

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 2463
Committee Substitute Favorable 6/11/08
Committee Substitute #2 Favorable 6/18/08

Short Title: Regulate Mortgage Servicers.

(Public)

Sponsors:

Referred to:

May 26, 2008

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE MORTGAGE SERVICING; TO REQUIRE MORTGAGE
3 SERVICER LICENSURE UNDER THE MORTGAGE LENDING ACT; AND TO
4 MAKE TECHNICAL AND CLARIFYING CHANGES TO THE MORTGAGE
5 LENDING ACT.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 53-243.01 reads as rewritten:

8 "§ 53-243.01. Definitions.

9 The following definitions apply in this Article:

- 10 (1) Act as a mortgage broker. – To act, for compensation or gain, or in the
11 expectation of compensation or gain, either directly or indirectly, by
12 accepting or offering to accept an application for a mortgage loan,
13 soliciting or offering to solicit a mortgage loan, negotiating the terms
14 or conditions of a mortgage loan, issuing mortgage loan commitments
15 or interest rate guarantee agreements to borrowers, or engaging in
16 tablefunding of mortgage loans, whether such acts are done through
17 contact by telephone, by electronic means, by mail, or in person with
18 the borrowers or potential borrowers.
- 19 (2) Act as a mortgage lender. – To engage in the business of making
20 mortgage loans for compensation or gain.
- 21 (3) Act as a mortgage servicer. – To engage, whether for compensation or
22 gain from another or on its own behalf, in the business of receiving
23 any scheduled periodic payments from a borrower pursuant to the
24 terms of any mortgage loan, including amounts for escrow accounts,
25 and making the payments of principal and interest and such other
26 payments with respect to the amounts received from the borrower as
27 may be required pursuant to the terms of the mortgage loan, the
28 mortgage servicing loan documents, or servicing contract.

1 ~~(2a)~~(4) Affiliate. – Any company that controls, is controlled by, or is under
2 common control with another company, as set forth in the Bank
3 Holding Company Act of 1956 (12 U.S.C. § 1841), et seq., as
4 amended from time to time. For purposes of this subdivision, the term
5 control means ownership of all of the voting stock or comparable
6 voting interest of the controlled person.

7 ~~(2b)~~(5) Affiliated mortgage banker. – A licensed mortgage banker that meets
8 the criteria of either sub-subdivisions a., b., and c. of this subdivision
9 or sub-subdivisions d. and e. of this subdivision:

10 a. The licensee, by itself or with its affiliates, is licensed in five or
11 more states to engage in the mortgage lending business and (i)
12 is supervised by a state or federal regulatory agency whose
13 regulatory scheme has been determined by the Commissioner to
14 be substantially similar to that of North Carolina, (ii) is
15 organized and supervised under the laws of a state that has
16 adopted a model licensing law endorsed by the Commissioner;
17 or (iii) is supervised by a state or federal agency that is a party
18 to an interstate compact, or has otherwise entered into a
19 cooperative reciprocal agreement by which the state or federal
20 regulatory agency and the State of North Carolina, directly or
21 by duly authorized act of the Commissioner, have mutually
22 agreed to recognize state licensing laws which have specific
23 enumerated criteria.

24 b. The licensee, including its affiliates and wholly owned
25 subsidiaries, has more than 100 employees that are licensed
26 pursuant to this Article.

27 c. The licensee has a consolidated net worth of one hundred
28 million dollars (\$100,000,000) or more, or if the licensee does
29 not have the required net worth, its parent shall provide to the
30 Commissioner (i) evidence satisfactory to the Commissioner
31 that the parent has a net worth of one hundred million dollars
32 (\$100,000,000) or more, and (ii) an unconditional guarantee or
33 comparable instrument of surety satisfactory to the
34 Commissioner of the performance of the licensee of its
35 obligations under this Article.

36 d. The licensee is a direct or indirect wholly owned subsidiary of a
37 bank holding company or financial services holding company
38 subject to regulation by the Federal Reserve Board or the Office
39 of Thrift Supervision.

40 e. The licensee has a net worth of one hundred million dollars
41 (\$100,000,000) or, if the licensee does not have the required net
42 worth, (i) its parent, if it is not a bank holding company or
43 financial holding company, meets the requirements of
44 sub-subdivision c. of this subdivision or (ii) its parent, if such

1 parent is a bank holding company or financial holding
2 company, has total assets in excess of ten billion dollars
3 (\$10,000,000,000) and provides the Commissioner with the
4 unconditional guarantee or comparable instrument of surety
5 required by sub-subdivision c. of this subdivision.

6 ~~(3)~~(6) Branch manager. – The individual whose principal office is physically
7 located in, who is in charge of, and who is responsible for the business
8 operations of a branch office of a mortgage broker or mortgage banker.

9 ~~(4)~~(7) Branch office. – An office of the licensee acting as a mortgage broker
10 or mortgage banker that is separate and distinct from the licensee's
11 principal office. A branch office shall not be located at an individual's
12 home or residence.

13 ~~(5)~~(8) Commissioner. – The North Carolina Commissioner of Banks and the
14 Commissioner's designees. For purposes of compliance with this
15 Article by credit unions, Commissioner means the Administrator of the
16 Credit Union Division of the Department of Commerce.

17 ~~(6)~~(9) Control. – ~~Except as provided in subdivision (2a) of this section,~~
18 ~~"control" means the power to vote more than twenty percent (20%) of~~
19 ~~outstanding voting shares or other interests of a corporation,~~
20 ~~partnership, limited liability company, association, or trust. The power,~~
21 ~~directly or indirectly, to direct the management or policies of a~~
22 ~~company, whether through ownership of securities, by contract, or~~
23 ~~otherwise. Any person that (i) is a director, general partner, or~~
24 ~~executive officer; (ii) directly or indirectly has the right to vote ten~~
25 ~~percent (10%) or more of a class of a voting security or has the power~~
26 ~~to sell or direct the sale of ten percent (10%) or more of a class of~~
27 ~~voting securities; (iii) in the case of a Limited Liability Company, is a~~
28 ~~managing member; or (iv) in the case of a partnership, has the right to~~
29 ~~receive upon dissolution, or has contributed, ten percent (10%) or~~
30 ~~more of the capital, is presumed to control the company.~~

31 ~~(7)~~(10) Employee. – An individual, who has an employment relationship,
32 acknowledged by both the individual and the mortgage broker or
33 mortgage banker or mortgage servicer and is treated as ~~an~~ a common
34 law employee for purposes of compliance with the federal income tax
35 ~~laws.~~ laws and whose income is reported on IRS Form W-2.

36 ~~(7a)~~(11) Exclusive mortgage broker. – An individual who acts as a mortgage
37 broker exclusively for a single mortgage banker or single exempt
38 person and who is licensed under the provisions of
39 G.S. 53-243.05(c)(1a).

40 ~~(8)~~(12) Exempt person. – The term includes any of the following:

- 41 a. Any agency of the federal government or any state or municipal
42 government granting or servicing mortgage loans under specific
43 authority of the laws of any state or the United States.

- 1 b. Any employee of a licensee whose responsibilities are limited
2 to clerical and administrative tasks for his or her employer and
3 who does not solicit borrowers, accept applications, or negotiate
4 the terms of loans on behalf of the employer.
- 5 c. Any person authorized to engage in business as a bank or a
6 wholly owned subsidiary of a bank, a farm credit system,
7 savings institution, or a wholly owned subsidiary of a savings
8 institution, or credit union or a wholly owned subsidiary of a
9 credit union, under the laws of the United States, this State, or
10 any other state. Except for G.S. 53-243.11 and G.S. 53-243.15,
11 this Article does not apply to the exempt persons set forth in
12 this ~~sub-subdivision (8)~~ sub-subdivision.
- 13 d. Any licensed real estate agent or broker who is performing
14 those activities subject to the regulation of the North Carolina
15 Real Estate Commission. Notwithstanding the above, an exempt
16 person does not include a real estate agent or broker who
17 receives compensation of any kind in connection with the
18 referral, placement, or origination of a mortgage loan.
- 19 e. Any officer or employee of an exempt person described in
20 sub-subdivision c. of this subdivision when acting in the scope
21 of employment for the exempt person.
- 22 f. Any person who, acting as seller, seller and lender and servicer
23 in a residential real estate transaction, receives and services in
24 one calendar year no more than five purchase money notes
25 secured by mortgages, deeds of trust, or other security
26 instruments on the real estate sold as security for a the purchase
27 money obligation.
- 28 g. The North Carolina Housing Finance Agency as established by
29 Article 122A of the General Statutes and the North Carolina
30 Agricultural Finance Authority as established by Article 122D
31 of the General Statutes.
- 32 h. Any nonprofit corporation qualifying under section 501(c)(3) of
33 the Internal Revenue Code which makes or services mortgage
34 loans to promote home ownership or home improvements for
35 the disadvantaged, provided that such corporation is not
36 primarily in the business of soliciting or brokering or servicing
37 mortgage loans.
- 38 i. Any life insurance companies licensed to do business in North
39 Carolina with regard to provisions concerning mortgage
40 lenders.
- 41 j. A North Carolina licensed attorney who, in the practice of law
42 or in performing as a trustee, accepts payments related to a loan
43 closing, default, foreclosure, loss mitigation, or litigation or
44 settlement of a dispute or legal claim related to a loan.

- 1 k. A mortgage banker licensed under this Article and any
2 employee of a mortgage banker licensed under this Article are
3 exempt from the requirement to obtain a separate license as a
4 mortgage servicer, provided, however, that all provisions of this
5 Article applicable to mortgage servicers are applicable to any
6 mortgage banker or any employee of a mortgage banker acting
7 as a mortgage servicer, including filing a claim of exemption
8 under G.S. 53-243.15.
- 9 ~~(9)~~(13) Licensee. – A loan officer, limited loan officer, mortgage broker, ~~or~~
10 ~~mortgage banker~~ mortgage banker, or mortgage servicer who is
11 licensed pursuant to this Article.
- 12 ~~(10)~~(14) Loan officer. – An individual who, in exchange for compensation as an
13 employee of another person, accepts or offers to accept applications
14 for mortgage ~~loans~~ loans, or who solicits or offers to solicit a mortgage
15 loan, negotiates the terms or conditions of a mortgage loan, issues
16 mortgage loan commitments or interest rate guarantee agreements to
17 borrowers, whether such acts are done through contact by telephone,
18 by electronic means, by mail, or in person with the borrowers or
19 potential borrowers. The definition of loan officer shall not include any
20 exempt person described in sub-subdivision ~~(8)b.~~(12)b. of this section.
- 21 ~~(10a)~~(15) Limited loan officer. – An individual who, in exchange for
22 compensation as an employee of an affiliated mortgage banker,
23 directly solicits, negotiates, offers, or makes commitments for
24 mortgage loans. The definition of limited loan officer shall not include
25 any exempt person described in sub-subdivision ~~(8)b.~~(12)b. of this
26 section.
- 27 ~~(11)~~(16) Make a mortgage loan. – To close a mortgage loan, to advance funds,
28 to offer to advance funds, or to make a commitment to advance funds
29 to a borrower under a mortgage loan.
- 30 (12) ~~Managing principal.~~ A person who meets the requirements of
31 ~~G.S. 53-243.05(c) and who agrees to be primarily responsible for the~~
32 ~~operations of a licensed mortgage broker or mortgage banker.~~
- 33 ~~(13)~~(17) Mortgage banker. – A person who acts as a mortgage lender as that
34 term is defined in subdivision (2) of this section. However, the
35 definition does not include a person who acts as a mortgage lender
36 only in tablefunding transactions.
- 37 ~~(14)~~(18) Mortgage broker. – A person who acts as a mortgage broker as that
38 term is defined in subdivision (1) of this section. The term "mortgage
39 broker" includes an exclusive mortgage broker, except when expressly
40 provided otherwise.
- 41 ~~(15)~~(19) Mortgage loan. – A loan made to a natural person or persons primarily
42 for personal, family, or household use, primarily secured by either a
43 mortgage or a deed of trust on residential real property located in
44 North Carolina.

- 1 (20) Mortgage servicer. – A person who directly or indirectly acts as a
2 mortgage servicer as that term is defined in subdivision (3) of this
3 section or who otherwise meets the definition of 'servicer' in RESPA,
4 12 U.S.C. § 2605(i), with respect to mortgage loans.
- 5 ~~(15a)~~(21) Parent. – The person that controls an affiliated mortgage
6 ~~banker,~~ banker, mortgage broker, or mortgage servicer, as control is
7 defined in subdivision ~~(2a)~~(4) of this section.
- 8 ~~(16)~~(22) Person. – An individual, partnership, limited liability company, limited
9 partnership, corporation, association, or other group engaged in joint
10 business activities, however organized.
- 11 ~~(17)~~(23) Qualified lender. – A person who is engaged as a mortgage lender in
12 North Carolina and is either a supervised or a nonsupervised
13 institution, as these terms are defined in 24 C.F.R. § 202.2, approved
14 by the United States Department of Housing and Urban Development.
- 15 ~~(18)~~(24) Qualified person. – A person who is employed as a loan officer by a
16 qualified lender, or by a mortgage banker or broker registered with the
17 Commissioner under former Article 19 of this Chapter, or who is a
18 general partner, manager, or officer of a qualified lender, registered
19 mortgage banker, or registered mortgage broker.
- 20 (25) Qualified servicer. – A person who is engaged in the business of acting
21 as a mortgage servicer in North Carolina and who has been approved
22 by the United States Department of Housing and Urban Development
23 to service FHA loans or has been approved as a servicer by either the
24 Federal National Mortgage Association or by the Federal Home Loan
25 Mortgage Corporation.
- 26 (26) Qualifying individual. – A person who meets the requirements of
27 G.S. 53-243.05(c) and who agrees to be primarily responsible for the
28 operations of a licensed mortgage broker or mortgage banker or
29 mortgage servicer.
- 30 ~~(19)~~(27) Residential real property. – Real property located in the State of North
31 Carolina upon which there is located or is to be located one or more
32 single-family dwellings or dwelling units.
- 33 (28) RESPA. – The Real Estate Settlement Procedures Act, 12 U.S.C. §
34 2601, et seq., as it may be hereafter amended.
- 35 ~~(20)~~(29) Tablefunding. – A transaction where a licensee closes a loan in its own
36 name with funds provided by others, and the loan is assigned
37 simultaneously to the mortgage lender providing the funding within
38 one business day of the funding of the loan."

39 **SECTION 2.** G.S. 53-243.02 reads as rewritten:

40 "**§ 53-243.02. License required; licensee records.**

41 (a) Other than an exempt person, it is unlawful for any person in this State to act
42 as a mortgage ~~broker or~~ broker, mortgage banker, or mortgage servicer, or directly or
43 indirectly to engage in the business of a mortgage ~~broker or a~~ broker, mortgage
44 ~~banker,~~ banker, or mortgage servicer, without first obtaining a license from the

1 Commissioner under the provisions of this Article. This Article shall apply to any
2 person who seeks to avoid its application by any direct or indirect device, subterfuge,
3 artifice, or pretense whatsoever.

4 ...

5 (e) No person, other than an exempt person, shall hold himself or herself out as a
6 mortgage banker, an affiliated mortgage banker, a mortgage broker, a mortgage
7 servicer, a limited loan officer, or a loan officer unless such person is licensed in
8 accordance with this Article.

9 (f) Any person who has completed and filed with the Commissioner the
10 application and all documents required for licensure as a loan officer other than
11 documents relating to the required examination and the mortgage lending fundamentals
12 course may act as a loan officer during the period before action is taken on the
13 application by the Commissioner, if:

- 14 (1) The Commissioner has not denied, revoked, or taken any adverse
15 action with respect to an application filed by or license held by such
16 person during the five-year period ending on the date of filing of the
17 application;
- 18 (2) The loan officer is employed by a licensed mortgage broker or
19 mortgage banker, and the ~~managing principal~~qualifying individual of
20 such mortgage broker or mortgage banker (i) certifies to the
21 Commissioner in writing that the ~~managing principal~~qualifying
22 individual reasonably believes that the application of the person for
23 licensure as a loan officer meets or exceeds all of the relevant
24 requirements of this Article for licensure and (ii) undertakes in writing
25 that the ~~managing principal~~qualifying individual and the employer will
26 be responsible for the acts of the applicant during the period that such
27 application is pending; and
- 28 (3) The person is currently or has within the six-month period prior to the
29 date of the application been employed as and acting as a loan officer
30 for an exempt entity which entity is exempt by virtue of an exemption
31 claimed under G.S. ~~53-243.01(8)~~53-243.01(12)c.

32 (g) The Commissioner may deny or suspend the rights of a mortgage broker or
33 mortgage banker to employ a loan officer acting under subsection (f) of this section if
34 the Commissioner finds that the mortgage broker or mortgage banker, or the ~~managing~~
35 ~~principal~~qualifying individual thereof, makes the certification or undertaking set forth in
36 subdivision (2) of subsection (f) of this section not in good faith."

37 **SECTION 3.** G.S. 53-243.05 reads as rewritten:

38 "**§ 53-243.05. Qualifications for licensure; issuance.**

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

- 1 (1) The applicant's name and address (including street address, mailing
2 address, e-mail, and telephone contact information) and social security
3 number, number or taxpayer identification number.
- 4 (2) The applicant's form and place of organization, if applicable.
- 5 (3) The applicant's proposed method of and locations for doing business,
6 if applicable.
- 7 (4) The qualifications and business history of the applicant and, if
8 applicable, the business history of any partner, officer, or director, any
9 person occupying a similar status or performing similar functions, or
10 any person directly or indirectly controlling the applicant, including:
11 (i) a description of any injunction or administrative order by any state
12 or federal authority to which the person is or has been subject; (ii) a
13 ~~conviction~~ conviction, within the past 10 years, of a misdemeanor
14 involving fraudulent dealings or moral turpitude or relating to any
15 aspect of the residential mortgage lending business any fraud, false
16 statement or omission, any theft or wrongful taking of property,
17 bribery, perjury, forgery, counterfeiting, extortion, or conspiracy to
18 commit any of these offenses; or involving any financial service or
19 financial service-related business; (iii) any felony convictions.
- 20 (5) With respect to an application for licensing as a mortgage ~~banker or~~
21 ~~broker,~~ banker, mortgage broker, or mortgage servicer, the applicant's
22 financial condition, credit history, and business history; and with
23 respect to the application for licensing as a loan officer, the applicant's
24 credit history and business history.
- 25 (6) The applicant's consent to a federal and State criminal history record
26 check and a set of the applicant's fingerprints in a form acceptable to
27 the Commissioner. In the case of an applicant that is a corporation,
28 partnership, limited liability company, association, or trust, each
29 individual who has control of the applicant or who is the ~~managing~~
30 ~~principal~~ qualifying individual or a branch manager shall consent to a
31 federal and State criminal history record check and submit a set of that
32 individual's fingerprints pursuant to this subdivision. Refusal to
33 consent to a criminal history record check constitutes grounds for the
34 Commissioner to deny licensure to the applicant as well as to any
35 entity (i) by whom or by which the applicant is employed, (ii) over
36 which the applicant has control, or (iii) as to which the applicant is the
37 current or proposed ~~managing principal~~ qualifying individual or a
38 current or proposed branch manager.
- 39 (b) In addition to the requirements imposed by the Commissioner under
40 subsection (a) of this section, each individual applicant for licensure as a loan officer
41 shall:
- 42 (1) Be at least 18 years of age.
- 43 (2) Have satisfactorily completed, within the three years immediately
44 preceding the date application is made, a mortgage lending

1 fundamentals course approved by the Commissioner. The course shall
2 consist of at least eight hours of classroom instruction in subjects
3 related to mortgage lending approved by the Commissioner. In
4 addition, the applicant shall have satisfactorily completed a written
5 examination approved by the Commissioner or possess residential
6 mortgage lending education or experience in residential mortgage
7 lending transactions that the Commissioner deems equivalent to the
8 course.

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

13 (1) Except as provided for in subdivision (1a) of this subsection, if the
14 applicant is a sole proprietor, the applicant shall have at least three
15 years of experience in residential mortgage lending or other experience
16 or competency requirements as the Commissioner may impose.
17 Experience as an exclusive mortgage broker or as a limited loan officer
18 shall not constitute mortgage-lending experience under this
19 subdivision.

20 (1a) If an individual applicant to be licensed as a mortgage broker meets all
21 other requirements for licensure under this section but does not meet
22 the requirements of subdivision (1) of this subsection, the individual
23 applicant may be licensed as an exclusive mortgage broker upon
24 compliance with all of the following:

25 a. Successfully complete both a residential mortgage-lending
26 course approved by the Commissioner of not less than 40 hours
27 of classroom instruction, and a written examination approved
28 by the Commissioner.

29 b. Act exclusively as a mortgage broker for a single mortgage
30 banker licensee or single exempt mortgage banker for whom the
31 broker shall be deemed an agent, who shall be responsible for
32 supervising the broker as required by this Article, who shall
33 sign the license application of the applicant, and who shall be
34 jointly and severally liable with the broker for any claims
35 arising out of the broker's mortgage lending activities.

36 c. Shall be compensated for the broker's mortgage brokering
37 activities on a basis that is not dependent upon the loan amount,
38 interest rate, fees, or other terms of the loans brokered.

39 d. Shall not handle borrower or other third-party funds in
40 connection with the brokering or closing of mortgage loans.

41 (2) If the applicant is a general or limited partnership, at least one of its
42 general partners shall have the experience as described under
43 subdivision (1) of this subsection.

1 (3) If the applicant is a corporation, at least one of its principal officers
2 shall have the experience as described under subdivision (1) of this
3 subsection.

4 (4) If the applicant is a limited liability company, at least one of its
5 managers shall have the experience as described under subdivision (1)
6 of this subsection.

7 (d) Each applicant shall identify one person meeting the requirements of
8 subsection (c) of this section to serve as the applicant's ~~managing principal~~qualifying
9 individual.

10 (e) Every applicant for initial licensure shall pay a filing fee not to exceed one
11 thousand two hundred fifty dollars (\$1,250) for licensure as a mortgage ~~broker or~~broker,
12 mortgage ~~banker~~banker, or mortgage servicer or sixty-seven dollars and fifty cents
13 (\$67.50) for licensure as a loan officer or limited loan officer, in addition to the actual
14 cost of obtaining credit reports and State and national criminal history record checks.

15 (f) A mortgage banker or mortgage servicer shall post a surety bond in the
16 amount of one hundred fifty thousand dollars (\$150,000), and a mortgage broker shall
17 post a surety bond in the amount of fifty thousand dollars (\$50,000). The surety bond
18 shall be in a form satisfactory to the Commissioner and shall run to the State for the
19 benefit of any claimants against the licensee to secure the faithful performance of the
20 obligations of the licensee under this Article. The aggregate liability of the surety shall
21 not exceed the principal sum of the bond. A party having a claim against the licensee
22 may bring suit directly on the surety bond, or the Commissioner may bring suit on
23 behalf of any claimants, either in one action or in successive actions. Consumer claims
24 shall be given priority in recovering from the bond. Any appropriate deposit of cash or
25 securities shall be accepted in lieu of any bond that is required. An audited financial
26 statement from a qualified lender or qualified servicer showing a net worth of two
27 hundred fifty thousand dollars (\$250,000) or more shall be accepted in lieu of any bond
28 required.

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

33 (h) Each principal office and each branch office of a mortgage broker or
34 mortgage banker licensed under the provisions of this Article shall be issued a separate
35 license. A licensed mortgage broker or mortgage banker shall file with the
36 Commissioner an application on a form prescribed by the Commissioner that identifies
37 the address of the principal office and each branch office and branch manager. A filing
38 fee not to exceed one hundred twenty-five dollars (\$125.00) shall be assessed by the
39 Commissioner for each branch office issued a license.

40 (i) If the Commissioner determines that an applicant meets the qualifications for
41 licensure and finds that the financial responsibility, character, and general fitness of the
42 applicant are such as to command the confidence of the community and to warrant
43 belief that the business will be operated honestly and fairly, the Commissioner shall
44 issue a license to the applicant. In addition, for an applicant qualifying as an exclusive

1 mortgage broker, the Commissioner shall determine if the mortgage broker/mortgage
2 banker relationship is in the public interest."

3 **SECTION 4.** G.S. 53-243.06 reads as rewritten:

4 "**§ 53-243.06. License renewal; termination.**

5 (a) All licenses issued by the Commissioner under the provisions of this Article
6 shall expire annually on the ~~30th day of June~~ 31st day of December following issuance
7 or on any other date that the Commissioner may determine. The license shall become
8 invalid after that date unless renewed. A license may be renewed ~~45 days prior to the~~
9 ~~expiration date~~ on or after November 1 by compliance with subsection (b1) of this
10 section and by paying to the Commissioner, in addition to the actual cost of obtaining
11 credit reports and State and national criminal history record checks and of processing
12 fees of the nationwide system as the Commissioner may require, a renewal fee as
13 follows:

- 14 (1) Licensed mortgage bankers and licensed mortgage servicers shall pay
15 an annual fee not to exceed six hundred twenty-five dollars (\$625.00)
16 and one hundred twenty-five dollars (\$125.00) for each branch office.
- 17 (2) Licensed mortgage brokers shall pay an annual fee not to exceed six
18 hundred twenty-five dollars (\$625.00) and one hundred twenty-five
19 dollars (\$125.00) for each branch office. Licensed exclusive mortgage
20 brokers shall pay an annual fee not to exceed six hundred twenty-five
21 dollars (\$625.00).
- 22 (3) Licensed loan officers shall pay an annual fee not to exceed
23 sixty-seven dollars and fifty cents (\$67.50).

24 (b) If a mortgage ~~banker~~ banker, mortgage servicer, or mortgage broker license is
25 not renewed prior to the applicable expiration date, then ~~an additional two hundred fifty~~
26 dollars (\$250.00) in addition to the renewal fee under subsection (a) of this section shall
27 be assessed as a late fee to any renewal. If a loan officer or limited loan officer license is
28 not renewed prior to the applicable expiration date, then ~~an additional fifty one hundred~~
29 dollars (~~\$50.00~~ \$100.00) in addition to the renewal fee under subsection (a) of this
30 section shall be assessed as a late fee to any renewal. In the event a licensee fails to
31 obtain a reinstatement of the license ~~within 90 days after the date the license expires,~~
32 prior to March 1, the Commissioner may require the licensee to comply with the
33 requirements for the initial issuance of a license under the provisions of this Article.

34 (b1) When required by the Commissioner, each individual described in
35 G.S. 53-245.05(a)(6) shall furnish to the Commissioner his or her consent to a criminal
36 history record check and a set of his or her fingerprints in a form acceptable to the
37 Commissioner. Refusal to consent to a criminal history record check may constitute
38 grounds for the Commissioner to deny renewal of the license of the person as well as
39 the license of any other person by which he or she is employed, over which he or she
40 has control, or as to which he or she is the current or proposed ~~managing~~
41 principal qualifying individual or a current or proposed branch manager.

42 (c) Licenses issued under this Article are not assignable. Control of a licensee
43 shall not be acquired through a stock purchase or other device without the prior written
44 consent of the Commissioner. The Commissioner shall not give written consent if the

1 Commissioner finds that any of the grounds for denial, revocation, or suspension of a
2 license pursuant to G.S. 53-243.12 are applicable to the acquiring person."

3 **SECTION 5.** G.S. 53-243.08 reads as rewritten:

4 "**§ 53-243.08. ~~Managing principals~~Qualifying individuals and branch managers.**

5 Each mortgage broker or mortgage banker or mortgage servicer licensed under this
6 Article shall have a ~~managing principal~~qualifying individual who operates the business
7 under that person's full charge, control, and supervision. Mortgage bankers and
8 mortgage brokers, other than exclusive mortgage brokers, may operate branch offices
9 subject to the requirements of this Article. Each principal and branch office of a
10 mortgage broker or mortgage banker licensed under this Article, shall have a branch
11 manager who meets the experience requirements under G.S. 53-243.05(c)(1); provided,
12 that an affiliated mortgage banker may designate a branch manager who does not meet
13 the experience requirements so long as at or before the designation, it certifies that the
14 person has been employed by the affiliated mortgage banker for at least one year as a
15 loan officer, limited loan officer, or in a comparable position in another state. The
16 ~~managing principal~~qualifying individual for a licensee's business may also serve as the
17 branch manager of one of the licensee's branch offices. Each mortgage broker or
18 mortgage banker licensed under this Article shall file a form as prescribed by the
19 Commissioner indicating the business's designation of ~~managing principal~~qualifying
20 individual and branch manager for each branch and each individual's acceptance of the
21 responsibility. Each mortgage broker or mortgage banker licensed under this Article
22 shall notify the Commissioner of any change in its ~~managing principal~~qualifying
23 individual or branch manager designated for each branch. Each mortgage servicer
24 licensed under this Article shall file a form prescribed by the Commissioner indicating
25 the business's designation of its qualifying individual and shall notify the Commissioner
26 of any change in its qualifying individual. Any licensee who does not comply with this
27 provision shall have the licensee's license suspended pursuant to G.S. 53-243.12 until
28 the licensee complies with this section. Any individual licensee who operates as a sole
29 proprietorship shall be considered a ~~managing principal~~qualifying individual for the
30 purposes of this Article."

31 **SECTION 6.** G.S. 53-243.09 reads as rewritten:

32 "**§ 53-243.09. Offices; address changes; display of license.**

33 (a) Each mortgage broker licensee shall maintain and transact business from a
34 principal place of business in this State. A principal place of business in this State shall
35 consist of at least one enclosed room or building of stationary construction in which
36 negotiations of mortgage loan transactions of others may be conducted and carried on in
37 privacy and in which all of the books, records, and files pertaining to mortgage loan
38 transactions relating to borrowers in this State are maintained. However, the
39 Commissioner may, by rule, impose terms and conditions under which the records and
40 files may be maintained outside of this State. A principal place of business shall not be
41 located at an individual's home or residence.

42 (b) A mortgage banker or mortgage broker or mortgage servicer licensee shall
43 report any change of address of the principal place of business or any branch office
44 within 15 days after the change.

1 (c) Each mortgage broker or mortgage banker licensed under this Article shall
2 display in plain public view the certificate of licensure issued by the Commissioner in
3 its principal office and in each branch office. Each loan officer licensed under this
4 Article shall ~~display~~ display, in plain public view, in each branch office in which the
5 officer acts as a loan officer the certificate of licensure issued by the Commissioner."

6 **SECTION 7.** G.S. 53-243.10 reads as rewritten:

7 "**§ 53-243.10. Mortgage broker ~~duties~~duties; mortgage servicer duties.**

8 (a) A mortgage broker, including any mortgage broker licensee and any person
9 ~~required to be licensed~~ acting as a mortgage broker under this Article, ~~shall~~, in addition
10 to duties imposed by other statutes or at common law, shall do all of the following:

- 11 (1) Safeguard and account for any money handled for the borrower.
- 12 (2) Follow reasonable and lawful instructions from the borrower.
- 13 (3) Act with reasonable skill, care, and diligence.
- 14 (4) Make reasonable efforts to secure a loan that is reasonably
15 advantageous to the borrower considering all the circumstances,
16 including the rates, charges, and repayment terms of the loan.
- 17 (5) Timely and clearly disclose to the borrower material information as
18 specified by the Commission that may be expected to influence the
19 borrower's decision and is reasonably accessible to the mortgage
20 broker, including the total compensation the mortgage broker expects
21 to receive from any and all sources in connection with each loan
22 option presented to the borrower.
- 23 (6) Notify before closing each lender of the particulars of each of the other
24 lender's loans if the mortgage broker knows that more than one
25 mortgage loan will be made by different lenders contemporaneously to
26 a borrower secured by the same real property.
- 27 (7) Ensure that any services offered to any applicant shall be available and
28 offered to all similarly situated applicants on an equal basis.
- 29 (8) In transactions where the broker has the ability to make credit
30 decisions, use reasonable means to provide the borrower with prompt
31 credit decisions on its loan applications and, where the credit is denied,
32 to comply fully with the notification requirements of applicable state
33 and federal law.
- 34 (9) Ensure that ~~its~~ advertising materials are designed to make customers
35 and potential customers aware that ~~one~~ the mortgage broker does not
36 discriminate on any prohibited basis.

37 (b) A mortgage servicer licensed or acting under this Article, in addition to duties
38 imposed by other statutes or at common law, shall do all of the following:

- 39 (1) Safeguard and account for any money handled for the borrower.
- 40 (2) Follow reasonable and lawful instructions from the borrower.
- 41 (3) Act with reasonable skill, care, and diligence.
- 42 (4) With its application and renewal and with its supplemental filings
43 made from time to time, file with the Commissioner a complete,

- 1 current schedule of the ranges of costs and fees it charges borrowers
2 for its servicing-related activities.
- 3 (5) File with the Commissioner upon request a report in a form and format
4 acceptable to the Commissioner detailing the servicer's activities in
5 this State, including:
- 6 a. The number of mortgage loans the servicer is servicing.
7 b. The type and characteristics of such loans in this State.
8 c. The number of serviced loans in default, along with a
9 breakdown of 30-, 60-, and 90-day delinquencies.
10 d. Information on loss mitigation activities, including details on
11 workout arrangements undertaken.
12 e. Information on foreclosures commenced in this State.
- 13 (6) At the time a servicer accepts assignment of servicing rights for a
14 mortgage loan, the servicer shall disclose to the borrower all of the
15 following:
- 16 a. Any notice required by RESPA or by regulations promulgated
17 thereunder.
18 b. A schedule of the ranges and categories of its costs and fees for
19 its servicing-related activities, which shall comply with North
20 Carolina law and which shall not exceed those reported to the
21 Commissioner.
22 c. A notice in a form and content acceptable to the Commissioner
23 that the servicer is licensed by the Commissioner and that
24 complaints about the servicer may be submitted to the
25 Commissioner.
26 d. Any notice required by Article 2A, Article 4, or Article 10 of
27 Chapter 45 of the General Statutes.
- 28 (7) In the event of a delinquency or other act of default on the part of the
29 borrower, the servicer shall act in good faith to inform the borrower of
30 the facts concerning the loan and the nature and extent of the
31 delinquency or default, and, if the borrower replies, to negotiate with
32 the borrower, subject to the servicer's duties and obligations under the
33 mortgage servicing contract, if any, to attempt a resolution or workout
34 to the delinquency."

35 **SECTION 8.** G.S. 53-243.11 reads as rewritten:

36 "**§ 53-243.11. Prohibited activities.**

37 In addition to the activities prohibited under other provisions of this Article, it shall
38 be unlawful for any person in the course of any mortgage loan transaction:

- 39 (1) To misrepresent or conceal the material facts or make false promises
40 likely to influence, persuade, or induce an applicant for a mortgage
41 loan or a mortgagor to take a mortgage loan, or to pursue a course of
42 misrepresentation through agents or otherwise.
43 (2) To refuse improperly to issue a satisfaction of a mortgage.

- 1 (3) To fail to account for or to deliver to any person any funds, documents,
2 or other thing of value obtained in connection with a mortgage loan,
3 including money provided by a borrower for a real estate appraisal or a
4 credit report, which the mortgage banker, servicer, broker, or loan
5 officer is not entitled to retain under the circumstances.
- 6 (4) To pay, receive, or collect in whole or in part any commission, fee, or
7 other compensation for brokering a mortgage loan in violation of this
8 Article, including a mortgage loan brokered by any unlicensed person
9 other than an exempt person.
- 10 (5) To charge or collect any fee or rate of interest or to make or broker or
11 service any mortgage loan with terms or conditions or in a manner
12 contrary to the provisions of ~~Chapter 24~~ Chapter 24, Chapter 45, or
13 Chapter 54 of the General Statutes.
- 14 (6) To advertise mortgage loans, including rates, margins, discounts,
15 points, fees, commissions, or other material information, including
16 material limitations on the loans, unless the person is able to make the
17 mortgage loans available to a reasonable number of qualified
18 applicants.
- 19 (7) To fail to disburse funds in accordance with a written commitment or
20 agreement to make a mortgage loan.
- 21 (8) To engage in any transaction, practice, or course of business that is not
22 in good faith or fair dealing or that constitutes a fraud upon any
23 person, in connection with the brokering or making or servicing of, or
24 purchase or sale of, any mortgage loan.
- 25 (9) To fail promptly to pay when due reasonable fees to a licensed
26 appraiser for appraisal services that are:
- 27 a. Requested from the appraiser in writing by the mortgage broker
28 or mortgage banker or an employee of the mortgage broker or
29 mortgage banker; and
- 30 b. Performed by the appraiser in connection with the origination or
31 closing of a mortgage loan for a customer or the mortgage
32 broker or mortgage banker.
- 33 (10) To broker a mortgage loan that contains a prepayment penalty if the
34 principal amount of the loan is one hundred fifty thousand dollars
35 (\$150,000) or less or if the loan is a rate spread home loan as defined
36 in G.S. 24-1.1F.
- 37 (11) To improperly influence or attempt to improperly influence the
38 development, reporting, result, or review of a real estate appraisal
39 sought in connection with a mortgage loan. Nothing in this subdivision
40 shall be construed to prohibit a mortgage ~~broker or mortgage banker~~
41 broker, mortgage banker, or mortgage servicer from asking the
42 appraiser to do one or more of the following:
- 43 a. Consider additional appropriate property information.

- 1 b. Provide further detail, substantiation, or explanation for the
2 appraiser's value conclusion.
- 3 c. Correct errors in the appraisal report.
- 4 (12) To fail to comply with the mortgage loan servicing transfer, escrow
5 account administration, or borrower inquiry response requirements
6 imposed by sections 6 and 10 of the Real Estate Settlement Procedures
7 Act (RESPA), 12 U.S.C. § 2605 and § 2609, and regulations adopted
8 thereunder by the Secretary of the Department of Housing and Urban
9 Development.
- 10 (13) To broker a rate spread adjustable rate mortgage loan without
11 disclosing to the borrower the terms and costs associated with a fixed
12 rate loan from the same lender at the lowest annual percentage rate for
13 which the borrower qualifies.
- 14 (14) To fail to comply with applicable federal laws and regulations related
15 to mortgage ~~lending~~, lending, or mortgage servicing.
- 16 (15) To engage in unfair, misleading, or deceptive advertising related to a
17 solicitation for a mortgage loan.
- 18 (16) For a mortgage servicer to fail to comply with the mortgage servicer's
19 obligations under Article 10 of Chapter 45 of the North Carolina
20 General Statutes.
- 21 (17) For a person acting as a mortgage servicer to fail to provide written
22 notice to a borrower upon taking action to place hazard, homeowner's,
23 or flood insurance on the mortgaged property or to place such
24 insurance when the person acting as a mortgage servicer knows or has
25 reason to know that such insurance is in effect.
- 26 (18) For a person acting as a mortgage servicer to place hazard,
27 homeowner's, or flood insurance on a mortgaged property for an
28 amount that exceeds either the value of the insurable improvements or
29 the last known coverage amount of insurance.
- 30 (19) For a person acting as a mortgage servicer to fail to provide to the
31 borrower a refund of unearned premiums paid by a borrower or
32 charged to the borrower for hazard, homeowner's, or flood insurance
33 placed by a lender if the borrower provides reasonable proof that the
34 borrower has obtained coverage such that the forced placement is no
35 longer necessary and the property is insured. If the borrower provides
36 reasonable proof within 12 months of the placement that no lapse in
37 coverage occurred such that the forced placement was not necessary,
38 the servicer shall refund the entire premium.
- 39 (20) For a person acting as a mortgage servicer to refuse to reinstate a
40 delinquent loan upon a tender of payment made timely under the
41 contract which is sufficient in amount, based upon the last written
42 statement received by borrower, to pay all past due amounts,
43 outstanding or overdue charges, and restore the loan to a

1 nondelinquent status, but this reinstatement shall be available to a
 2 borrower no more than twice in any 24-month period.

3 (21) For a person acting as a mortgage servicer to fail to mail, at least 30
 4 days before foreclosure is initiated, a notice addressed to the borrower
 5 at the borrower's last known address with the following information:

6 a. An itemization of all past due amounts causing the loan to be in
 7 default.

8 b. An itemization of any other charges that must be paid in order
 9 to bring the loan current.

10 c. A statement that the borrower may have options available other
 11 than foreclosure, and that the borrower may discuss such
 12 options with the mortgage lender, the servicer, or a counselor
 13 approved by the U.S. Department of Housing and Urban
 14 Development.

15 d. The address, telephone number, and other contact information
 16 for the mortgage lender, the servicer, or the agent for either of
 17 them who is authorized to attempt to work with the borrower to
 18 avoid foreclosure.

19 e. The name, address, telephone number, and other contact
 20 information for three or more HUD-approved counseling
 21 agencies operating to assist borrowers in North Carolina to
 22 avoid foreclosure.

23 f. The address, telephone number, and other contact information
 24 for the consumer complaint section of the Office of the
 25 Commissioner of Banks.

26 (22) To fail to make all payments from any escrow account held for the
 27 borrower for insurance, taxes, and other charges with respect to the
 28 property in a timely manner so as to ensure that no late penalties are
 29 assessed or other negative consequences result regardless of whether
 30 the loan is delinquent unless there are not sufficient funds in the
 31 account to cover the payments, and the servicer has a reasonable basis
 32 to believe that recovery of the funds will not be possible."

33 **SECTION 9.** G.S. 53-243.12 reads as rewritten:

34 **"§ 53-243.12. Disciplinary authority.**

35 (a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or
 36 renew a license of a licensee or applicant under this Article or may restrict or limit the
 37 activities relating to mortgage loans of any licensee or any person who owns an interest
 38 in or participates in the business of a licensee, if the Commissioner finds both of the
 39 following:

40 (1) That the order is in the public interest.

41 (2) That any of the following circumstances apply to the applicant,
 42 licensee, or any partner, member, manager, officer, director, loan
 43 officer, limited loan officer, ~~managing principal~~, qualifying individual,
 44 or any person occupying a similar status or performing similar

- 1 functions or any person directly or indirectly controlling the applicant
2 or licensee. The person:
- 3 a. Has filed an application for license that, as of its effective date
4 or as of any date after filing, contained any statement that, in
5 light of the circumstances under which it was made, is false or
6 misleading with respect to any material fact.
- 7 b. Has violated or failed to comply with any provision of this
8 Article, rule adopted by the Commissioner, or order of the
9 Commissioner.
- 10 c. Has been convicted of any felony, or, within the past 10 years,
11 has been convicted of any misdemeanor involving ~~mortgage~~
12 ~~lending or any aspect of the mortgage lending business, or any~~
13 ~~offense involving breach of trust, moral turpitude, or fraudulent~~
14 ~~or dishonest dealing, or financial services or a financial~~
15 ~~services-related business or any fraud, false statements or~~
16 ~~omissions, theft or any wrongful taking of property, bribery,~~
17 ~~perjury, forgery, counterfeiting, extortion, or a conspiracy to~~
18 ~~commit any of these offenses.~~
- 19 d. Is permanently or temporarily enjoined by any court of
20 competent jurisdiction from engaging in or continuing any
21 conduct or practice involving any aspect of the mortgage
22 lending business.
- 23 e. Is the subject of an order of the Commissioner denying,
24 suspending, or revoking that person's license as a mortgage
25 ~~broker or mortgage banker.~~broker, mortgage banker, or
26 mortgage servicer.
- 27 f. Is the subject of an order entered within the past five years by
28 the authority of any state with jurisdiction over that state's
29 mortgage ~~brokerage or mortgage banking~~brokerage, mortgage
30 banking, or mortgage-servicing industry denying or revoking
31 that person's license as a mortgage ~~broker or mortgage banking~~
32 ~~industry or denying or revoking that person's license as a~~
33 ~~mortgage broker or mortgage banker.~~broker, mortgage servicer,
34 or mortgage banker.
- 35 g. Does not meet the qualifications or the financial responsibility,
36 character, or general fitness requirements under G.S. 53-243.05
37 or any bond or capital requirements under this Article.
- 38 h. Has been the executive officer or controlling shareholder or
39 owned a controlling interest in any mortgage broker or
40 mortgage banker or mortgage servicer who has been subject to
41 an order or injunction described in sub-subdivision d., e., or f.
42 of this subdivision.
- 43 i. Has failed to pay the proper filing or renewal fee under this
44 Article. However, the Commissioner may enter only a denial

1 order under this sub-subdivision, and the Commissioner shall
2 vacate the order when the deficiency has been corrected.

3 j. Has falsely certified attendance or completion of hours at an
4 approved mortgage lending continuing education course.

5 (b) The Commissioner may, by order, summarily postpone or suspend the license
6 of a licensee pending final determination of any proceeding under this section. Upon
7 entering the order, the Commissioner shall promptly notify the applicant or licensee that
8 the order has been entered and the reasons for the order. The Commissioner shall
9 calendar a hearing within 15 days after the Commissioner receives a written request for
10 a hearing. If a licensee does not request a hearing and the Commissioner does not
11 request a hearing, the order will remain in effect until it is modified or vacated by the
12 Commissioner. If a hearing is requested or ordered by the Commissioner, after notice of
13 and opportunity for hearing, the Commissioner may modify or vacate the order or
14 extend it until final determination.

15 (c) The Commissioner may, by order, impose a civil penalty upon a licensee or
16 any partner, officer, director, or other person occupying a similar status or performing
17 similar functions on behalf of a licensee for any violation of this Article. The civil
18 penalty shall not exceed ten thousand dollars (\$10,000) for each violation of this Article
19 by a mortgage ~~broker or mortgage banker~~, broker, mortgage banker, or mortgage
20 servicer. The Commissioner may impose a civil penalty of up to ten thousand dollars
21 (\$10,000) for each violation of this Article by a person other than a licensee or exempt
22 person.

23 (d) In addition to other powers under this Article, upon finding that any action of
24 a person is in violation of this Article, the Commissioner may order the person to cease
25 from the prohibited action. If the person subject to the order fails to appeal the order of
26 the Commissioner in accordance with G.S. 53-243.03, or if the person appeals and the
27 appeal is denied or dismissed, and the person continues to engage in the prohibited
28 action in violation of the Commissioner's order, the person shall be subject to a civil
29 penalty of up to twenty-five thousand dollars (\$25,000) for each violation of the
30 Commissioner's order. The penalty provision of this section shall be in addition to and
31 not in lieu of any other provision of law applicable to a licensee for the licensee's failure
32 to comply with an order of the Commissioner.

33 (e) Unless otherwise provided, all actions and hearings under this Article shall be
34 governed by Chapter 150B of the General Statutes.

35 (f) When a licensee is accused of any act, omission, or misconduct that would
36 subject the licensee to disciplinary action, the licensee, with the consent and approval of
37 the Commissioner, may surrender the license and all the rights and privileges pertaining
38 to it for a period of time established by the Commissioner. A person who surrenders a
39 license shall not be eligible for or submit any application for licensure under this
40 Article.

41 (g) If the Commissioner has reasonable grounds to believe that a licensee or other
42 person has violated the provisions of this Article or that facts exist that would be the
43 basis for an order against a licensee or other person, the Commissioner may at any time,
44 either personally or by a person duly designated by the Commissioner, investigate or

1 examine the loans and business of the licensee and examine the books, accounts,
2 records, and files of any licensee or other person relating to the complaint or matter
3 under investigation. The Commissioner may require any licensee or other person to
4 submit a consent to a criminal history record check and a set of that person's fingerprints
5 in a form acceptable to the Commissioner in connection with any examination or
6 investigation. Refusal to submit the requested criminal history record check or a set of
7 fingerprints shall be grounds for disciplinary action. The reasonable cost of this
8 investigation or examination shall be charged against the licensee.

9 (h) The Commissioner may issue subpoenas to require the attendance of and to
10 examine under oath all persons whose testimony the Commissioner deems relative to
11 the person's business.

12 (i) The Commissioner may from time to time, at the expense of the
13 ~~Commissioner's office, licensee,~~ conduct routine examinations of the books and records
14 of any licensee in order to determine the compliance with this Article and any rules
15 adopted pursuant to the authority of G.S. 53-243.04.

16 (j) In addition to the rights described under this section, the Commissioner may
17 require a licensee to pay to a borrower or other individual any amounts received by the
18 licensee or its employees in violation of Chapter 24 of the General ~~Statutes, Statutes,~~ or,
19 if a servicer, in excess of those allowed by law to servicers.

20 (k) If the Commissioner finds that the ~~managing principal, qualifying individual,~~
21 branch manager, or loan officer of a licensee had knowledge of or reasonably should
22 have had knowledge of, or participated in, any activity that results in the entry of an
23 order under this section suspending or withdrawing the license of a licensee, the
24 Commissioner may prohibit the branch manager, ~~managing principal, qualifying~~
25 individual, or loan officer from serving as a branch manager, ~~managing~~
26 principal, qualifying individual, or loan officer for any period of time the Commissioner
27 deems necessary.

28 (l) In addition to the authority to require criminal history background checks as
29 set forth in G.S. 53-243.05 and G.S. 53-243.06, the Commissioner shall have the
30 authority to require a criminal history background check at any other time as a condition
31 of continued licensure. Upon the request of the Commissioner, a licensee shall furnish
32 to the Commissioner the licensee's consent to a criminal history record check and a set
33 of the licensee's fingerprints in a form acceptable to the Commissioner. Refusal to
34 consent to a criminal history record check under this subsection may constitute grounds
35 for the Commissioner to suspend or revoke the license of the licensee.

36 (m) Subject to the provisions of G.S. 53-243.03, the Commissioner may, by order,
37 prohibit licensees under this Article from engaging in acts and practices in connection
38 with mortgage loans that the Commissioner finds to be unfair, deceptive, designed to
39 evade the laws of this State, or that are not in the best interest of the borrowing public.

40 (n) In the event the Commissioner shall have evidence that a material violation of
41 law has occurred in the origination or servicing of a loan then being foreclosed or then
42 delinquent and in threat of foreclosure, and that the putative violation would be
43 sufficient in law or equity to base a claim or affirmative defense which would affect the
44 validity or enforceability of the underlying contract or the right to foreclose, then the

1 Commissioner may notify the Clerk of Superior Court, and the Clerk shall suspend
2 foreclosure proceedings on the mortgage for 60 days from the date of the notice. In the
3 event that the Commissioner notifies the Clerk, the Commissioner shall also notify the
4 servicer, if known, and provide an opportunity to cure the violation or provide
5 information to the Commissioner to rebut the evidence of the suspected violation. If the
6 violation is cured or the information satisfies the Commissioner that no material
7 violation has occurred, the Commissioner shall notify the Clerk so that the foreclosure
8 proceeding may be resumed.

9 (o) The Commissioner shall be deemed to have complied with the requirements
10 of law concerning service of process upon mailing by certified mail any notice required
11 or permitted to a licensee under this Article, postage prepaid and addressed to the last
12 known address of the licensee on file with the Commissioner pursuant to
13 G.S. 53-243.13(d).

14 (p) The Commissioner is authorized to take action, including suspension of the
15 license, if the licensee fails to respond within 20 days, or within a lesser time if
16 specifically requested for good cause, to inquiries from the Commissioner or the
17 Commissioner's designee regarding any complaints filed against the licensee which
18 allege or appear to involve violation of this Article or any law or rule affecting the
19 mortgage lending business.

20 (q) The Commissioner is authorized to take action, including suspension of the
21 license, if the licensee fails to respond within 20 days, or within a lesser time if
22 specifically requested for good cause, to and cooperate fully with notices from the
23 Commissioner or the Commissioner's designee relating to the scheduling and
24 conducting of an examination or investigation under this Article."

25 **SECTION 10.** G.S. 53-243.13(e) reads as rewritten:

26 "(e) A licensee shall maintain in a segregated escrow fund or trust account any
27 funds which come into the licensee's possession, but which are not the licensee's
28 property and which the licensee is not entitled to retain under the circumstances. The
29 escrow fund or trust account shall be held on deposit in a federally insured financial
30 institution. Individual loan applicants' or borrowers' accounts may be aggregated into a
31 common trust fund so long as (i) interests in the common fund can be individually
32 tracked and accounted for, and (ii) the common fund is kept separate from and is not
33 commingled with the licensee's own funds."

34 **SECTION 11.** G.S. 53-243.14 reads as rewritten:

35 "**§ 53-243.14. Criminal penalty.**

36 A violation of G.S. 53-243.02 is a Class I felony. Each transaction involving the
37 unlawful making or brokering or servicing of a mortgage loan is a separate offense."

38 **SECTION 12.** G.S. 53-243.15 reads as rewritten:

39 "**§ 53-243.15. Filing required for exempt persons; civil penalty.**

40 (a) All exempt persons described in G.S. ~~53-243.01(8)~~53-243.01(12) who are
41 engaged in the mortgage brokerage or mortgage banking business on October 1, 2002,
42 or who are engaged in the mortgage-servicing business on October 1, 2008, shall be
43 required to file a form with the Commissioner on or before that date. All exempt
44 persons, who commence mortgage brokerage or mortgage banking business in this State

1 after October 1, 2002, or who commence mortgage servicing in this State after October
2 1, 2008, shall file the form with the Commissioner upon commencement of the
3 business. This form, prescribed by the Commissioner, shall contain all of the following
4 information:

- 5 (1) The name of the respective exempt person.
- 6 (2) The basis of the exempt status of the exempt person.
- 7 (3) The principal business address of the exempt person.
- 8 (4) The State or federal regulatory authority responsible for the exempt
9 person's supervision, examination, or regulation, if any.

10 (b) In addition to any other measures the exempt person may be subject to under
11 this Article, failure by an exempt person to file the required form shall not affect the
12 exempt status of the person. However, the exempt person shall be subject to a civil
13 penalty set by the Commissioner that shall not exceed the sum of two hundred fifty
14 dollars (\$250.00) for each year the form is not filed. No person required to file under
15 this section may transact business in this State as a mortgage banker or mortgage broker
16 or mortgage servicer unless the person has filed the prescribed form with the
17 Commissioner in accordance with this section."

18 **SECTION 13.** G.S. 53-243.16(b) reads as rewritten:

19 "(b) In addition, if a person described in subsection (a) of this section is a
20 corporation, partnership, limited liability company, association, or trust, the Department
21 of Justice may provide a criminal history record check to the Commissioner for any
22 person who has control of that person, or who is the ~~managing principal~~qualifying
23 individual or a branch manager of that person."

24 **SECTION 14.** G.S. 53-243.17(c) reads as rewritten:

25 "(c) Notwithstanding any other provision of this section, the Commissioner retains
26 full authority and discretion under this Article to license mortgage brokers, mortgage
27 bankers, mortgage servicers, loan officers, and limited loan officers and to enforce this
28 Article to its fullest extent. Nothing in this section shall be deemed to be a reduction or
29 derogation of that authority and discretion."

30 **SECTION 15.** G.S. 24-1.1E(a)(4a) reads as rewritten:

31 "(4a) 'Mortgage broker' is as defined in G.S. ~~53-243.01(14)~~53-243.01."

32 **SECTION 16.** G.S. 24-1.1F(a)(4) reads as rewritten:

33 "(4) Mortgage broker. – A mortgage broker as defined in
34 G.S. ~~53-243.01(14)~~53-243.01."

35 **SECTION 17.** G.S. 66-106(b) reads as rewritten:

36 "(b) Except for mortgage loans as defined in G.S. ~~53-243.01(15)~~53-243.01, this
37 Article shall not apply to any party approved as a mortgagee by the Secretary of
38 Housing and Urban Development, the Federal Housing Administration, the Veterans
39 Administration, a National Mortgage Association or any federal agency; nor to any
40 party currently designated and compensated by a North Carolina licensed insurance
41 company as its agent to service loans it makes in this State; nor to any insurance
42 company registered with and licensed by the North Carolina Insurance Commissioner;
43 nor, with respect to residential mortgage loans, to any residential mortgage banker or
44 mortgage broker licensed pursuant to Article 19A of Chapter 53 of the General Statutes

1 or exempt from licensure pursuant to G.S. ~~53-243.01(8)~~53-243.01(12) and
2 G.S. 53-243.02; nor to any attorney-at-law, public accountant, or dealer registered under
3 the North Carolina Securities Act, acting in the professional capacity for which such
4 attorney-at-law, public accountant, or dealer is registered or licensed under the laws of
5 the State of North Carolina. Provided further that subdivision (1)(ii) above shall not
6 apply to any lender whose loans or advances to any person, firm or corporation in North
7 Carolina aggregate more than one million dollars (\$1,000,000) in the preceding calendar
8 year."

9 **SECTION 18.** Chapter 45 of the General Statutes is amended by adding a
10 new section to read:

11 **"§ 45-21.16B. Suspension of foreclosure proceedings.**

12 (a) The Clerk of Superior Court shall suspend foreclosure proceedings, including
13 any hearing or order for sale, for 60 days if notified by the Commissioner of Banks as
14 provided in G.S. 53-243.12(n). During the suspension period, all deadlines under this
15 Article are tolled.

16 (b) When a clerk enters a suspension order pursuant to subsection (a) of this
17 section prior to a hearing required under G.S. 45-21.16, upon completion of the 60-day
18 suspension period, the trustee or mortgagee may proceed with the hearing by providing
19 written notice to all parties of the new hearing date, not less than 10 days prior to the
20 hearing date.

21 (c) When a clerk enters a suspension order pursuant to subsection (a) of this
22 section, after entry of any authorization by the clerk pursuant to G.S. 45-21.16 and
23 before the expiration of the 10-day upset bid period, the trustee or mortgagee shall not
24 be required to comply with the provisions of G.S. 45-21.16, but shall advertise and hold
25 the sale in accordance with G.S. 45-21.16A, 45-21.17, and 45-21.17A."

26 **SECTION 19.** G.S. 45-91 reads as rewritten:

27 **"§ 45-91. (Effective April 1, 2008) Assessment of fees; processing of payments;**
28 **publication of statements.**

29 A servicer must comply as to every home loan, regardless of whether the loan is
30 considered in default or the borrower is in bankruptcy or the borrower has been in
31 bankruptcy, with the following requirements:

32 (1) Any fee that is incurred by a servicer shall be both:

33 a. Assessed within 45 days of the date on which the fee was
34 incurred. Provided, however, that attorney or trustee fees and
35 costs incurred as a result of a foreclosure action shall be
36 assessed within 45 days of the date they are charged by either
37 the attorney or trustee to the servicer.

38 b. Explained clearly and conspicuously in a statement mailed to
39 the borrower at the borrower's last known address at least 30
40 days after assessing the fee, provided the servicer shall not be
41 required to take any action in violation of the provisions of the
42 federal bankruptcy code.

43 (2) All amounts received by a servicer on a home loan at the address
44 where the borrower has been instructed to make payments shall be

1 accepted and credited, or treated as credited, within one business day
2 of the date received, provided that the borrower has made the full
3 contractual payment and has provided sufficient information to credit
4 the account. If a servicer uses the scheduled method of accounting, any
5 regularly scheduled payment made prior to the scheduled due date
6 shall be credited no later than the due date. Provided, however, that if
7 any payment is received and not credited, or treated as credited, the
8 borrower shall be notified within 10 business days by mail at the
9 borrower's last known address of the disposition of the payment, the
10 reason the payment was not credited, or treated as credited to the
11 account, and any actions necessary by the borrower to make the loan
12 current.

13 (3) Failure to charge the fee or provide the information within the
14 allowable time and in the manner required under subdivision (1) of
15 subsection (a) of this section constitutes a waiver of such fee.

16 (4) All fees charged by a servicer must be otherwise permitted under
17 applicable law and the contracts between the parties. Nothing herein is
18 intended to permit the application of payments or method of charging
19 interest which is less protective of the borrower than the contracts
20 between the parties and other applicable law.

21 (5) The obligations of mortgage servicers set forth in G.S. 53-243.11."

22 **SECTION 20.** G.S. 45-94 reads as rewritten:

23 **"§ 45-94. (Effective April 1, 2008) Remedies.**

24 In addition to any equitable remedies and any other remedies at law, any borrower
25 injured by any violation of this Article may bring an action for recovery of actual
26 damages, including reasonable attorneys' fees. The Commissioner of Banks, the
27 Attorney General, or any party to a home loan may enforce the provisions of this
28 section. The Clerk of Superior Court shall also suspend foreclosure proceedings for 60
29 days if notified by the Commissioner of Banks as provided in G.S. 53-243.12(n). With
30 the exception of an action by the Commissioner of Banks or the Attorney General, at
31 least 30 days before a borrower or a borrower's representative institutes a civil action for
32 damages against a servicer for a violation of this Article, the borrower or a borrower's
33 representative shall notify the servicer in writing of any claimed errors or disputes
34 regarding the borrower's home loan that forms the basis of the civil action. The notice
35 must be sent to the address as designated on any of the servicer's bills, statements,
36 invoices, or other written communication, and must enable the servicer to identify the
37 name and loan account of the borrower. For purposes of this section, notice shall not
38 include a complaint or summons. Nothing in this section shall limit the rights of a
39 borrower to enjoin a civil action, or make a counterclaim, cross-claim, or plead a
40 defense in a civil action. A servicer will not be in violation of this Article if the servicer
41 shows by a preponderance of evidence that:

42 (1) The violation was not intentional or the result of bad faith; and

43 (2) Within 30 days after discovering or being notified of an error, and
44 prior to the institution of any legal action by the borrower against the

1 servicer under this section, the servicer corrected the error and
2 compensated the borrower for any fees or charges incurred by the
3 borrower as a result of the violation."

4 **SECTION 21.** Sections 12 and 21 of this act become effective when it
5 becomes law. Subsection (n) of G.S. 53-243.12, as amended by Section 9, Section 18,
6 and Section 20 of this act, become effective January 1, 2009, and apply to foreclosure
7 proceedings filed on or after that date. The remainder of this act becomes effective
8 January 1, 2009, and applies to anyone engaged in the business of mortgage servicing
9 on or after that date.