

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  
Senate Commerce, Small Business & Entrepreneurship Committee Substitute  
Adopted 7/1/08

Short Title: Regulate Mortgage Servicers.

(Public)

Sponsors:

Referred to:

May 26, 2008

A BILL TO BE ENTITLED

AN ACT TO REGULATE MORTGAGE SERVICING; TO REQUIRE MORTGAGE  
SERVICER LICENSURE UNDER THE MORTGAGE LENDING ACT; AND TO  
MAKE TECHNICAL AND CLARIFYING CHANGES TO THE MORTGAGE  
LENDING ACT.

The General Assembly of North Carolina enacts:

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

"§ 53-243.01. **Definitions.**

The following definitions apply in this Article:

- (1) Act as a mortgage broker. – To act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by accepting or offering to accept an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage loan commitments or interest rate guarantee agreements to borrowers, or engaging in tablefunding of mortgage loans, whether such acts are done through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.
- (2) Act as a mortgage lender. – To engage in the business of making mortgage loans for compensation or gain.
- (3) Act as a mortgage servicer. – To engage, whether for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as

1                    may be required pursuant to the terms of the mortgage loan, the  
2                    mortgage servicing loan documents, or servicing contract.

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

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

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

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

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

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

42                   e.            The licensee has a net worth of one hundred million dollars  
43                   (\$100,000,000) or, if the licensee does not have the required net  
44                   worth, (i) its parent, if it is not a bank holding company or

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

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

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

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

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

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

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

42 ~~(8)~~(12) Exempt person. – The term includes any of the following:

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

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

- 1           ~~(15)~~(19) Mortgage loan. – A loan made to a natural person or persons primarily  
2                                   for personal, family, or household use, primarily secured by either a  
3                                   mortgage or a deed of trust on residential real property located in  
4                                   North Carolina.
- 5           (20) Mortgage servicer. – A person who directly or indirectly acts as a  
6                                   mortgage servicer as that term is defined in subdivision (3) of this  
7                                   section or who otherwise meets the definition of 'servicer' in RESPA,  
8                                   12 U.S.C. § 2605(i), with respect to mortgage loans.
- 9           ~~(15a)~~(21) Parent. – The person that controls an affiliated mortgage  
10                                  ~~banker, banker, mortgage broker, or mortgage servicer,~~ as control is  
11                                  defined in subdivision ~~(2a)~~(4) of this section.
- 12           ~~(16)~~(22) Person. – An individual, partnership, limited liability company, limited  
13                                  partnership, corporation, association, or other group engaged in joint  
14                                  business activities, however organized.
- 15           ~~(17)~~(23) Qualified lender. – A person who is engaged as a mortgage lender in  
16                                  North Carolina and is either a supervised or a nonsupervised  
17                                  institution, as these terms are defined in 24 C.F.R. § 202.2, approved  
18                                  by the United States Department of Housing and Urban Development.
- 19           ~~(18)~~(24) Qualified person. – A person who is employed as a loan officer by a  
20                                  qualified lender, or by a mortgage banker or broker registered with the  
21                                  Commissioner under former Article 19 of this Chapter, or who is a  
22                                  general partner, manager, or officer of a qualified lender, registered  
23                                  mortgage banker, or registered mortgage broker.
- 24           (25) Qualified servicer. – A person who is engaged in the business of acting  
25                                  as a mortgage servicer in North Carolina and who has been approved  
26                                  by the United States Department of Housing and Urban Development  
27                                  to service FHA loans or has been approved as a servicer by either the  
28                                  Federal National Mortgage Association or by the Federal Home Loan  
29                                  Mortgage Corporation.
- 30           (26) Qualifying individual. – 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 or  
33                                  mortgage servicer.
- 34           ~~(19)~~(27) Residential real property. – Real property located in the State of North  
35                                  Carolina upon which there is located or is to be located one or more  
36                                  single-family dwellings or dwelling units.
- 37           (28) RESPA. – The Real Estate Settlement Procedures Act, 12 U.S.C. §  
38                                  2601, et seq., as it may be hereafter amended.
- 39           ~~(20)~~(29) Tablefunding. – A transaction where a licensee closes a loan in its own  
40                                  name with funds provided by others, and the loan is assigned  
41                                  simultaneously to the mortgage lender providing the funding within  
42                                  one business day of the funding of the loan."

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

44           "**§ 53-243.02. License required; licensee records.**

1 (a) Other than an exempt person, it is unlawful for any person in this State to act  
2 as a mortgage ~~broker or broker~~, mortgage banker, or mortgage servicer, or directly or  
3 indirectly to engage in the business of a mortgage ~~broker or a broker~~, mortgage  
4 ~~banker, banker, or mortgage servicer~~, without first obtaining a license from the  
5 Commissioner under the provisions of this Article. This Article shall apply to any  
6 person who seeks to avoid its application by any direct or indirect device, subterfuge,  
7 artifice, or pretense whatsoever.

8 ...

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

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

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

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

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

42 "**§ 53-243.05. Qualifications for licensure; issuance.**

43 (a) Any person, other than an exempt person, desiring to obtain a license  
44 pursuant to this Article shall make written application for licensure to the Commissioner

1 on forms prescribed by the Commissioner. In accordance with rules adopted by the  
2 Commission, the application shall contain any information the Commissioner deems  
3 necessary regarding the following:

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

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



- 1 (1) Be at least 18 years of age.
- 2 (2) Have satisfactorily completed, within the three years immediately
- 3 preceding the date application is made, a mortgage lending
- 4 fundamentals course approved by the Commissioner. The course shall
- 5 consist of at least eight hours of classroom instruction in subjects
- 6 related to mortgage lending approved by the Commissioner. In
- 7 addition, the applicant shall have satisfactorily completed a written
- 8 examination approved by the Commissioner or possess residential
- 9 mortgage lending education or experience in residential mortgage
- 10 lending transactions that the Commissioner deems equivalent to the
- 11 course.
- 12 (c) In addition to the requirements under subsection (a) of this section, each
- 13 applicant for licensure as a mortgage broker or mortgage banker or mortgage servicer at
- 14 the time of application and at all times thereafter shall comply with the following
- 15 requirements:
- 16 (1) Except as provided for in subdivision (1a) of this subsection, if the
- 17 applicant is a sole proprietor, the applicant shall have at least three
- 18 years of experience in residential mortgage lending or other experience
- 19 or competency requirements as the Commissioner may impose.
- 20 Experience as an exclusive mortgage broker or as a limited loan officer
- 21 shall not constitute mortgage-lending experience under this
- 22 subdivision.
- 23 (1a) If an individual applicant to be licensed as a mortgage broker meets all
- 24 other requirements for licensure under this section but does not meet
- 25 the requirements of subdivision (1) of this subsection, the individual
- 26 applicant may be licensed as an exclusive mortgage broker upon
- 27 compliance with all of the following:
- 28 a. Successfully complete both a residential mortgage-lending
- 29 course approved by the Commissioner of not less than 40 hours
- 30 of classroom instruction, and a written examination approved
- 31 by the Commissioner.
- 32 b. Act exclusively as a mortgage broker for a single mortgage
- 33 banker licensee or single exempt mortgage banker for whom the
- 34 broker shall be deemed an agent, who shall be responsible for
- 35 supervising the broker as required by this Article, who shall
- 36 sign the license application of the applicant, and who shall be
- 37 jointly and severally liable with the broker for any claims
- 38 arising out of the broker's mortgage lending activities.
- 39 c. Shall be compensated for the broker's mortgage brokering
- 40 activities on a basis that is not dependent upon the loan amount,
- 41 interest rate, fees, or other terms of the loans brokered.
- 42 d. Shall not handle borrower or other third-party funds in
- 43 connection with the brokering or closing of mortgage loans.

- 1 (2) If the applicant is a general or limited partnership, at least one of its  
2 general partners shall have the experience as described under  
3 subdivision (1) of this subsection.
- 4 (3) If the applicant is a corporation, at least one of its principal officers  
5 shall have the experience as described under subdivision (1) of this  
6 subsection.
- 7 (4) If the applicant is a limited liability company, at least one of its  
8 managers shall have the experience as described under subdivision (1)  
9 of this subsection.

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

13 (e) Every applicant for initial licensure shall pay a filing fee not to exceed one  
14 thousand two hundred fifty dollars (\$1,250) for licensure as a mortgage ~~broker or broker,~~  
15 mortgage banker-banker, or mortgage servicer or sixty-seven dollars and fifty cents  
16 (\$67.50) for licensure as a loan officer or limited loan officer, in addition to the actual  
17 cost of obtaining credit reports and State and national criminal history record checks.

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

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

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

43 (i) If the Commissioner determines that an applicant meets the qualifications for  
44 licensure and finds that the financial responsibility, character, and general fitness of the

1 applicant are such as to command the confidence of the community and to warrant  
2 belief that the business will be operated honestly and fairly, the Commissioner shall  
3 issue a license to the applicant. In addition, for an applicant qualifying as an exclusive  
4 mortgage broker, the Commissioner shall determine if the mortgage broker/mortgage  
5 banker relationship is in the public interest."

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

7 "**§ 53-243.06. License renewal; termination.**

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

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

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

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

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

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

7 "**§ 53-243.08. ~~Managing principals~~Qualifying individuals and branch managers.**

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

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

35 "**§ 53-243.09. Offices; address changes; display of license.**

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

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

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

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

10 **"§ 53-243.10. Mortgage broker ~~duties~~duties; mortgage servicer duties.**

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

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

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

- 42 (1) Safeguard and account for any money handled for the borrower.
- 43 (2) Follow reasonable and lawful instructions from the borrower.
- 44 (3) Act with reasonable skill, care, and diligence.

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

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

38   "**§ 53-243.11. Prohibited activities.**

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

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

- 1 (2) To refuse improperly to issue a satisfaction of a mortgage.  
2 (3) To fail to account for or to deliver to any person any funds, documents,  
3 or other thing of value obtained in connection with a mortgage loan,  
4 including money provided by a borrower for a real estate appraisal or a  
5 credit report, which the mortgage banker, servicer, broker, or loan  
6 officer is not entitled to retain under the circumstances.  
7 (4) To pay, receive, or collect in whole or in part any commission, fee, or  
8 other compensation for brokering a mortgage loan in violation of this  
9 Article, including a mortgage loan brokered by any unlicensed person  
10 other than an exempt person.  
11 (5) To charge or collect any fee or rate of interest or to make or broker or  
12 service any mortgage loan with terms or conditions or in a manner  
13 contrary to the provisions of ~~Chapter 24~~ Chapter 24, Chapter 45, or  
14 Chapter 54 of the General Statutes.  
15 (6) To advertise mortgage loans, including rates, margins, discounts,  
16 points, fees, commissions, or other material information, including  
17 material limitations on the loans, unless the person is able to make the  
18 mortgage loans available to a reasonable number of qualified  
19 applicants.  
20 (7) To fail to disburse funds in accordance with a written commitment or  
21 agreement to make a mortgage loan.  
22 (8) To engage in any transaction, practice, or course of business that is not  
23 in good faith or fair dealing or that constitutes a fraud upon any  
24 person, in connection with the brokering or making or servicing of, or  
25 purchase or sale of, any mortgage loan.  
26 (9) To fail promptly to pay when due reasonable fees to a licensed  
27 appraiser for appraisal services that are:  
28 a. Requested from the appraiser in writing by the mortgage broker  
29 or mortgage banker or an employee of the mortgage broker or  
30 mortgage banker; and  
31 b. Performed by the appraiser in connection with the origination or  
32 closing of a mortgage loan for a customer or the mortgage  
33 broker or mortgage banker.  
34 (10) To broker a mortgage loan that contains a prepayment penalty if the  
35 principal amount of the loan is one hundred fifty thousand dollars  
36 (\$150,000) or less or if the loan is a rate spread home loan as defined  
37 in G.S. 24-1.1F.  
38 (11) To improperly influence or attempt to improperly influence the  
39 development, reporting, result, or review of a real estate appraisal  
40 sought in connection with a mortgage loan. Nothing in this subdivision  
41 shall be construed to prohibit a mortgage ~~broker or mortgage banker~~  
42 broker, mortgage banker, or mortgage servicer from asking the  
43 appraiser to do one or more of the following:  
44 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



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

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

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

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

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

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

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

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

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

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

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

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

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

(2) That any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, limited loan officer, ~~managing principal~~, qualifying individual, 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. Class 3 misdemeanor. Each  
37 transaction involving the unlawful making or brokering or servicing of a mortgage loan  
38 is a separate offense."

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

40 "**§ 53-243.15. Filing required for exempt persons; civil penalty.**

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

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

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

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

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

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

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

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

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

32 "(4a) 'Mortgage broker' is as defined in G.S. ~~53-243.01(14)~~53-243.01."

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

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

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

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

1 mortgage broker licensed pursuant to Article 19A of Chapter 53 of the General Statutes  
2 or exempt from licensure pursuant to G.S. ~~53-243.01(8)~~53-243.01(12) and  
3 G.S. 53-243.02; nor to any attorney-at-law, public accountant, or dealer registered under  
4 the North Carolina Securities Act, acting in the professional capacity for which such  
5 attorney-at-law, public accountant, or dealer is registered or licensed under the laws of  
6 the State of North Carolina. Provided further that subdivision (1)(ii) above shall not  
7 apply to any lender whose loans or advances to any person, firm or corporation in North  
8 Carolina aggregate more than one million dollars (\$1,000,000) in the preceding calendar  
9 year."

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

12 **"§ 45-21.16B. Suspension of foreclosure proceedings.**

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

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

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

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

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

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

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

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

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

- 1 (2) All amounts received by a servicer on a home loan at the address  
2 where the borrower has been instructed to make payments shall be  
3 accepted and credited, or treated as credited, within one business day  
4 of the date received, provided that the borrower has made the full  
5 contractual payment and has provided sufficient information to credit  
6 the account. If a servicer uses the scheduled method of accounting, any  
7 regularly scheduled payment made prior to the scheduled due date  
8 shall be credited no later than the due date. Provided, however, that if  
9 any payment is received and not credited, or treated as credited, the  
10 borrower shall be notified within 10 business days by mail at the  
11 borrower's last known address of the disposition of the payment, the  
12 reason the payment was not credited, or treated as credited to the  
13 account, and any actions necessary by the borrower to make the loan  
14 current.
- 15 (3) Failure to charge the fee or provide the information within the  
16 allowable time and in the manner required under subdivision (1) of  
17 subsection (a) of this section constitutes a waiver of such fee.
- 18 (4) All fees charged by a servicer must be otherwise permitted under  
19 applicable law and the contracts between the parties. Nothing herein is  
20 intended to permit the application of payments or method of charging  
21 interest which is less protective of the borrower than the contracts  
22 between the parties and other applicable law.
- 23 (5) The obligations of mortgage servicers set forth in G.S. 53-243.11."

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

25 **"§ 45-94. (Effective April 1, 2008) Remedies.**

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

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



1           (2) Within 30 days after discovering or being notified of an error, and  
2           prior to the institution of any legal action by the borrower against the  
3           servicer under this section, the servicer corrected the error and  
4           compensated the borrower for any fees or charges incurred by the  
5           borrower as a result of the violation."

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