

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SESSION LAW 2013-412
HOUSE BILL 293

AN ACT AMENDING THE SECURE AND FAIR ENFORCEMENT MORTGAGE LICENSING ACT TO REDUCE REGULATORY BURDENS, MAKING CLARIFYING AND TECHNICAL CHANGES, AND MODIFYING CERTAIN FORECLOSURE PROCEEDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-244.050 reads as rewritten:

"§ 53-244.050. License and registration application; claim of exemption.

...
(b) The eligibility requirements for an application for licensure under this Article are as follows:

(1) Each individual applicant for licensure as a mortgage loan originator or qualifying individual shall:

...
c. Have passed, within the ~~three~~-five years immediately preceding the date of application, the test required under G.S. 53-244.080.

...
(3) If an individual applicant to be licensed as a mortgage broker is a licensed mortgage loan originator and meets the requirements for licensure as a mortgage broker, but is not an employee as defined in G.S. 53-244.030(10) and does not meet the experience requirements of G.S. 53-244.050(b)(2)a., the individual may be licensed as an exclusive mortgage broker upon compliance with all of the following:

a. Successfully completes a ~~16-hour residential mortgage lending course approved by the Commissioner supplementing the~~ prelicensing education required under G.S. 53-244.070."

SECTION 2. G.S. 53-244.080 reads as rewritten:

"§ 53-244.080. Testing requirements for mortgage loan originators.

...
(e) An applicant may retake a test three consecutive times with each consecutive test occurring at least 30 days after the preceding test. After failing three consecutive tests, an applicant must wait at least six months before retaking the test. A licensed mortgage loan originator who fails to maintain a valid license for a period of ~~three~~-five years or longer must retake the test."

SECTION 3. G.S. 53-244.102 reads as rewritten:

"§ 53-244.102. Continuing education for mortgage loan originators.

...
(d) A licensed mortgage loan originator:
(1) Except for G.S. 53-244.070(a) and subsection (e) of this section, may ~~only~~ receive credit for a continuing education course ~~in the year in which the course is taken; and taken prior to the end of the reinstatement period under~~ G.S. 53-244.101(d); and
...."

SECTION 4. G.S. 53-244.114 reads as rewritten:

"§ 53-244.114. Licensure authority.

(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this Article, or may restrict or limit the manner



in which a licensee, applicant, or any person who owns an interest in or participates in the business of a licensee engages in the mortgage business, if the Commissioner finds both of the following:

- ...
- (2) That any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, ~~limited loan officer, originator,~~ qualifying individual, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the applicant or licensee. The person:

- ...
- e. Is the subject of an order entered within the past five years by the authority of any state or federal agency with jurisdiction over that state's ~~the~~ mortgage brokerage, mortgage lending, or mortgage servicing ~~industry denying that person's license as a mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer;~~industry;

...."

SECTION 4.1. If House Bill 616, 2013 Regular Session, becomes law, the amendment to G.S. 53-244.114(a)(2)e. made by Section 12 of that bill is repealed.

SECTION 5. G.S. 53-244.116 reads as rewritten:

"§ 53-244.116. **Disciplinary authority.**

...

(b) When a licensee is accused of any act, omission, or misconduct that would subject the licensee to disciplinary action, the licensee, with the consent and approval of the Commissioner, may surrender the license and all the rights and privileges pertaining to it. A person who surrenders a license shall not be eligible for or submit any application for licensure under this ~~Article.~~Article during any period specified by the Commissioner.

...."

SECTION 6. G.S. 53-244.117 is repealed.

SECTION 7. G.S. 45-21.16B is repealed.

SECTION 8. G.S. 45-94 reads as rewritten:

"§ 45-94. **Remedies.**

In addition to any equitable remedies and any other remedies at law, any borrower injured by any violation of this Article may bring an action for recovery of actual damages, including reasonable attorneys' fees. The Commissioner of Banks, the Attorney General, or any party to a home loan may enforce the provisions of this section. ~~The Clerk of Superior Court shall also suspend foreclosure proceedings for 60 days if notified by the Commissioner of Banks as provided in G.S. 53-243.12(n).~~ With the exception of an action by the Commissioner of Banks or the Attorney General, at least 30 days before a borrower or a borrower's representative institutes a civil action for damages against a servicer for a violation of this Article, the borrower or a borrower's representative shall notify the servicer in writing of any claimed errors or disputes regarding the borrower's home loan that forms the basis of the civil action. The notice must be sent to the address as designated on any of the servicer's bills, statements, invoices, or other written communication, and must enable the servicer to identify the name and loan account of the borrower. For purposes of this section, notice shall not include a complaint or summons. Nothing in this section shall limit the rights of a borrower to enjoin a civil action, or make a counterclaim, cross-claim, or plead a defense in a civil action. A servicer will not be in violation of this Article if the servicer shows by a preponderance of evidence that:

- (1) The violation was not intentional or the result of bad faith; and
- (2) Within 30 days after discovering or being notified of an error, and prior to the institution of any legal action by the borrower against the servicer under this section, the servicer corrected the error and compensated the borrower for any fees or charges incurred by the borrower as a result of the violation."

SECTION 9. This act is effective when it becomes law.
In the General Assembly read three times and ratified this the 25th day of July, 2013.

s/ Tom Apodaca
Presiding Officer of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 10:52 a.m. this 23rd day of August, 2013