

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

**H**

**D**

**HOUSE DRH80533-MDz-94A (4/24)**

Short Title: Regulate Mortgage Servicers. (Public)

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Sponsors: Representatives Blue and Church (Primary Sponsors).

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Referred to:

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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 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 may be required pursuant to the terms of the loan.

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.

12 ~~(5)~~(8) Commissioner. – The North Carolina Commissioner of Banks and the  
13 Commissioner's designees. For purposes of compliance with this  
14 Article by credit unions, Commissioner means the Administrator of the  
15 Credit Union Division of the Department of Commerce.

16 ~~(6)~~(9) Control. – ~~Except as provided in subdivision (2a) of this section,~~  
17 ~~"control" means the power to vote more than twenty percent (20%) of~~  
18 ~~outstanding voting shares or other interests of a corporation,~~  
19 ~~partnership, limited liability company, association, or trust. The power,~~  
20 ~~directly or indirectly, to direct the management or policies of a~~  
21 ~~company, whether through ownership of securities, by contract, or~~  
22 ~~otherwise. Any person that (i) is a director, general partner, or~~  
23 ~~executive officer; (ii) directly or indirectly has the right to vote ten~~  
24 ~~percent (10%) or more of a class of a voting security or has the power~~  
25 ~~to sell or direct the sale of ten percent (10%) or more of a class of~~  
26 ~~voting securities; (iii) in the case of an Limited Liability Corporation,~~  
27 ~~is a managing member; or (iv) in the case of a partnership, has the~~  
28 ~~right to receive upon dissolution, or has contributed, ten percent (10%)~~  
29 ~~or more of the capital, is presumed to control the company.~~

30 ~~(7)~~(10) Employee. – An individual, who has an employment relationship,  
31 acknowledged by both the individual and the mortgage broker or  
32 mortgage banker or mortgage servicer and is treated as ~~an~~ a common  
33 law employee for purposes of compliance with the federal income tax  
34 laws ~~laws~~ and whose income is reported on IRS Form W-2.

35 ~~(7a)~~(11) Exclusive mortgage broker. – An individual who acts as a mortgage  
36 broker exclusively for a single mortgage banker or single exempt  
37 person and who is licensed under the provisions of  
38 G.S. 53-243.05(c)(1a).

39 ~~(8)~~(12) Exempt person. – The term includes any of the following:

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

43 b. Any employee of a licensee whose responsibilities are limited  
44 to clerical and administrative tasks for his or her employer and

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

- 1        ~~(9)~~(13)    Licensee. – A loan officer, limited loan officer, mortgage broker, ~~or~~  
2        ~~mortgage banker~~ mortgage banker, or mortgage servicer who is  
3        licensed pursuant to this Article.
- 4        ~~(10)~~(14)    Loan officer. – An individual who, in exchange for compensation as an  
5        employee of another person, accepts or offers to accept applications  
6        for mortgage ~~loans~~ loans, or who solicits or offers to solicit a mortgage  
7        loan, negotiates the terms or conditions of a mortgage loan, issues  
8        mortgage loan commitments or interest rate guarantee agreements to  
9        borrowers, whether such acts are done through contact by telephone,  
10       by electronic means, by mail, or in person with the borrowers or  
11       potential borrowers. The definition of loan officer shall not include any  
12       exempt person described in sub-subdivision ~~(8)b.~~(12)b. of this section.
- 13       ~~(10a)~~(15)    Limited loan officer. – An individual who, in exchange for  
14       compensation as an employee of an affiliated mortgage banker,  
15       directly solicits, negotiates, offers, or makes commitments for  
16       mortgage loans. The definition of limited loan officer shall not include  
17       any exempt person described in sub-subdivision ~~(8)b.~~(12)b. of this  
18       section.
- 19       ~~(11)~~(16)    Make a mortgage loan. – To close a mortgage loan, to advance funds,  
20       to offer to advance funds, or to make a commitment to advance funds  
21       to a borrower under a mortgage loan.
- 22       ~~(13)~~(17)    Mortgage banker. – A person who acts as a mortgage lender as that  
23       term is defined in subdivision (2) of this section. However, the  
24       definition does not include a person who acts as a mortgage lender  
25       only in tablefunding transactions.
- 26       ~~(14)~~(18)    Mortgage broker. – A person who acts as a mortgage broker as that  
27       term is defined in subdivision (1) of this section. The term "mortgage  
28       broker" includes an exclusive mortgage broker, except when expressly  
29       provided otherwise.
- 30       ~~(15)~~(19)    Mortgage loan. – A loan made to a natural person or persons primarily  
31       for personal, family, or household use, primarily secured by either a (i)  
32       mortgage or a deed of trust on residential real property located in  
33       North ~~Carolina~~ Carolina, or (ii) security interest in a manufactured  
34       home (as defined in G.S. 143-145(7)).
- 35              (20)        Mortgage servicer. – A person who directly or indirectly acts as a  
36       mortgage servicer as that term is defined in subsection (3) of this  
37       section or who otherwise meets the definition of 'servicer' in RESPA,  
38       12 U.S.C. § 2605(i), with respect to mortgage loans.
- 39       ~~(15a)~~(21)    Parent. – The person that controls an affiliated mortgage  
40       ~~banker~~ banker, mortgage broker, or mortgage servicer, as control is  
41       defined in subdivision ~~(2a)~~(4) of this section.
- 42       ~~(16)~~(22)    Person. – An individual, partnership, limited liability company, limited  
43       partnership, corporation, association, or other group engaged in joint  
44       business activities, however organized.

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

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

30           **"§ 53-243.02. License required; licensee records.**

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

38           ...

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

43           (f) Any person who has completed and filed with the Commissioner the  
44           application and all documents required for licensure as a loan officer other than

1 documents relating to the required examination and the mortgage lending fundamentals  
2 course may act as a loan officer during the period before action is taken on the  
3 application by the Commissioner, if:

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

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

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

28 "**§ 53-243.05. Qualifications for licensure; issuance.**

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

- 34 (1) The applicant's name and address (including street address, mailing  
35 address, e-mail, and telephone contact information) and social security  
36 ~~number~~number or taxpayer identification number.
- 37 (2) The applicant's form and place of organization, if applicable.
- 38 (3) The applicant's proposed method of and locations for doing business,  
39 if applicable.
- 40 (4) The qualifications and business history of the applicant and, if  
41 applicable, the business history of any partner, officer, or director, any  
42 person occupying a similar status or performing similar functions, or  
43 any person directly or indirectly controlling the applicant, including:  
44 (i) a description of any injunction or administrative order by any state

1 or federal authority to which the person is or has been subject; (ii) a  
2 ~~conviction~~ conviction, within the past 10 years, of a misdemeanor  
3 involving ~~fraudulent dealings or moral turpitude or relating to any~~ any fraud, false  
4 ~~aspect of the residential mortgage lending business~~ statement or omission, any theft or wrongful taking of property,  
5 bribery, perjury, forgery, counterfeiting, extortion, or conspiracy to  
6 commit any of these offenses; or involving any financial service or  
7 financial-service related business; (iii) any felony convictions.

8  
9 (5) With respect to an application for licensing as a mortgage ~~banker or~~  
10 ~~broker, banker, mortgage broker, or mortgage servicer,~~ the applicant's  
11 financial condition, credit history, and business history; and with  
12 respect to the application for licensing as a loan officer, the applicant's  
13 credit history and business history.

14 (6) The applicant's consent to a federal and State criminal history record  
15 check and a set of the applicant's fingerprints in a form acceptable to  
16 the Commissioner. In the case of an applicant that is a corporation,  
17 partnership, limited liability company, association, or trust, each  
18 individual who has control of the applicant or who is the ~~managing~~  
19 ~~principal~~ qualifying individual or a branch manager shall consent to a  
20 federal and State criminal history record check and submit a set of that  
21 individual's fingerprints pursuant to this subdivision. Refusal to  
22 consent to a criminal history record check constitutes grounds for the  
23 Commissioner to deny licensure to the applicant as well as to any  
24 entity (i) by whom or by which the applicant is employed, (ii) over  
25 which the applicant has control, or (iii) as to which the applicant is the  
26 current or proposed ~~managing principal~~ qualifying individual or a  
27 current or proposed branch manager.

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

- 31 (1) Be at least 18 years of age.  
32 (2) Have satisfactorily completed, within the three years immediately  
33 preceding the date application is made, a mortgage lending  
34 fundamentals course approved by the Commissioner. The course shall  
35 consist of at least eight hours of classroom instruction in subjects  
36 related to mortgage lending approved by the Commissioner. In  
37 addition, the applicant shall have satisfactorily completed a written  
38 examination approved by the Commissioner or possess residential  
39 mortgage lending education or experience in residential mortgage  
40 lending transactions that the Commissioner deems equivalent to the  
41 course.

42 (c) In addition to the requirements under subsection (a) of this section, each  
43 applicant for licensure as a mortgage broker or mortgage banker or mortgage servicer at



1 the time of application and at all times thereafter shall comply with the following  
2 requirements:

3 (1) Except as provided for in subdivision (1a) of this subsection, if the  
4 applicant is a sole proprietor, the applicant shall have at least three  
5 years of experience in residential mortgage lending or other experience  
6 or competency requirements as the Commissioner may impose.  
7 Experience as an exclusive mortgage broker or as a limited loan officer  
8 shall not constitute mortgage-lending experience under this  
9 subdivision.

10 (1a) If an individual applicant to be licensed as a mortgage broker meets all  
11 other requirements for licensure under this section but does not meet  
12 the requirements of subdivision (1) of this subsection, the individual  
13 applicant may be licensed as an exclusive mortgage broker upon  
14 compliance with all of the following:

15 a. Successfully complete both a residential mortgage-lending  
16 course approved by the Commissioner of not less than 40 hours  
17 of classroom instruction, and a written examination approved  
18 by the Commissioner.

19 b. Act exclusively as a mortgage broker for a single mortgage  
20 banker licensee or single exempt mortgage banker for whom the  
21 broker shall be deemed an agent, who shall be responsible for  
22 supervising the broker as required by this Article, who shall  
23 sign the license application of the applicant, and who shall be  
24 jointly and severally liable with the broker for any claims  
25 arising out of the broker's mortgage lending activities.

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

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

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

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

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

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

43 (d1) A mortgage banker licensed under this Article may, upon notice in a format  
44 acceptable to the Commissioner and without payment of added fee, also act as a

1 mortgage servicer, as long as the mortgage banker complies with the requirements  
2 applicable to a mortgage servicer under this Article. This subsection is not a waiver for  
3 the mortgage banker or mortgage servicer of any fees charged or payable to the  
4 Nationwide Mortgage Licensing System.

5 (e) Every applicant for initial licensure shall pay a filing fee not to exceed one  
6 thousand two hundred fifty dollars (\$1,250) for licensure as a mortgage ~~broker or broker,~~  
7 mortgage ~~banker~~-banker, or mortgage servicer or sixty-seven dollars and fifty cents  
8 (\$67.50) for licensure as a loan officer or limited loan officer, in addition to the actual  
9 cost of obtaining credit reports and State and national criminal history record checks.

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

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

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

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

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

43 **"§ 53-243.06. License renewal; termination.**

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

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

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

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

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

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

44 "**§ 53-243.08. Managing principalsQualifying individuals and branch managers.**

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

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

28 "**§ 53-243.09. Offices; address changes; display of license.**

29 (a) Each mortgage broker licensee shall maintain and transact business from a  
30 principal place of business in this State. A principal place of business in this State shall  
31 consist of at least one enclosed room or building of stationary construction in which  
32 negotiations of mortgage loan transactions of others may be conducted and carried on in  
33 privacy and in which all of the books, records, and files pertaining to mortgage loan  
34 transactions relating to borrowers in this State are maintained. However, the  
35 Commissioner may, by rule, impose terms and conditions under which the records and  
36 files may be maintained outside of this State.

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

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

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

2   "**§ 53-243.10. Mortgage broker ~~duties~~duties; mortgage servicer duties.**

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

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

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

- 34           (1) Safeguard and account for any money handled for the borrower.
- 35           (2) Follow reasonable and lawful instructions from the borrower.
- 36           (3) Act with reasonable skill, care, and diligence.
- 37           (4) With its application and renewal and with its supplemental filings  
38 made from time to time, file with the Commissioner a complete,  
39 current schedule of costs and fees it charges borrowers for its servicing  
40 related activities.
- 41           (5) File with the Commissioner upon request a report in a form and format  
42 acceptable to the Commissioner detailing the servicer's activities in  
43 this State, including, without limitation:
  - 44           a. The number of mortgage loans the servicer is servicing.

- 1           b. The type and characteristics of such loans in this State.  
2           c. The number of serviced loans in default, along with a  
3           breakdown of 30-, 60-, and 90-day delinquencies.  
4           d. Information on loss mitigation activities, including details on  
5           workout arrangements undertaken.  
6           e. Information on foreclosures commenced in this State.  
7       (6) At the time a servicer accepts assignment of servicing rights for a  
8       mortgage loan, the servicer shall disclose to the borrower all of the  
9       following:  
10       a. Any notice required by RESPA or by regulations promulgated  
11       thereunder.  
12       b. A schedule of its costs and fees (which shall comply with North  
13       Carolina law and which shall not exceed those reported to the  
14       Commissioner).  
15       c. A notice in a form and content acceptable to the Commissioner  
16       that the servicer is licensed by the Commissioner and that  
17       complaints about the servicer may be submitted to the  
18       Commissioner.  
19       d. Any notice required by Chapter 45 of the General Statutes.  
20       (7) In the event of a delinquency or other act of default on the part of the  
21       borrower, the servicer shall act in good faith to inform the borrower of  
22       the true facts concerning the loan and its status, and to negotiate with  
23       the borrower a resolution or 'work out' to the delinquency."

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

25       "**§ 53-243.11. Prohibited activities.**

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

- 28       (1) To misrepresent or conceal the material facts or make false promises  
29       likely to influence, persuade, or induce an applicant for a mortgage  
30       loan or a mortgagor to take a mortgage loan, or to pursue a course of  
31       misrepresentation through agents or otherwise.  
32       (2) To refuse improperly to issue a satisfaction of a mortgage.  
33       (3) To fail to account for or to deliver to any person any funds, documents,  
34       or other thing of value obtained in connection with a mortgage loan,  
35       including money provided by a borrower for a real estate appraisal or a  
36       credit report, which the mortgage banker, servicer, broker, or loan  
37       officer is not entitled to retain under the circumstances.  
38       (4) To pay, receive, or collect in whole or in part any commission, fee, or  
39       other compensation for brokering a mortgage loan in violation of this  
40       Article, including a mortgage loan brokered by any unlicensed person  
41       other than an exempt person.  
42       (5) To charge or collect any fee or rate of interest or to make or broker or  
43       service any mortgage loan with terms or conditions or in a manner  
44       contrary to the provisions of Chapter 24 of the General Statutes.

- 1 (6) To advertise mortgage loans, including rates, margins, discounts,  
2 points, fees, commissions, or other material information, including  
3 material limitations on the loans, unless the person is able to make the  
4 mortgage loans available to a reasonable number of qualified  
5 applicants.
- 6 (7) To fail to disburse funds in accordance with a written commitment or  
7 agreement to make a mortgage loan.
- 8 (8) To engage in any transaction, practice, or course of business that is not  
9 in good faith or fair dealing or that constitutes a fraud upon any  
10 person, in connection with the brokering or making or servicing of, or  
11 purchase or sale of, any mortgage loan.
- 12 (9) To fail promptly to pay when due reasonable fees to a licensed  
13 appraiser for appraisal services that are:
- 14 a. Requested from the appraiser in writing by the mortgage broker  
15 or mortgage banker or an employee of the mortgage broker or  
16 mortgage banker; and
- 17 b. Performed by the appraiser in connection with the origination or  
18 closing of a mortgage loan for a customer or the mortgage  
19 broker or mortgage banker.
- 20 (10) To broker a mortgage loan that contains a prepayment penalty if the  
21 principal amount of the loan is one hundred fifty thousand dollars  
22 (\$150,000) or less or if the loan is a rate spread home loan as defined  
23 in G.S. 24-1.1F.
- 24 (11) To improperly influence or attempt to improperly influence the  
25 development, reporting, result, or review of a real estate appraisal  
26 sought in connection with a mortgage loan. Nothing in this subdivision  
27 shall be construed to prohibit a mortgage ~~broker or mortgage banker~~  
28 broker, mortgage banker, or mortgage servicer from asking the  
29 appraiser to do one or more of the following:
- 30 a. Consider additional appropriate property information.
- 31 b. Provide further detail, substantiation, or explanation for the  
32 appraiser's value conclusion.
- 33 c. Correct errors in the appraisal report.
- 34 (12) To fail to comply with the mortgage loan servicing transfer, escrow  
35 account administration, or borrower inquiry response requirements  
36 imposed by sections 6 and 10 of the Real Estate Settlement Procedures  
37 Act (RESPA), 12 U.S.C. § 2605 and § 2609, and regulations adopted  
38 thereunder by the Secretary of the Department of Housing and Urban  
39 Development.
- 40 (13) To broker a rate spread adjustable rate mortgage loan without  
41 disclosing to the borrower the terms and costs associated with a fixed  
42 rate loan from the same lender at the lowest annual percentage rate for  
43 which the borrower qualifies.

- 1 (14) To fail to comply with applicable federal laws and regulations related  
2 to mortgage lending.
- 3 (15) To engage in unfair, misleading, or deceptive advertising related to a  
4 solicitation for a mortgage loan.
- 5 (16) For a mortgage servicer to fail to comply with the mortgage servicer's  
6 obligations under Article 10 of Chapter 45 of the North Carolina  
7 General Statutes.
- 8 (17) For a person acting as a mortgage servicer to place or attempt to place  
9 hazard, homeowner's, or flood insurance on the mortgaged property if  
10 insurance is in effect.
- 11 (18) For a person acting as a mortgage servicer to fail to provide to the  
12 borrower reasonable notice and opportunity to cure (including a full  
13 refund or credit to the borrower's account) if insurance coverage lapses  
14 and the servicer then places hazard, homeowner's, or flood insurance at  
15 rates exceeding that most recently paid by borrower or if the insurance  
16 is for coverage that exceeds the lesser of the replacement cost of the  
17 improvements on the collateral or the outstanding principal  
18 indebtedness of the borrower. It shall be deemed 'reasonable notice  
19 and opportunity to cure' if the servicer who unilaterally insures the  
20 mortgaged property gives the borrower notice of that action and 30  
21 days for the borrower to obtain alternative insurance coverage and  
22 request a refund or credit from the servicer.
- 23 (19) For a person acting as a mortgage servicer to refuse to reinstate a  
24 delinquent loan upon a tender of payment made timely under the  
25 contract which is sufficient in amount, based upon the last written  
26 statement received by borrower, to pay outstanding or overdue charges  
27 and restore the loan to a nondelinquent status.
- 28 (20) For a person acting as a mortgage servicer to fail to mail within 10  
29 days after a loan becomes 60 days delinquent, and at least 30 days  
30 before foreclosure is initiated, a notice addressed to the borrower at his  
31 last known address with form and content of the notice prescribed by  
32 the Commissioner which provides to the delinquent borrower,  
33 including those currently in bankruptcy, suggested alternatives to  
34 foreclosure; provided, however, that servicer is not required to send  
35 any notice that violates the U.S. Bankruptcy Code or the order of any  
36 bankruptcy judge then in effect.
- 37 (21) After notice from the Commissioner or other government agent or  
38 from any party in interest for a person acting as a mortgage servicer to  
39 charge or collect any fee or rate of interest on any mortgage loan with  
40 terms or conditions or in a manner contrary to the provisions of  
41 Chapter 24 or Chapter 45 of the General Statutes or Title 11 of the  
42 United States Code."

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

44 **"§ 53-243.12. Disciplinary authority.**



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

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

7 (2) That any of the following circumstances apply to the applicant,  
8 licensee, or any partner, member, manager, officer, director, loan  
9 officer, limited loan officer, ~~managing principal, qualifying individual,~~  
10 or any person occupying a similar status or performing similar  
11 functions or any person directly or indirectly controlling the applicant  
12 or licensee. The person:

13 a. Has filed an application for license that, as of its effective date  
14 or as of any date after filing, contained any statement that, in  
15 light of the circumstances under which it was made, is false or  
16 misleading with respect to any material fact.

17 b. Has violated or failed to comply with any provision of this  
18 Article, rule adopted by the Commissioner, or order of the  
19 Commissioner.

20 c. Has been convicted of any felony, or, within the past 10 years,  
21 has been convicted of any misdemeanor involving ~~mortgage~~  
22 ~~lending or any aspect of the mortgage lending business, or any~~  
23 ~~offense involving breach of trust, moral turpitude, or fraudulent~~  
24 ~~or dishonest dealing, or financial services or a financial services~~  
25 ~~related business or any fraud, false statements or omissions,~~  
26 ~~theft or any wrongful taking of property, bribery, perjury,~~  
27 ~~forgery, counterfeiting, extortion, or a conspiracy to commit~~  
28 ~~any of these offenses.~~

29 d. Is permanently or temporarily enjoined by any court of  
30 competent jurisdiction from engaging in or continuing any  
31 conduct or practice involving any aspect of the mortgage  
32 lending business.

33 e. Is the subject of an order of the Commissioner denying,  
34 suspending, or revoking that person's license as a mortgage  
35 ~~broker or mortgage banker.~~broker, mortgage banker, or  
36 mortgage servicer.

37 f. Is the subject of an order entered within the past five years by  
38 the authority of any state with jurisdiction over that state's  
39 mortgage ~~brokerage or mortgage banking~~brokerage, mortgage  
40 banking, or mortgage servicing industry denying or revoking  
41 that person's license as a mortgage ~~broker or mortgage banking~~  
42 ~~industry or denying or revoking that person's license as a~~  
43 ~~mortgage broker or mortgage banker.~~broker, mortgage servicer,  
44 or mortgage banker.

- 1           g. Does not meet the qualifications or the financial responsibility,  
2 character, or general fitness requirements under G.S. 53-243.05  
3 or any bond or capital requirements under this Article.  
4           h. Has been the executive officer or controlling shareholder or  
5 owned a controlling interest in any mortgage broker or  
6 mortgage banker or mortgage servicer who has been subject to  
7 an order or injunction described in sub-subdivision d., e., or f.  
8 of this subdivision.  
9           i. Has failed to pay the proper filing or renewal fee under this  
10 Article. However, the Commissioner may enter only a denial  
11 order under this sub-subdivision, and the Commissioner shall  
12 vacate the order when the deficiency has been corrected.  
13           j. Has falsely certified attendance or completion of hours at an  
14 approved mortgage lending continuing education course.

15       (b) The Commissioner may, by order, summarily postpone or suspend the license  
16 of a licensee pending final determination of any proceeding under this section. Upon  
17 entering the order, the Commissioner shall promptly notify the applicant or licensee that  
18 the order has been entered and the reasons for the order. The Commissioner shall  
19 calendar a hearing within 15 days after the Commissioner receives a written request for  
20 a hearing. If a licensee does not request a hearing and the Commissioner does not  
21 request a hearing, the order will remain in effect until it is modified or vacated by the  
22 Commissioner. If a hearing is requested or ordered by the Commissioner, after notice of  
23 and opportunity for hearing, the Commissioner may modify or vacate the order or  
24 extend it until final determination.

25       (c) The Commissioner may, by order, impose a civil penalty upon a licensee or  
26 any partner, officer, director, or other person occupying a similar status or performing  
27 similar functions on behalf of a licensee for any violation of this Article. The civil  
28 penalty shall not exceed ten thousand dollars (\$10,000) for each violation of this Article  
29 by a mortgage broker or mortgage banker. The Commissioner may impose a civil  
30 penalty of up to ten thousand dollars (\$10,000) for each violation of this Article by a  
31 person other than a licensee or exempt person.

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

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

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

7 (g) If the Commissioner has reasonable grounds to believe that a licensee or other  
8 person has violated the provisions of this Article or that facts exist that would be the  
9 basis for an order against a licensee or other person, the Commissioner may at any time,  
10 either personally or by a person duly designated by the Commissioner, investigate or  
11 examine the loans and business of the licensee and examine the books, accounts,  
12 records, and files of any licensee or other person relating to the complaint or matter  
13 under investigation. The Commissioner may require any licensee or other person to  
14 submit a consent to a criminal history record check and a set of that person's fingerprints  
15 in a form acceptable to the Commissioner in connection with any examination or  
16 investigation. Refusal to submit the requested criminal history record check or a set of  
17 fingerprints shall be grounds for disciplinary action. The reasonable cost of this  
18 investigation or examination shall be charged against the licensee.

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

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

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

30 (k) If the Commissioner finds that the ~~managing principal, qualifying individual,~~  
31 branch manager, or loan officer of a licensee had knowledge of or reasonably should  
32 have had knowledge of, or participated in, any activity that results in the entry of an  
33 order under this section suspending or withdrawing the license of a licensee, the  
34 Commissioner may prohibit the branch manager, ~~managing principal, qualifying~~  
35 individual, or loan officer from serving as a branch manager, ~~managing~~  
36 principal, qualifying individual, or loan officer for any period of time the Commissioner  
37 deems necessary.

38 (l) In addition to the authority to require criminal history background checks as  
39 set forth in G.S. 53-243.05 and G.S. 53-243.06, the Commissioner shall have the  
40 authority to require a criminal history background check at any other time as a condition  
41 of continued licensure. Upon the request of the Commissioner, a licensee shall furnish  
42 to the Commissioner the licensee's consent to a criminal history record check and a set  
43 of the licensee's fingerprints in a form acceptable to the Commissioner. Refusal to

1 consent to a criminal history record check under this subsection may constitute grounds  
2 for the Commissioner to suspend or revoke the license of the licensee.

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

7 (n) In the event the Commissioner shall reasonably believe that a material  
8 violation of law has occurred in the origination or servicing of a loan then being  
9 foreclosed or then delinquent and in threat of foreclosure, the Commissioner may order  
10 the servicer to suspend its efforts to foreclose on the mortgage for up to 60 days from  
11 the date of the order.

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

17 (p) The Commissioner is authorized to take action, including suspension of the  
18 license, if the licensee fails to respond promptly to inquiries from the Commissioner or  
19 the Commissioner's delegates regarding any complaints filed against the licensee which  
20 allege or appear to involve violation of this Article or any law or rule affecting the  
21 mortgage lending business.

22 (q) The Commissioner is authorized to take action, including suspension of the  
23 license, if the licensee fails to respond promptly to and cooperate fully with notices  
24 from the Commissioner or the Commissioner's delegates relating to the scheduling and  
25 conducting of an examination or investigation under this Article."

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

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

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

36 "**§ 53-243.14. Criminal penalty.**

37 A violation of G.S. 53-243.02 is a Class I felony. Each transaction involving the  
38 unlawful making or brokering or servicing of a mortgage loan 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.** This act becomes effective January 1, 2009, and applies to  
11 serving activities commenced on loans entered into on or after that date.