Article 20.

Loan Brokers.

§ 66-106. Definitions.

(a) For purposes of this Article, the following definitions apply:

(1) Loan. – An agreement to advance money or property in return for the promise to make payments therefor, whether the agreement is styled as a loan, credit card, line of credit, lease, or otherwise.

(2) Loan broker. – Any person, firm, or corporation that, in return for any consideration from any person, promises to do any of the following:

a. Procure for the person, or assist the person in procuring, a loan from any third party.

b. Consider whether or not it will make a loan to the person. This sub-subdivision does not apply to a lender whose loans or advances to any person in North Carolina aggregate more than one million dollars ($1,000,000) in the preceding calendar year.

(b) This Article does not apply to any of the following:

(1) A 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.

(2) A party currently designated and compensated by a North Carolina licensed insurance company as its agent to service loans it makes in this State.

(3) An insurance company registered with and licensed by the North Carolina Insurance Commissioner.

(4) With respect to a residential mortgage loan, a mortgage lender or mortgage broker licensed pursuant to Article 19B of Chapter 53 of the General Statutes or exempt from licensure pursuant to G.S. 53-244.040(d).

(5) An attorney-at-law, public accountant, or dealer registered under the North Carolina Securities Act, acting in the professional capacity for which the attorney-at-law, public accountant, or dealer is registered or licensed under the laws of North Carolina. (1979, c. 705, s. 1; 1981, c. 785, s. 1; 1993, c. 339, s. 2; 2001-393, s. 4; 2008-228, s. 17; 2021-93, s. 14.)

§ 66-107. Required disclosure statement.

At least seven days prior to the time any person signs a contract for the services of a loan broker, or the time of the receipt of any consideration by the loan broker, whichever occurs first, the broker must provide to the party with whom he contracts a written document, the cover sheet of which is entitled in at least 10-point bold face capital letters "DISCLOSURES REQUIRED BY NORTH CAROLINA LAW." Under this title shall appear the statement in at least 10-point type that "The State of North Carolina has not reviewed and does not approve, recommend, endorse or sponsor any loan brokerage contract. The information contained in this disclosure has not been verified by the State. If you have any questions see an attorney before you sign a contract or agreement." Nothing except the title and required statement shall appear on the cover sheet. The disclosure document shall contain the following information:

(1) The name of the broker; whether the broker is doing business as an individual, partnership, or corporation; the names under which the broker has done, is

doing or intends to do business; and the name of any parent or affiliated companies;

(2) The names, addresses and titles of the broker's officers, directors, trustees, general partners, general managers, principal executives, and any other persons charged with responsibility for the broker's business activities; and all the broker's employees located in North Carolina;

(3) The length of time the broker has conducted business as a loan broker;

(4) The total number of loan brokerage contracts the broker has entered within the past 12 months;

(5) The number of loan brokerage contracts in which the broker has successfully obtained a loan for the prospective borrower within the past 12 months;

(6) A copy of a current (not older than 13 months) financial statement of the broker, updated to reflect any material changes in the broker's financial condition;

(7) A full and detailed description of the actual services that the broker undertakes to perform for the prospective borrower;

(8) A specific statement of the circumstances in which the broker will be entitled to obtain or retain consideration from the party with whom he contracts;

(9) One of the following statements, whichever is appropriate:

a. "As required by North Carolina law, this loan broker has secured a bond by _____
(name and address of surety company)
a surety authorized to do business in this State. Before signing a contract with this loan broker, you should check with the surety company to determine the bond's current status," or

b. "As required by North Carolina law, this loan broker has established a trust account _____
(number of account)
with _____
(name/address of bank or savings institution).
Before signing a contract with this loan broker you should check with the bank or savings institution to determine the current status of the trust account." (1979, c. 705, s. 1.)

§ 66-108. Bond or trust account required.

(a) Every loan broker must obtain a surety bond issued by a surety company authorized to do business in this State, or establish a trust account with a licensed and insured bank or savings institution located in the State of North Carolina. The amount of the bond or trust account shall be ten thousand dollars ($10,000). The bond or trust account shall be in favor of the State of North Carolina. Any person damaged by the loan broker's breach of contract or of any obligation arising therefrom, or by any violation of this Article, may bring an action against the bond or trust account to recover damages suffered. The aggregate liability of the surety or trustee shall be only for actual damages and in no event shall exceed the amount of the bond or trust account.

(b) Failure to comply with subsection (a) shall be a Class 1 misdemeanor.

(c) No loan broker shall collect any advance fee or other valuable consideration from a borrower prior to the closing of the loan. This prohibition shall not preclude the loan broker from collecting reasonable and necessary fees payable to third parties for appraisal, property survey, title

examination, and credit reports. (1979, c. 705, s. 1; 1993, c. 339, s. 3, c. 539, s. 522; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 66-109. Filing with Secretary of State.

(a) Prior to placing any advertisement or making any other representations to prospective borrowers in this State, every loan broker shall file with the Secretary of State two copies of the disclosure statement required by G.S. 66-107, and either a copy of the bond required by G.S. 66-108, or a copy of the formal notification by the depository that the trust account required by G.S. 66-108 is established. These filings shall be updated as any material changes in the required information or the status of the bond or trust account occur, but no less than annually.

(b) Failure to comply with subsection (a) shall be a Class 1 misdemeanor. (1979, c. 705, s. 1; 1981, c. 785, s. 2; 1993, c. 539, s. 523; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 66-110. Contracts to be in writing.

Every loan brokerage contract shall be in writing, and signed by all contracting parties. A copy of the contract shall be given to the prospective borrower at the time he signs the contract. (1979, c. 705, s. 1.)

§ 66-111. Remedies.

(a) If a loan broker uses any untrue or misleading statements in connection with a loan brokerage contract, fails to fully comply with the requirements of this Article, fails to comply with the terms of the contract or any obligation arising therefrom, or fails to make diligent effort to grant a loan to or procure a loan on behalf of the prospective borrower, then, upon written notice to the broker, the prospective borrower may void the contract, and shall be entitled to receive from the broker all sums paid to the broker, and recover any additional damages including attorney's fees.

(b) Upon complaint of any person that a loan broker has violated the provisions of this Article, the superior court shall have jurisdiction to enjoin that defendant from further such violations.

(c) The remedies provided herein shall be in addition to any other remedies provided for by law or in equity.

(d) The violation of any provisions of this Article shall constitute an unfair practice under G.S. 75-1.1. (1979, c. 705, s. 1.)

§ 66-112. Scope.

The provisions of this Article shall apply in all circumstances in which any party to the contract conducted any contractual activity (including but not limited to solicitation, discussion, negotiation, offer, acceptance, signing, or performance) in this State. (1979, c. 705, s. 1.)

§§ 66-113 through 66-117. Reserved for future codification purposes.