

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2006-239
SENATE BILL 2043**

AN ACT TO UPDATE THE MORTGAGE LENDING ACT BY CHANGING THE REGISTRATION FEES FOR MORTGAGE LICENSING AND RENEWAL AND BY AUTHORIZING THE COMMISSIONER TO PARTICIPATE IN A NATIONAL LICENSING SYSTEM AND DATABASE.

The General Assembly of North Carolina enacts:

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

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

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

- (1) The applicant's name and address and social security number.
- (2) The applicant's form and place of organization, if applicable.
- (3) The applicant's proposed method of and locations for doing business, if applicable.
- (4) The qualifications and business history of the applicant and, if applicable, the business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, including:
 - (i) a description of any injunction or administrative order by any state or federal authority to which the person is or has been subject;
 - (ii) a conviction of a misdemeanor involving fraudulent dealings or moral turpitude or relating to any aspect of the residential mortgage lending business;
 - (iii) any felony convictions.
- (5) With respect to an application for licensing as a mortgage banker or broker, the applicant's financial condition, credit history, and business history; and with respect to the application for licensing as a loan officer, the applicant's credit history and business history.
- (6) The applicant's consent to a federal and State criminal history record check and a set of the applicant's fingerprints in a form acceptable to the Commissioner. In the case of an applicant that is a corporation, partnership, limited liability company, association, or trust, each individual who has control of the applicant or who is the managing principal or a branch manager shall consent to a federal and State

criminal history record check and submit a set of that individual's fingerprints pursuant to this subdivision. Refusal to consent to a criminal history record check constitutes grounds for the Commissioner to deny licensure to the applicant as well as to any entity (i) by whom or by which the applicant is employed, (ii) over which the applicant has control, or (iii) as to which the applicant is the current or proposed managing principal or a current or proposed branch manager.

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

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

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

- (1) Except as provided for in subdivision (1a) of this subsection, if the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other experience or competency requirements as the Commissioner may impose. Experience as an exclusive mortgage broker or as a limited loan officer shall not constitute mortgage-lending experience under this subdivision.
- (1a) If an individual applicant to be licensed as a mortgage broker meets all other requirements for licensure under this section but does not meet the requirements of subdivision (1) of this subsection, the individual applicant may be licensed as an exclusive mortgage broker upon compliance with all of the following:
 - a. Successfully complete both a residential mortgage-lending course approved by the Commissioner of not less than 40 hours of classroom instruction, and a written examination approved by the Commissioner.
 - b. Act exclusively as a mortgage broker for a single mortgage banker licensee or single exempt mortgage banker for whom the broker shall be deemed an agent, who shall be responsible for

supervising the broker as required by this Article, who shall sign the license application of the applicant, and who shall be jointly and severally liable with the broker for any claims arising out of the broker's mortgage lending activities.

- c. Shall be compensated for the broker's mortgage brokering activities on a basis that is not dependent upon the loan amount, interest rate, fees, or other terms of the loans brokered.
 - d. Shall not handle borrower or other third-party funds in connection with the brokering or closing of mortgage loans.
- (2) If the applicant is a general or limited partnership, at least one of its general partners shall have the experience as described under subdivision (1) of this subsection.
 - (3) If the applicant is a corporation, at least one of its principal officers shall have the experience as described under subdivision (1) of this subsection.
 - (4) If the applicant is a limited liability company, at least one of its managers shall have the experience as described under subdivision (1) of this subsection.

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

(e) Every applicant for initial licensure shall pay a filing fee ~~of not to exceed one thousand dollars (\$1,000)~~ one thousand two hundred fifty dollars (\$1,250) for licensure as a mortgage broker or mortgage banker or ~~fifty dollars (\$50.00)~~ sixty-seven dollars and fifty cents (\$67.50) for licensure as a loan officer or limited loan officer, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks.

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

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

(h) Each principal office and each branch office of a mortgage broker or mortgage banker licensed under the provisions of this Article shall be issued a separate license. A licensed mortgage broker or mortgage banker shall file with the Commissioner an application on a form prescribed by the Commissioner that identifies the address of the principal office and each branch office and branch manager. A filing fee of not to exceed one hundred dollars (\$100.00) one hundred twenty-five dollars (\$125.00) shall be assessed by the Commissioner for each branch office issued a license.

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

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

"§ 53-243.06. License renewal; termination.

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

- (1) Licensed mortgage bankers shall pay an annual fee of not to exceed five hundred dollars (\$500.00) six hundred twenty-five dollars (\$625.00) and one hundred dollars (\$100.00) one hundred twenty-five dollars (\$125.00) for each branch office.
- (2) Licensed mortgage brokers shall pay an annual fee of not to exceed five hundred dollars (\$500.00) six hundred twenty-five dollars (\$625.00) and one hundred dollars (\$100.00) one hundred twenty-five dollars (\$125.00) for each branch office. Licensed exclusive mortgage brokers shall pay an annual fee of not to exceed five hundred dollars (\$500.00) six hundred twenty-five dollars (\$625.00).
- (3) Licensed loan officers shall pay an annual fee of not to exceed fifty dollars (\$50.00) sixty-seven dollars and fifty cents (\$67.50).

(b) If a mortgage banker or mortgage broker license is not renewed prior to the applicable expiration date, then an additional two hundred fifty dollars (\$250.00) in addition to the renewal fee under subsection (a) of this section shall be assessed as a late fee to any renewal. If a loan officer or limited loan officer license is not renewed prior to the applicable expiration date, then an additional fifty dollars (\$50.00) in addition to the renewal fee under subsection (a) of this section shall be assessed as a late fee to any renewal. In the event a licensee fails to obtain a reinstatement of the license within 90 days after the date the license expires, the Commissioner may require the licensee to

comply with the requirements for the initial issuance of a license under the provisions of this Article.

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

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

SECTION 3. Article 19A of Chapter 53 of the General Statutes is amended by adding two new sections to read:

"§ 53-243.17. Participation in national mortgage licensing system; licensing proprietary software.

(a) The Commissioner of Banks is authorized to participate in the formation and operation of a centralized and automated licensing system and data depository funded by State mortgage regulators and law enforcement agencies. Pursuant to this authority, the Commissioner may:

- (1) Cause funds of the Office of Commissioner of Banks to be applied to the initial capitalization, organizational expenses, and operating expenses of a limited liability company, nonprofit corporation or foundation, or other entity created to operate the licensing system and data depository and to serve as a manager or director of the entity;
- (2) Enter into operating agreements, information sharing agreements, interstate cooperative agreements, and technology licensing agreements necessary to the organization and operation of the entity and the licensing system and data depository; and
- (3) Take such further actions as are reasonably necessary to give effect to the provisions of this section.

(b) The Commissioner is authorized to enter into agreements to license the use of the proprietary software owned by the Office of the Commissioner of Banks to banking, mortgage, or financial services supervisory agencies of other states.

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

"§ 53-243.18. Payment of fees.

Payment of fees specified in this Article shall be made to the Office of Commissioner of Banks or, at the election of the Commissioner, to a national mortgage licensing system, agency, or enterprise designated by the Commissioner."

SECTION 4. The amount set as the maximum amount that may be charged for fees in this act shall be the actual amount of the fee until the Banking Commission adopts rules setting the fee at a lower rate.

SECTION 5. This act becomes effective October 1, 2006.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 2:15 p.m. this 13th day of August, 2006