

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE BILL 2043

Short Title: Increase Mortgage Lending Fees.

(Public)

Sponsors: Senator Rand.

Referred to: Finance.

May 26, 2006

A BILL TO BE ENTITLED
AN ACT TO UPDATE THE MORTGAGE LENDING ACT BY RAISING THE
REGISTRATION FEES FOR MORTGAGE LICENSING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-243.05 reads as rewritten:

"§ 53-243.05. Qualifications for licensure; issuance.

(a) Any person, other than an exempt person, desiring to obtain a license pursuant to this Article shall make written application for licensure to the Commissioner on forms prescribed by the Commissioner. In accordance with rules adopted by the Commission, the application shall contain any information the Commissioner deems necessary regarding the following:

- (1) The applicant's name and address and social security 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:
 - (i) a description of any injunction or administrative order by any state or federal authority to which the person is or has been subject;
 - (ii) a conviction of a misdemeanor involving fraudulent dealings or moral turpitude or relating to any aspect of the residential mortgage lending business;
 - (iii) any felony convictions.
- (5) With respect to an application for licensing as a mortgage banker or broker, the applicant's financial condition, credit history, and business history; and with respect to the application for licensing as a loan officer, the applicant's credit history and business history.

1 (6) The applicant's consent to a federal and State criminal history record
2 check and a set of the applicant's fingerprints in a form acceptable to
3 the Commissioner. In the case of an applicant that is a corporation,
4 partnership, limited liability company, association, or trust, each
5 individual who has control of the applicant or who is the managing
6 principal or a branch manager shall consent to a federal and State
7 criminal history record check and submit a set of that individual's
8 fingerprints pursuant to this subdivision. Refusal to consent to a
9 criminal history record check constitutes grounds for the
10 Commissioner to deny licensure to the applicant as well as to any
11 entity (i) by whom or by which the applicant is employed, (ii) over
12 which the applicant has control, or (iii) as to which the applicant is the
13 current or proposed managing principal or a current or proposed
14 branch manager.

15 (b) In addition to the requirements imposed by the Commissioner under
16 subsection (a) of this section, each individual applicant for licensure as a loan officer
17 shall:

- 18 (1) Be at least 18 years of age.
19 (2) Have satisfactorily completed, within the three years immediately
20 preceding the date application is made, a mortgage lending
21 fundamentals course approved by the Commissioner. The course shall
22 consist of at least eight hours of classroom instruction in subjects
23 related to mortgage lending approved by the Commissioner. In
24 addition, the applicant shall have satisfactorily completed a written
25 examination approved by the Commissioner or possess residential
26 mortgage lending education or experience in residential mortgage
27 lending transactions that the Commissioner deems equivalent to the
28 course.

29 (c) In addition to the requirements under subsection (a) of this section, each
30 applicant for licensure as a mortgage broker or mortgage banker at the time of
31 application and at all times thereafter shall comply with the following requirements:

- 32 (1) Except as provided for in subdivision (1a) of this subsection, if the
33 applicant is a sole proprietor, the applicant shall have at least three
34 years of experience in residential mortgage lending or other experience
35 or competency requirements as the Commissioner may impose.
36 Experience as an exclusive mortgage broker or as a limited loan officer
37 shall not constitute mortgage-lending experience under this
38 subdivision.

- 39 (1a) If an individual applicant to be licensed as a mortgage broker meets all
40 other requirements for licensure under this section but does not meet
41 the requirements of subdivision (1) of this subsection, the individual
42 applicant may be licensed as an exclusive mortgage broker upon
43 compliance with all of the following:

- 1 a. Successfully complete both a residential mortgage-lending
2 course approved by the Commissioner of not less than 40 hours
3 of classroom instruction, and a written examination approved
4 by the Commissioner.
- 5 b. Act exclusively as a mortgage broker for a single mortgage
6 banker licensee or single exempt mortgage banker for whom the
7 broker shall be deemed an agent, who shall be responsible for
8 supervising the broker as required by this Article, who shall
9 sign the license application of the applicant, and who shall be
10 jointly and severally liable with the broker for any claims
11 arising out of the broker's mortgage lending activities.
- 12 c. Shall be compensated for the broker's mortgage brokering
13 activities on a basis that is not dependent upon the loan amount,
14 interest rate, fees, or other terms of the loans brokered.
- 15 d. Shall not handle borrower or other third-party funds in
16 connection with the brokering or closing of mortgage loans.
- 17 (2) If the applicant is a general or limited partnership, at least one of its
18 general partners shall have the experience as described under
19 subdivision (1) of this subsection.
- 20 (3) If the applicant is a corporation, at least one of its principal officers
21 shall have the experience as described under subdivision (1) of this
22 subsection.
- 23 (4) If the applicant is a limited liability company, at least one of its
24 managers shall have the experience as described under subdivision (1)
25 of this subsection.
- 26 (d) Each applicant shall identify one person meeting the requirements of
27 subsection (c) of this section to serve as the applicant's managing principal.
- 28 (e) Every applicant for initial licensure shall pay a filing fee of ~~one thousand~~
29 ~~dollars (\$1,000)~~ one thousand five hundred dollars (\$1,500) for licensure as a mortgage
30 broker or mortgage banker or ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100.00) for
31 licensure as a loan officer or limited loan officer, in addition to the actual cost of
32 obtaining credit reports and State and national criminal history record checks.
- 33 (f) A mortgage banker shall post a surety bond in the amount of ~~one hundred~~
34 ~~fifty thousand dollars (\$150,000)~~, two hundred fifty thousand dollars (\$250,000), and a
35 mortgage broker shall post a surety bond in the amount of ~~fifty thousand dollars~~
36 ~~(\$50,000)~~, one hundred fifty thousand dollars (\$150,000). The surety bond shall be in a
37 form satisfactory to the Commissioner and shall run to the State for the benefit of any
38 claimants against the licensee to secure the faithful performance of the obligations of
39 the licensee under this Article. The aggregate liability of the surety shall not exceed the
40 principal sum of the bond. A party having a claim against the licensee may bring suit
41 directly on the surety bond, or the Commissioner may bring suit on behalf of any
42 claimants, either in one action or in successive actions. Consumer claims shall be given
43 priority in recovering from the bond. ~~Any appropriate deposit of cash or securities shall~~
44 ~~be accepted in lieu of any bond that is required.~~ Failure to maintain an active surety

1 bond will result in the automatic administrative suspension of the licensee's license to
2 conduct business, upon the mailing of a notice sent certified mail to the last known
3 address of the licensee. An audited financial statement from a qualified lender showing
4 a net worth of ~~two hundred fifty thousand dollars (\$250,000)~~ five hundred thousand
5 dollars (\$500,000) or more shall be accepted in lieu of any bond required.

6 (g) Any general partner, manager of a limited liability company, or officer of a
7 corporation who individually meets the requirements under subsection (b) of this
8 section shall, upon payment of the applicable fee, meet the qualifications for licensure
9 as a loan officer subject to the provisions of subsection (i) of this section.

10 (h) Each principal office and each branch office of a mortgage broker or
11 mortgage banker licensed under the provisions of this Article shall be issued a separate
12 license. A licensed mortgage broker or mortgage banker shall file with the
13 Commissioner an application on a form prescribed by the Commissioner that identifies
14 the address of the principal office and each branch office and branch manager. A filing
15 fee of ~~one hundred dollars (\$100.00)~~ one hundred fifty dollars (\$150.00) shall be
16 assessed by the Commissioner for each office issued a license.

17 (i) If the Commissioner determines that an applicant meets the qualifications for
18 licensure and finds that the financial responsibility, character, and general fitness of the
19 applicant are such as to command the confidence of the community and to warrant
20 belief that the business will be operated honestly and fairly, the Commissioner shall
21 issue a license to the applicant. In addition, for an applicant qualifying as an exclusive
22 mortgage broker, the Commissioner shall determine if the mortgage broker/mortgage
23 banker relationship is in the public interest."

24 **SECTION 2.** G.S. 53-243.06 reads as rewritten:

25 **"§ 53-243.06. License renewal; termination.**

26 (a) All licenses issued by the Commissioner under the provisions of this Article
27 shall expire annually on the 30th day of June following issuance or on any other date
28 that the Commissioner may determine. The license shall become invalid after that date
29 unless renewed. A license may be renewed 45 days prior to the expiration date by
30 compliance with subsection (b1) of this section and by paying to the Commissioner, in
31 addition to the actual cost of obtaining credit reports and State and national criminal
32 history record checks as the Commissioner may require, a renewal fee as follows:

33 (1) Licensed mortgage bankers shall pay an annual fee of ~~five hundred~~
34 ~~dollars (\$500.00)~~ seven hundred fifty dollars (\$750.00) and ~~one~~
35 ~~hundred dollars (\$100.00)~~ one hundred fifty dollars (\$150.00) for each
36 branch office.

37 (2) Licensed mortgage brokers shall pay an annual fee of ~~five hundred~~
38 ~~dollars (\$500.00)~~ seven hundred fifty dollars (\$750.00) and ~~one~~
39 ~~hundred dollars (\$100.00)~~ one hundred fifty dollars (\$150.00) for each
40 branch office. Licensed exclusive mortgage brokers shall pay an
41 annual fee of ~~five hundred dollars (\$500.00).~~ seven hundred fifty
42 dollars (\$750.00).

43 (3) Licensed loan officers shall pay an annual fee of ~~fifty dollars (\$50.00).~~
44 one hundred dollars (\$100.00).

1 (b) If a license is not renewed prior to the applicable expiration date, then an
2 additional two hundred fifty dollars (\$250.00) in addition to the renewal fee under
3 subsection (a) of this section shall be assessed as a late fee to any renewal. If a loan
4 officer or limited loan officer license is not renewed prior to the applicable expiration
5 date, then an additional one hundred dollars (\$100.00) in addition to the renewal fee
6 under subsection (a) of this section shall be assessed as a late fee to any renewal. In the
7 event a licensee fails to obtain a reinstatement of the license within 90 days after the
8 date the license expires, the Commissioner may require the licensee to comply with the
9 requirements for the initial issuance of a license under the provisions of this Article.

10 (b1) When required by the Commissioner, each individual described in
11 G.S. 53-245.05(a)(6) shall furnish to the Commissioner his or her consent to a criminal
12 history record check and a set of his or her fingerprints in a form acceptable to the
13 Commissioner. Refusal to consent to a criminal history record check may constitute
14 grounds for the Commissioner to deny renewal of the license of the person as well as
15 the license of any other person by which he or she is employed, over which he or she
16 has control, or as to which he or she is the current or proposed managing principal or a
17 current or proposed branch manager.

18 (c) Licenses issued under this Article are not assignable. Control of a licensee
19 shall not be acquired through a stock purchase or other device without the prior written
20 consent of the Commissioner. The Commissioner shall not give written consent if the
21 Commissioner finds that any of the grounds for denial, revocation, or suspension of a
22 license pursuant to G.S. 53-243.12 are applicable to the acquiring person.

23 (d) Payments of any or all fees specified in this section shall be made to the
24 Office of the Commissioner of Banks or, at the election of the Commissioner, to a
25 national licensing agency or enterprise designated by the Commissioner."

26 **SECTION 3.** This act becomes effective October 1, 2006.