

§ 53-244.050. License and registration application; claim of exemption.

(a) Applicants for a license or registration shall apply through the Nationwide Mortgage Licensing System and Registry on a form acceptable to the Commissioner, including the following information:

- (1) The applicant's name and address, including street address, mailing address, e-mail, telephone contact information, and social security number or taxpayer identification number.
- (2) The applicant's form and place of organization, if applicable.
- (3) The applicant's proposed method of and locations for doing business, if applicable.
- (4) The qualifications and business history of the applicant and, if applicable, the business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, including:
 - a. A description of any injunction or administrative order by any state or federal authority to which the person is or has been subject;
 - b. Any conviction, within the past 10 years, of a misdemeanor involving moral turpitude or any fraud, false statement or omission, any theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or conspiracy to commit any of these offenses, or involving any financial service or financial service-related business; and
 - c. Any felony convictions.
- (5) With respect to an application for licensing as a mortgage lender, mortgage broker, or mortgage servicer, the applicant's financial condition, credit history, and business history, and, with respect to an application for licensing as a mortgage loan originator, the applicant's credit history and business history.
- (6) The applicant's consent to a federal and State criminal history record check and a set of the applicant's fingerprints in a form acceptable to the Commissioner. In the case of an applicant that is a person other than a natural person, each individual who has control of the applicant or who is the qualifying individual or a branch manager shall consent to a federal and State criminal history record check and submit a set of that individual's fingerprints pursuant to this subdivision.

(b) The eligibility requirements for an application for licensure or registration under this Article are as follows:

- (1) Each individual applicant for licensure as a mortgage loan originator or qualifying individual shall:
 - a. Be at least 18 years of age;
 - b. Have satisfactorily completed, within the three years immediately preceding the date of application, the mortgage lending prelicensing education as required under G.S. 53-244.070; and
 - c. Have passed, within the five years immediately preceding the date of application, the test required under G.S. 53-244.080.
- (1a) Each individual applicant for licensure as a transitional mortgage loan originator shall:
 - a. Be at least 18 years of age;

- b. Have an active license to originate mortgage loans pursuant to the laws of any state or territory of the United States other than North Carolina or be a registered loan originator;
 - c. Have a valid unique identifier, registration, and fingerprints on file with the Nationwide Mortgage Licensing System and Registry;
 - d. Have been employed for a period of no less than two years as a mortgage loan originator; and
 - e. Have provided certification of employment with a mortgage lender or mortgage broker licensed under this Article, including an attestation by the employer that the applicant is in his or her employ.
- (2) Each applicant for licensure as a mortgage broker, mortgage lender, or mortgage servicer, or registration as a registrant, at the time of application shall comply with the following requirements:
- a. If the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other experience or meet competency requirements as the Commissioner may impose.
 - b. If the applicant is a corporation, limited liability company, general or limited partnership, association, or other group engaged in a joint enterprise, however organized, at least one of its principal officers, managers, or general partners shall have three years of experience in residential mortgage lending or other experience or meet competency requirements as the Commissioner may impose.
 - c. If the applicant will be a qualifying individual or branch manager, the applicant shall have at least three years of experience in residential mortgage lending or other experience or meet competency requirements as the Commissioner may impose.
- (3) If an individual applicant to be licensed as a mortgage broker is a licensed mortgage loan originator and meets the requirements for licensure as a mortgage broker, but is not an employee as defined in G.S. 53-244.030(10) and does not meet the experience requirements of G.S. 53-244.050(b)(2)a., the individual may be licensed as an exclusive mortgage broker upon compliance with all of the following:
- a. Successfully completes the prelicensing education required under G.S. 53-244.070.
 - b. Acts exclusively as a mortgage broker and shall be an agent for a single mortgage lender or mortgage broker licensee or a single exempt mortgage lender, who:
 - 1. Shall be responsible for supervising the broker as required by this Article and in accordance with a plan of supervision approved by the Commissioner in the Commissioner's discretion;
 - 2. Shall sign the license application of the applicant; and
 - 3. Shall be jointly and severally liable with the broker for any claims arising from the broker's mortgage brokering activities.
 - c. Shall be compensated on a basis that is not dependent upon the interest rate, fees, or other terms of the loan brokered, provided that this sub-subdivision shall not prohibit compensation based on the principal balance of the loan.

- d. Shall offer only fixed-term, fixed-rate, fully amortizing mortgage loans originated by a single mortgage lender with substantially equal monthly mortgage payments and without a prepayment penalty, unless the Commissioner shall approve, in the Commissioner's discretion, the sale of other mortgage loan products for that lender.
- e. Shall not handle borrower or other third-party funds in connection with the brokering or closing of mortgage loans.
- f. Shall meet the surety bond requirement of a mortgage broker or otherwise be covered by a surety bond provided by the mortgage lender or broker licensee or exempt mortgage lender of the lesser of five million dollars (\$5,000,000) or an amount equal to or greater than the sum of the surety bond requirements for each exclusive mortgage broker supervised by the broker or lender.

(c) In connection with an application for licensing as a mortgage loan originator, transitional mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer, or registration as a registrant, the applicant and its owners, qualifying individual, and controlling persons shall furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

- (1) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check.
- (2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain:
 - a. Independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and
 - b. Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.
- (3) The personal history may be obtained by the Commissioner at any time and the fingerprint information shall be furnished upon the Commissioner's request.
- (4) An authorization for the Commissioner to obtain personal history or fingerprint information at any time.

(d) For the purposes of this section and in order to reduce the points of contact that the Federal Bureau of Investigation may have to maintain for purposes of the criminal information required by this section, the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Public Safety or any governmental agency.

(e) For the purposes of this section and in order to reduce the points of contact that the Commissioner may have to maintain for purposes of the noncriminal information required by this section, the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the Commissioner.

(f) For purposes of this section, the Commissioner may request and the North Carolina Department of Public Safety may provide a criminal record check to the Commissioner for any person who (i) has applied for or holds a mortgage lender, mortgage broker, mortgage servicer, mortgage loan originator, or transitional mortgage loan originator license as provided by this section or (ii) has applied for or holds a registration as a registrant under this section. The Commissioner shall provide the Department of Public Safety, along with the request, the fingerprints of the person, any additional information required by the Department of Public

Safety, and a form signed by the person consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The person's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Department of Public Safety may charge a fee for each person for conducting the checks of criminal history records authorized by this section.

(g) Except as provided by subsection (h) of this section, persons engaged in the mortgage business and exempt from licensure pursuant to G.S. 53-244.040(d)(5) shall notify the Commissioner in order to claim and confirm the exemption and to facilitate the referral of consumers that contact the Commissioner. The Commissioner shall prescribe a form for such a claim of exemption that shall contain:

- (1) The name of the exempt person;
- (2) The basis of the exempt status of the exempt person;
- (3) The principal business address and contact information for the exempt person; and
- (4) The State or federal regulatory authority responsible for the exempt person's supervision, examination, or regulation.

(h) A State or federally chartered credit union may claim and confirm an exemption from this Article by notifying the Administrator of the Credit Union Division of the Department of Commerce and providing substantially the same information required by subsection (g) of this section.

(i) The Commissioner shall keep all information pursuant to this section privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes. (2009-374, s. 2; 2013-327, s. 3; 2013-412, s. 1; 2014-100, s. 17.1(o); 2014-115, s. 39; 2015-293, s. 1.)