

Prepayment Fees on Commercial Loans

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It is pretty widely known at this point that New Jersey does not permit prepayment penalties on mortgage loans. N.J.S.A. 46:10B-2.

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What if, however, you enter into a commercial loan? That loan is often guaranteed by a principal of the borrower. Additionally, the lender frequently requires a mortgage on the guarantor's personal residence. Is that sufficient to bring into play the prohibition on prepayment penalties?

That was the question in *Lopresti v. Wells Fargo Bank*, 435 N.J. Super 311 (App. Div. 2014).

The borrower was a commercial enterprise. Lender required a personal guaranty from the President of the company. Borrower also required a mortgage on the guarantor's personal residence. Some years later, when interest rates had fallen, borrower asked Wells Fargo to renegotiate the loan. The bank refused. Borrower then went to another bank to refinance. That bank paid off Wells Fargo, including a prepayment fee of \$48,306.41. Borrower challenged that, claiming that because the bank held a mortgage on his personal residence it was a mortgage loan and therefore no prepayment penalty was permitted.

The court first decided that the guarantor had standing to bring the action. Although his interest was "inchoate and conditional," he had a "real and genuine financial interest in the transaction..."

The court then noted, however, that all proceeds of the loan and the refinance were deposited directly into the account of the business. No portion of the money was used for personal or residential purposes. The mortgage secured the personal guaranty, not the business obligation. Therefore, the mortgage on the personal residence was not a "mortgage loan" within the statute's definition and the lender was not "the holder of a mortgage loan."

The upshot is that prepayment fees, long considered acceptable in commercial transactions, do not lose their character as commercial loans if guaranteed by an individual and that guarantee is secured by a mortgage on the guarantor's personal residence.