provision of such other act shall prevail. This shall include but not be limited to the provisions of the act of April 8, 1937 (P.L.262, No.66). Except with respect to residential mortgages on which the maximum lawful rate of interest shall be determined pursuant to section 301 of this act, nothing in this act shall prohibit banks and bank and trust companies, subject to the act of November 30, 1965 (P.L.847, No.356), from charging a maximum rate of interest not in excess of the maximum lawful interest rate permitted to be charged by a national bank located in Pennsylvania under 12 U.S.C. §85.

Section 605. Effective Date.—This act shall take effect immediately except that sections 401, 403 and 404 shall take effect in sixty days. Notwithstanding any other provision of this act, the Secretary of Banking, immediately upon final enactment of this act, shall determine the maximum lawful rate of interest for residential mortgages as provided in section 301 of this act, for the month in which this act becomes effective and for the next succeeding month. Such rates shall be immediately published in the Pennsylvania Bulletin and shall become effective upon such publication for the respective months. Thereafter the secretary shall determine and publish the maximum lawful rate of interest for residential mortgages in conformity with the other provisions of this act.

APPROVED—The 30th day of January, A. D. 1974.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 6.



*Secretary of the Commonwealth.*