

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**HOUSE BILL 1307  
Senate Finance Committee Substitute Adopted 9/25/02**

Short Title: Amend Mortgage Lending Act.

(Public)

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Sponsors:

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Referred to:

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April 12, 2001

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE MORTGAGE LENDING ACT TO AUTHORIZE  
2 LICENSURE OF EXCLUSIVE MORTGAGE BROKERS UNDER CERTAIN  
3 CIRCUMSTANCES, TO REQUIRE CRIMINAL HISTORY BACKGROUND  
4 CHECKS ON APPLICANTS AND LICENSEES UNDER THE MORTGAGE  
5 LENDING ACT, AND TO PROVIDE FOR THE APPROVAL OF  
6 EDUCATIONAL COURSES UNDER THE MORTGAGE LENDING ACT.  
7

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** G.S. 53-243.01 is amended by adding a new subdivision to  
10 read:

11 "(7a) Exclusive mortgage broker – An individual who acts as a mortgage  
12 broker exclusively for a single mortgage banker or single exempt  
13 person and who is licensed under the provisions of G.S.  
14 53-243.05(c)(1a)."

15 **SECTION 2.** G.S. 53-243.01(14) reads as rewritten:

16 "(14) Mortgage broker. – A person who acts as a mortgage broker as that  
17 term is defined in subdivision (1) of this section. The term "mortgage  
18 broker" includes an exclusive mortgage broker, except when expressly  
19 provided otherwise."

20 **SECTION 3.** G.S. 53-243.05(a) reads as rewritten:

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

- 27 (1) The applicant's name and address and social security number.  
28 (2) The applicant's form and place of organization, if applicable.

- 1 (3) The applicant's proposed method of and locations for doing business,  
2 if applicable.
- 3 (4) The qualifications and business history of the applicant and, if  
4 applicable, the business history of any partner, officer, or director, any  
5 person occupying a similar status or performing similar functions, or  
6 any person directly or indirectly controlling the applicant, including:  
7 (i) a description of any injunction or administrative order by any state  
8 or federal authority to which the person is or has been subject; (ii) a  
9 conviction of a misdemeanor involving fraudulent dealings or moral  
10 turpitude or relating to any aspect of the residential mortgage lending  
11 business; (iii) any felony convictions.
- 12 (5) With respect to an application for licensing as a mortgage banker or  
13 broker, the applicant's financial condition, credit history, and business  
14 history; and with respect to the application for licensing as a loan  
15 officer, the applicant's credit history and business history.
- 16 (6) The applicant's consent to a criminal history record check and a set of  
17 the applicant's fingerprints in a form acceptable to the Commissioner.  
18 Refusal to consent to a criminal history record check may constitute  
19 grounds for the Commissioner to deny licensure to the applicant."

20 **SECTION 4.** G.S. 53-243.05(c) reads as rewritten:

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

- 24 (1) ~~If-Except as provided for in subdivision (1a) of this subsection, if the~~  
25 ~~applicant is a sole proprietor, the applicant shall have at least three~~  
26 ~~years of experience in residential mortgage lending or other experience~~  
27 ~~or competency requirements as the Commissioner may impose.~~  
28 ~~Experience as an exclusive mortgage broker shall not constitute~~  
29 ~~mortgage-lending experience under this subdivision.~~
- 30 (1a) If an individual applicant to be licensed as a mortgage broker meets all  
31 other requirements for licensure under this section but does not meet  
32 the requirements of subdivision (1) of this subsection, the individual  
33 applicant may be licensed as an exclusive mortgage broker upon  
34 compliance with all of the following:
- 35 a. Successfully complete both a residential mortgage-lending  
36 course approved by the Commissioner of not less than 40 hours  
37 of classroom instruction, and a written examination approved  
38 by the Commissioner.
- 39 b. Act exclusively as a mortgage broker for a single mortgage  
40 banker licensee or single exempt mortgage banker for whom the  
41 broker shall be deemed an agent, who shall be responsible for  
42 supervising the broker as required by this Article, who shall  
43 sign the license application of the applicant, and who shall be

1                   jointly and severally liable with the broker for any claims  
2                   arising out of the broker's mortgage lending activities.

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

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

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

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

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

17                  **SECTION 5.** G.S. 53-243.05(e) reads as rewritten:

18                  "(e)       Every applicant for initial licensure shall pay a filing fee of one thousand  
19                  dollars (\$1,000) for licensure as a mortgage broker or mortgage banker or fifty dollars  
20                  (\$50.00) for licensure as a loan ~~officer~~ officer, in addition to the actual cost of obtaining  
21                  credit reports and State and national criminal history record checks."

22                  **SECTION 6.** G.S. 53-243.05(i) reads as rewritten:

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

30                  **SECTION 7.** G.S. 53-243.06 reads as rewritten:

31                  "**§ 53-243.06. License renewal; termination.**

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

40                  (1)       Licensed mortgage bankers shall pay an annual fee of five hundred  
41                  dollars (\$500.00) and one hundred dollars (\$100.00) for each branch  
42                  office.

43                  (2)       Licensed mortgage brokers shall pay an annual fee of five hundred  
44                  dollars (\$500.00) and one hundred dollars (\$100.00) for each branch

1 office. Licensed exclusive mortgage brokers shall pay an annual fee of  
2 five hundred dollars (\$500.00).

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

4 (b) If a license is not renewed prior to the applicable expiration date, then an  
5 additional two hundred fifty dollars (\$250.00) in addition to the renewal fee under  
6 subsection (a) of this section shall be assessed as a late fee to any renewal. In the event a  
7 licensee fails to obtain a reinstatement of the license within 90 days after the date the  
8 license expires, the Commissioner may require the licensee to comply with the  
9 requirements for the initial issuance of a license under the provisions of this Article.

10 (b1) When required by the Commissioner, the licensee shall furnish to the  
11 Commissioner the licensee's consent to a criminal history record check and a set of the  
12 licensee's fingerprints in a form acceptable to the Commissioner. Refusal to consent to a  
13 criminal history record check may constitute grounds for the Commissioner to deny  
14 renewal of licensure to the licensee.

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

20 **SECTION 8.** G.S. 53-243.07 reads as rewritten:

21 "**§ 53-243.07. Continuing education.**

22 (a) As a condition of license renewal, the Commissioner may adopt rules to  
23 require continuing education of licensees under this Article for the purpose of enhancing  
24 the professional competence and professional responsibility of ~~mortgage bankers,~~  
25 ~~mortgage brokers, and loan officers.~~ all licensees. The rules may include criteria for:

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

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

36 (c) The Commissioner may require education providers of the fundamentals  
37 mortgage lending course required under the provisions of G.S. 53-243.05(b)(2) and the  
38 continuing education courses required under this section to file information regarding  
39 the contents and materials of proposed courses to satisfy the education requirements  
40 with the Commissioner for review and approval. The Commissioner may set fees for the  
41 initial and continuing review of courses for which credit hours will be granted. The  
42 initial filing fee for review of materials shall not exceed five hundred dollars (\$500.00)  
43 and the fee for continued review shall not exceed two hundred fifty dollars (\$250.00)  
44 per annum per course offered."

1           **SECTION 9.** G.S. 53-243.08 reads as rewritten:

2   "**§ 53-243.08. Managing principals and branch managers.**

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

22           **SECTION 10.** G.S. 53-243.12 is amended by adding a new subsection to  
23   read:

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

32           **SECTION 11.** Article 19A of Chapter 53 of the General Statutes is amended  
33   by adding a new section to read:

34   "**§ 53-243.16. Criminal history record checks.**

35       The Department of Justice may provide a criminal record check to the  
36   Commissioner for a person who has applied for or holds a mortgage broker, exclusive  
37   mortgage broker, or loan officer license through the Commissioner under this Article.  
38   The Commissioner shall provide to the Department of Justice, along with the request,  
39   the fingerprints of the applicant, any additional information required by the Department  
40   of Justice, and a form signed by the applicant consenting to the check of the criminal  
41   record and to the use of the fingerprints and other identifying information required by  
42   the State or national repositories. The applicant's fingerprints shall be forwarded to the  
43   State Bureau of Investigation for a search of the State's criminal history record file, and  
44   the State Bureau of Investigation shall forward a set of the fingerprints to the Federal

1 Bureau of Investigation for a national criminal history check. The Commissioner shall  
2 keep all information pursuant to this section privileged, in accordance with applicable  
3 State law and federal guidelines, and the information shall be confidential and shall not  
4 be a public record under Chapter 132 of the General Statutes.

5 The Department of Justice may charge a fee for each applicant for conducting the  
6 checks of criminal history records authorized by this section."

7 **SECTION 12.** This act is effective when it becomes law and applies to  
8 persons who apply for licensure or licensure renewal under Article 19A of Chapter 53  
9 of the General Statutes on or after that date.