A BILL TO BE ENTITLED
AN ACT AMENDING THE LAWS CONCERNING THE LICENSURE OF
MORTGAGE LENDERS AND BROKERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 53 of the North Carolina General
Statutes is repealed.

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

"Article 19A.
Residential Mortgage Lenders and Brokers Licensure Act.

§ 53-243.01. Title and scope.
This Article shall be known and cited as the 'Residential Mortgage Lenders and
Brokers Licensure Act.'

§ 53-243.02. Legislative findings.
The General Assembly finds that the activities of mortgage lenders and mortgage
brokers and the offering of financing for residential real property have a direct and
immediate impact upon the housing industry, neighborhoods and communities, and
homeowners and potential homeowners of this State. The General Assembly further
finds that it is essential for the protection of the citizens of this State and the stability of
the State's economy to establish reasonable standards governing the business practices
of mortgage lenders and mortgage brokers and to provide for adequate supervision and
regulation of mortgage lenders and mortgage brokers. This Act is intended to be
remedial and shall be liberally construed to accomplish its purposes.

§ 53-243.03. Definitions.
As used in this Article, the term:

(1) 'Affiliate' means, when used with reference to a specified company, a
company which directly, indirectly, or through one or more
intermediaries controls, is controlled by, or is under common control
with the specified company.

(2) 'Audit' means a certified audit of the licensee's books and records and
systems of internal control performed by an independent certified
public accountant in accordance with generally accepted accounting
principles and generally accepted auditing standards. An audit shall
include a statement of financial condition.

(3) 'Holding company' means any bank holding company or financial
holding company as defined in section 2 of the Bank Holding
Company Act of 1956, 12 U.S.C. § 1841, as the same may be amended
from time to time.

(4) 'Borrower' means one or more individuals who obtain or seek to obtain
a mortgage loan, including an applicant or applicants for a mortgage
loan.

(5) 'Branch office' means any location, other than a licensee's principal
place of business:
   a. At which the licensee makes or brokers mortgage loans;
   b. At which the licensee's advertising, promotional material, or
      signage suggests that the licensee makes or brokers mortgage
      loans; or
   c. Which, due to the actions of the licensee or any employee or
      independent contractor of the licensee, may be reasonably
      construed by the public as a branch office of the licensee where
      the licensee makes or brokers mortgage loans.

(6) 'Commission' means the State Banking Commission.

(7) 'Commissioner' means the Commissioner of Banks of this State.

(8) 'Company' means any corporation, limited liability company,
partnership, business trust, association, or other similar organization.

(9) 'Control,' 'controlling,' 'controlled by,' and 'under common control
with,' mean the possession, directly or indirectly, of the power to direct
or cause the direction of the management and policies of a company,
whether through the ownership of voting stock of the company, the
ownership of voting stock of any entity which possesses that power, or
otherwise. Control of a company shall be presumed to exist if any
person, directly or indirectly, owns, controls, or holds power to
vote twenty-five percent (25%) or more of the voting stock of the
company or of any entity which owns, controls, or holds power to
vote twenty-five percent (25%) or more of the voting stock of the
company, but no person shall be deemed to control a company solely
by reason of being an officer or director of that company.

(10) 'Depository institution' means any of the following:
   a. Any bank as defined in section 2(c) of the Bank Holding
      Company Act of 1956, 12 U.S.C. § 1841(c), as amended from
time to time;
b. Any savings association or savings bank as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813, as amended from time to time; and

c. Any insured credit union as defined in section 1 of the Federal Credit Union Act, 12 U.S.C. § 1752, as amended from time to time.

(11) 'Employee' means an individual employed in the service of a mortgage lender or a mortgage broker for wages, salary, commissions, or other direct compensation. An employee is subject to income tax withholding and other lawful deductions by his or her employer as a condition of employment and is subject to the right of the employer to direct and control the actions of the employee.

(12) 'Exempt person' means any person exempt from any portion of this Article pursuant to G.S. 53-243.04.

(13) 'Flipping' shall have the same meaning as in G.S. 24-10.2.

(14) 'Independent contractor' means a person who contracts with a mortgage lender, a mortgage broker, or an exempt person to perform a service where the independent contractor: (i) is not directed or controlled by the mortgage lender, mortgage broker, or exempt person, or (ii) is required to maintain separate records regarding his, her, or its contract for services in respect to, but not limited to, accounting and taxes.

(15) 'Individual' means one or more natural persons.

(16) 'License' means a license issued by the Commissioner under this Article which authorizes a person to act as a mortgage lender, a mortgage broker, or both a mortgage lender and a mortgage broker.

(17) 'Licensee' means a person who is issued a license pursuant to this Article.

(18) 'Loan commitment' and 'commitment' mean a written statement by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular mortgage loan to a particular borrower.

(19) 'Make a mortgage loan' (or any similar phrase) means to advance funds, offer to advance funds, or make a commitment to advance funds to a borrower for a mortgage loan.

(20) 'Managing broker' means the individual in charge of and responsible for the operation of the principal place of business or a branch office of a licensed mortgage broker, including supervision of all employees of the licensed broker at that location.

(21) 'Managing loan officer' means the individual in charge of and responsible for the operation of the principal place of business or a branch office of a licensed mortgage lender, including supervision of all employees of the licensed mortgage lender at that location.
(22) 'Misrepresent' means to make a false statement of a substantive fact with reckless disregard for the truth of the statement or with knowledge that the statement is false, or to engage, with the intent to deceive or mislead, in any conduct which leads to a false belief which is material to the transaction.

(23) 'Mortgage broker' means any person who (i) holds himself, herself, or itself out to a borrower or the general public as a mortgage broker, or (ii) performs mortgage brokering services. The term 'mortgage broker' includes any person who closes a mortgage loan in such a person's own name with funds provided by another person in a table funded mortgage loan transaction; the mortgage lender in any table funded mortgage loan transaction is the person who advances the loan proceeds and to whom the obligation is initially assigned at or after settlement.

(24) 'Mortgage brokering' and 'mortgage brokering services' mean attempting to or actually negotiating, placing, finding, or obtaining a mortgage loan for a borrower from a third-party mortgage lender in return for compensation or in anticipation of compensation to be paid, either directly or indirectly, by the borrower, the mortgage lender, or both the borrower and the mortgage lender.

(25) 'Mortgage lender' means a person who (i) holds himself, herself, or itself out to a borrower or the general public as a mortgage lender, or (ii) makes a mortgage loan. In a table funded mortgage loan transaction originated by a mortgage broker who closes the mortgage loan in the mortgage broker's own name, the person who advances the loan funds and to whom the obligation is initially assigned at or after settlement is the mortgage lender.

(26) 'Mortgage loan' means a loan made to a borrower which is incurred by the borrower primarily for personal, family, or household purposes and which is primarily secured by a mortgage or deed of trust upon an interest in real property located in this State upon which there is located or there is to be located a one-to-four family dwelling occupied or to be occupied by the borrower as the borrower's principal dwelling, regardless of where the loan is made. For purposes of this Article, 'mortgage loan' shall not include any loan that is made primarily for a business, commercial, or agricultural purpose.

(27) 'Net worth' shall be computed in accordance with generally accepted accounting principles and shall be reported annually on a certified statement of financial condition.

(28) 'Person' means any individual, sole proprietorship, estate, trust, firm, corporation, limited liability company, partnership, association, or legal or commercial entity, or group of individuals, however organized.
(29) 'Principal broker' means the individual in charge of and responsible for the mortgage brokering activities of a licensed mortgage broker, including supervision of all managing brokers and other employees of the licensed mortgage broker.

(30) 'Principal loan officer' means the individual in charge of and responsible for the mortgage lending activities of a licensed mortgage lender, including supervision of all managing loan officers and other employees of the licensed mortgage lender.

(31) 'Principal place of business' means a licensee's primary business office as designated on the application for a license or any amendment thereto.

(32) 'Principals of a company' mean the directors, managers, general partners and principal officers of a company, and any individual who owns a controlling interest in the company. The 'principals of a company' which provide mortgage brokering services expressly include each principal broker and each managing broker. The 'principals of a company' which make mortgage loans expressly include each principal loan officer and each managing loan officer.

(33) 'Subsidiary' means, when used with reference to a specified company, any company that is at least majority-owned or majority-controlled by the specified company, whether directly, indirectly, or through one or more intermediaries.

(34) 'Table funded mortgage loan transaction' means a settlement at which a mortgage loan is funded by an advance of loan funds and a subsequent assignment of the loan from the person identified as the lender in the loan documents to the person advancing the funds.

(35) 'This State' means the State of North Carolina.

(36) 'Total compensation' means all payments made to the broker in connection with a mortgage loan, whether paid by the borrower or by the lender, including payments made before, at the time of, or after the loan closing.

(37) 'Total loan amount' means the same as the term 'total loan amount' as used in section 226.32 of Title 12 of the Code of Federal Regulations, and the same shall be calculated in accordance with the Federal Reserve Board's Official Staff Commentary thereto.


(a) The following persons shall not be subject to any of the provisions of this Article:

(1) Any depository institution and any subsidiary of a depository institution.

(2) The United States of America, the State of North Carolina or any other state, and any agency, division, corporate instrumentality, or quasi-governmental agency of the federal government or any state, county, or municipal government, including without limitation: the North...
Carolina Housing Finance Agency, the North Carolina Agricultural
Finance Authority, Fannie Mae, the Federal Home Loan Mortgage
Corporation, the Government National Mortgage Association, the
United States Department of Housing and Urban Development, the
Federal Housing Administration, the Department of Veterans Affairs,
the Farmers Home Administration, and the Federal Land Banks and
Production Credit Associations.

(3) Any employee of any exempt person described in this subsection when
acting within the course and scope of his or her employment.

(b) The following persons shall not be subject to any of the provisions of this
Article relating to mortgage lenders other than G.S. 53-243.05, 53-243.22, and 53-
243.28:

(1) Any insurance company duly licensed in this or any other state and
qualified to do business in North Carolina.

(2) Any pension plan which makes mortgage loans solely to plan
participants from plan assets.

(3) Any nonprofit corporation qualifying under section 501(c)(3) of the
Internal Revenue Code making mortgage loans to promote home
ownership or improvements for the disadvantaged.

(4) Any person who makes a mortgage loan to the extent such person's
mortgage-lending activities are limited as follows:

a. Any person who makes three or fewer mortgage loans in any
calendar year with the person's own funds for the person's own
investment and who does not hold himself, herself, or itself out
to the general public as a mortgage lender or a mortgage broker.

b. Any person who makes a mortgage loan while acting in a
fiduciary capacity conferred by authority of any court.

c. Any person who, as seller, receives in one calendar year no
more than 10 deeds of trust as security for purchase money
obligations.

d. Any person who makes a mortgage loan to a bona fide
employee of such person as an employee benefit.

e. Any person who makes a mortgage loan to a borrower related to
the lender by blood or marriage.

(5) Any employee of an exempt person described in subdivision (1), (2),
(3), or (4) of this subsection, when assisting in the activities described
in those subdivisions under the supervision of his or her employer.

(c) The following persons shall not be subject to any of the provisions of this
Article relating to mortgage brokers other than G.S. 53-243.05, 53-243.22, and 53-
243.28:

(1) Any attorney licensed to practice law in this State when rendering
services as an attorney; provided a licensed attorney shall not be
considered an exempt person if the attorney holds himself or herself
out to the general public as a mortgage broker.
(2) Any licensed real estate agent or broker when rendering services as a real estate agent or broker subject to regulation and supervision by the North Carolina Real Estate Commission; provided, a real estate agent or broker shall not be considered an exempt person if the real estate agent or broker receives any fee, commission, or other payment for mortgage brokering services or holds himself or herself out to the general public as a mortgage broker.

(3) Any person who brokers no more than three mortgage loans in this State in any calendar year, provided the person is licensed as a mortgage broker under the laws of any other state.

(4) Any employee of an exempt person described in subdivision (1), (2), or (3) of this subsection, when assisting in the activities described in those subdivisions under the supervision of his or her employer.

(d) Any employee of a holding company, a subsidiary of a bank holding company, or an affiliate of a depository institution when providing mortgage brokering services to a borrower in the course and scope of his or her employment shall not be subject to the provisions of this Article relating to mortgage brokers, other than G.S. 53-243.05, 53-243.22, and 53-243.28 where the lender involved in the loan is an affiliate of the employee’s employer and the affiliate is (i) a licensed mortgage lender, (ii) a depository institution, or (iii) a subsidiary of a depository institution.

(e) Notwithstanding any other provisions of this section, any person other than a person exempt under subsection (a) of this section who holds himself, herself, or itself out to a borrower or to the general public as a mortgage broker must be licensed under this Article.

(f) An employee of a licensed mortgage lender shall not be subject to any of the provisions of this Article relating to mortgage lenders, other than G.S. 53-243.05, 53-243.22, 53-243.25, 53-243.26, and 53-243.28, when acting within the course and scope of his or her employment.

(g) An employee of a licensed mortgage broker shall not be subject to any of the provisions of this Article relating to mortgage brokers other than G.S. 53-243.04, 53-243.20, 53-243.21, 53-243.22, 53-243.25, 53-243.26, and 53-243.28, provided he or she (i) performs only clerical and ministerial tasks, (ii) is under the direct and continuous supervision of a principal broker or a managing broker who has a current mortgage broker license, (iii) is not holding himself or herself out to the general public as a mortgage broker, and (iv) is acting within the course and scope of his or her employment.

(h) The burden of establishing the right to any exemption under this Article shall rest upon the party claiming the benefit of the exemption.

§ 53-243.05. Mortgage loans subject to this Article.

Mortgage loans shall be subject to the provisions of this Article without regard to where or how the loan is made. Any person who provides mortgage brokering services or mortgage lending services by mail, telephone, or electronic means in connection with mortgage loans is subject to the provisions of this Article. Any person who solicits or
makes mortgage loans by mail, telephone, or electronic means is subject to the provisions of this Article.

§ 53-243.06. Validity of mortgage loans.

This Article shall not be construed to alter the validity or enforceability of any existing or future mortgage loan under common or other statutory laws provided that this section shall not be construed as a limitation of the rights of a borrower to pursue all available remedies for violations of the provisions of this Article.

§ 53-243.07. License requirement.

(a) It is unlawful for any person other than an exempt person to act as a mortgage lender, or to hold himself, herself, or itself out to a borrower or to the general public as a mortgage lender, without a current mortgage lender license issued by the Commissioner.

(b) It is unlawful for any person other than an exempt person to act as a mortgage broker, or to hold himself or herself out to a borrower or to the general public as a mortgage broker, without a current mortgage broker license issued by the Commissioner.

§ 53-243.08. Application for license.

(a) An application for a license under this Article shall be in writing, under oath, and in a form prescribed by the Commissioner.

(b) The Commissioner may require each applicant for a license to provide any information reasonably necessary for the Commissioner to make a determination of the applicant's eligibility for a license and to provide appropriate supervision of the applicant if a license is granted.

(c) A completed license application form shall be accompanied by the following:

(1) Evidence of the financial requirements of G.S. 53-243.13.

(2) If applicable, an application for branch office permits.

(3) Evidence that the applicant and its employees and agents satisfy the training and experience requirements prescribed by the Commissioner.

(4) If the applicant is a company, documentation that the company is duly incorporated, registered, or otherwise formed as a lawful entity under the laws of the state in which it was organized and that the company is duly authorized to transact business in this State.

(5) Any fees required by G.S. 53-243.31.

§ 53-243.09. Renewal of licenses.

(a) On or before March 1 of each year, each licensee shall apply to renew each license issued in his, her, or its name by the Commissioner under this Article by submitting to the Commissioner a license renewal application in a form prescribed by the Commissioner.

(b) The Commissioner may require any applicant for the renewal of a license to provide any information reasonably necessary for the Commissioner to make a determination that the applicant continues to be eligible for a license and that the applicant will continue to be subject to appropriate supervision of the Commissioner upon renewal.
(c) A completed license renewal application shall be accompanied by the following:

(1) Evidence that the licensee continues to satisfy the financial responsibility requirements of G.S. 53-243.13;

(2) If applicable, an application for the renewal of branch office permits; and

(3) Any fees required by G.S. 53-243.31.

(d) Any licensee who submits a completed license renewal application in a timely manner, including all supporting documents and supplemental information and all applicable fees, shall be permitted to continue to operate pending final approval or disapproval of the license renewal application if final approval or disapproval is not granted prior to May 1.

(e) Any person holding a license who fails to file a proper license renewal application on or before March 1 and who files a license renewal application thereafter but before April 1 may be required to pay, in addition to the renewal fee, a late filing penalty as provided in G.S. 53-243.30.

(f) Each license shall expire immediately and automatically on April 30 without further action by the Commissioner if the licensee fails to file a proper license renewal application as provided for in this section.

(g) If the Commissioner determines that the efficient operation of the Commissioner's office and the orderly administration and enforcement of the law warrants a modification of the annual renewal of licenses issued under this Article, and that the modification may be made consistent with the protection of the borrowing public, then the Commissioner may permit license renewals for a period not to exceed three years in lieu of the annual renewal of licenses required by this section. The Commissioner may modify or extend renewal dates to stagger the deadlines throughout the calendar year. The Commissioner may adopt any rules, regulations, and orders necessary or advisable to accomplish any modification.

§ 53-243.10. Investigation of applicants; approval and denial of applications.

(a) Upon receipt of an application for a license or for the renewal of a license, the Commissioner shall conduct any investigation the Commissioner deems necessary to determine whether the applicant qualifies for the issuance or renewal of the requested license. The Commissioner's investigation may include matters relating to the financial responsibility, criminal record, credit history, experience, training, character, and general fitness of the applicant, its principals, and its employees.

(b) The Commissioner shall not approve an application for a license unless the Commissioner makes the following findings:

(1) That the financial responsibility, criminal record, credit history, experience, training, character, or general fitness of the applicant, its principals, or its employees (i) are such that the applicant will command the confidence of the community, and (ii) warrant the belief that the business of the applicant has been, or will be, operated honestly, fairly, and in an ethical manner consistent with the laws of this State and rules and regulations adopted by the Commission;
The applicant is in material compliance with all provisions of this Article;

All material requirements for the renewal of a license have been met; and

No grounds exist which would justify disciplinary action against the applicant under G.S. 53-243.25.

The Commissioner shall approve an application for renewal of an existing license unless the Commissioner finds that one or more of the criteria for license set forth in subsection (b) of this section are not met.

If an application for a license or the renewal of a license is denied, the Commissioner shall promptly notify the applicant of the denial and the reasons for the denial.

Each license issued under this Article shall state the name of the licensee and the address of the principal place of business of the licensee. The licensee shall post a copy of the license in a conspicuous place in the licensee's principal place of business. A license shall not be transferred or assigned, by operation of law or otherwise. No licensee shall transact business as a mortgage lender or as a mortgage broker under any name other than that designated in the license. Every license shall remain in force until it expires or until it is surrendered, revoked, or suspended. The expiration, surrender, revocation, or suspension of a license shall not affect any preexisting legal right or obligation of a licensee.

Except as provided in this section, no person shall acquire a twenty-five percent (25%) or larger controlling interest in a licensee unless that person first:

Files an application for change of control with the Commissioner in a form prescribed by the Commissioner;

Delivers the information to the Commissioner as the Commissioner may require concerning the financial responsibility, criminal record, credit history, experience, training, character, and general fitness of the applicant (if the applicant is an individual) or of the applicant and its principals (if the applicant is a company);

Provides evidence that the licensee continues to satisfy the financial responsibility requirements of G.S. 53-243.13; and

Pays the required fee as provided in G.S. 53-243.31.

Upon receipt of an application for a change of control, the Commissioner shall conduct any investigation the Commissioner deems necessary to determine whether the application should be approved or denied. The Commissioner's investigation may include matters relating to the financial responsibility, criminal record, credit history, experience, training, character, and general fitness of the applicant, its principals, and its employees.

Subject to subsection (d) of this section, the Commissioner shall approve the application for a change of control and permit the applicant to acquire the interest in the licensee if the Commissioner finds that the applicant, and its principals, if applicable,
The Commissioner may deny an application for change of control if:

1. The Commissioner cannot make the findings specified in subsection (c) of this section;
2. The applicant or the licensee is not in material compliance with the provisions of this Article;
3. All material requirements for the approval of the change of control have not been met; or
4. Any grounds exist which would justify disciplinary action against the applicant or the licensee under G.S. 53-243.25.

The Commissioner shall grant or deny the application for change of control within 60 days from the date a completed application accompanied by the required information and the required fee is filed, unless the period is extended by order of the Commissioner reciting the reasons for the extension. If the application is denied, the Commissioner shall promptly notify the applicant of the denial and the reasons for the denial.

The provisions of this section shall not apply to:

1. The acquisition of an interest in a licensee by merger or consolidation by or with (i) a person affiliated through common ownership or control with the licensee, or (ii) a person licensed under this Article or an exempt person; or
2. The acquisition of an interest in a licensee by a person by bequest, descent, survivorship, or by operation of law.


(a) Each licensee under this Article shall have and continuously maintain the following as long as the license remains in effect:

1. For any person who holds both a mortgage lender license and a mortgage broker license, a surety bond in an amount set by the Commissioner, but not less than two hundred thousand dollars ($200,000) and not more than one million dollars ($1,000,000).
2. For any person who holds a mortgage lender license, a surety bond in an amount set by the Commissioner, but not less than one hundred thousand dollars ($100,000) and not more than five hundred thousand dollars ($500,000).
3. For any individual who holds a mortgage broker license, a surety bond in an amount set by the Commissioner, but not less than fifty thousand dollars ($50,000) and not more than two hundred fifty thousand dollars ($250,000).

(b) An individual may satisfy the requirements of subsection (a) of this section as follows:
(1) If the individual is licensed as a mortgage lender or as both a mortgage lender and a mortgage broker, the individual shall obtain a surety bond in his or her own name which satisfies the requirements of subsection (c) of this section.

(2) If the individual is licensed only as a mortgage broker, the individual may either (i) obtain a surety bond in his or her own name, which satisfies the requirements of subsection (c) of this section, or (ii) be covered under the terms of a surety bond issued to his or her employer that is issued in accordance with subdivision (3) of this subsection.

(3) Any company employing one or more licensed mortgage brokers may obtain a bond in the name of the company which by its terms covers certain named individuals who are licensed as mortgage brokers employed by the company; the amount of the bond shall be equal to or in excess of the total of the bond amounts set by this section for each broker covered by the company bond.

(c) Any surety bond required or permitted by this section shall be issued by a bonding company or an insurance company authorized to do business in this State. The bond shall be in a form satisfactory to the Commissioner. The obligor shall be the principal loan officer and managing loan officer requirements.

(d) As an alternative to the surety bond required by subsection (a) or (b) of this section, the Commissioner may allow the financial responsibility requirements of this section to be satisfied by a licensee where the licensee has maintained for at least three years preceding the date of application for license or application for renewal, a net worth of at least five million dollars ($5,000,000).


(a) Each licensed mortgage lender shall designate a principal loan officer. The principal loan officer shall be in charge of and responsible for the mortgage lending activities of the licensee, including general supervision of all managing loan officers and other employees of the licensee. The principal loan officer may also be designated as the managing loan officer for the principal place of business or for one branch office. Each licensed mortgage lender shall maintain on file with the Commissioner a form prescribed by the Commissioner designating the principal loan officer and confirming the principal loan officer's acceptance of that responsibility.
(b) Each licensed mortgage lender shall designate a separate managing loan officer for the principal place of business and for each branch office. An individual shall not be designated as a managing loan officer for more than one location. The managing loan officer shall have his or her office at that location and shall be responsible for the direct control and continuous supervision of the licensee's business and employees at that location. Each licensed mortgage lender shall maintain a form on file with the Commissioner as prescribed by the Commissioner designating the identity and location of the principal place of business or branch office, as the case may be, the name and address of the designated managing loan officer assigned to that location, and the individual's acceptance of the responsibility.

(c) The Commissioner may prescribe the qualifications required for principal loan officers and managing loan officers.

(d) Each licensed mortgage lender shall report any change in the identity of any designated principal loan officer or managing loan officer to the Commissioner in writing and in a form prescribed by the Commissioner within 30 days following the change.

§ 53-243.15. Principal broker and managing broker requirements.

(a) Each licensed mortgage broker shall designate an individual who is duly licensed under this Article as a mortgage broker as his, her, or its principal broker. The principal broker shall be in charge of and responsible for the mortgage brokering activities of the licensee, including general supervision of all managing brokers and other employees of the licensee. The principal broker may also be designated as the managing broker for the principal place of business or for one branch office. If the licensee is an individual operating as a sole proprietor or independent contractor, the principal broker shall be the licensee. Each licensed mortgage broker shall maintain on file with the Commissioner a form prescribed by the Commissioner designating the principal broker and confirming the principal broker's acceptance of the responsibility.

(b) Each licensed mortgage broker shall designate a separate managing broker for the principal place of business and for each branch office. Each individual designated as a managing broker must be duly licensed under this Article as a mortgage broker. An individual shall not be designated as a managing broker for more than one location. The managing broker shall have his or her office at that location and shall be responsible for the direct control and continuous supervision of the licensee's business and employees at that location. Each licensed mortgage broker shall maintain a form on file with the Commissioner as prescribed by the Commissioner designating the identity and location of the principal place of business or branch office, as the case may be, the name and address of the designated managing broker assigned to that location, and the individual's acceptance of that responsibility.

(c) The Commissioner may prescribe the qualifications required for principal brokers and managing brokers.

(d) Each licensed mortgage broker shall report any change in the identity of any designated principal broker or managing broker to the Commissioner in writing and in a form prescribed by the Commissioner within 30 days following the change.

§ 53-243.16. Record-keeping requirements.
(a) Each licensee shall maintain any books, accounts, records, and documents regarding mortgage loans subject to this Chapter prescribed by the Commissioner to enable the Commissioner to determine the licensee's compliance with this Article; provided, however, if federal law prescribes record-keeping requirements for any licensee, the Commissioner shall not impose obligations under this Article for that licensee that are more burdensome than those imposed under federal law.

(b) A licensee shall keep the books, accounts, records, and documents in a secure location under conditions which will not lead to their damage or destruction. The Commissioner may require the books, accounts, records, and documents to be produced and available at any reasonable and convenient location in this State for inspection and examination.

(c) If the Commissioner determines that it is more effective and cost-efficient to perform a review or examination of the books, accounts, records, and documents of a licensee at an out-of-state location, the Commissioner may require the books, accounts, records, and documents to be produced and made available at any reasonable and convenient location outside of this State.

(d) A licensee shall satisfy the record retention requirements prescribed by the Commissioner. A licensee may dispose of any record which has been retained for the prescribed period; provided, however, if federal law prescribes record-retention requirements for any licensee, the Commissioner shall not impose obligations under this Article for such licensee that are more burdensome than those imposed under federal law.

(e) A licensee may cause any or all books, accounts, records, and documents kept by it to be recorded, copied, or reproduced by any document imaging or other electronic means or by any other photographic, photostat, or miniature photographic or reproduction process of any kind which is capable of conversion into written form within a reasonable time and which correctly, accurately, and permanently copies, reproduces, or forms a medium for copying or reproducing the original record on a film or other durable material.

(f) Any electronic imaging, photographic, photostat, or miniature photographic copy or reproduction of any kind, including electronic or computer-generated data, which is capable of conversion into written form within a reasonable time, shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts and administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification, or certified copy of any photographic copy or reproduction shall, for all purposes, be deemed a facsimile, exemplification, or certified copy of the original record.

§ 53-243.17. Reporting requirements.

(a) Each licensee shall by March 31 of each year file a written report with the Commissioner containing information necessary to determine the licensee's compliance with the provisions of this Article and any other information prescribed by the Commissioner concerning the licensee's business and operations during the preceding calendar year. Reports shall be under oath and in the form prescribed by the Commissioner.
(b) Each person licensed as a mortgage lender, a mortgage broker, or as both a mortgage lender and a mortgage broker shall file with the Commissioner an audit of the licensee's operations during the licensee's preceding fiscal year and the licensee's financial condition at the end of the preceding fiscal year within 120 days after the end of the licensee's fiscal year.

(c) Any licensee who fails to prepare and file a report or audit required by this section within the time prescribed by this section shall pay a late filing fee as required by G.S. 53-243.31.


(a) A licensee shall be fully responsible for the administration, operation, control, and oversight of the licensee's branch offices.

(b) No licensee shall open any branch office without first obtaining a branch office permit for that branch office from the Commissioner.

(c) An application for a branch office permit under this Article shall be in writing and in a form prescribed by the Commissioner. The Commissioner may require each applicant for a branch office permit to provide any information reasonably necessary for the Commissioner to supervise the branch office effectively. An application for a branch office of a licensed mortgage lender shall include the name and address of the managing loan officer who will have responsibility for supervision of the branch office. An application for a branch office of a licensed mortgage broker shall include the name and address of the managing broker who will have responsibility for supervision of the branch office. A completed application for a branch office permit shall be accompanied by any fees required by G.S. 53-243.30.

(d) An application for a branch office permit submitted with an application for a license shall be considered in conjunction with, and as part of, the license application. If the application for a license is approved, the Commissioner may approve the application for a branch office permit; if the application for a license is denied, the Commissioner shall deny the application for a branch office permit. If the application is approved, the applicant shall give written notice to the Commissioner within 30 days after the licensee commences business at the branch office.

(e) The Commissioner may deny an application for a branch office permit if the Commissioner finds that:

1. The applicant has not conducted business under this Article efficiently, fairly, ethically, in the public interest, and in accordance with the laws of this State and the rules and regulations adopted by the Commission;
2. The licensee's surety bond is insufficient to cover the licensee's employees and activities;
3. The licensee's staff at the branch office does not satisfy training and experience requirements prescribed by the Commissioner;
4. The licensee has not accepted full financial responsibility for the operation and activities of the branch office;
5. The applicant is not in material compliance with any provision of this Article;
(6) All material requirements for the issuance of the branch office permit have not been met; or
(7) Any grounds exist which would justify disciplinary action against the applicant under G.S. 53-243.25.

(f) An application for a branch permit shall be deemed approved if notice to the contrary has not been mailed by the Commissioner to the applicant within 30 days after the date the completed application, accompanied by all required information and the required fee, is filed, unless the period is extended by the order of the Commissioner. The Commissioner shall promptly notify the applicant of the denial and the reasons for the denial.

(g) Branch office permits must be renewed in conjunction with the renewal of the licensee's license. Fees payable by a licensee for the renewal of the licensee's branch office permits are specified in G.S. 53-243.30.

(h) No later than 30 business days after a change is effective, the licensee shall notify the Commissioner in writing of the closing or relocation of any branch office. Each notice shall be in writing, in a form prescribed by the Commissioner, and accompanied by any fees required by G.S. 53-243.30.

(i) A licensee shall post a copy of the branch office permit in a conspicuous place in the branch office.

(j) A branch permit shall not be transferred or assigned, whether by operation of law or otherwise.

(k) Unless an individual licensee's personal residence is specifically designated as a branch office, an individual licensee's personal residence shall not be considered a branch office.


Each licensee has a continuing obligation and responsibility to satisfy the following:

(1) A licensee shall maintain a staff with the training and experience prescribed by the Commissioner.

(2) A licensee shall promptly report to the Commissioner the conviction of the licensee or of any principal or employee of the licensee of (i) any crime in any jurisdiction which involves fraud, dishonest dealing, or any other act of morale turpitude, or (ii) any felony in any jurisdiction. For the purposes of this section, a person shall be deemed to have been convicted of a crime if either (i) that person has pleaded guilty, no contest, or nolo contendere before a court or federal magistrate, or (ii) that person has been found guilty by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof. A person shall not be deemed to have been convicted of a crime if that person's conviction has been set aside, reversed, or otherwise abrogated by lawful judicial process or if the person convicted of the crime has received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the person was convicted.
A licensee shall account for any funds, documents, or other thing of value which comes into the licensee's possession, which is not the licensee's property, and which the licensee is not entitled to retain under the circumstances.

Within 30 days after the commencement of an action or proceeding and within 30 days after the entry of a judgment or order, a licensee shall give written notice to the Commissioner of the following:

a. Any administrative proceeding or order which is initiated or entered against the licensee or any principal, or employee of the licensee related to or arising out of mortgage brokering or the making of mortgage loans;

b. Any action or proceeding which is brought against the licensee or any principal, or employee of the licensee by any person where the action is brought under this Article or involves a claim against the surety bond filed with the Commissioner to satisfy the requirements of G.S. 53-243.13;

c. Any judgment which is entered against the licensee or any principal, or employee of the licensee arising out of an action brought under this Article or involving a claim against the surety bond filed with the Commissioner to satisfy the requirements of G.S. 53-243.13; or

d. Any bankruptcy or insolvency proceeding which is instituted by or against the licensee or any principal, or employee of the licensee.

A licensee shall notify the Commissioner in writing of any material change to the information required on the most recent application for a license or the renewal of a license within 30 days of the change.

A licensee shall comply with the provisions of this Article, all rules and regulations adopted by the Commission pursuant to G.S. 53-243.30, and all orders issued by the Commissioner under this Article.


A mortgage broker, including any licensee and any person required to be licensed under this Article, shall, in addition to duties imposed by other statutes or at common law:

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. Disclose to the borrower information reasonably accessible to the mortgage broker which might reasonably be expected to influence the borrower's decision;
5. Make reasonable efforts to secure a mortgage loan with rates, charges, and repayment terms that are advantageous to the borrower; and
6. If the broker presents the borrower with a loan that contains a prepayment penalty, the broker shall advise the borrower in writing, at
or before the time that a Good Faith Estimate is given to the borrower, whether the borrower qualifies for a loan on comparable terms without a prepayment penalty.


A mortgage loan shall be subject to the limitations and prohibited acts and practices set out in G.S. 24-1.1E(b), (c), and (d) if, in consideration of or in connection with the brokering of a loan, a lender pays to a broker a fee in excess of: (i) two percent (2%) of the loan amount for a loan that has no points and fees other than fees described in G.S. 24-1.1E and broker fees paid directly by the borrower, or (ii) one percent (1%) of the loan amount for all other mortgage loans.


(a) It shall be unlawful for any mortgage lender or mortgage broker, including any licensee, any exempt person other than a person exempt under the provisions of G.S. 53-243.04(a), and any person required to be licensed under this Article to:

(1) Misrepresent the material facts or knowingly make false promises likely to influence, persuade, or induce a borrower to take a mortgage loan, or knowingly pursue a course of misrepresentation through agents or otherwise;

(2) Misrepresent to, or conceal from a borrower, material factors, terms, or conditions of a mortgage loan transaction;


(4) Fail to disburse funds in accordance with agreements;

(5) Improperly refuse to issue a satisfaction of a mortgage loan in violation of G.S. 45-36.3;

(6) Fail to account for any funds, documents, or other thing of value which comes into the possession of the mortgage lender or mortgage broker, which is not the property of the mortgage lender or mortgage broker, and which the mortgage lender or mortgage broker is not entitled to retain under the circumstances;

(7) Engage in any transaction, practice, or course of business which is not in good faith or fair dealing or which operates a fraud upon any person or that violates the provisions of G.S. 24-1.1E or G.S. 24-10.2 or is prohibited by the provisions of Chapter 75 of the General Statutes;

(8) Advertise a mortgage loan product unless the product will be available to a significant number of borrowers responding to the advertisement;

(9) Fraudulently or deceitfully advertise a mortgage loan or misrepresent the terms, conditions, or charges incident to a mortgage loan in any advertisement;

(10) Use any sign or written or printed paper or any communication in any medium indicating that a person is a bank, a savings bank, trust company, or place of banking, or use the word 'bank,' 'savings bank,'
'banking,' 'banker,' 'trust,' 'trust company,' or the equivalent or plural or phonetic equivalent of any of these words in connection with any business unless the business is a banking entity as defined in G.S. 53-127, provided that the use of the term 'mortgage banker' or 'mortgage banking' in connection with the business of mortgage lending as defined in this Article shall not be deemed to be a violation of this section;

(11) Recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a mortgage loan that refinances all or any portion of such existing loan or debt;

(12) Hold himself, herself, or itself out to the general public as a mortgage lender or as a mortgage broker unless the person is either an exempt person or a licensee under this Article;

(13) Fail to disclose, at the first significant contact with borrowers, all fees to be paid to the broker by the borrower or lender, including the amount and method of calculation, in writing on a form prescribed by the Commissioner;

(14) When engaged in mortgage brokering, knowingly or intentionally engage in the unfair act or practice of 'flipping', as defined in G.S. 53-243.03;

(15) For a mortgage broker to broker a loan the terms of which include a prepayment penalty that is precluded under the terms of G.S. 24-1.1A(b)(1);

(16) Engage in a practice or course of business which violates the provisions of G.S. 58-43-5;

(17) Fail to pay promptly for completed appraisals or other services ordered by or for the mortgage lender or mortgage broker; or

(18) To influence or attempt to influence through direct or indirect means the outcome of a real estate appraisal sought in connection with a mortgage loan, or to otherwise engage in a practice or course of business which induces or attempts to induce a real estate appraiser to violate the Uniform Standards of Professional Appraisal Practice in connection with a mortgage loan.

§ 53-243.23. Complaints; investigations; examinations.

(a) Any person having reason to believe that a provision of this Article has been violated by a person who is required to be licensed under this Article may file a written complaint with the Commissioner setting forth details of the alleged violation.

(b) The Commissioner shall refer written complaints relating to any exempt person to State or federal regulatory agencies responsible for regulation or oversight of that person or to federal or State law enforcement authorities. The Commission shall notify the complainants of those referrals.

(c) The Commissioner shall conduct a public or private investigation of any person required to be licensed under this Article when the Commissioner has reason to
believe, either upon complaint or otherwise, that the person has violated or is about to violate the provisions of this Article.

(d) Upon reasonable notice, the Commissioner may conduct examinations of any licensee or any person required to be licensed under this Article to determine the person's compliance with the provisions of this Article.

(e) The costs of an investigation or an examination shall be paid as follows:

(1) If the Commissioner finds as a result of an investigation that the person investigated has violated, in a material way, the provisions of this Article, the person investigated shall pay the costs of the investigation and reimburse the Office of the Commissioner for the expenses for each examiner and investigator designated by the Commissioner who participated in the investigation. Otherwise, the costs of an investigation shall be borne by the Office of the Commissioner.

(2) The Commissioner shall annually determine examination costs and may include in those costs reimbursement of all expenses, including salary, for each examiner designated by the Commissioner who participates in the examination. The costs of all examinations shall be borne by the person examined.

(3) Payment of investigation and examination costs shall be due within 30 days after receipt of an invoice from the Commissioner. If the person invoiced fails to pay the costs of an investigation or an examination, the Commissioner may bring an action for the recovery of the costs in any court of competent jurisdiction.


The Commissioner shall be responsible for the administration and enforcement of this Article. In furtherance of that duty, and in addition to any other powers the Commissioner has under this Article, the Commissioner shall have the following powers:

(1) To issue and serve subpoenas for witnesses and documents relevant to any inquiry authorized by this Article, to compel their attendance and production, and to administer oaths in connection therewith.

(2) To require information with regard to any application, report, investigation, or examination as the Commissioner may deem necessary, with due regard to the paramount interest of the public as to the experience, training, background, criminal record, credit history, honesty, truthfulness, integrity, and competency of the person, its principals, its employees, and its agents.

(3) To institute proceedings in any court of competent jurisdiction in furtherance of the purposes of this Article.

(4) To appoint designees, investigators, supervisors, experts, special assistants, and other agents as needed to effectively and efficiently administer this Article. Any person so appointed or designated shall
have all powers delegated by the Commissioner, including the powers
granted the Commissioner in this section.

(5) To conduct checks of criminal records and credit records for any
licensee, applicant, or employee or agent of a licensee or applicant.

§ 53-243.25. Disciplinary action; license violations.
(a) In addition to any other powers or authority granted to the Commissioner
under this Article, whenever the Commissioner finds that grounds for disciplinary
action exist under this section, the Commissioner may impose one or more of the
following disciplinary measures against any person required to be licensed under this
Article and the person's principals and employees:

(1) Deny any application or approve an application under such reasonable
conditions as the Commissioner specifies.
(2) Revoke a license or branch office permit.
(3) Suspend a license or branch office permit, subject to reinstatement
upon satisfying all reasonable conditions that the Commissioner
specifies.
(4) Place a licensee on provisional status for a period of time and subject
to all reasonable conditions that the Commissioner specifies.
(5) Issue a public letter of warning or a public reprimand.
(6) Issue cease and desist orders.
(7) Require an increase in a licensee's surety bond within the limits
(8) Enter into consent agreements.
(9) Require a person to disgorge profits.
(10) Impose civil money penalties in an amount up to five thousand dollars
($5,000) for each incident or violation.

(b) Each of the following acts constitutes an independent ground for which the
disciplinary actions specified in subsection (a) of this section may be taken:

(1) Being convicted of (i) a crime in any jurisdiction which involves fraud,
dishonest dealing, or any other act of moral turpitude, or (ii) a felony
in any jurisdiction. For the purposes of this section, a person shall be
deemed to have been convicted of a crime if the person has pleaded
guilty, no contest, or nolo contendere before a court or federal
magistrate, or has been found guilty thereof by the decision or
judgment of a court or federal magistrate or by the verdict of a jury,
irrespective of the pronouncement of sentence or the suspension
thereof, unless the plea or decision, judgment, or verdict has been set
aside, reversed, or otherwise abrogated by lawful judicial process or
unless the person convicted of the crime has received a pardon therefor
from the President of the United States or the governor or other
pardoning authority in the jurisdiction where the person was convicted.

(2) Fraud, misrepresentation, deceit, negligence, or incompetence in
providing mortgage brokering services, making a mortgage loan, or in
connection with any mortgage loan transaction.
(3) Making a material misstatement of fact on an initial or renewal application.

(4) Failure to place immediately upon receipt, and maintain until authorized to disburse, any money entrusted to the licensee by a person dealing with the licensee as a mortgage broker or mortgage lender in a trust account or a segregated account in a federally insured financial institution.

(5) Failure to account for any funds, documents, or other thing of value which comes into the licensee's possession, which is not the licensee's property, and that the licensee is not entitled to retain under the circumstances.

(6) Failure to disburse funds in accordance with agreements.

(7) Any misuse, misapplication, or misappropriation of funds or other personal property entrusted to his, her, or its care and to which he, she, or it has no current property right at the time of entrustment.

(8) Having a license or the equivalent to practice any profession or occupation revoked, suspended, or otherwise acted against, including the denial of licensure by a licensing authority of this State or any other state or the federal government for fraud, dishonest dealing, or any other act of moral turpitude.

(9) Failure to comply with any order or consent agreement made or issued under this Article.

(10) Acting as a mortgage broker in violation of G.S. 53-243.07.


(12) Failure to pay any fee, charge, or civil money penalty under this Article in a timely manner.

(13) Failure to maintain, preserve, or keep available for examination all books, accounts, records, and other documents required under this Article.

(14) Refusal to permit an investigation or examination of books and records, or refusal to comply with a lawful subpoena.

(15) Repeatedly and materially underestimating closing costs in communication to borrowers.

(16) Failure to comply with, or violation of, any other provision of this Article, any rules adopted pursuant to this Article, or any applicable federal or State laws or rules.

(17) Commission of fraud, misrepresentation, concealment, dishonest dealing by trick, scheme, or device, culpable negligence, or breach of trust in any business transaction; or aiding, assisting, or conspiring with another person engaged in any such misconduct in furtherance thereof.

(18) Failure to continuously satisfy the financial requirements of G.S. 53-243.13.
(c) If the licensee is an individual, the licensee is subject to the disciplinary action specified in subsection (a) of this section for any act or condition described in subsection (b) of this section by the licensee or any of the licensee's employees. If the licensee is a company, the licensee is subject to the disciplinary action specified in subsection (a) of this section for any act or condition described in subsection (b) of this section by the licensee, any principal of the company, or any employee or agent of the company.

(d) An individual employed by a person required to be licensed under this Article is subject to the disciplinary action specified in this section arising from the individual's own conduct.


(a) Consistent with Article 3A of Chapter 150B of the General Statutes, a party shall be afforded notice and an opportunity for hearing before any of the enforcement or disciplinary actions enumerated in G.S. 53-243.25 shall be concluded by the Commissioner; provided, however, that in cases involving extraordinary circumstances requiring immediate action, including, without limitation, an effort to prevent imminent loss or damage to a consumer or to the general public, the Commissioner may take action without notice or a hearing, but the Commissioner shall promptly afford, upon written request, a subsequent hearing to rescind or modify any action so taken.

(b) On any enforcement or disciplinary action taken or proposed to be taken by the Commissioner, the person against whom the action is taken or proposed to be taken shall be entitled to an informal hearing, provided the applicant requests an informal hearing in writing within 20 days after the Commissioner has mailed or otherwise delivered notice of the action. In the event of an informal hearing, which shall be held with reasonable promptness in the offices of the Commissioner in Raleigh, the Commissioner shall reconsider the matter and, after the informal hearing, issue a written order affirming, modifying, or canceling the enforcement or disciplinary action. The right of a person to an informal hearing under this subsection shall be in addition to and not in derogation of the person's rights to an administrative hearing and judicial review under Article 3A and Article 4 of Chapter 150B of the General Statutes.

§ 53-243.27. Confidentiality of records.

(a) Except as provided in subsection (b) of this section, the following shall be confidential under G.S. 53-99(b)(7b):

(1) Records of applications for licenses, license renewals, and changes of control, and all investigations and proceedings relating thereto; and

(2) Records of investigations and examinations conducted under this Article and information obtained by the Commissioner in the course of the Commissioner's duties under this Article.

(b) Notwithstanding the confidentiality restrictions contained in this section, the Commissioner may:

(1) Refer complaints relating to any exempt person to State or federal regulatory agencies responsible for regulation or oversight of the exempt person or to law enforcement authorities and may notify complainants of these referrals. In the case of referrals, the safeguards
(2) Share confidential information obtained under this Article with other State or federal regulatory agencies or law enforcement authorities. In the case of sharing under this subdivision, the safeguards to confidentiality already in place within the applicable agencies or authorities shall be deemed adequate.

(3) Compile and publish statistical information relating to mortgage lenders and mortgage brokers extracted from confidential records, provided identifying information is not disclosed.

(4) Make public disclosure of the following to the public:
   a. Information contained in any application other than tax identification numbers, financial information, and business plans relating to the applicant or any of its principals or employees;
   b. Information concerning any surety bond obtained to satisfy the requirements of G.S. 53-243.13;
   c. Information concerning the number of written complaints filed against any person during the preceding three years, and a statement of how many of those complaints were referred to federal or State regulatory agencies or law enforcement authorities; withdrawn by the complainant, remain pending; or resulted in disciplinary action pursuant to G.S. 53-243.25; and
   d. Information concerning any violation of this Article or any rule, regulation, or order under this Article, provided the information is derived from disciplinary action pursuant to G.S. 53-243.25 which is or has the effect of a final order.

§ 53-243.28. Enforcement by borrowers.
   (a) Any person damaged by the failure of an exempt person, other than a person exempt under the provision of G.S. 53-243.04(a), to comply with the provisions of G.S. 53-243.22, and any person damaged by the failure of any other mortgage lender or mortgage broker to comply with the provisions of G.S. 53-243.19, 53-243.20, 53-243.21, or 53-243.22 may file an action in civil court to recover damages or to obtain other legal and equitable relief.
   (b) Subject to the provisions of G.S. 53-243.06, upon a showing that a mortgage lender or a mortgage broker required to be licensed under this Article was not licensed at the time the mortgage lender made a mortgage loan to a borrower or a mortgage broker provided mortgage brokering services to a borrower, the unlicensed mortgage lender or mortgage broker shall not be entitled to recover or retain any fees or charges connected with the loan.
   (c) In any suit instituted by a borrower who alleges that the defendant violated this Article, a reasonable attorney's fee shall be awarded to the attorney representing the prevailing party, be taxed as a part of the court costs, and be payable by the losing party, upon a finding by the presiding judge that:
(1) The party charged with the violation has willfully engaged in the act or practice, and there was an unwarranted refusal by the party to fully resolve the matter which constitutes the basis of the suit; or

(2) The party instituting the action knew, or should have known, the action was frivolous and malicious.

(d) For conduct which constitutes a violation of this Article which also constitutes a violation of Chapter 24 or Chapter 75 of the General Statutes, any person seeking damages or penalties under the provisions of this Article may recover damages either under this Article, under Chapter 24, or under Chapter 75, but no person may recover damages for the same conduct under more than one of these statutes.

(e) The duties imposed on mortgage brokers or mortgage lenders by this Article or by other common or statutory law shall not be subject to waiver or disclaimer.

(f) Any remedies available to a borrower under this Article are supplemental to the power of the Commission to impose disciplinary action or otherwise enforce the provisions of this Article.

(g) Nothing in this Article shall limit any statutory or common law right of any person to bring any action in any court for any act, or the right of this State to punish any person for any violation of any law.

"§ 53-243.29. Making or brokering loans without a license is a felony.

The making of a mortgage loan by a mortgage lender required to be licensed under this Article who is not licensed or the provision of mortgage brokering services by a mortgage broker who is required to be licensed under this Article but is not licensed shall be a Class I felony.


At the request of the Commissioner, the Commission may adopt rules and regulations to effect the purposes of this Article, to provide for the protection of the borrowing public, and to assist mortgage lenders and mortgage brokers in interpreting this Article. This Article does not repeal the existing rules and regulations to the extent that those rules and regulations are not inconsistent with the provisions of the Article.

"§ 53-243.31. Fees.

The following fees may be set from time to time by the Commissioner, not to exceed the amounts set forth in this section.

(1) Application for initial license.

a. Application for a mortgage lender license.

1. Nonrefundable application fee of one thousand dollars ($1,000); and

2. Initial license fee (which shall be refunded if the application for license is denied) of eight hundred dollars ($800.00).

b. Application for a mortgage broker license.

1. Nonrefundable application fee of two hundred dollars ($200.00); and
2. Initial license fee (which shall be refunded if the application for license is denied) of two hundred dollars ($200.00).

c. Application for both a mortgage lender license and a mortgage broker license.
   1. Nonrefundable application fee of one thousand one hundred dollars ($1,100); and
   2. Initial license fee (which shall be refunded if the application for license is denied) of nine hundred dollars ($900.00).

(2) Application for the renewal of existing license.
   a. Application to renew a mortgage lender license – nonrefundable renewal fee of eight hundred dollars ($800.00).
   b. Application to renew a mortgage broker license – nonrefundable renewal fee of two hundred dollars ($200.00).
   c. Application to renew both a mortgage lender license and mortgage broker license – nonrefundable renewal fee of nine hundred dollars ($900.00).

(3) Branch office permits.
   a. Initial permit fee – two hundred dollars ($200.00) per branch office. Permit fees paid in conjunction with an initial application for a license shall be refunded if the application for a license is denied; otherwise, the initial permit fee is nonrefundable.
   b. Nonrefundable permit renewal fee of two hundred dollars ($200.00) for each branch office, not to exceed a total of five thousand dollars ($5,000) per calendar year for all branch offices.

(4) Change of control application – nonrefundable fee of five hundred dollars ($500.00).

(5) Miscellaneous fees.
   a. Filing notice of change of principal place of business – fifty dollars ($50.00).
   b. Filing notice of closing or relocation of a branch office – fifty dollars ($50.00).
   c. Late filing penalty – one hundred dollars ($100.00).

§ 53-243.32. Licensure of mortgage bankers and brokers under prior law.
(a) Persons required to be licensed pursuant to G.S. 53-243.07 shall have until April 30, 2002, to become licensed under this Article for the period beginning May 1, 2002.
(b) Any mortgage banker or mortgage broker which, upon the effective date of this Article, is registered with the Commissioner under the former Article 19 of Chapter 53 of the General Statutes, shall be automatically licensed hereunder for the period ending April 30, 2002, provided the registrant:
(1) Is in good standing with the Commissioner. For the purposes of this subdivision, 'good standing' shall mean that a mortgage banker or mortgage broker is not an adverse party to a pending administrative proceeding, enforcement proceeding, civil or criminal action, or other legal proceeding by the Commissioner or the Attorney General of this State or another state.

(2) Is not subject to the terms of any consent agreement, final agency decision, or court order limiting the mortgage banker's or mortgage broker's authority to engage in that business in this State.

(3) Shall be subject to and shall comply with the provisions of G.S. 53-243.09 on or before March 1, 2002.

(4) Shall designate, in the case of a mortgage lender, its principal loan officer and the managing loan officer of each branch office required by G.S. 53-243.14; and in the case of a mortgage broker, its principal mortgage broker and the managing mortgage broker of each branch office as required by G.S. 53-243.15.

SECTION 3. G.S. 53-99(b)(7b) reads as written:
"(7b) Records of examinations and investigations of registrants under the Mortgage Bankers and Brokers Act, Article 19 of this Chapter; Mortgage Lenders and Brokers Licensure Act, Chapter 19A of this Chapter. Except as provided in G.S. 53-243.27, records of applications, investigations, and examinations under the Residential Mortgage Lenders and Brokers Licensure Act, Article 19A of this Chapter;"

SECTION 4. G.S. 66-106 reads as rewritten:
"§ 66-106. Definitions.
For purposes of this Article the following definitions apply:
(1) A 'loan broker' is any person, firm, or corporation who, in return for any consideration from any person, promises to (i) procure for such person, or assist such person in procuring, a loan from any third party; or (ii) consider whether or not it will make a loan to such person.
(2) A 'loan' is an agreement to advance money or property in return for the promise to make payments therefor, whether such agreement is styled as a loan, credit card, line of credit, a lease or otherwise.
Provided, that 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 registered with the Commissioner of Banks pursuant to Article 19 of Chapter 53 or exempt from such registration pursuant to G.S. 53-234(6); Article 19A of Chapter 53 of the General Statutes 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 5. This act becomes effective April 1, 2002.