

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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HOUSE BILL 1106

Short Title: Enact Mortgage Lending Act. (Public)

Sponsors: Representatives Church, Morgan, Cole, Brubaker, and Hill.

Referred to: Financial Institutions.

April 11, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE MORTGAGE LENDING ACT TO GOVERN
3 MORTGAGE BROKERS AND BANKERS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 19 of Chapter 53 of the General Statutes is repealed.

6 **SECTION 2.** Chapter 53 of the General Statutes is amended by adding a
7 new Article to read:

"Article 19A.

"Mortgage Lending Act.

10 **§ 53-243.01. Definitions.**

11 The following definitions apply in this Article:

- 12 (1) Act as a mortgage broker. – The act, for compensation or gain, or in
13 the expectation of compensation or gain, either directly or indirectly,
14 of accepting or offering to accept an application for a mortgage loan,
15 soliciting or offering to solicit a mortgage loan, negotiating the terms
16 or conditions of a mortgage loan, issuing mortgage loan commitments
17 or interest rate guarantee agreements to borrowers, engaging in
18 tablefunding of mortgage loans, or generating leads or referrals for
19 mortgage loans through contact by telephone, by electronic means, by
20 mail, or in person with the borrowers or potential borrowers.
- 21 (2) Act as a mortgage lender. – The act of engaging in the business of
22 making mortgage loans for compensation or gain.
- 23 (3) Branch manager. – The individual whose principal office is physically
24 located in, who is in charge of, and who is responsible for the business
25 operations of a branch office of a mortgage broker or mortgage banker.
- 26 (4) Branch office. – An office of the licensee acting as a mortgage broker
27 or mortgage banker that is separate and distinct from the licensee's
28 principal office.

- 1 (5) Commissioner. – The North Carolina Commissioner of Banks and the
2 Commissioner's designees.
- 3 (6) Control. – The power to vote more than twenty percent (20%) of
4 outstanding voting shares or other interests of a corporation,
5 partnership, limited liability company, association, or trust.
- 6 (7) Exempt person. – The term includes any of the following:
- 7 a. Any agency of the federal government or any state or municipal
8 government granting first mortgage loans under specific
9 authority of the laws of any state or the United States.
- 10 b. Any employee of a licensee whose responsibilities are limited
11 to clerical and administrative tasks for his or her employer and
12 who does not solicit borrowers, accept applications, or negotiate
13 the terms of loans on behalf of the employer.
- 14 c. Any lender authorized to engage in business as a bank or a
15 wholly owned subsidiary of a bank, a farm credit system, life
16 insurance company, savings institution, or credit union, under
17 the laws of the United States, this State, or any other state.
- 18 d. Any licensed real estate agent or broker who is performing
19 those activities subject to the regulation of the North Carolina
20 Real Estate Commission. Notwithstanding the above, an exempt
21 person does not include a real estate agent or broker who
22 receives compensation of any kind in connection with the
23 referral, placement, or origination of a mortgage loan.
- 24 e. Any officer or employee of an exempt person described in sub-
25 subdivision c. of this subdivision.
- 26 f. Any person who, as seller, receives in one calendar year no
27 more than five mortgages, deeds of trust, or other security
28 instruments on real estate as security for a purchase money
29 obligation.
- 30 g. The North Carolina Housing Finance Agency as established by
31 Article 122A of the General Statutes and the North Carolina
32 Agricultural Finance Authority as established by Article 122D
33 of the General Statutes.
- 34 (8) Licensee. – A loan officer, mortgage broker, or mortgage banker who
35 is licensed pursuant to this Article.
- 36 (9) Loan officer. – A natural person who, in exchange for compensation as
37 an employee of another person, accepts or offers to accept applications
38 for mortgage loans. The definition of loan officer shall not include any
39 exempt person described in sub-subdivision (5)b. of this section.
- 40 (10) Make a mortgage loan. – To close a mortgage loan, to advance funds,
41 to offer to advance funds, or to make a commitment to advance funds
42 to a borrower under a mortgage loan.

- 1 (11) Managing principal. – A person who meets the qualifications of G.S.
2 53-243.05(c) and who agrees to be primarily responsible for the
3 operations of a licensed mortgage broker or mortgage banker.
- 4 (12) Mortgage banker. – A person who acts as a mortgage lender as that
5 term is defined in subdivision (2) of this section. However, the
6 definition does not include a person who acts as a mortgage lender
7 only in tablefunding transactions.
- 8 (13) Mortgage broker. – A person who acts as a mortgage broker as that
9 term is defined in subdivision (1) of this section.
- 10 (14) Mortgage loan. – A loan made to a natural person or persons primarily
11 for personal family or household use, primarily secured by either a
12 mortgage or a deed of trust on residential real property located in
13 North Carolina.
- 14 (15) Person. – An individual, partnership, limited liability company, limited
15 partnership, corporation, association, or other group engaged in joint
16 business activities however organized.
- 17 (16) Qualified lender. – A person who is engaged as a mortgage lender in
18 North Carolina and is either a supervised or a nonsupervised
19 institution, as these terms are defined in 24 C.F.R. § 202.2, approved
20 by the United States Department of Housing and Urban Development.
- 21 (17) Qualified person. – A person who is employed as a registered loan
22 officer by a mortgage broker, qualified lender, or mortgage banker or
23 who is an officer, director, shareholder, partner, member, or manager
24 of a registered mortgage broker, qualified lender, or mortgage banker.
- 25 (18) Residential real property. – Real property located in the State of North
26 Carolina upon which there is located or is to be located one or more
27 single-family dwellings or dwelling units.
- 28 (19) Tablefunding. – A transaction where a licensee closes a loan in its own
29 name with funds provided by others and the loan is assigned
30 simultaneously with or within one business day of the funding of the
31 loan to the mortgage lender providing the funding.

32 **§ 53-243.02. License required; licensee records.**

33 (a) Other than an exempt person, it is unlawful for any person in this State to act
34 as a mortgage broker or mortgage banker, or directly or indirectly to engage in the
35 business of a mortgage broker or a mortgage banker, without first obtaining a license
36 from the Commissioner under the provisions of this Article.

37 (b) It is unlawful for any natural person to engage in the solicitation and
38 acceptance of applications for mortgage loans without first obtaining a license as a loan
39 officer issued by the Commissioner under the provisions of this Article. It is unlawful
40 for any person to employ, to compensate, or to appoint as its agent a loan officer unless
41 the loan officer is licensed as a loan officer under this Article. Exempt persons shall not
42 be subject to this subsection.

43 (c) The license of a loan officer is not effective during any period when that
44 person is not employed by a mortgage broker or mortgage banker licensed under this

1 Article. When a loan officer ceases to be employed by a mortgage broker or mortgage
2 banker licensed under this Article, the loan officer and the mortgage broker or mortgage
3 banker licensed under this Article by whom that person is employed shall promptly
4 notify the Commissioner in writing. A loan officer shall not be employed
5 simultaneously by more than one mortgage broker or mortgage banker licensed under
6 this Article.

7 (d) Each mortgage broker and mortgage banker licensed under this Article shall
8 maintain on file with the Commissioner a list of all loan officers who are employed with
9 the mortgage broker or mortgage banker.

10 **"§ 53-243.03. Review by Banking Commission.**

11 The Banking Commission may review any rule, regulation, order, or article of the
12 Commissioner adopted pursuant to or with respect to the provisions of this Article, and
13 any person aggrieved by any rule, regulation, order, or article may appeal to the
14 Banking Commission for review upon giving notice in writing 20 days after the rule,
15 regulation, order, or article that is the subject of the complaint is adopted or issued.
16 Notwithstanding any other provision of law, any party aggrieved by a decision of the
17 Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92.

18 **"§ 53-243.04. Rule-making authority.**

19 The Banking Commission may adopt any rules necessary to carry out the provisions
20 of this Article, to provide for the protection of the borrowing public, and to instruct
21 mortgage lenders in interpreting this Article.

22 **"§ 53-243.05. Qualifications for licensure; issuance.**

23 (a) Any person other than an exempt person desiring to obtain a license as a loan
24 officer, mortgage banker, or mortgage broker shall make written application for
25 licensure to the Commissioner on forms prescribed by the Commissioner. In accordance
26 with rules adopted by the Commission, the application shall contain any information the
27 Commissioner deems necessary regarding the following:

- 28 (1) The applicant's name and address.
- 29 (2) The applicant's form and place of organization, if applicable.
- 30 (3) The applicant's proposed method of and locations for doing business,
31 if applicable.
- 32 (4) The qualifications and business history of the applicant and, if
33 applicable, the business history of any partner, officer, or director, any
34 person occupying a similar status or performing similar functions, or
35 any person directly or indirectly controlling the applicant, including:
36 (i) a description of any injunction or administrative order by any state
37 or federal authority to which the person is or has been subject; (ii) a
38 conviction of a misdemeanor including any aspect of the residential
39 mortgage lending business; (iii) any convictions of misdemeanors or
40 felonies involving fraudulent dealings or moral turpitude.
- 41 (5) The applicant's financial condition, credit history, and business history.

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

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

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

- 15 (1) If the applicant is a sole proprietor, the applicant shall have at least
16 three years of experience in residential mortgage lending or other
17 experience or competency requirements as the Commissioner may
18 impose by rule.
19 (2) If the applicant is a general or limited partnership, at least one of its
20 general partners shall have the experience as described under
21 subdivision (1) of this subsection.
22 (3) If the applicant is a corporation, at least one of its principal officers
23 shall have the experience as described under subdivision (1) of this
24 subsection.
25 (4) If the applicant is a limited liability company, at least one of its
26 managers shall have the experience as described under subdivision (1)
27 of this subsection.

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

30 (e) Every applicant for initial licensure shall pay a filing fee of one thousand
31 dollars (\$1,000) for licensure as a mortgage broker or mortgage banker or fifty dollars
32 (\$50.00) for licensure as a loan officer.

33 (f) A mortgage banker shall post a surety bond in the amount of one hundred
34 fifty thousand dollars (\$150,000) and a mortgage broker shall post a surety bond in the
35 amount of fifty thousand dollars (\$50,000). The surety bond shall be in a form
36 satisfactory to the Commissioner and shall run to the State for the benefit of any
37 claimants against the licensee to secure the faithful performance of the obligations of
38 the licensee with respect to the receipt, handling, transmission, and payment of money
39 or monetary value in connection with a mortgage loan. The aggregate liability of the
40 surety shall not exceed the principal sum of the bond. A party having a claim against the
41 licensee may bring suit directly on the surety bond, or the Commissioner may bring suit
42 on behalf of any claimants, either in one action or in successive actions. Any
43 appropriate deposit of cash or securities shall be accepted in lieu of any bond that is
44 required. An audited financial statement showing a net worth of two hundred fifty

1 thousand dollars (\$250,000) or more shall be accepted in lieu of any bond required. No
2 bond shall be required of any supervised or any nonsupervised institution, as defined in
3 24 C.F.R. § 202.2, approved by the United States Department of Housing and Urban
4 Development.

5 (g) Any partner, member, shareholder, officer, or other person occupying a
6 similar position with an applicant at the time of the application and who meets the
7 requirements under subsection (c) of this section shall be issued a license as a loan
8 officer without further action under this Article.

9 (h) Each branch office of a mortgage broker or mortgage banker licensed under
10 the provisions of this Article shall be issued a separate license. A licensed mortgage
11 broker or mortgage banker shall file with the Commissioner an application on a form
12 prescribed by the Commissioner that identifies the address of the branch and the branch
13 manager. A filing fee of one hundred dollars (\$100.00) shall be assessed by the
14 Commissioner for each branch office issued a license.

15 (i) Upon determining that an applicant meets the qualifications for licensure, the
16 Commissioner shall issue a license to the applicant.

17 **"§ 53-243.06. License renewal; termination.**

18 (a) All licenses issued by the Commissioner under the provisions of this Article
19 shall expire annually on the 30th day of June following issuance or on any other date that
20 the Commissioner may determine. The license shall become invalid after that date
21 unless renewed. A license may be renewed 45 days prior to the expiration date by
22 paying to the Commissioner a renewal fee as follows:

23 (1) Licensed mortgage bankers shall pay an annual fee of five hundred
24 dollars (\$500.00), and one hundred dollars (\$100.00) for each branch
25 office.

26 (2) Licensed mortgage brokers shall pay an annual fee of five hundred
27 dollars (\$500.00), and one hundred dollars (\$100.00) for each branch
28 office.

29 (3) Licensed loan officers shall pay an annual fee of fifty dollars (\$50.00).

30 (b) If a license is not renewed prior to the applicable expiration date, then an
31 additional two hundred fifty dollars (\$250.00) shall be assessed as a late fee to any
32 renewal. In the event a licensee fails to obtain a reinstatement of the license within 90
33 days after the date the license expires, the Commissioner may require the licensee to
34 comply with the requirements for the initial issuance of a license under the provisions of
35 this Article.

36 (c) Licenses issued under this Article are not assignable. Control of a licensee
37 shall not be acquired through a stock purchase or other device without the prior written
38 consent of the Commissioner. The Commissioner shall not give written consent if the
39 Commissioner finds that any of the grounds for denial, revocation, or suspension of a
40 license pursuant to G.S. 53-243.11 are applicable to the acquiring person.

41 **"§ 53-243.07. Continuing education.**

42 (a) As a condition of license renewal, the Commissioner may adopt rules to
43 require continuing education of licensees under this Article for the purpose of enhancing

1 the professional competence and professional responsibility of mortgage bankers,
2 mortgage brokers, and loan officers. The rules may include criteria for:

- 3 (1) The content of continuing education courses.
- 4 (2) Accreditation of continuing education sponsors and programs.
- 5 (3) Accreditation of videotape or other audiovisual programs.
- 6 (4) Computation of credit.
- 7 (5) Special cases and exemptions.
- 8 (6) General compliance procedures.
- 9 (7) Sanctions for noncompliance.

10 (b) Annual continuing professional education requirements shall be determined
11 by the Commissioner. However, the requirements shall not exceed eight credit hours
12 within a one-year period.

13 **"§ 53-243.08. Managing principals and branch managers.**

14 Each mortgage broker or mortgage banker licensed under this Article shall have a
15 managing principal who operates the business under that person's full charge, control,
16 and supervision. Each branch office of a mortgage broker or mortgage banker licensed
17 under this Article shall have a branch manager who meets the requirements under G.S.
18 53-243.05(c). The managing principal for a licensee's business may also serve as the
19 branch manager of one of the licensee's branch offices. Each mortgage broker or
20 mortgage banker licensed under this Article shall file a form as prescribed by the
21 Commissioner indicating the business's designation of managing principal and branch
22 manager for each branch and each individual's acceptance of the responsibility. Each
23 mortgage broker or mortgage banker licensed under this Article shall notify the
24 Commissioner of any change in its managing principal or branch manager designated
25 for each branch. Any licensee who does not comply with this provision shall have the
26 licensee's license suspended pursuant to G.S. 53-243.11 until the licensee complies with
27 this section. Any individual licensee who operates as a sole proprietorship shall be
28 considered a managing principal for the purposes of this Article.

29 **"§ 53-243.09. Offices; address changes; display of license.**

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

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

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

1 shall display in each branch office in which the officer acts as a loan officer the
2 certificate of licensure issued by the Commissioner.

3 **"§ 53-243.10. Prohibited activities.**

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

- 6 (1) To misrepresent or conceal the material facts or make false promises
7 likely to influence, persuade, or induce an applicant for a mortgage
8 loan or a mortgagor to take a mortgage loan, or to pursue a course of
9 misrepresentation through agents or otherwise.
- 10 (2) To refuse improperly to issue a satisfaction of a mortgage.
- 11 (3) To fail to account for or to deliver to any person any personal property
12 obtained in connection with a mortgage loan, such as money, including
13 money provided by a borrower for a real estate appraisal or a credit
14 report, funds, deposit, check, draft, mortgage, or other document or
15 thing of value, which has come into his or her possession and that is
16 not his or her property or that he or she is not in law or equity entitled
17 to retain.
- 18 (4) To pay any commission, share, split, or compensation in connection
19 with a mortgage loan: (i) to any person who is engaged in the
20 mortgage brokerage or mortgage banking business in violation of this
21 Article; or (ii) to any unlicensed person, other than an exempt person,
22 acting as a loan officer, mortgage broker, or mortgage lender.
- 23 (5) To charge or collect any fee or rate of interest prohibited by Chapter
24 24 of the General Statutes in connection with a mortgage loan.
- 25 (6) To advertise mortgage loans, including rates, margins, discounts,
26 points, fees, commissions, or other material information, including
27 material limitations on the loans, unless the person is able to make the
28 mortgage loans available to a reasonable number of qualified
29 applicants.
- 30 (7) To fail to disburse funds in accordance with a written commitment or
31 agreement to make a mortgage loan.
- 32 (8) To engage in any transaction, practice, or course of business that is not
33 in good faith or fair dealing or that constitutes a fraud upon any
34 person, in connection with the making of or purchase or sale of any
35 mortgage loan.
- 36 (9) To fail promptly to pay when due reasonable fees to a licensed
37 appraiser or licensed land surveyor for appraisal or survey services that
38 are:
 - 39 a. Requested from the appraiser or surveyor in writing by the
40 mortgage broker or mortgage banker or an employee of the
41 mortgage broker or mortgage banker; and
 - 42 b. Performed by the appraiser in connection with the origination or
43 closing of a mortgage loan for a customer or the mortgage
44 broker or mortgage banker.

1 **"§ 53-243.11. Disciplinary authority.**

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

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

7 (2) That the applicant, licensee, or any partner, member, manager, officer,
8 director, loan officer, managing broker, or any person occupying a
9 similar status or performing similar functions or any person directly or
10 indirectly controlling the applicant or licensee:

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

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

18 c. Has been convicted, within the past 10 years, of any
19 misdemeanor involving mortgage lending or any aspect of the
20 mortgage lending business, or any offense involving breach of
21 trust, moral turpitude, or fraudulent or dishonest dealing.

22 d. Is permanently or temporarily enjoined by any court of
23 competent jurisdiction from engaging in or continuing any
24 conduct or practice involving any aspect of the mortgage
25 lending business.

26 e. Is the subject of an order of the Commissioner denying,
27 suspending, or revoking that person's license as a mortgage
28 broker or mortgage banker.

29 f. Is the subject of an order entered within the past five years by
30 the authority of any state with jurisdiction over that state's
31 mortgage brokerage or mortgage banking industry denying or
32 revoking that person's license as a mortgage broker or mortgage
33 banking industry or denying or revoking that person's license as
34 a mortgage broker or mortgage banker.

35 g. Does not meet the qualification requirements under G.S. 53-
36 243.05 or any bond or capital requirements imposed by the
37 Commissioner, by rule, under the provisions of this Article.

38 h. Has been the executive officer or controlling shareholder or
39 owned a controlling interest in any mortgage broker or
40 mortgage banker who has been subject to an order or injunction
41 described in sub-subdivision d., e., or f. of this subdivision.

42 i. Has failed to pay the proper filing or renewal fee under this
43 Article. However, the Commissioner may enter only a denial

1 order under this sub-subdivision, and the Commissioner shall
2 vacate the order when the deficiency has been corrected.

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

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

20 (d) In addition to other powers under this Article, upon finding that any action of
21 a person is in violation of this Article, the Commissioner may order the person to cease
22 from the prohibited action. If the person subject to the order fails to appeal the order of
23 the Commissioner in accordance with G.S. 53-240 and continues to engage in the
24 prohibited action in violation of the Commissioner's order, the person shall be subject to
25 a civil penalty of up to twenty-five thousand dollars (\$25,000) for each violation of the
26 Commissioner's order. The penalty provision of this section shall be in addition to and
27 not in lieu of any other provision of law applicable to a licensee for the licensee's failure
28 to comply with an order of the Commissioner.

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

31 (f) When a licensee is accused of any act, omission, or misconduct that would
32 subject the licensee to disciplinary action, the licensee, with the consent and approval of
33 the Commissioner, may surrender the license and all the rights and privileges pertaining
34 to it for a period of time established by the Commissioner. A person who surrenders a
35 license shall not be eligible for or submit any application for licensure as a mortgage
36 broker or mortgage banker during the period the license is surrendered.

37 (g) If the Commissioner has reasonable grounds to believe that a licensee or other
38 person has violated the provisions of this Article or that facts exist that would be the
39 basis for an order against a licensee or other person, the Commissioner may at any time,
40 either personally or by a person duly designated by the Commissioner, investigate or
41 examine the loans and business of the licensee and examine the books, accounts,
42 records, and files of any licensee or other person relating to the complaint or matter
43 under investigation. The Commissioner and all persons duly designated by the
44 Commissioner may issue subpoenas to require the attendance of and to examine under

1 oath all persons whose testimony the Commissioner deems relative to the person's
2 business. The reasonable cost of this investigation or examination shall be charged
3 against the licensee.

4 (h) In addition to the rights described under this section, the Commissioner may
5 require a licensee to pay to a borrower or other individual any amounts received by the
6 licensee or its employees in violation of Chapter 24 of the General Statutes.

7 (i) If the Commissioner finds that the managing principal, branch manager, or
8 loan officer of a licensee had knowledge of or participated in any activity that results in
9 the entry of an order under this section suspending or withdrawing the license of a
10 licensee, the Commissioner may prohibit the managing broker or loan officer from
11 serving as a managing broker or loan officer for any period of time the Commissioner
12 deems necessary.

13 **"§ 53-243.12. Records; escrow funds or trust accounts.**

14 (a) The Commissioner shall keep a list of all applicants for licensure under this
15 Article that includes the date of application, name, and place of residence and whether
16 the license was granted or refused.

17 (b) The Commissioner shall keep a current roster showing the names and places
18 of business of all licensees that shows their respective loan officers and a roster of
19 exempt persons required to file a notice under G.S. 53-243.02. The rosters shall: (i) be
20 kept on file in the office of the Commissioner; (ii) contain information regarding all
21 orders or other action taken against the licensees, loan officers, and other persons; and
22 (iii) be open to public inspection.

23 (c) Every licensee shall make and keep the accounts, correspondence,
24 memoranda, papers, books, and other records as prescribed in rules adopted by the
25 Commissioner. All records shall be preserved for three years unless the Commissioner,
26 by rule, prescribes otherwise for particular types of records. The recordkeeping
27 requirements imposed by the Commissioner or this subsection shall not be greater than
28 those imposed by applicable federal law.

29 (d) If the information contained in any document filed with the Commissioner is
30 or becomes inaccurate or incomplete in any material respect, the licensee shall promptly
31 file a correcting amendment to the information contained in the document.

32 (e) A licensee shall maintain in a segregated escrow fund or trust account any
33 funds which come into the licensee's possession, but which are not the licensee's
34 property and which the licensee is not entitled to retain under the circumstances. The
35 escrow fund or trust account shall be held on deposit in a federally insured financial
36 institution.

37 **"§ 53-243.13. Validity of mortgage loan.**

38 A violation of any provision of this Article shall not invalidate the loan transaction
39 or create liability for a subsequent holder of the loan who purchased the loan without
40 knowledge of the violation. Failure to comply with the provisions of this Article shall
41 not affect the validity or enforceability of any mortgage loan. However, this section
42 shall not be construed as a limitation on the rights of a borrower to pursue any available
43 remedy to redress a loss suffered as a result of the violation of this Article."

44 **SECTION 3.** G.S. 53-99(b)(7b) reads as rewritten:

1 "(7b) Records of examinations and investigations of registrants under the
2 Mortgage ~~Bankers and Brokers Act, Article 19 of this Chapter;~~
3 Lending Act, Article 19A of this Chapter;"

4 **SECTION 4.** G.S. 66-106 reads as rewritten:

5 "**§ 66-106. Definitions.**

6 For purposes of this Article the following definitions apply:

7 (1) A "loan broker" is any person, firm, or corporation who, in return for
8 any consideration from any person, promises to (i) procure for such
9 person, or assist such person in procuring, a loan from any third party;
10 or (ii) consider whether or not it will make a loan to such person.

11 (2) A "loan" is an agreement to advance money or property in return for
12 the promise to make payments therefor, whether such agreement is
13 styled as a loan, credit card, line of credit, a lease or otherwise.

14 Provided, that this Article shall not apply to any party approved as a mortgagee by the
15 Secretary of Housing and Urban Development, the Federal Housing Administration, the
16 Veterans Administration, a National Mortgage Association or any federal agency; nor to
17 any party currently designated and compensated by a North Carolina licensed insurance
18 company as its agent to service loans it makes in this State; nor to any insurance
19 company registered with and licensed by the North Carolina Insurance Commissioner;
20 nor, with respect to residential mortgage loans, to any residential mortgage banker or
21 mortgage broker ~~registered with the Commissioner of Banks pursuant to Article 19 of~~
22 ~~Chapter 53 or exempt from such registration pursuant to G.S. 53-234(6); licensed~~
23 pursuant to Article 19A of Chapter 53 of the General Statutes or exempt from licensure
24 pursuant to G.S. 53-243.01(7) and G.S. 53-243.02; nor to any attorney-at-law, public
25 accountant, or dealer registered under the North Carolina Securities Act, acting in the
26 professional capacity for which such attorney-at-law, public accountant, or dealer is
27 registered or licensed under the laws of the State of North Carolina. Provided further
28 that subdivision (1)(ii) above shall not apply to any lender whose loans or advances to
29 any person, firm or corporation in North Carolina aggregate more than one million
30 dollars (\$1,000,000) in the preceding calendar year."

31 **SECTION 5.** All exempt persons described in G.S. 53-243.01(7), enacted
32 by Section 1 of this act, who are engaged in the mortgage brokerage or mortgage
33 banking business shall be required to file with the Commissioner, within 90 days of the
34 effective date of this act or upon the commencement of mortgage brokerage or
35 mortgage banking business in this State, a statement on a form prescribed by the
36 Commissioner setting forth the name of the respective exempt person, the basis of the
37 exempt status of the exempt person, the principal business address of the exempt
38 person, and the State or federal regulatory authority responsible for its supervision,
39 examination, or regulation, if any. In addition to any other measures the exempt person
40 may be subject to under Article 19A of Chapter 53 of the General Statutes, enacted by
41 Section 1 of this act, failure by an exempt person to file the required form shall not
42 affect the exempt status of the person. However, the entity shall be subject to a civil
43 penalty set by the Commissioner that shall not exceed the sum of two hundred fifty
44 dollars (\$250.00) for each year the form is not filed. No person required to file under

1 this section may transact business in this State as a mortgage banker or mortgage broker
2 unless the person has filed the prescribed form with the Commissioner in accordance
3 with this section.

4 **SECTION 6.(a)** Any person who, on the effective date of this act, is
5 engaged in business and registered as a mortgage broker or mortgage banker shall not
6 be required to file an application under G.S. 53-243.05, enacted by Section 1 of this act,
7 and shall be entitled to issuance of a license under Article 19A of Chapter 53 of the
8 General Statutes, enacted by Section 1 of this act.

9 **SECTION 6.(b)** Any qualified person who files, within 180 days after this
10 act becomes effective, a sworn application with the Commissioner stating that he or she
11 has met the definition of a qualified person under G.S. 53-243.01(17), enacted by
12 Section 1 of this act, including a statement that he or she has not been convicted of any
13 felony or any felony or misdemeanor involving moral turpitude, shall be issued a license
14 as a loan officer from the Commissioner without having to meet the requirements for
15 licensure under G.S. 53-243.05(b), enacted by Section 1 of this act.

16 **SECTION 6.(c)** Any qualified lender who files, within 90 days after this act
17 becomes effective, a sworn statement with the Commissioner that consists of a list of its
18 loan officers in North Carolina, the addresses of its principal office and each of its
19 branches, and the names and addresses of the managing principal and each of its branch
20 managers and states that no employee, loan officer, or individual with a controlling
21 interest in the lender has been convicted of any felony or any misdemeanor involving
22 moral turpitude, shall be issued a license as a mortgage banker from the Commissioner
23 without having to meet the requirements for licensure under G.S. 53-243.05(c), enacted
24 by Section 1 of this act.

25 **SECTION 7.** On or after July 1, 2003, any individual mortgage banker,
26 mortgage broker, or loan officer desiring to renew a license shall offer evidence
27 satisfactory to the Commissioner that he or she has complied with the continuing
28 professional education requirements approved by the Commissioner pursuant to G.S.
29 53-243.07, enacted by Section 1 of this act.

30 **SECTION 8.** This act becomes effective July 1, 2002.