

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2008-228
HOUSE BILL 2463**

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 may be required pursuant to the terms of the mortgage loan, the mortgage servicing loan documents, or servicing contract.
- ~~(2a)~~(4) Affiliate. – Any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841), et seq., as amended from time to time. For purposes of this subdivision, the term control means ownership of all of the voting stock or comparable voting interest of the controlled person.

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

- a. The licensee, by itself or with its affiliates, is licensed in five or more states to engage in the mortgage lending business and (i) is supervised by a state or federal regulatory agency whose regulatory scheme has been determined by the Commissioner to be substantially similar to that of North Carolina, (ii) is organized and supervised under the laws of a state that has adopted a model licensing law endorsed by the Commissioner; or (iii) is supervised by a state or federal agency that is a party to an interstate compact, or has otherwise entered into a cooperative reciprocal agreement by which the state or federal regulatory agency and the State of North Carolina, directly or by duly authorized act of the Commissioner, have mutually agreed to recognize state licensing laws which have specific enumerated criteria.
- b. The licensee, including its affiliates and wholly owned subsidiaries, has more than 100 employees that are licensed pursuant to this Article.
- c. The licensee has a consolidated net worth of one hundred million dollars (\$100,000,000) or more, or if the licensee does not have the required net worth, its parent shall provide to the Commissioner (i) evidence satisfactory to the Commissioner that the parent has a net worth of one hundred million dollars (\$100,000,000) or more, and (ii) an unconditional guarantee or comparable instrument of surety satisfactory to the Commissioner of the performance of the licensee of its obligations under this Article.
- d. The licensee is a direct or indirect wholly owned subsidiary of a bank holding company or financial services holding company subject to regulation by the Federal Reserve Board or the Office of Thrift Supervision.
- e. The licensee has a net worth of one hundred million dollars (\$100,000,000) or, if the licensee does not have the required net worth, (i) its parent, if it is not a bank holding company or financial holding company, meets the requirements of sub-subdivision c. of this subdivision or (ii) its parent, if such parent is a bank holding company or financial holding company, has total assets in excess of ten billion dollars (\$10,000,000,000) and provides the Commissioner with the unconditional guarantee or comparable instrument of surety required by sub-subdivision c. of this subdivision.

- ~~(3)~~(6) Branch manager. – The individual whose principal office is physically located in, who is in charge of, and who is responsible for the business operations of a branch office of a mortgage broker or mortgage banker.
- ~~(4)~~(7) Branch office. – An office of the licensee acting as a mortgage broker or mortgage banker that is separate and distinct from the licensee's principal office. A branch office shall not be located at an individual's home or residence.
- ~~(5)~~(8) Commissioner. – The North Carolina Commissioner of Banks and the Commissioner's designees. For purposes of compliance with this Article by credit unions, Commissioner means the Administrator of the Credit Union Division of the Department of Commerce.
- ~~(6)~~(9) Control. – ~~Except as provided in subdivision (2a) of this section, "control" means the power to vote more than twenty percent (20%) of outstanding voting shares or other interests of a corporation, partnership, limited liability company, association, or trust. The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner, or executive officer; (ii) directly or indirectly has the right to vote ten percent (10%) or more of a class of a voting security or has the power to sell or direct the sale of ten percent (10%) or more of a class of voting securities; (iii) in the case of a Limited Liability Company, is a managing member; or (iv) in the case of a partnership, has the right to receive upon dissolution, or has contributed, ten percent (10%) or more of the capital, is presumed to control the company.~~
- ~~(7)~~(10) Employee. – An individual, who has an employment relationship, acknowledged by both the individual and the mortgage broker or mortgage banker or mortgage servicer and is treated as ~~an~~ a common law employee for purposes of compliance with the federal income tax ~~laws~~ laws and whose income is reported on IRS Form W-2.
- ~~(7a)~~(11) Exclusive mortgage broker. – An individual who acts as a mortgage broker exclusively for a single mortgage banker or single exempt person and who is licensed under the provisions of G.S. 53-243.05(c)(1a).
- ~~(8)~~(12) Exempt person. – The term includes any of the following:
- a. Any agency of the federal government or any state or municipal government granting or servicing mortgage loans under specific authority of the laws of any state or the United States.
 - b. Any employee of a licensee whose responsibilities are limited to clerical and administrative tasks for his or her employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer.
 - c. Any person authorized to engage in business as a bank or a wholly owned subsidiary of a bank, a farm credit system,

savings institution, or a wholly owned subsidiary of a savings institution, or credit union or a wholly owned subsidiary of a credit union, under the laws of the United States, this State, or any other state. Except for G.S. 53-243.11 and G.S. 53-243.15, this Article does not apply to the exempt persons set forth in this ~~sub-subdivision (8)~~ sub-subdivision.

- d. Any licensed real estate agent or broker who is performing those activities subject to the regulation of the North Carolina Real Estate Commission. Notwithstanding the above, an exempt person does not include a real estate agent or broker who receives compensation of any kind in connection with the referral, placement, or origination of a mortgage loan.
- e. Any officer or employee of an exempt person described in sub-subdivision c. of this subdivision when acting in the scope of employment for the exempt person.
- f. Any person who, acting as seller, seller and lender and servicer in a residential real estate transaction, receives and services in one calendar year no more than five purchase money notes secured by mortgages, deeds of trust, or other security instruments on the real estate sold as security for a the purchase money obligation.
- g. The North Carolina Housing Finance Agency as established by Article 122A of the General Statutes and the North Carolina Agricultural Finance Authority as established by Article 122D of the General Statutes.
- h. Any nonprofit corporation qualifying under section 501(c)(3) of the Internal Revenue Code which makes or services mortgage loans to promote home ownership or home improvements for the disadvantaged, provided that such corporation is not primarily in the business of soliciting or brokering or servicing mortgage loans.
- i. Any life insurance companies licensed to do business in North Carolina with regard to provisions concerning mortgage lenders.
- j. A North Carolina licensed attorney who, in the practice of law or in performing as a trustee, accepts payments related to a loan closing, default, foreclosure, loss mitigation, or litigation or settlement of a dispute or legal claim related to a loan.
- k. A mortgage banker licensed under this Article and any employee of a mortgage banker licensed under this Article are exempt from the requirement to obtain a separate license as a mortgage servicer, provided, however, that all provisions of this Article applicable to mortgage servicers are applicable to any

- mortgage banker or any employee of a mortgage banker acting as a mortgage servicer, except as provided in G.S. 53-243.15(c).
- (9)(13) ~~Licensee.~~ – A loan officer, limited loan officer, mortgage broker, ~~or mortgage banker~~ mortgage banker, or mortgage servicer who is licensed pursuant to this Article.
- (10)(14) Loan officer. – An individual who, in exchange for compensation as an employee of another person, accepts or offers to accept applications for mortgage ~~loans~~ loans, or who solicits or offers to solicit a mortgage loan, negotiates the terms or conditions of a mortgage loan, issues mortgage loan commitments or interest rate guarantee agreements to borrowers, whether such acts are done through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers. The definition of loan officer shall not include any exempt person described in sub-subdivision ~~(8)b.~~ (12)b. of this section.
- (10a)(15) Limited loan officer. – An individual who, in exchange for compensation as an employee of an affiliated mortgage banker, directly solicits, negotiates, offers, or makes commitments for mortgage loans. The definition of limited loan officer shall not include any exempt person described in sub-subdivision ~~(8)b.~~ (12)b. of this section.
- (11)(16) Make a mortgage loan. – To close a mortgage loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan.
- (12) ~~Managing principal.~~ – A person who meets the requirements of ~~G.S. 53-243.05(c) and who agrees to be primarily responsible for the operations of a licensed mortgage broker or mortgage banker.~~
- (13)(17) Mortgage banker. – A person who acts as a mortgage lender as that term is defined in subdivision (2) of this section. However, the definition does not include a person who acts as a mortgage lender only in tablefunding transactions.
- (14)(18) Mortgage broker. – A person who acts as a mortgage broker as that term is defined in subdivision (1) of this section. The term "mortgage broker" includes an exclusive mortgage broker, except when expressly provided otherwise.
- (15)(19) Mortgage loan. – A loan made to a natural person or persons primarily for personal, family, or household use, primarily secured by either a mortgage or a deed of trust on residential real property located in North Carolina.
- (20) Mortgage servicer. – A person who directly or indirectly acts as a mortgage servicer as that term is defined in subdivision (3) of this section or who otherwise meets the definition of 'servicer' in RESPA, 12 U.S.C. § 2605(i), with respect to mortgage loans.

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

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

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

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

...

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

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

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

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

SECTION 3. 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 (including street address, mailing address, e-mail, and telephone contact information) and social security ~~number~~number or taxpayer identification 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~~ conviction, within the past 10 years, of a misdemeanor involving fraudulent dealings or moral turpitude or relating to any aspect of the residential mortgage lending business any fraud, false statement or omission, any theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or conspiracy to commit any of these offenses; or involving any financial service or financial service-related business; (iii) any felony convictions.
- (5) With respect to an application for licensing as a mortgage ~~banker or broker,~~ banker, mortgage broker, or mortgage servicer, 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~~ managing principal ~~qualifying individual~~ 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~~ managing principal ~~qualifying individual~~ 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 or mortgage servicer 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~~ qualifying individual.

(e) Every applicant for initial licensure shall pay a filing fee not to exceed one thousand two hundred fifty dollars (\$1,250) for licensure as a mortgage ~~broker or broker,~~ mortgage banker–banker, or mortgage servicer or 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 or mortgage servicer 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 or qualified servicer 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 not to exceed 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 4. 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~~31st day of December 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~~on or after November 1 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 and of processing fees of the nationwide system as the Commissioner may require, a renewal fee as follows:

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

(b) If a mortgage ~~banker~~banker, mortgage servicer, 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 one hundred dollars (\$50.00\$100.00)~~ 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,~~prior to March 1, 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~~qualifying individual 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 5. G.S. 53-243.08 reads as rewritten:

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

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

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

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

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

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

(c) Each mortgage broker or mortgage banker licensed under this Article shall display in plain public view the certificate of licensure issued by the Commissioner in its principal office and in each branch office. Each loan officer licensed under this

Article shall ~~display~~ display, in plain public view, in each branch office in which the officer acts as a loan officer the certificate of licensure issued by the Commissioner."

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

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

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

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

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

- (1) Safeguard and account for any money handled for the borrower.
- (2) Follow reasonable and lawful instructions from the borrower.
- (3) Act with reasonable skill, care, and diligence.
- (4) With its application and renewal and with its supplemental filings made from time to time, file with the Commissioner a complete, current schedule of the ranges of costs and fees it charges borrowers for its servicing-related activities.

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

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

"§ 53-243.11. Prohibited activities.

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

- (1) To misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise.
- (2) To refuse improperly to issue a satisfaction of a mortgage.
- (3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a

- credit report, which the mortgage banker, servicer, broker, or loan officer is not entitled to retain under the circumstances.
- (4) To pay, receive, or collect in whole or in part any commission, fee, or other compensation for brokering a mortgage loan in violation of this Article, including a mortgage loan brokered by any unlicensed person other than an exempt person.
 - (5) To charge or collect any fee or rate of interest or to make or broker or service any mortgage loan with terms or conditions or in a manner contrary to the provisions of ~~Chapter 24~~ Chapter 24, Chapter 45, or Chapter 54 of the General Statutes.
 - (6) To advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on the loans, unless the person is able to make the mortgage loans available to a reasonable number of qualified applicants.
 - (7) To fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan.
 - (8) To engage in any transaction, practice, or course of business that is not in good faith or fair dealing or that constitutes a fraud upon any person, in connection with the brokering or making or servicing of, or purchase or sale of, any mortgage loan.
 - (9) To fail promptly to pay when due reasonable fees to a licensed appraiser for appraisal services that are:
 - a. Requested from the appraiser in writing by the mortgage broker or mortgage banker or an employee of the mortgage broker or mortgage banker; and
 - b. Performed by the appraiser in connection with the origination or closing of a mortgage loan for a customer or the mortgage broker or mortgage banker.
 - (10) To broker a mortgage loan that contains a prepayment penalty if the principal amount of the loan is one hundred fifty thousand dollars (\$150,000) or less or if the loan is a rate spread home loan as defined in G.S. 24-1.1F.
 - (11) To improperly influence or attempt to improperly influence the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan. Nothing in this subdivision shall be construed to prohibit a mortgage ~~broker or mortgage banker~~ broker, mortgage banker, or mortgage servicer from asking the appraiser to do one or more of the following:
 - a. Consider additional appropriate property information.
 - b. Provide further detail, substantiation, or explanation for the appraiser's value conclusion.
 - c. Correct errors in the appraisal report.

- (12) To fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by sections 6 and 10 of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2605 and § 2609, and regulations adopted thereunder by the Secretary of the Department of Housing and Urban Development.
- (13) To broker a rate spread adjustable rate mortgage loan without disclosing to the borrower the terms and costs associated with a fixed rate loan from the same lender at the lowest annual percentage rate for which the borrower qualifies.
- (14) To fail to comply with applicable federal laws and regulations related to mortgage ~~lending~~, lending, or mortgage servicing.
- (15) To engage in unfair, misleading, or deceptive advertising related to a solicitation for a mortgage loan.
- (16) For a mortgage servicer to fail to comply with the mortgage servicer's obligations under Article 10 of Chapter 45 of the North Carolina General Statutes.
- (17) For a person acting as a mortgage servicer to fail to provide written notice to a borrower upon taking action to place hazard, homeowner's, or flood insurance on the mortgaged property or to place such insurance when the person acting as a mortgage servicer knows or has reason to know that such insurance is in effect.
- (18) For a person acting as a mortgage servicer to place hazard, homeowner's, or flood insurance on a mortgaged property for an amount that exceeds either the value of the insurable improvements or the last known coverage amount of insurance.
- (19) For a person acting as a mortgage servicer to fail to provide to the borrower a refund of unearned premiums paid by a borrower or charged to the borrower for hazard, homeowner's, or flood insurance placed by a lender if the borrower provides reasonable proof that the borrower has obtained coverage such that the forced placement is no longer necessary and the property is insured. If the borrower provides reasonable proof within 12 months of the placement that no lapse in coverage occurred such that the forced placement was not necessary, the servicer shall refund the entire premium.
- (20) For a person acting as a mortgage servicer to refuse to reinstate a delinquent loan upon a tender of payment made timely under the contract which is sufficient in amount, based upon the last written statement received by borrower, to pay all past due amounts, 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 45 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 one 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 functions or any person directly or indirectly controlling the applicant or licensee. The person:

- a. Has filed an application for license that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact.
- b. Has violated or failed to comply with any provision of this Article, rule adopted by the Commissioner, or order of the Commissioner.
- c. Has been convicted of any felony, or, within the past 10 years, has been convicted of any misdemeanor involving ~~mortgage lending or any aspect of the mortgage lending business, or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing,~~ or financial services or a financial services-related business or any fraud, false statements or omissions, theft or any wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses.
- d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage lending business.
- e. Is the subject of an order of the Commissioner denying, suspending, or revoking that person's license as a mortgage ~~broker or mortgage banker,~~ broker, mortgage banker, or mortgage servicer.
- f. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage ~~brokerage or mortgage banking~~ brokerage, mortgage banking, or mortgage-servicing industry denying or revoking that person's license as a mortgage ~~broker or mortgage banking industry or denying or revoking that person's license as a mortgage broker or mortgage banker,~~ broker, mortgage servicer, or mortgage banker.
- g. Does not meet the qualifications or the financial responsibility, character, or general fitness requirements under G.S. 53-243.05 or any bond or capital requirements under this Article.
- h. Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker or mortgage banker or mortgage servicer who has been subject to an order or injunction described in sub-subdivision d., e., or f. of this subdivision.
- i. Has failed to pay the proper filing or renewal fee under this Article. However, the Commissioner may enter only a denial order under this sub-subdivision, and the Commissioner shall vacate the order when the deficiency has been corrected.

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

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

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

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

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

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

(g) If the Commissioner has reasonable grounds to believe that a licensee or other person has violated the provisions of this Article or that facts exist that would be the basis for an order against a licensee or other person, the Commissioner may at any time, either personally or by a person duly designated by the Commissioner, investigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of any licensee or other person relating to the complaint or matter

under investigation. The Commissioner may require any licensee or other person to submit a consent to a criminal history record check and a set of that person's fingerprints in a form acceptable to the Commissioner in connection with any examination or investigation. Refusal to submit the requested criminal history record check or a set of fingerprints shall be grounds for disciplinary action. The reasonable cost of this investigation or examination shall be charged against the licensee.

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

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

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

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

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

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

(n) In the event the Commissioner shall have evidence that a material violation of law has occurred in the origination or servicing of a loan then being foreclosed or then delinquent and in threat of foreclosure, and that the putative violation would be sufficient in law or equity to base a claim or affirmative defense which would affect the validity or enforceability of the underlying contract or the right to foreclose, then the Commissioner may notify the Clerk of Superior Court, and the Clerk shall suspend foreclosure proceedings on the mortgage for 60 days from the date of the notice. In the

event that the Commissioner notifies the Clerk, the Commissioner shall also notify the servicer, if known, and provide an opportunity to cure the violation or provide information to the Commissioner to rebut the evidence of the suspected violation. If the violation is cured or the information satisfies the Commissioner that no material violation has occurred, the Commissioner shall notify the Clerk so that the foreclosure proceeding may be resumed.

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

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

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

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

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

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

§ 53-243.14. Criminal penalty.

A violation of G.S. 53-243.02 is a Class I felony. Class 3 misdemeanor. Each transaction involving the unlawful making or brokering or servicing of a mortgage loan is a separate offense."

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

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

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

1, 2008, shall file the form with the Commissioner upon commencement of the business. This form, prescribed by the Commissioner, shall contain all of the following information:

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

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

(c) The filing requirements of this section shall not apply to the individual employees of an exempt person."

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

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

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

"(c) Notwithstanding any other provision of this section, the Commissioner retains full authority and discretion under this Article to license mortgage brokers, mortgage bankers, mortgage servicers, 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."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Any fee that is incurred by a servicer shall be both:
 - a. Assessed within 45 days of the date on which the fee was incurred. Provided, however, that attorney or trustee fees and costs incurred as a result of a foreclosure action shall be assessed within 45 days of the date they are charged by either the attorney or trustee to the servicer.
 - b. Explained clearly and conspicuously in a statement mailed to the borrower at the borrower's last known address at least 30 days after assessing the fee, provided the servicer shall not be required to take any action in violation of the provisions of the federal bankruptcy code.

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 9th day of July, 2008.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 10:13 p.m. this 17th day of August, 2008