

NORTH CAROLINA GENERAL ASSEMBLY



**HOUSE SELECT COMMITTEE ON RISING
HOME FORECLOSURES**

**Co-chairs:
Representative Daniel T. Blue
Representative Walter G. Church**

INTERIM REPORT

MAY 2008

The House Select Committee on Rising Home Foreclosures respectfully submits the following interim report.

Representative Daniel T. Blue
Co-Chair

Representative Walter G. Church
Co-Chair

COMMITTEE PROCEEDINGS

The House Select Committee on Rising Home Foreclosures met four times from January 23, 2008, until April 29, 2008. The Committee heard presentations from a number of participants in the mortgage lending and foreclosure process including:

- North Carolina Commissioner of Banks, Joseph A. Smith, and Deputy Commissioner of Banks, Mark Pearce presented an overview of the mortgage industry and foreclosure trends in the State. Deputy Commissioner Pearce outlined the following recommendations to reduce foreclosures:
 - Hold lenders and brokers accountable for origination of abusive or fraudulent loans and increase funding for enforcement of current laws.
 - Work with servicers to ensure that homeowners have opportunities to avoid needless foreclosures and also increase regulation of mortgage servicers.
 - Increase funding for counseling resources for homeowners in distress.
 - Temporarily increase judicial review of foreclosures for certain types of sub-prime or nontraditional loans originated in 2005 – 2007.
- Senior Deputy Attorney General, Josh Stein presented concerns from the perspective of the Consumer Protection Division of the Attorney General's Office. Mr. Stein said that the State should seek to prevent unnecessary foreclosures by 1.) Setting clear rules to outlaw abusive loans; 2.) Enforcing those rules; 3.) Educating consumers; and 4.) Holding servicers accountable.
- Mr. Al Ripley, Senior Staff Attorney, NC Justice Center, discussed foreclosure trends from the consumer perspective. Mr. Ripley recommended providing resources for pre-purchase counseling and post-purchase foreclosure mitigation counseling, legal service providers, and the NC Housing Trust Fund. He also encouraged the passage of legislation to address foreclosure rescue scams and the monitoring of recent anti-predatory lending laws.
- Mr. Paul Stock, General Counsel, NC Bankers' Association, congratulated the NC General Assembly for being the most proactive legislature in the country on the issues of predatory lending and foreclosure prevention. He affirmed the industry's willingness to work with the Committee.
- Ms. Louise Mack, Executive Director, Prosperity Unlimited, Inc., a nonprofit credit counseling agency, described the role of housing counselors in helping to reduce foreclosures.
- Ms. Keir D. Morton, Program Development Officer, NC Housing Finance Agency, presented information on the services provided and funding sources associated with housing counseling agencies in the state and the role of the Housing Finance Agency in helping to provide the resources for financing affordable housing.
- Mr. Roberto Quercia, Director, UNC Center for Community Capital, discussed the benefits of housing counseling. He presented a summary of his research which indicates that post-purchase foreclosure prevention counseling is useful as a means of dealing with rising delinquencies and foreclosures.

- Mr. Bill Bost, General Counsel, NC Association of Mortgage Professionals, noted that the Association has participated in all of the major mortgage lending legislation in the State and wants to insure that consumers are protected while continuing to allow access to a wide range of mortgage products. He suggested the following: 1.) encourage and fund increased enforcement of existing laws; 2.) consider new laws that do not disrupt the flow of credit during this volatile market; 3.) encourage good business practices; 4.) educate high school and college students regarding consumer credit and mortgage lending issues.
- Ms. Hazel Mack-Hilliard, Consumer Law Practice Group Manager and Triad Regional Manager for Legal Aid of North Carolina, outlined the foreclosure process and described the role of Legal Aid in providing legal assistance and service to various agencies, advocates and homeowners.
- Mr. Dick Taylor, NC Academy of Trial Lawyers, discussed the Academy's pro bono foreclosure project in which volunteer attorneys work with Legal Aid to provide assistance to low income homeowners dealing with foreclosure and other mortgage lending issues.
- Ms. Glyndola Beasley, Executive Director, Durham Regional Community Development Corporation, presented three recommendations developed by a special committee of the NC Association of Housing Counselors to address the foreclosure crisis: 1.) Enact a plan to fully fund 100 new housing counseling positions under the oversight of the NC Housing Finance Agency at a cost of \$6 million. 2.) Enact HB 1708 which would remedy abuses conducted by mortgage rescue operators. 3.) Temporarily expand judicial review of foreclosures for victims of sub-prime and abusive products and practices.
- Ms. Patricia Amend, Director of Policy, Planning, and Technology, NC Housing Finance Agency, announced that the Agency has obtained a \$3,033,000 grant in collaboration with 20 local nonprofit housing counseling agencies from the federal Neighborworks program.
- Mr. George Hausen, Executive Director, Legal Aid of North Carolina, presented a proposal to fund 28 new staff lawyers at a cost of \$3 million. This would allow Legal Aid to provide training and support to counselors and volunteer attorneys who are working to address the foreclosure crisis.
- Mr. Al Ripley, NC Justice Center, presented a legislative proposal to make several changes to the Mortgage Debt Collection and Servicing Act which became effective April 1, 2008.
- Ms. Evan Covington-Chavez, Director of Real Estate Development, Self Help, discussed a pilot program which her organization has initiated to stabilize neighborhoods experiencing high foreclosure rates in Charlotte.
- Mr. Mark Pearce, Deputy Commissioner of Banks, offered a legislative proposal to regulate mortgage servicers and to enhance enforcement resources. He also presented a list of principles to guide future discussions on a process by which the Office of the Commissioner of Banks could provide early intervention in a potential foreclosure to promote communication between homeowners and servicers.

FINDINGS AND RECOMMENDATIONS

FINDINGS 1:

The Committee found that there is almost universal agreement among those involved in the lending and foreclosure process that mortgage counseling is an effective tool to combat foreclosure and that it needs to be strengthened if this State is to weather the foreclosure storm. Several of the speakers pointed out that the need for mortgage counseling is really twofold: a need for more pre-purchase credit and housing counseling and a need for more post-purchase foreclosure mitigation counseling, in which the counselor attempts to work out a solution with the lender in order to avoid foreclosure. The Committee found that mortgage counselors are currently working at full capacity and that increased funding is greatly needed in order to ensure that everyone who needs counseling receives it.

RECOMMENDATION 1:

The House Select Committee on Rising Home Foreclosures recommends that the General Assembly consider funding additional housing counselors in a manner similar to the proposal presented by the North Carolina Association of Community Development Corporations.

FINDINGS 2:

After hearing several presentations about the need for increased legal services to respond to homeowners facing foreclosure, the Committee found that the legal services organizations have demonstrated a great capacity to meet the crisis and to assist in saving homes and stabilizing families and communities. The Committee also found that the private bar has shown a willingness to assist with this effort by recruiting 150 volunteer lawyers who will be trained and supported by Legal Aid staff attorneys. The Committee found that by investing in additional Legal Aid attorneys who would train and supervise the volunteer lawyers, the State could dramatically increase the impact of its investment.

RECOMMENDATION 2:

The House Select Committee on Rising Home Foreclosures recommends that the General Assembly consider funding the proposal presented by Legal Aid of North Carolina to appropriate \$3 million to fund its foreclosure project. (See, Attachment #1, page 8)

FINDINGS 3:

The Committee found that in 2007, as the sub-prime mortgage market began to implode and the foreclosure rate skyrocketed nationally, North Carolina again took the lead among the states by enacting a number of measures designed to help protect homeowners and borrowers. One of the measures, (HB 1374 - *Protect Homeowners/Reduce Foreclosure*) created new requirements for mortgage debt collection and servicing. The law restricts the amount and conditions under which the servicer may assess fees, and imposes obligations on the servicer to maintain records and requests for information from the borrower and to provide timely responses to the borrower. The new law became effective April 1, 2008. However, the Committee found that several technical and clarifying changes were needed.

RECOMMENDATION 3:

The House Select Committee on Rising Home Foreclosures recommends that the General Assembly enact

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT ANY FEE INCURRED BY A HOME LOAN SERVICER BE CLEARLY AND CONSPICUOUSLY EXPLAINED TO THE BORROWER WITHIN 30 DAYS AFTER THE FEE IS ASSESSED, TO CLARIFY THAT THE SERVICER IS NOT REQUIRED TO SEND A STATEMENT TO THE BORROWER UNDER CERTAIN CIRCUMSTANCES, AND TO PROVIDE THAT A SERVICER IS NOT REQUIRED TO PROVIDE NOTIFICATION TO THE BORROWER IF A PARTIAL PAYMENT IS ACCEPTED AND CREDITED IN ACCORDANCE WITH A WRITTEN AGREEMENT.

(See, Proposed Legislation, page 10)

FINDINGS 4:

The Committee heard from several speakers who testified that efforts by homeowners and others acting on their behalf to avoid foreclosure when the homeowner becomes delinquent in payments were being undermined in some cases by mortgage loan servicers. The Committee found that, like mortgage brokers and mortgage bankers, mortgage servicers play an important role in the mortgage lending industry. The Committee further found that proper regulation of the industry requires that mortgage servicers be supervised in a manner similar to that currently provided for mortgage brokers and mortgage bankers.

RECOMMENDATION 4:

The House Select Committee on Rising Home Foreclosures recommends that the General Assembly enact

A BILL TO BE ENTITLED

AN ACT TO REGULATE MORTGAGE SERVICING; TO REQUIRE MORTGAGE SERVICER LICENSURE UNDER THE MORTGAGE LENDING ACT; AND TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE MORTGAGE LENDING ACT.

(See, Proposed Legislation, page 12)

ATTACHMENT #1

| LEGAL AID OF NORTH CAROLINA, INC. FORECLOSURE PROJECT PROPOSED BUDGET | |
|--|----------------------|
| | ANNUAL BUDGET |
| Salaries | |
| 24 - Staff Attorneys (entry level @ \$39,000) | 936,000 |
| 4 - MFP Staff Attorneys (entry level @ \$39,000) | 156,000 |
| 7 - Paralegals (entry level @ \$23,000) | 161,000 |
| Total Salaries | 1,253,000 |
| Fringe Benefits (29%) | 363,370 |
| Total Personnel Costs | \$ 1,616,370 |
| Space/Parking | \$ 84,000 |
| Equipment (fax/copier) | 3,600 |
| Office Supplies/Printing/Postage | 16,000 |
| Telephone/Internet | 56,000 |
| Staff Travel | 100,000 |
| Staff Training | 40,000 |
| On Line Library | 23,000 |
| Insurance | 17,500 |
| Due and fees | 14,000 |
| Contract Services (13,000 hours @ \$75/hour) | 975,000 |
| Office Furniture/Equipment/Computers | 50,000 |
| Miscellaneous | 4,530 |
| Total Non-personnel Costs | \$ 1,383,630 |
| Total Budget | \$ 3,000,000 |

PROPOSED LEGISLATION

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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D

BILL DRAFT 2007-MD-93 [v.4] (4/24)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/1/2008 12:18:47 PM**

Short Title: Earlier Notification of Mortgage Servicer Fee. (Public)

Sponsors: Representative Unknown.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT ANY FEE INCURRED BY A HOME LOAN
SERVICER BE CLEARLY AND CONSPICUOUSLY EXPLAINED TO THE
BORROWER WITHIN 30 DAYS AFTER THE FEE IS ASSESSED, TO
CLARIFY THAT THE SERVICER IS NOT REQUIRED TO SEND A
STATEMENT TO THE BORROWER UNDER CERTAIN CIRCUMSTANCES,
AND TO PROVIDE THAT A SERVICER IS NOT REQUIRED TO PROVIDE
NOTIFICATION TO THE BORROWER IF A PARTIAL PAYMENT IS
ACCEPTED AND CREDITED IN ACCORDANCE WITH A WRITTEN
AGREEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-91 reads as rewritten:

**"§ 45-91. (Effective April 1, 2008) Assessment of fees; processing of payments;
publication of statements.**

A servicer must comply as to every home loan, regardless of whether the loan is
considered in default or the borrower is in bankruptcy or the borrower has been in
bankruptcy, with the following requirements:

(1) Any fee that is incurred by a servicer shall be both:

- a. Assessed within 45 days of the date on which the fee was
incurred. Provided, however, that attorney or trustee fees and
costs incurred as a result of a foreclosure action shall be
assessed within 45 days of the date they are charged by either
the attorney or trustee to the servicer.
- b. Explained clearly and conspicuously in a statement mailed to
the borrower at the borrower's last known address ~~at least~~

1 within 30 days after assessing the fee, provided the servicer
2 shall not be required to take any action in violation of the
3 provisions of the federal bankruptcy code. The servicer shall
4 not be required to send such a statement for a fee that: 1.)
5 results from a service that is requested by the borrower, 2.) is
6 paid for by the borrower at the time the service is provided, 3.)
7 is not collected by the servicer, and 4.) is not charged to the
8 borrower's loan account.

- 9 (2) All amounts received by a servicer on a home loan at the address
10 where the borrower has been instructed to make payments shall be
11 accepted and credited, or treated as credited, within one business day
12 of the date received, provided that the borrower has made the full
13 contractual payment and has provided sufficient information to credit
14 the account. If a servicer uses the scheduled method of accounting, any
15 regularly scheduled payment made prior to the scheduled due date
16 shall be credited no later than the due date. Provided, however, that if
17 any payment is received and not credited, or treated as credited, the
18 borrower shall be notified within 10 business days by mail at the
19 borrower's last known address of the disposition of the payment, the
20 reason the payment was not credited, or treated as credited to the
21 account, and any actions necessary by the borrower to make the loan
22 current. Provided however, that if a written loan modification or loss
23 mitigation agreement is entered into between the servicer and the
24 borrower that provides for the acceptance and crediting of partial
25 payments, no such notification is necessary if the agreed upon
26 payments are applied as provided in the agreement.
- 27 (3) Failure to charge the fee or provide the information within the
28 allowable time and in the manner required under subdivision (1) of
29 subsection (a) of this section constitutes a waiver of such fee.
- 30 (4) All fees charged by a servicer must be otherwise permitted under
31 applicable law and the contracts between the parties. Nothing herein is
32 intended to permit the application of payments or method of charging
33 interest which is less protective of the borrower than the contracts
34 between the parties and other applicable law."

35 **SECTION 2.** This act becomes effective October 1, 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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D

BILL DRAFT 2007-MD-94A [v.4] (4/24)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

4/28/2008 12:47:13 PM

Short Title: Regulate Mortgage Servicers.

(Public)

Sponsors: Representative Unknown.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REGULATE MORTGAGE SERVICING; TO REQUIRE MORTGAGE
SERVICER LICENSURE UNDER THE MORTGAGE LENDING ACT; AND TO
MAKE TECHNICAL AND CLARIFYING CHANGES TO THE MORTGAGE
LENDING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-243.01 reads as rewritten:

"§ 53-243.01. Definitions.

The following definitions apply in this Article:

- (1) Act as a mortgage broker. – To act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by accepting or offering to accept an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage loan commitments or interest rate guarantee agreements to borrowers, or engaging in tablefunding of mortgage loans, whether such acts are done through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.
- (2) Act as a mortgage lender. – To engage in the business of making mortgage loans for compensation or gain.
- (3) Act as a mortgage servicer. – To engage, whether for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with

1 respect to the amounts received from the borrower as may be required
2 pursuant to the terms of the loan.

3 ~~(2a)~~(4) Affiliate. – Any company that controls, is controlled by, or is under
4 common control with another company, as set forth in the Bank
5 Holding Company Act of 1956 (12 U.S.C. § 1841), et seq., as
6 amended from time to time. For purposes of this subdivision, the term
7 control means ownership of all of the voting stock or comparable
8 voting interest of the controlled person.

9 ~~(2b)~~(5) Affiliated mortgage banker. – A licensed mortgage banker that
10 meets the criteria of either sub-subdivisions a., b., and c. of this
11 subdivision or sub-subdivisions d. and e. of this subdivision:

12 a. The licensee, by itself or with its affiliates, is licensed in five or
13 more states to engage in the mortgage lending business and (i)
14 is supervised by a state or federal regulatory agency whose
15 regulatory scheme has been determined by the Commissioner to
16 be substantially similar to that of North Carolina, (ii) is
17 organized and supervised under the laws of a state that has
18 adopted a model licensing law endorsed by the Commissioner;
19 or (iii) is supervised by a state or federal agency that is a party
20 to an interstate compact, or has otherwise entered into a
21 cooperative reciprocal agreement by which the state or federal
22 regulatory agency and the State of North Carolina, directly or
23 by duly authorized act of the Commissioner, have mutually
24 agreed to recognize state licensing laws which have specific
25 enumerated criteria.

26 b. The licensee, including its affiliates and wholly owned
27 subsidiaries, has more than 100 employees that are licensed
28 pursuant to this Article.

29 c. The licensee has a consolidated net worth of one hundred
30 million dollars (\$100,000,000) or more, or if the licensee does
31 not have the required net worth, its parent shall provide to the
32 Commissioner (i) evidence satisfactory to the Commissioner
33 that the parent has a net worth of one hundred million dollars
34 (\$100,000,000) or more, and (ii) an unconditional guarantee or
35 comparable instrument of surety satisfactory to the
36 Commissioner of the performance of the licensee of its
37 obligations under this Article.

38 d. The licensee is a direct or indirect wholly owned subsidiary of a
39 bank holding company or financial services holding company
40 subject to regulation by the Federal Reserve Board or the Office
41 of Thrift Supervision.

42 e. The licensee has a net worth of one hundred million dollars
43 (\$100,000,000) or, if the licensee does not have the required net

1 worth, (i) its parent, if it is not a bank holding company or
2 financial holding company, meets the requirements of
3 sub-subdivision c. of this subdivision or (ii) its parent, if such
4 parent is a bank holding company or financial holding
5 company, has total assets in excess of ten billion dollars
6 (\$10,000,000,000) and provides the Commissioner with the
7 unconditional guarantee or comparable instrument of surety
8 required by sub-subdivision c. of this subdivision.

9 ~~(3)~~(6) Branch manager. – The individual whose principal office is physically
10 located in, who is in charge of, and who is responsible for the business
11 operations of a branch office of a mortgage broker or mortgage banker.

12 ~~(4)~~(7) Branch office. – An office of the licensee acting as a mortgage broker
13 or mortgage banker that is separate and distinct from the licensee's
14 principal office.

15 ~~(5)~~(8) Commissioner. – The North Carolina Commissioner of Banks and the
16 Commissioner's designees. For purposes of compliance with this
17 Article by credit unions, Commissioner means the Administrator of the
18 Credit Union Division of the Department of Commerce.

19 ~~(6)~~(9) Control. – ~~Except as provided in subdivision (2a) of this section,~~
20 ~~"control" means the power to vote more than twenty percent (20%) of~~
21 ~~outstanding voting shares or other interests of a corporation,~~
22 ~~partnership, limited liability company, association, or trust. The power,~~
23 ~~directly or indirectly, to direct the management or policies of a~~
24 ~~company, whether through ownership of securities, by contract, or~~
25 ~~otherwise. Any person that (i) is a director, general partner or~~
26 ~~executive officer; (ii) directly or indirectly has the right to vote 10% or~~
27 ~~more of a class of a voting security or has the power to sell or direct~~
28 ~~the sale of 10% or more of a class of voting securities; (iii) in the case~~
29 ~~of an LLC, is a Managing Member; or (iv) in the case of a partnership,~~
30 ~~has the right to receive upon dissolution, or has contributed, 10% or~~
31 ~~more of the capital, is presumed to control the company.~~

32 ~~(7)~~(10) Employee. – An individual, who has an employment relationship,
33 acknowledged by both the individual and the mortgage broker or
34 mortgage banker or mortgage servicer and is treated as ~~an~~a common
35 law employee for purposes of compliance with the federal income tax
36 ~~laws.~~laws and whose income is reported on IRS Form W-2.

37 ~~(7a)~~(11) Exclusive mortgage broker. – An individual who acts as a
38 mortgage broker exclusively for a single mortgage banker or single
39 exempt person and who is licensed under the provisions of G.S.
40 53-243.05(c)(1a).

41 ~~(8)~~(12) Exempt person. – The term includes any of the following:

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- a. Any agency of the federal government or any state or municipal government granting or servicing mortgage loans under specific authority of the laws of any state or the United States.
- b. Any employee of a licensee whose responsibilities are limited to clerical and administrative tasks for his or her employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer.
- c. Any person authorized to engage in business as a bank or a wholly owned subsidiary of a bank, a farm credit system, savings institution, or a wholly owned subsidiary of a savings institution, or credit union or a wholly owned subsidiary of a credit union, under the laws of the United States, this State, or any other state. Except for G.S. 53-243.11 and G.S. 53-243.15, this Article does not apply to the exempt persons set forth in this sub-subdivision ~~(8)e.~~(12)c.
- d. Any licensed real estate agent or broker who is performing those activities subject to the regulation of the North Carolina Real Estate Commission. Notwithstanding the above, an exempt person does not include a real estate agent or broker who receives compensation of any kind in connection with the referral, placement, or origination of a mortgage loan.
- e. Any officer or employee of an exempt person described in sub-subdivision c. of this subdivision when acting in the scope of employment for the exempt person.
- f. Any person who, acting as seller, seller and lender and servicer in a residential real estate transaction, receives and services in one calendar year no more than five purchase money notes secured by mortgages, deeds of trust, or other security instruments on the real estate sold as security for ~~a-the~~ purchase money obligation.
- g. The North Carolina Housing Finance Agency as established by Article 122A of the General Statutes and the North Carolina Agricultural Finance Authority as established by Article 122D of the General Statutes.
- h. Any nonprofit corporation qualifying under section 501(c)(3) of the Internal Revenue Code which makes or services mortgage loans to promote home ownership or home improvements for the disadvantaged, provided that such corporation is not primarily in the business of soliciting or brokering or servicing mortgage loans.
- i. Any life insurance companies licensed to do business in North Carolina with regard to provisions concerning mortgage lenders.

1 j. A North Carolina licensed attorney who, in the practice of law
2 or in performing as a trustee, accepts payments related to a loan
3 closing, default, foreclosure, or settlement of a dispute or legal
4 claim related to a loan.

5 ~~(9)~~(13) Licensee. – A loan officer, limited loan officer, mortgage broker, ~~or~~
6 ~~mortgage banker~~ mortgage banker, or mortgage servicer who is
7 licensed pursuant to this Article.

8 ~~(10)~~(14) Loan officer. – An individual who, in exchange for compensation
9 as an employee of another person, accepts or offers to accept
10 applications for mortgage ~~loans~~ loans, or who solicits or offers to
11 solicit a mortgage loan, negotiates the terms or conditions of a
12 mortgage loan, issues mortgage loan commitments or interest rate
13 guarantee agreements to borrowers, whether such acts are done
14 through contact by telephone, by electronic means, by mail, or in
15 person with the borrowers or potential borrowers. The definition of
16 loan officer shall not include any exempt person described in
17 sub-subdivision ~~(8)b.~~(12)b. of this section.

18 ~~(10a)~~(15) Limited loan officer. – An individual who, in exchange for
19 compensation as an employee of an affiliated mortgage banker,
20 directly solicits, negotiates, offers, or makes commitments for
21 mortgage loans. The definition of limited loan officer shall not include
22 any exempt person described in sub-subdivision ~~(8)b.~~(12)b. of this
23 section.

24 ~~(11)~~(16) Make a mortgage loan. – To close a mortgage loan, to advance
25 funds, to offer to advance funds, or to make a commitment to advance
26 funds to a borrower under a mortgage loan.

27 ~~(13)~~(17) Mortgage banker. – A person who acts as a mortgage lender as that
28 term is defined in subdivision (2) of this section. However, the
29 definition does not include a person who acts as a mortgage lender
30 only in tablefunding transactions.

31 ~~(14)~~(18) Mortgage broker. – A person who acts as a mortgage broker as that
32 term is defined in subdivision (1) of this section. The term "mortgage
33 broker" includes an exclusive mortgage broker, except when expressly
34 provided otherwise.

35 ~~(15)~~(19) Mortgage loan. – A loan made to a natural person or persons
36 primarily for personal, family, or household use, primarily secured by
37 either a (i) mortgage or a deed of trust on residential real property
38 located in North ~~Carolina~~ Carolina, or (ii) security interest in a
39 manufactured home (as defined in G.S. 143-145(7)).

40 (20) Mortgage servicer. – A person who directly or indirectly acts as a
41 mortgage servicer as that term is defined in subsection (3) of this
42 section or who otherwise meets the definition of 'servicer' in RESPA,
43 12 U.S.C. § 2605(i), with respect to mortgage loans.

1 ~~(15a)~~(21) Parent. – The person that controls an affiliated mortgage
2 ~~banker, banker, mortgage broker, or mortgage servicer,~~ as control is
3 defined in subdivision ~~(2a)~~(4) of this section.

4 ~~(16)~~(22) Person. – An individual, partnership, limited liability company,
5 limited partnership, corporation, association, or other group engaged in
6 joint business activities, however organized.

7 ~~(17)~~(23) Qualified lender. – A person who is engaged as a mortgage lender
8 in North Carolina and is either a supervised or a nonsupervised
9 institution, as these terms are defined in 24 C.F.R. § 202.2, approved
10 by the United States Department of Housing and Urban Development.

11 ~~(18)~~(24) Qualified person. – A person who is employed as a loan officer by
12 a qualified lender, or by a mortgage banker or broker registered with
13 the Commissioner under former Article 19 of this Chapter, or who is a
14 general partner, manager, or officer of a qualified lender, registered
15 mortgage banker, or registered mortgage broker.

16 (25) Qualified servicer. – A person who is engaged in the business of acting
17 as a mortgage servicer in North Carolina and who has been approved
18 by the United States Department of Housing and Urban Development
19 to service FHA loans or has been approved as a servicer by either the
20 Federal National Mortgage Association or by the Federal Home Loan
21 Mortgage Corporation.

22 (26) Qualifying individual. – A person who meets the requirements of G.S.
23 53-243.05(c) and who agrees to be primarily responsible for the
24 operations of a licensed mortgage broker or mortgage banker or
25 mortgage servicer.

26 ~~(19)~~(27) Residential real property. – Real property located in the State of
27 North Carolina upon which there is located or is to be located one or
28 more single-family dwellings or dwelling units.

29 (28) RESPA. – The Real Estate Settlement Procedures Act, 12 U.S.C. §
30 2601 et seq., as it may be hereafter amended.

31 ~~(20)~~(29) Tablefunding. – A transaction where a licensee closes a loan in its
32 own name with funds provided by others, and the loan is assigned
33 simultaneously to the mortgage lender providing the funding within
34 one business day of the funding of the loan."

35 **SECTION 2.** G.S. 53-243.02 reads as rewritten:

36 **"§ 53-243.02. License required; licensee records.**

37 (a) Other than an exempt person, it is unlawful for any person in this State to act
38 as a mortgage ~~broker or broker,~~ mortgage banker, or mortgage servicer, or directly or
39 indirectly to engage in the business of a mortgage ~~broker or abroker,~~ mortgage
40 ~~banker, banker, or mortgage servicer,~~ without first obtaining a license from the
41 Commissioner under the provisions of this Article. This Article shall apply to any
42 person who seeks to avoid its application by any direct or indirect device, subterfuge,
43 artifice, or pretense whatsoever.

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...
(e) No person, other than an exempt person, shall hold himself or herself out as a mortgage banker, an affiliated mortgage banker, a mortgage broker, a mortgage servicer, a limited loan officer, or a loan officer unless such person is licensed in accordance with this Article.

(f) Any person who has completed and filed with the Commissioner the application and all documents required for licensure as a loan officer other than documents relating to the required examination and the mortgage lending fundamentals course may act as a loan officer during the period before action is taken on the application by the Commissioner, if:

- (1) The Commissioner has not denied, revoked, or taken any adverse action with respect to an application filed by or license held by such person during the five-year period ending on the date of filing of the application;
- (2) The loan officer is employed by a licensed mortgage broker or mortgage banker, and the ~~managing principal qualifying individual~~ of such mortgage broker or mortgage banker (i) certifies to the Commissioner in writing that the ~~managing principal qualifying individual~~ reasonably believes that the application of the person for licensure as a loan officer meets or exceeds all of the relevant requirements of this Article for licensure and (ii) undertakes in writing that the ~~managing principal qualifying individual~~ and the employer will be responsible for the acts of the applicant during the period that such application is pending; and
- (3) The person is currently or has within the six-month period prior to the date of the application been employed as and acting as a loan officer for an exempt entity which entity is exempt by virtue of an exemption claimed under G.S. ~~53-243.01(8)~~e.53-243.01(12)c.

(g) The Commissioner may deny or suspend the rights of a mortgage broker or mortgage banker to employ a loan officer acting under subsection (f) of this section if the Commissioner finds that the mortgage broker or mortgage banker, or the ~~managing principal qualifying individual~~ thereof, makes the certification or undertaking set forth in subdivision (2) of subsection (f) of this section not in good faith."

SECTION 3. G.S. 53-243.05 reads as rewritten:

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

(a) Any person, other than an exempt person, desiring to obtain a license pursuant to this Article shall make written application for licensure to the Commissioner on forms prescribed by the Commissioner. In accordance with rules adopted by the Commission, the application shall contain any information the Commissioner deems necessary regarding the following:

- (1) The applicant's name and address (including street address, mailing address, email and telephone contact information) and social security ~~number~~number or taxpayer identification number.

- 1 (2) The applicant's form and place of organization, if applicable.
- 2 (3) The applicant's proposed method of and locations for doing business,
- 3 if applicable.
- 4 (4) The qualifications and business history of the applicant and, if
- 5 applicable, the business history of any partner, officer, or director, any
- 6 person occupying a similar status or performing similar functions, or
- 7 any person directly or indirectly controlling the applicant, including:
- 8 (i) a description of any injunction or administrative order by any state
- 9 or federal authority to which the person is or has been subject; (ii) a
- 10 ~~conviction~~ conviction, within the past 10 years, of a misdemeanor
- 11 involving ~~fraudulent dealings or moral turpitude or relating to any~~ any fraud, false
- 12 statement or omission, any theft or wrongful taking of property,
- 13 bribery, perjury, forgery, counterfeiting, extortion, or conspiracy to
- 14 commit any of these offenses; or involving any financial service or
- 15 financial-service related business; (iii) any felony convictions.
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- 17 (5) With respect to an application for licensing as a mortgage ~~banker or~~
- 18 ~~broker,~~ banker, mortgage broker, or mortgage servicer, the applicant's
- 19 financial condition, credit history, and business history; and with
- 20 respect to the application for licensing as a loan officer, the applicant's
- 21 credit history and business history.
- 22 (6) The applicant's consent to a federal and State criminal history record
- 23 check and a set of the applicant's fingerprints in a form acceptable to
- 24 the Commissioner. In the case of an applicant that is a corporation,
- 25 partnership, limited liability company, association, or trust, each
- 26 individual who has control of the applicant or who is the ~~managing~~
- 27 ~~principal~~ qualifying individual or a branch manager shall consent to a
- 28 federal and State criminal history record check and submit a set of that
- 29 individual's fingerprints pursuant to this subdivision. Refusal to
- 30 consent to a criminal history record check constitutes grounds for the
- 31 Commissioner to deny licensure to the applicant as well as to any
- 32 entity (i) by whom or by which the applicant is employed, (ii) over
- 33 which the applicant has control, or (iii) as to which the applicant is the
- 34 current or proposed ~~managing principal~~ qualifying individual or a
- 35 current or proposed branch manager.
- 36 (b) In addition to the requirements imposed by the Commissioner under
- 37 subsection (a) of this section, each individual applicant for licensure as a loan officer
- 38 shall:
- 39 (1) Be at least 18 years of age.
- 40 (2) Have satisfactorily completed, within the three years immediately
- 41 preceding the date application is made, a mortgage lending
- 42 fundamentals course approved by the Commissioner. The course shall
- 43 consist of at least eight hours of classroom instruction in subjects

1 related to mortgage lending approved by the Commissioner. In
2 addition, the applicant shall have satisfactorily completed a written
3 examination approved by the Commissioner or possess residential
4 mortgage lending education or experience in residential mortgage
5 lending transactions that the Commissioner deems equivalent to the
6 course.

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

11 (1) Except as provided for in subdivision (1a) of this subsection, if the
12 applicant is a sole proprietor, the applicant shall have at least three
13 years of experience in residential mortgage lending or other experience
14 or competency requirements as the Commissioner may impose.
15 Experience as an exclusive mortgage broker or as a limited loan officer
16 shall not constitute mortgage-lending experience under this
17 subdivision.

18 (1a) If an individual applicant to be licensed as a mortgage broker meets all
19 other requirements for licensure under this section but does not meet
20 the requirements of subdivision (1) of this subsection, the individual
21 applicant may be licensed as an exclusive mortgage broker upon
22 compliance with all of the following:

23 a. Successfully complete both a residential mortgage-lending
24 course approved by the Commissioner of not less than 40 hours
25 of classroom instruction, and a written examination approved
26 by the Commissioner.

27 b. Act exclusively as a mortgage broker for a single mortgage
28 banker licensee or single exempt mortgage banker for whom the
29 broker shall be deemed an agent, who shall be responsible for
30 supervising the broker as required by this Article, who shall
31 sign the license application of the applicant, and who shall be
32 jointly and severally liable with the broker for any claims
33 arising out of the broker's mortgage lending activities.

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

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

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

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

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

7 (d) Each applicant shall identify one person meeting the requirements of
8 subsection (c) of this section to serve as the applicant's ~~managing principal~~qualifying
9 individual.

10 (d1) A mortgage banker licensed under this Article may, upon notice in a format
11 acceptable to the Commissioner and without payment of added fee, also act as a
12 mortgage servicer, as long as the mortgage banker complies with the requirements
13 applicable to a mortgage servicer under this Article. This subsection is not a waiver for
14 the mortgage banker or mortgage servicer of any fees charged or payable to the
15 Nationwide Mortgage Licensing System.

16 (e) Every applicant for initial licensure shall pay a filing fee not to exceed one
17 thousand two hundred fifty dollars (\$1,250) for licensure as a mortgage ~~broker or broker,~~
18 mortgage ~~banker—banker, or mortgage servicer~~ or sixty-seven dollars and fifty cents
19 (\$67.50) for licensure as a loan officer or limited loan officer, in addition to the actual
20 cost of obtaining credit reports and State and national criminal history record checks.

21 (f) A mortgage banker or mortgage servicer shall post a surety bond in the
22 amount of one hundred fifty thousand dollars (\$150,000), and a mortgage broker shall
23 post a surety bond in the amount of fifty thousand dollars (\$50,000). The surety bond
24 shall be in a form satisfactory to the Commissioner and shall run to the State for the
25 benefit of any claimants against the licensee to secure the faithful performance of the
26 obligations of the licensee under this Article. The aggregate liability of the surety shall
27 not exceed the principal sum of the bond. A party having a claim against the licensee
28 may bring suit directly on the surety bond, or the Commissioner may bring suit on
29 behalf of any claimants, either in one action or in successive actions. Consumer claims
30 shall be given priority in recovering from the bond. Any appropriate deposit of cash or
31 securities shall be accepted in lieu of any bond that is required. An audited financial
32 statement from a qualified lender or qualified servicer showing a net worth of two
33 hundred fifty thousand dollars (\$250,000) or more shall be accepted in lieu of any bond
34 required.

35 (g) Any general partner, manager of a limited liability company, or officer of a
36 corporation who individually meets the requirements under subsection (b) of this
37 section shall, upon payment of the applicable fee, meet the qualifications for licensure
38 as a loan officer subject to the provisions of subsection (i) of this section.

39 (h) Each principal office and each branch office of a mortgage broker or
40 mortgage banker licensed under the provisions of this Article shall be issued a separate
41 license. A licensed mortgage broker or mortgage banker shall file with the
42 Commissioner an application on a form prescribed by the Commissioner that identifies
43 the address of the principal office and each branch office and branch manager. A filing

1 fee not to exceed one hundred twenty-five dollars (\$125.00) shall be assessed by the
2 Commissioner for each branch office issued a license.

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

10 **SECTION 4.** G.S. 53-243.06 reads as rewritten:

11 "**§ 53-243.06. License renewal; termination.**

12 (a) All licenses issued by the Commissioner under the provisions of this Article
13 shall expire annually on the ~~30th day of June~~31st day of December following issuance
14 or on any other date that the Commissioner may determine. The license shall become
15 invalid after that date unless renewed. A license may be renewed ~~45 days prior to the~~
16 ~~expiration date~~on or after November 1st by compliance with subsection (b1) of this
17 section and by paying to the Commissioner, in addition to the actual cost of obtaining
18 credit reports and State and national criminal history record checks and of processing
19 fees of the nationwide system as the Commissioner may require, a renewal fee as
20 follows:

- 21 (1) Licensed mortgage bankers and licensed mortgage servicers shall pay
22 an annual fee not to exceed six hundred twenty-five dollars (\$625.00)
23 and one hundred twenty-five dollars (\$125.00) for each branch office.
- 24 (2) Licensed mortgage brokers shall pay an annual fee not to exceed six
25 hundred twenty-five dollars (\$625.00) and one hundred twenty-five
26 dollars (\$125.00) for each branch office. Licensed exclusive mortgage
27 brokers shall pay an annual fee not to exceed six hundred twenty-five
28 dollars (\$625.00).
- 29 (3) Licensed loan officers shall pay an annual fee not to exceed
30 sixty-seven dollars and fifty cents (\$67.50).

31 (b) If a mortgage ~~banker~~banker, mortgage servicer, or mortgage broker license is
32 not renewed prior to the applicable expiration date, then ~~an additional~~ two hundred fifty
33 dollars (\$250.00) in addition to the renewal fee under subsection (a) of this section shall
34 be assessed as a late fee to any renewal. If a loan officer or limited loan officer license is
35 not renewed prior to the applicable expiration date, then ~~an additional fifty one hundred~~
36 ~~dollars~~ (\$50.00\$100.00) in addition to the renewal fee under subsection (a) of this
37 section shall be assessed as a late fee to any renewal. In the event a licensee fails to
38 obtain a reinstatement of the license ~~within 90 days after the date the license expires,~~
39 prior to March 1st, the Commissioner may require the licensee to comply with the
40 requirements for the initial issuance of a license under the provisions of this Article.

41 (b1) When required by the Commissioner, each individual described in G.S.
42 53-245.05(a)(6) shall furnish to the Commissioner his or her consent to a criminal
43 history record check and a set of his or her fingerprints in a form acceptable to the

1 Commissioner. Refusal to consent to a criminal history record check may constitute
2 grounds for the Commissioner to deny renewal of the license of the person as well as
3 the license of any other person by which he or she is employed, over which he or she
4 has control, or as to which he or she is the current or proposed ~~managing~~
5 ~~principal~~qualifying individual or a current or proposed branch manager.

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

11 **SECTION 5.** G.S. 53-243.08 reads as rewritten:

12 "**§ 53-243.08. ~~Managing principals~~Qualifying individuals and branch managers.**

13 Each mortgage broker or mortgage banker ~~or mortgage servicer~~ licensed under this
14 Article shall have a ~~managing principal~~qualifying individual who operates the business
15 under that person's full charge, control, and supervision. Mortgage bankers and
16 mortgage brokers, other than exclusive mortgage brokers, may operate branch offices
17 subject to the requirements of this Article. Each principal and branch office of a
18 mortgage broker or mortgage banker licensed under this Article, shall have a branch
19 manager who meets the experience requirements under G.S. 53-243.05(c)(1); provided,
20 that an affiliated mortgage banker may designate a branch manager who does not meet
21 the experience requirements so long as at or before the designation, it certifies that the
22 person has been employed by the affiliated mortgage banker for at least one year as a
23 loan officer, limited loan officer, or in a comparable position in another state. The
24 ~~managing principal~~qualifying individual for a licensee's business may also serve as the
25 branch manager of one of the licensee's branch offices. Each mortgage broker or
26 mortgage banker licensed under this Article shall file a form as prescribed by the
27 Commissioner indicating the business's designation of ~~managing principal~~qualifying
28 individual and branch manager for each branch and each individual's acceptance of the
29 responsibility. Each mortgage broker or mortgage banker licensed under this Article
30 shall notify the Commissioner of any change in its ~~managing principal~~qualifying
31 individual or branch manager designated for each branch. Each mortgage servicer
32 licensed under this Article shall file a form prescribed by the Commissioner indicating
33 the business's designation of its qualifying individual and shall notify the Commissioner
34 of any change in its qualifying individual. Any licensee who does not comply with this
35 provision shall have the licensee's license suspended pursuant to G.S. 53-243.12 until
36 the licensee complies with this section. Any individual licensee who operates as a sole
37 proprietorship shall be considered a ~~managing principal~~qualifying individual for the
38 purposes of this Article."

39 **SECTION 6.** G.S. 53-243.09 reads as rewritten:

40 "**§ 53-243.09. Offices; address changes; display of license.**

41 (a) Each mortgage broker licensee shall maintain and transact business from a
42 principal place of business in this State. A principal place of business in this State shall
43 consist of at least one enclosed room or building of stationary construction in which

1 negotiations of mortgage loan transactions of others may be conducted and carried on in
2 privacy and in which all of the books, records, and files pertaining to mortgage loan
3 transactions relating to borrowers in this State are maintained. However, the
4 Commissioner may, by rule, impose terms and conditions under which the records and
5 files may be maintained outside of this State.

6 (b) A mortgage banker or mortgage broker or mortgage servicer licensee shall
7 report any change of address of the principal place of business or any branch office
8 within 15 days after the change.

9 (c) Each mortgage broker or mortgage banker licensed under this Article shall
10 display in plain public view the certificate of licensure issued by the Commissioner in
11 its principal office and in each branch office. Each loan officer licensed under this
12 Article shall ~~display~~ display, in plain public view, in each branch office in which the
13 officer acts as a loan officer the certificate of licensure issued by the Commissioner."

14 **SECTION 7.** G.S. 53-243.10 reads as rewritten:

15 "**§ 53-243.10. Mortgage broker ~~duties~~duties; mortgage servicer duties.**

16 (a) A mortgage broker, including any mortgage broker licensee and any person
17 ~~required to be licensed~~acting as a mortgage broker under this Article, shall, in addition
18 to duties imposed by other statutes or at common law, shall do all of the following:

- 19 (1) Safeguard and account for any money handled for the borrower.
- 20 (2) Follow reasonable and lawful instructions from the borrower.
- 21 (3) Act with reasonable skill, care, and diligence.
- 22 (4) Make reasonable efforts to secure a loan that is reasonably
23 advantageous to the borrower considering all the circumstances,
24 including the rates, charges, and repayment terms of the loan.
- 25 (5) Timely and clearly disclose to the borrower material information as
26 specified by the Commission that may be expected to influence the
27 borrower's decision and is reasonably accessible to the mortgage
28 broker, including the total compensation the mortgage broker expects
29 to receive from any and all sources in connection with each loan
30 option presented to the borrower.
- 31 (6) Notify before closing each lender of the particulars of each of the other
32 lender's loans if the mortgage broker knows that more than one
33 mortgage loan will be made by different lenders contemporaneously to
34 a borrower secured by the same real property.
- 35 (7) Ensure that any services offered to any applicant shall be available and
36 offered to all similarly situated applicants on an equal basis.
- 37 (8) In transactions where the broker has the ability to make credit
38 decisions, use reasonable means to provide the borrower with prompt
39 credit decisions on its loan applications and, where the credit is denied,
40 to comply fully with the notification requirements of applicable state
41 and federal law.

1 (9) Ensure that ~~its~~ advertising materials are designed to make customers
2 and potential customers aware that ~~one~~the mortgage broker does not
3 discriminate on any prohibited basis.

4 (b) A mortgage servicer licensed or acting under this Article, in addition to duties
5 imposed by other statutes or at common law, shall do all of the following:

6 (1) Safeguard and account for any money handled for the borrower.

7 (2) Follow reasonable and lawful instructions from the borrower.

8 (3) Act with reasonable skill, care, and diligence.

9 (4) With its application and renewal and with its supplemental filings
10 made from time to time, file with the Commissioner a complete,
11 current schedule of costs and fees it charges borrowers for its servicing
12 related activities.

13 (5) File with the Commissioner upon request a report in a form and format
14 acceptable to the Commissioner detailing the servicer's activities in
15 this state, including, without limitation:

16 a. The number of mortgage loans the servicer is servicing.

17 b. The type and characteristics of such loans in this State.

18 c. The number of serviced loans in default, along with a
19 breakdown of 30, 60, and 90 day delinquencies.

20 d. Information on loss mitigation activities, including details on
21 workout arrangements undertaken.

22 e. Information on foreclosures commenced in this State.

23 (6) At the time a servicer accepts assignment of servicing rights for a
24 mortgage loan, the servicer shall disclose to the borrower all of the
25 following:

26 a. Any notice required by RESPA or by regulations promulgated
27 thereunder.

28 b. A schedule of its costs and fees (which shall comply with North
29 Carolina law and which shall not exceed those reported to the
30 Commissioner).

31 c. A notice in a form and content acceptable to the Commissioner
32 that the servicer is licensed by the Commissioner and that
33 complaints about the servicer may be submitted to the
34 Commissioner.

35 d. Any notice required by Chapter 45 of the General Statutes.

36 (7) In the event of a delinquency or other act of default on the part of the
37 borrower, the servicer shall act in good faith to inform the borrower of
38 the true facts concerning the loan and its status, and to negotiate with
39 the borrower a resolution or 'work out' to the delinquency."

40 **SECTION 8.** G.S. 53-243.11 reads as rewritten:

41 **"§ 53-243.11. Prohibited activities.**

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

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- (1) To misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise.
- (2) To refuse improperly to issue a satisfaction of a mortgage.
- (3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report, which the mortgage banker, servicer, broker, or loan officer is not entitled to retain under the circumstances.
- (4) To pay, receive, or collect in whole or in part any commission, fee, or other compensation for brokering a mortgage loan in violation of this Article, including a mortgage loan brokered by any unlicensed person other than an exempt person.
- (5) To charge or collect any fee or rate of interest or to make or broker or service any mortgage loan with terms or conditions or in a manner contrary to the provisions of Chapter 24 of the General Statutes.
- (6) To advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on the loans, unless the person is able to make the mortgage loans available to a reasonable number of qualified applicants.
- (7) To fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan.
- (8) To engage in any transaction, practice, or course of business that is not in good faith or fair dealing or that constitutes a fraud upon any person, in connection with the brokering or making or servicing of, or purchase or sale of, any mortgage loan.
- (9) To fail promptly to pay when due reasonable fees to a licensed appraiser for appraisal services that are:
 - a. Requested from the appraiser in writing by the mortgage broker or mortgage banker or an employee of the mortgage broker or mortgage banker; and
 - b. Performed by the appraiser in connection with the origination or closing of a mortgage loan for a customer or the mortgage broker or mortgage banker.
- (10) To broker a mortgage loan that contains a prepayment penalty if the principal amount of the loan is one hundred fifty thousand dollars (\$150,000) or less or if the loan is a rate spread home loan as defined in G.S. 24-1.1F.
- (11) To improperly influence or attempt to improperly influence the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan. Nothing in this subdivision

1 shall be construed to prohibit a mortgage ~~broker or mortgage banker~~
2 broker, mortgage banker, or mortgage servicer from asking the
3 appraiser to do one or more of the following:

- 4 a. Consider additional appropriate property information.
- 5 b. Provide further detail, substantiation, or explanation for the
6 appraiser's value conclusion.
- 7 c. Correct errors in the appraisal report.

8 (12) To fail to comply with the mortgage loan servicing transfer, escrow
9 account administration, or borrower inquiry response requirements
10 imposed by sections 6 and 10 of the Real Estate Settlement Procedures
11 Act (RESPA), 12 U.S.C. § 2605 and § 2609, and regulations adopted
12 thereunder by the Secretary of the Department of Housing and Urban
13 Development.

14 (13) To broker a rate spread adjustable rate mortgage loan without
15 disclosing to the borrower the terms and costs associated with a fixed
16 rate loan from the same lender at the lowest annual percentage rate for
17 which the borrower qualifies.

18 (14) To fail to comply with applicable federal laws and regulations related
19 to mortgage lending.

20 (15) To engage in unfair, misleading, or deceptive advertising related to a
21 solicitation for a mortgage loan.

22 (16) For a mortgage servicer to fail to comply with the mortgage servicer's
23 obligations under Article 10 of Chapter 45 of the North Carolina
24 General Statutes.

25 (17) For a person acting as a mortgage servicer to place or attempt to place
26 hazard, homeowner's, or flood insurance on the mortgaged property if
27 insurance is in effect.

28 (18) For a person acting as a mortgage servicer to fail to provide to the
29 borrower reasonable notice and opportunity to cure (including a full
30 refund or credit to the borrower's account) if insurance coverage lapses
31 and the servicer then places hazard, homeowner's, or flood insurance at
32 rates exceeding that most recently paid by borrower or if the insurance
33 is for coverage that exceeds the lesser of the replacement cost of the
34 improvements on the collateral or the outstanding principal
35 indebtedness of the borrower. It shall be deemed 'reasonable notice
36 and opportunity to cure' if the servicer who unilaterally insures the
37 mortgaged property gives the borrower notice of that action and 30
38 days for the borrower to obtain alternative insurance coverage and
39 request a refund or credit from the servicer.

40 (19) For a person acting as a mortgage servicer to refuse to reinstate a
41 delinquent loan upon a tender of payment made timely under the
42 contract which is sufficient in amount, based upon the last written

1 statement received by borrower, to pay outstanding or overdue charges
2 and restore the loan to a non-delinquent status.

3 (20) For a person acting as a mortgage servicer to fail to mail within 10
4 days after a loan becomes 60 days delinquent, and at least 30 days
5 before foreclosures is initiated, a notice addressed to the borrower at
6 his last known address with form and content of the notice prescribed
7 by the Commissioner which provides to the delinquent borrower,
8 including those currently in bankruptcy, suggested alternatives to
9 foreclosure; provided, however, that servicer is not required to send
10 any notice that violates the U.S. Bankruptcy Code or the order of any
11 bankruptcy judge then in effect.

12 (21) After notice from the Commissioner or other government agent or
13 from any party in interest for a person acting as a mortgage servicer to
14 charge or collect any fee or rate of interest on any mortgage loan with
15 terms or conditions or in a manner contrary to the provisions of
16 Chapter 24 or Chapter 45 of the General Statutes or Title 11 of the
17 United States Code."

18 **SECTION 9.** G.S. 53-243.12 reads as rewritten:

19 **"§ 53-243.12. Disciplinary authority.**

20 (a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or
21 renew a license of a licensee or applicant under this Article or may restrict or limit the
22 activities relating to mortgage loans of any licensee or any person who owns an interest
23 in or participates in the business of a licensee, if the Commissioner finds both of the
24 following:

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

26 (2) That any of the following circumstances apply to the applicant,
27 licensee, or any partner, member, manager, officer, director, loan
28 officer, limited loan officer, ~~managing principal, qualifying individual,~~
29 or any person occupying a similar status or performing similar
30 functions or any person directly or indirectly controlling the applicant
31 or licensee. The person:

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

36 b. Has violated or failed to comply with any provision of this
37 Article, rule adopted by the Commissioner, or order of the
38 Commissioner.

39 c. Has been convicted of any felony, or, within the past 10 years,
40 has been convicted of any misdemeanor involving ~~mortgage~~
41 ~~lending or any aspect of the mortgage lending business, or any~~
42 ~~offense involving breach of trust, moral turpitude, or fraudulent~~
43 ~~or dishonest dealing, or financial services or a financial services~~

1 related business or any fraud, false statements or omissions,
2 theft or any wrongful taking of property, bribery, perjury,
3 forgery, counterfeiting, extortion, or a conspiracy to commit
4 any of these offenses.

- 5 d. Is permanently or temporarily enjoined by any court of
6 competent jurisdiction from engaging in or continuing any
7 conduct or practice involving any aspect of the mortgage
8 lending business.
- 9 e. Is the subject of an order of the Commissioner denying,
10 suspending, or revoking that person's license as a mortgage
11 ~~broker or mortgage banker~~broker, mortgage banker, or
12 mortgage servicer.
- 13 f. Is the subject of an order entered within the past five years by
14 the authority of any state with jurisdiction over that state's
15 mortgage ~~brokerage or mortgage banking~~brokerage, mortgage
16 banking, or mortgage servicing industry denying or revoking
17 that person's license as a mortgage ~~broker or mortgage banking~~
18 ~~industry denying or revoking that person's license as a~~
19 ~~mortgage broker or mortgage banker~~broker, mortgage servicer,
20 or mortgage banker.
- 21 g. Does not meet the qualifications or the financial responsibility,
22 character, or general fitness requirements under G.S. 53-243.05
23 or any bond or capital requirements under this Article.
- 24 h. Has been the executive officer or controlling shareholder or
25 owned a controlling interest in any mortgage broker or
26 mortgage banker or mortgage servicer who has been subject to
27 an order or injunction described in sub-subdivision d., e., or f.
28 of this subdivision.
- 29 i. Has failed to pay the proper filing or renewal fee under this
30 Article. However, the Commissioner may enter only a denial
31 order under this sub-subdivision, and the Commissioner shall
32 vacate the order when the deficiency has been corrected.
- 33 j. Has falsely certified attendance or completion of hours at an
34 approved mortgage lending continuing education course.

35 (b) The Commissioner may, by order, summarily postpone or suspend the license
36 of a licensee pending final determination of any proceeding under this section. Upon
37 entering the order, the Commissioner shall promptly notify the applicant or licensee that
38 the order has been entered and the reasons for the order. The Commissioner shall
39 calendar a hearing within 15 days after the Commissioner receives a written request for
40 a hearing. If a licensee does not request a hearing and the Commissioner does not
41 request a hearing, the order will remain in effect until it is modified or vacated by the
42 Commissioner. If a hearing is requested or ordered by the Commissioner, after notice of

1 and opportunity for hearing, the Commissioner may modify or vacate the order or
2 extend it until final determination.

3 (c) The Commissioner may, by order, impose a civil penalty upon a licensee or
4 any partner, officer, director, or other person occupying a similar status or performing
5 similar functions on behalf of a licensee for any violation of this Article. The civil
6 penalty shall not exceed ten thousand dollars (\$10,000) for each violation of this Article
7 by a mortgage broker or mortgage banker. The Commissioner may impose a civil
8 penalty of up to ten thousand dollars (\$10,000) for each violation of this Article by a
9 person other than a licensee or exempt person.

10 (d) In addition to other powers under this Article, upon finding that any action of
11 a person is in violation of this Article, the Commissioner may order the person to cease
12 from the prohibited action. If the person subject to the order fails to appeal the order of
13 the Commissioner in accordance with G.S. 53-243.03, or if the person appeals and the
14 appeal is denied or dismissed, and the person continues to engage in the prohibited
15 action in violation of the Commissioner's order, the person shall be subject to a civil
16 penalty of up to twenty-five thousand dollars (\$25,000) for each violation of the
17 Commissioner's order. The penalty provision of this section shall be in addition to and
18 not in lieu of any other provision of law applicable to a licensee for the licensee's failure
19 to comply with an order of the Commissioner.

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

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

28 (g) If the Commissioner has reasonable grounds to believe that a licensee or other
29 person has violated the provisions of this Article or that facts exist that would be the
30 basis for an order against a licensee or other person, the Commissioner may at any time,
31 either personally or by a person duly designated by the Commissioner, investigate or
32 examine the loans and business of the licensee and examine the books, accounts,
33 records, and files of any licensee or other person relating to the complaint or matter
34 under investigation. The Commissioner may require any licensee or other person to
35 submit a consent to a criminal history record check and a set of that person's fingerprints
36 in a form acceptable to the Commissioner in connection with any examination or
37 investigation. Refusal to submit the requested criminal history record check or a set of
38 fingerprints shall be grounds for disciplinary action. The reasonable cost of this
39 investigation or examination shall be charged against the licensee.

40 (h) The Commissioner may issue subpoenas to require the attendance of and to
41 examine under oath all persons whose testimony the Commissioner deems relative to
42 the person's business.

1 (i) The Commissioner may from time to time, at the expense of the
2 Commissioner's office, conduct routine examinations of the books and records of any
3 licensee in order to determine the compliance with this Article and any rules adopted
4 pursuant to the authority of G.S. 53-243.04.

5 (j) In addition to the rights described under this section, the Commissioner may
6 require a licensee to pay to a borrower or other individual any amounts received by the
7 licensee or its employees in violation of Chapter 24 of the General ~~Statutes~~.Statutes, or,
8 if a servicer, in excess of those allowed by law to servicers.

9 (k) If the Commissioner finds that the ~~managing principal, qualifying individual,~~
10 branch manager, or loan officer of a licensee had knowledge of or reasonably should
11 have had knowledge of, or participated in, any activity that results in the entry of an
12 order under this section suspending or withdrawing the license of a licensee, the
13 Commissioner may prohibit the branch manager, ~~managing principal, qualifying~~
14 individual, or loan officer from serving as a branch manager, ~~managing~~
15 principal, qualifying individual, or loan officer for any period of time the Commissioner
16 deems necessary.

17 (l) In addition to the authority to require criminal history background checks as
18 set forth in G.S. 53-243.05 and G.S. 53-243.06, the Commissioner shall have the
19 authority to require a criminal history background check at any other time as a condition
20 of continued licensure. Upon the request of the Commissioner, a licensee shall furnish
21 to the Commissioner the licensee's consent to a criminal history record check and a set
22 of the licensee's fingerprints in a form acceptable to the Commissioner. Refusal to
23 consent to a criminal history record check under this subsection may constitute grounds
24 for the Commissioner to suspend or revoke the license of the licensee.

25 (m) Subject to the provisions of G.S. 53-243.03, the Commissioner may, by order,
26 prohibit licensees under this Article from engaging in acts and practices in connection
27 with mortgage loans that the Commissioner finds to be unfair, deceptive, designed to
28 evade the laws of this State, or that are not in the best interest of the borrowing public.

29 (n) In the event the Commissioner shall reasonably believe that a material
30 violation of law has occurred in the origination or servicing of a loan then being
31 foreclosed or then delinquent and in threat of foreclosure, the Commissioner may order
32 the servicer to suspend its efforts to foreclose on the mortgage for up to 60 days from
33 the date of the order.

34 (o) The Commissioner shall be deemed to have complied with the requirements
35 of law concerning service of process upon mailing by certified mail any notice required
36 or permitted to a licensee under this Article, postage prepaid and addressed to the last
37 known address of the licensee on file with the Commissioner pursuant to G.S. 53-
38 243.13(d).

39 (p) The Commissioner is authorized to take action, including suspension of the
40 license, if the licensee fails to respond promptly to inquiries from the Commissioner or
41 the Commissioner's delegates regarding any complaints filed against the licensee which
42 allege or appear to involve violation of this Article or any law or rule affecting the
43 mortgage lending business.

1 (q) The Commissioner is authorized to take action, including suspension of the
2 license, if the licensee fails to respond promptly to and cooperate fully with notices
3 from the Commissioner or the Commissioner's delegates relating to the scheduling and
4 conducting of an examination or investigation under this Article."

5 **SECTION 10.** G.S. 53-243.13(e) reads as rewritten:

6 "(e) A licensee shall maintain in a segregated escrow fund or trust account any
7 funds which come into the licensee's possession, but which are not the licensee's
8 property and which the licensee is not entitled to retain under the circumstances. The
9 escrow fund or trust account shall be held on deposit in a federally insured financial
10 institution. Individual loan applicants' or borrowers' accounts may be aggregated into a
11 common trust fund so long as (i) interests in the common fund can be individually
12 tracked and accounted for, and (ii) the common fund is kept separate from and is not
13 commingled with the licensee's own funds."

14 **SECTION 11.** G.S. 53-243.14 reads as rewritten:

15 "**§ 53-243.14. Criminal penalty.**

16 A violation of G.S. 53-243.02 is a Class I felony. Each transaction involving the
17 unlawful making or brokering or servicing of a mortgage loan is a separate offense."

18 **SECTION 12.** G.S. 53-243.15 reads as rewritten:

19 "**§ 53-243.15. Filing required for exempt persons; civil penalty.**

20 (a) All exempt persons described in G.S. ~~53-243.01(8)~~53-243.01(12) who are
21 engaged in the mortgage brokerage or mortgage banking business on October 1, 2002,
22 or who are engaged in the mortgage servicing business on October 1, 2008, shall be
23 required to file a form with the Commissioner on or before that date. All exempt
24 persons, who commence mortgage brokerage or mortgage banking business in this State
25 after October 1, 2002, or who commence mortgage servicing in this State after October
26 1, 2008, shall file the form with the Commissioner upon commencement of the
27 business. This form, prescribed by the Commissioner, shall contain all of the following
28 information:

- 29 (1) The name of the respective exempt person.
- 30 (2) The basis of the exempt status of the exempt person.
- 31 (3) The principal business address of the exempt person.
- 32 (4) The State or federal regulatory authority responsible for the exempt
33 person's supervision, examination, or regulation, if any.

34 (b) In addition to any other measures the exempt person may be subject to under
35 this Article, failure by an exempt person to file the required form shall not affect the
36 exempt status of the person. However, the exempt person shall be subject to a civil
37 penalty set by the Commissioner that shall not exceed the sum of two hundred fifty
38 dollars (\$250.00) for each year the form is not filed. No person required to file under
39 this section may transact business in this State as a mortgage banker or mortgage broker
40 or mortgage servicer unless the person has filed the prescribed form with the
41 Commissioner in accordance with this section."

42 **SECTION 13.** G.S. 53-243.16(b) reads as rewritten:

1 "(b) In addition, if a person described in subsection (a) of this section is a
2 corporation, partnership, limited liability company, association, or trust, the Department
3 of Justice may provide a criminal history record check to the Commissioner for any
4 person who has control of that person, or who is the ~~managing principal~~qualifying
5 individual or a branch manager of that person."

6 **SECTION 14.** G.S. 53-243.17(c) reads as rewritten:

7 "(c) Notwithstanding any other provision of this section, the Commissioner retains
8 full authority and discretion under this Article to license mortgage brokers, mortgage
9 bankers, mortgage servicers, loan officers, and limited loan officers and to enforce this
10 Article to its fullest extent. Nothing in this section shall be deemed to be a reduction or
11 derogation of that authority and discretion."

12 **SECTION 15.** G.S. 24-1.1E(a)(4a) reads as rewritten:

13 "(4a) 'Mortgage broker' is as defined in G.S. ~~53-243.01(14)~~53-243.01."

14 **SECTION 16.** G.S. 24-1.1F(a)(4) reads as rewritten:

15 "(4) Mortgage broker. – A mortgage broker as defined in G.S.
16 ~~53-243.01(14)~~53-243.01."

17 **SECTION 17.** G.S. 66-106(b) reads as rewritten:

18 "(b) Except for mortgage loans as defined in G.S. ~~53-243.01(15)~~53-243.01, this
19 Article shall not apply to any party approved as a mortgagee by the Secretary of
20 Housing and Urban Development, the Federal Housing Administration, the Veterans
21 Administration, a National Mortgage Association or any federal agency; nor to any
22 party currently designated and compensated by a North Carolina licensed insurance
23 company as its agent to service loans it makes in this State; nor to any insurance
24 company registered with and licensed by the North Carolina Insurance Commissioner;
25 nor, with respect to residential mortgage loans, to any residential mortgage banker or
26 mortgage broker licensed pursuant to Article 19A of Chapter 53 of the General Statutes
27 or exempt from licensure pursuant to G.S. ~~53-243.01(8)~~53-243.01(12) and G.S.
28 53-243.02; nor to any attorney-at-law, public accountant, or dealer registered under the
29 North Carolina Securities Act, acting in the professional capacity for which such
30 attorney-at-law, public accountant, or dealer is registered or licensed under the laws of
31 the State of North Carolina. Provided further that subdivision (1)(ii) above shall not
32 apply to any lender whose loans or advances to any person, firm or corporation in North
33 Carolina aggregate more than one million dollars (\$1,000,000) in the preceding calendar
34 year."

35 **SECTION 18.** This act becomes effective January 1, 2009 and applies to
36 serving activities commenced on loans entered into on or after that date.

37

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