

§ 53-244.030. Definitions.

For purposes of the Article, the following definitions apply:

- (1) "Affiliate" means 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.
- (2) "Audited Statement of Financial Condition" means a statement of financial condition prepared in accordance with generally accepted accounting principles and certified by a certified public accountant as fairly and accurately reflecting financial condition of the licensee as of the date specified in the statement.
- (2a) "Banking Commission" means the North Carolina Banking Commission. For the purpose of complying with this Article by credit unions, Banking Commission means the North Carolina Credit Union Commission.
- (3) "Branch manager" means the individual who is assigned to, is in charge of, and is responsible for the business operations of a branch office of a mortgage broker or mortgage lender.
- (4) "Branch office" means an office of a mortgage broker or mortgage lender that is separate and distinct from the mortgage broker's or lender's principal office and from which its employees engage in the mortgage business. A branch office shall not be located at an individual's home or residence.
- (5) "Certified Statement of Financial Condition" means a statement of financial condition prepared in accordance with generally accepted accounting principles and certified by the preparer or licensee as fairly and accurately reflecting the financial condition of the licensee as of the date specified in the statement.
- (6) "Commissioner" means the North Carolina Commissioner of Banks and the Commissioner's designees. For the purpose of compliance with this Article by credit unions, Commissioner means the Administrator of the Credit Union Division of the Department of Commerce.
- (7) "Control" means 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 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.
- (8) "Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act and includes any credit union whose share and deposit accounts are insured by the National Credit Union Administration under the Federal Credit Union Act.
- (9) "Dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, manufactured home, mobile home, or trailer if it is used as a residence.
- (10) "Employee" means an individual who has an employment relationship with a mortgage broker, mortgage lender, or mortgage servicer and who is treated

as a common law employee for purposes of compliance with the federal income tax laws and whose income is reported on IRS Form W-2.

- (11) "Engaging in the mortgage business" means:
 - a. For compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, to accept or offer to accept an application for a residential mortgage loan from prospective borrowers, solicit or offer to solicit a residential mortgage loan from prospective borrowers, negotiate the terms or conditions of a residential mortgage loan with prospective borrowers, issue residential mortgage loan commitments or interest rate guarantee agreements to prospective borrowers, or engage in tablefunding of residential mortgage loans, whether any such acts are done through contact by telephone, by electronic means, by mail, or in person with the borrowers or prospective borrowers.
 - b. To make or fund, or offer to make or fund, or advance funds on residential mortgage loans for compensation or gain, or in the expectation of compensation or gain.
 - c. To engage, whether for compensation or gain from another or on one's own behalf, in the business of receiving any scheduled periodic payments from a borrower pursuant to the terms of any residential 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 residential mortgage loan, the residential mortgage loan servicing documents, or servicing contract, or otherwise to meet the definition of the term "servicer" in 12 U.S.C. § 2605(i)(2) with respect to residential mortgage loans.
- (11a) "Exclusive mortgage broker" means an individual who acts as a mortgage broker exclusively for a single mortgage lender or mortgage broker licensee or a single exempt mortgage lender and who is licensed pursuant to G.S. 53-244.050(b)(3). Unless otherwise indicated, an exclusive mortgage broker shall be subject to the requirements of a mortgage broker under this Article.
- (12) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.
- (13) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild, or the spouse of an immediate family member. This term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.
- (14) "Individual" means a natural person.
- (15) "Licensee" means a mortgage loan originator, transitional mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer or other person who is licensed pursuant to this Article.
- (16) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under this Article. Clerical or support duties may include, subsequent to the receipt of an application:

- a. The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and
- b. Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

Any person who represents to the public, through advertising or other means of communication, or provides information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator shall not be deemed to be a loan processor or underwriter under this definition.

- (17) "Loss mitigation specialist" means an employee of a mortgage servicer authorized to (i) collect or receive payments, including payments of principal, interest, escrow amounts, and other amounts due on existing residential mortgage loans due and owing to the licensed lender or servicer when the borrower is in default or in reasonably foreseeable likelihood of default, (ii) work with the borrower to collect data, and (iii) make decisions necessary to modify, either temporarily or permanently, certain terms of those residential mortgage loans or to otherwise finalize collection through the foreclosure process. Such decisions shall include any change in the principal amount of the debt, the rate of annual interest charged, the term of the loan, the waiver of any fees or charges, including late charges, the deferral of payments, or any other similar matter.
- (18) "Make a residential mortgage loan" means to advance funds, to offer to advance funds, to make a commitment to advance funds to a borrower under a mortgage loan, or to fund a residential mortgage loan.
- (19) "Mortgage broker" means a person engaged in the mortgage business as defined in sub-subdivision a. of subdivision (11) of this section.
- (20) "Mortgage lender" means a person engaged in the mortgage business as defined in sub-subdivision b. of subdivision (11) of this section. However, the definition does not include a person who acts as a mortgage lender only in a tablefunding transaction.
- (21) "Mortgage loan originator" means:
 - a. An individual who for compensation or gain or in the expectation of compensation or gain, whether through contact by telephone, by electronic means, by mail, or in person with prospective borrowers, either:
 - 1. Takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan,
 - 2. Accepts or offers to accept applications for mortgage loans,
 - 3. Solicits or offers to solicit a mortgage loan,
 - 4. Negotiates the terms or conditions of a mortgage loan, or
 - 5. Issues mortgage loan commitments or interest rate guarantee agreements to prospective borrowers.
 - b. The term includes an individual acting solely as a loss mitigation specialist if the United States Department of Housing and Urban Development issues a guideline, rule, regulation, or interpretative

letter that such individuals are loan originators as the term is defined by § 1503 of Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, and only to the extent of such an issuance or determination.

c. The term does not include:

1. An individual engaged solely as a loan processor or underwriter;
 2. A person or entity that only performs real estate brokerage activities and is licensed or registered as such in accordance with State law, unless the person or entity is compensated by a mortgage lender, a mortgage broker, or other mortgage loan originator or by any agent of a mortgage lender, mortgage broker, or other mortgage loan originator;
 3. A person or entity solely involved in extensions of credit or sale of time share instruments relating to time share plans, as that term is defined in G.S. 93A-41(9a); or
 4. An individual who only informs a prospective borrower of the availability of persons engaged in the mortgage business, does not take or assist in the completion of a loan application, and does not discuss specific terms or conditions of a mortgage loan. The taking of basic preapplication information for facilitating a residential mortgage loan transaction, such as the name and contact information of the prospective borrower, the prospective borrower's own assessment of creditworthiness, desired loan types, and resources to make a down payment, but not including social security number, credit score, credit or employment history, or specific rates of a desired mortgage loan, to connect prospective borrowers to persons engaged in the mortgage business does not prevent an individual from qualifying for this exclusion.
 5. An individual who is a salesperson for a licensed manufactured housing retailer that performs the purely administrative and clerical tasks of physically handling or transmitting to a licensed mortgage loan originator on behalf of a prospective borrower an application and other forms completed by the prospective borrower. Nothing in this subpart prohibits a salesperson, upon the written request of a mortgage loan originator and after a prospective borrower completes an application, from pulling and transmitting a credit report with the application.
- (21a) "Mortgage origination support registrant" or "registrant" means a person engaged exclusively in the processing or underwriting of residential mortgage loans and not engaged in the mortgage business.
- (22) "Mortgage servicer" means a person engaged in the mortgage business who directly or indirectly engages in the mortgage business as defined in sub-subdivision c. of subdivision (11) of this section.
- (23) "Nationwide Mortgage Licensing System and Registry" means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage

- Regulators for the licensing and registration of licensed mortgage loan originators.
- (24) "Nontraditional mortgage product" means any residential mortgage loan product other than a 30-year fixed rate mortgage.
 - (25) "Person" means an individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities however organized.
 - (26) "Principal office" means a principal place of business that shall consist of at least one enclosed room or building of stationary construction in which negotiations of mortgage loan transactions 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. A principal office shall not be located at an individual's home or residence.
 - (27) "Qualifying individual" means a person who meets the experience and other requirements of G.S. 53-244.050(b) and who agrees to be primarily responsible for the operations of a licensed mortgage broker or mortgage lender or mortgage servicer.
 - (28) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:
 - a. Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
 - b. Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
 - c. Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction;
 - d. Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under Chapter 93A of the General Statutes; and
 - e. Offering to engage in any activity, or act in any capacity, described in sub-subdivision a., b., c., or d. of this subdivision.
 - (29) "Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator, is registered with, and maintains a unique identifier through the Nationwide Mortgage Licensing System and Registry and is an employee of:
 - a. A depository institution;
 - b. A subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or
 - c. An institution regulated by the Farm Credit Administration.
 - (30) "Residential mortgage loan or mortgage loan" means any loan made or represented to be made to a natural person or persons primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling located within this State or residential real estate upon which is constructed or intended to be constructed a dwelling.
 - (31) "Residential real estate" means any real property located in this State upon which is constructed or intended to be constructed a dwelling.
 - (32) "RESPA" means the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, et seq., as it may be hereafter amended.

- (33) "Tablefunding" means a transaction in which a person closes a residential mortgage loan in its own name but with funds provided by another and in which the loan is assigned to the mortgage lender actually providing the funds within one business day of the funding of the loan.
- (33a) "Transitional mortgage loan originator" means an individual who is authorized to act as a mortgage loan originator subject to a transitional mortgage loan originator license which is limited to a term of no more than 120 days and is not subject to reapplication, renewal, or extension by the Commissioner.
- (34) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry. (2009-374, s. 2; 2009-570, s. 34.1; 2013-327, s. 1; 2015-293, s. 1.)