

§9-405. Effect of violations on rights of parties

1. If a creditor, assignee or servicer has violated the provisions of this article applying to timely payments from escrow, section 9-305-A, timely responses to requests for payoff figures, section 9-305-B, misrepresentation, section 9-401, or illegal, fraudulent or unconscionable conduct in an attempted collection of debts, section 9-403, any aggrieved consumer has a right to recover actual damages from that person, or in lieu thereof any consumer named as a plaintiff in the complaint as originally filed has a right to recover from a person violating this article an amount determined by the court not less than \$250 nor more than \$1,000. No action pursuant to this subsection may be brought more than 2 years after the due date of the last scheduled payment.

[PL 2005, c. 206, §4 (AMD).]

2. A debtor is not obligated to pay a charge in excess of that allowed by this article and if he has paid an excess charge he has a right to a refund. A refund may be made by reducing the debtor's obligation by the amount of the excess charge. If the debtor has paid an amount in excess of the lawful obligation under the agreement, the debtor may recover the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against debtors arising from the debt.

[PL 1987, c. 396, §12 (NEW).]

3. If the creditor has contracted for or received a charge in excess of that allowed by this article, or if a debtor, is entitled to a refund and a person liable to the debtor refuses to make a refund within a reasonable time after demand, the debtor may recover from the creditor or the person liable an amount determined by the court not less than \$250 nor more than \$1,000. No action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made or the date the agreement was paid in full, whichever was earlier.

[PL 1987, c. 396, §12 (NEW).]

4. If a creditor has violated the provisions of this article applying to authority to make supervised loans, section 9-201, the debtor is not obligated to pay any application fee, prepaid finance charge or closing cost, nor the loan finance charge owed for the first 12 months of the loan. If the debtor has paid any part of the application fee, prepaid finance charge, closing cost or loan finance charge owed for the first 12 months of the loan, the debtor has a right to recover the payment from the person violating this article or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. No action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

[PL 1993, c. 496, §4 (AMD).]

5. Except as otherwise provided, no violation of this article impairs rights on a debt.

[PL 1987, c. 396, §12 (NEW).]

6. A creditor has no liability under subsections 1 or 3 if, within 60 days after discovering an error and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and corrects the error. If the violation consists of a prohibited agreement, giving the debtor a corrected copy of the writing containing the error is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund.

[PL 1987, c. 396, §12 (NEW).]

7. If the creditor establishes by a preponderance of evidence that a violation is unintentional and the result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, no liability is imposed under subsections 1 and 2, the validity of the

transaction is not affected, and no liability is imposed under subsection 3, except for refusal to make a refund.

[PL 1993, c. 496, §4 (AMD).]

8. In an action in which it is found that a creditor has violated this article, the court shall award the debtor the costs of the action together with reasonable attorneys fees. Reasonable attorneys fees shall be determined by the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the debtor.

[PL 1987, c. 396, §12 (NEW).]

9. A creditor has no liability under subsection 1 or 3, or under section 6-113, subsection 2, for any act done or omitted in good faith in conformity with any rule or interpretation thereof by the administrator, notwithstanding that after such act or omission has occurred, the rule or interpretation is amended, rescinded or determined by judicial or other authority to be invalid for any reason.

[RR 2021, c. 2, Pt. A, §13 (COR).]

SECTION HISTORY

PL 1987, c. 396, §12 (NEW). PL 1993, c. 496, §4 (AMD). PL 2005, c. 206, §4 (AMD). RR 2021, c. 2, Pt. A, §13 (COR).

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