

May 21, 2008

H 2463. REGULATE MORTGAGE SERVICERS. Filed 5/21/08. *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.*

Mortgage servicers. Article 19 of GS Chapter 53 (the "Mortgage Lending Act") regulates many aspects of the mortgage lending business and applies specifically to mortgage bankers (those who make mortgage loans) and mortgage brokers (those who solicit applications for mortgage loans, negotiate terms, issue loan commitments, and engage in similar mortgage-related activities). This bill, among other things, extends the coverage of Article 19 to "mortgage servicers" [defined in new GS 53-243.01(3) to mean those who engage in the business of receiving scheduled periodic payments from borrowers pursuant to the terms of a loan and make the payments of principal and interest and other payments, including escrow payments, as are required]. It amends GS 53-243.02 to require that mortgage servicers obtain a license like brokers and bankers.

The bill amends GS 53-243.10 to specify that the duties of a mortgage servicer include the obligations to safeguard money entrusted to them; follow reasonable instructions from the borrower; act with reasonable skill, care and diligence; file with the Commissioner of Banks a schedule of costs and fees; file with the commissioner, on request, a statement of the number of loans the servicer is servicing along with specified information on the loans; make specified disclosures to the borrower; and in the event of any delinquency or other act of default by the borrower, act in good faith to inform the borrower of the facts regarding the loan and its status and negotiate with the borrower a resolution of the delinquency.

The bill amends GS 53-243.11 to prohibit a number of activities by a mortgage servicer, including attempting to place insurance on a mortgaged property that already has insurance in place and to engage in specified other activities with respect to insurance; refusing to reinstate a delinquent loan when tender is made in a timely and sufficient manner; failing to make specified notice before foreclosure is initiated; and making certain charges after foreclosure.

The bill amends GS 53-243.14 to make the criminal standards that apply to mortgage bankers and brokers also apply to mortgage servicers.

Coverage of the Mortgage Lending Act generally. Several aspects of the bill affect the coverage of the act as it applies to mortgage lenders and brokers as well as servicers. The GS 53-243.01 definition of "control" is expanded. Under current law, "control" means the power to vote 20% of the voting shares or other control interests of a corporation or other entity. This bill lowers that to 10%. The definition of "exempt person" is expanded to include a North Carolina licensed attorney who in the practice of law or performing as a trustee accepts payment related to a loan closing, default, foreclosure, or settlement of a claim related to a loan. The use of term "managing principal" of a broker or banker (meaning the person designated as in charge) is replaced with the term "qualifying individual." GS 53-243.06 is amended to change the license cycle to the calendar year and to raise the late renewal fee from \$100 to \$250. GS 53-243.09 is amended to require that each licensee display the license in plain public view. GS 53-243.12 is amended to specify the authority of the Commissioner with respect to licensees who are in violation of law or who fail to respond to notices from the Commissioner.

Intro. by Blue and Church.

GS 53

June 11, 2008

H 2463. REGULATE MORTGAGE SERVICERS. Filed 5/21/08. House committee substitute makes the following changes to 1st edition.

Amends GS 53-243.01 regarding definitions that apply in the Mortgage Lending Act (GS Chapter 53, Article 19A). Clarifies the phrase, *act as a mortgage servicer*, to refer to (1) engaging in the business of receiving scheduled periodic payments from a borrower pursuant of a mortgage loan (was, loan), and (2) making payments of principal, interest and other such payments as may be required pursuant to the terms of the mortgage loan, the mortgage servicing loan documents, or servicing contract (was, pursuant to the terms of the loan). Qualifies the term *branch office* to direct that a branch office may not be located at an individual's home or

residence. Defines a mortgage banker licensed under GS Chapter 53, Article 19A and any employee of a mortgage banker licensed under the article, as an *exempt person*, not required to obtain a separate license as a mortgage servicer, providing that all requirements of the article that apply to mortgage servicers are met, including filing a claim of exemption under GS 53-243.15 (requiring all entities defines as an exempt person to file a claim of exemption). Modifies the definition of mortgage loan to no longer include a security interest in a manufactured home as defined in GS 143-145(7).

Deletes proposed new GS 53-243.05(d1) which provided that a mortgage banker licensed under the article may also act as a mortgage servicer.

Amends GS 53-243.09(a) to direct that a mortgage broker licensee's principal place of business may not be located at an individual's home or residence.

Amends GS 53-243.10 to clarify that in the event of a delinquency or other default by the borrower that the servicer must inform the borrower as to the nature and extent of the delinquency or default along with the facts concerning the loan (was, inform the borrower of the true facts concerning the loan and its status). Also directs the servicer to negotiate with the borrower, subject to the servicer's duties and obligations under the mortgage servicing contract to attempt a resolution.

Amends GS 53-243.11 to declare that it is unlawful to fail to comply with applicable federal laws and regulations related to mortgage servicing. Also expands the prohibition regarding unlawful behavior by a person engaged in any mortgage loan transaction to declare it unlawful for a mortgage servicer to (1) fail to provide written notice to a borrower before placing hazard, homeowner's, or flood insurance on the mortgaged property, or (2) place such insurance on the mortgaged property when the mortgage servicer knows or has reason to know that those insurances are already in effect.

Deletes proposed GS 53-243.11(18) that would require a mortgage servicer to provide a borrower whose insurance coverage has lapsed with reasonable notice and an opportunity to cure the default. Replaces it with provision that it is unlawful for a mortgage servicer to place hazard, homeowner's, or flood insurance on a mortgaged property for an amount that is more than the value of the insurable improvements or the last known coverage amount of insurance.

Provides that it is unlawful for a mortgage servicer to fail to refund unearned premiums paid by or charged to the borrower for hazard, homeowner's, or flood insurance if the borrower can show reasonable proof that the property is insured and the forced placement is no longer necessary.

Provides that the opportunity for reinstatement of a delinquent loan upon the payment of the borrower of all past due amounts, outstanding or overdue charges (was, outstanding or overdue charges), is available to the borrower no more than twice in any 24-month period.

Deletes provisions declaring that it is unlawful for a mortgage servicer to fail to mail notice with the details of the delinquency to the borrower within ten days after a loan becomes 60 days delinquent. Describes the form and content of the notice to be sent to the borrower at least 30 days before foreclosure is initiated. Among the notice requirements are: (1) an itemization of all past due amounts and any additional charges that have to be paid to make the loan current; (2) a statement alerting the borrower of possible options other than foreclosure; and (3) contact information for state and federal offices and agencies that may provide counseling and assistance to borrowers.

Prohibits as unlawful the failure by a mortgage servicer to make all payments from any escrow account held for the borrower in a timely manner to ensure that no late penalties are assessed or other negative consequences result even if the loan is delinquent unless there are insufficient funds in the escrow account to cover the payments and the mortgage servicer has a reasonable belief that the funds will not be recovered.

Deletes provision declaring it unlawful to for a mortgage servicer to charge or collect any fee or rate of interest on any mortgage loan contrary to provisions of GS Chapter 24 or 45, or Title II of the U.S. Code.

Amends GS 53-243.12 to provide that if the NC Commissioner of Banks (Commissioner) has evidence (was, reasonable belief) that a material violation of law has occurred in the origination or servicing of a loan being foreclosed or in threat of foreclosure, then the Commissioner may notify the Clerk of Superior Court, and the Clerk must suspend the foreclosure proceedings on the

mortgage for 60 days from the date of the notice. Requires that the violation be sufficient to support a claim or affirmative defense in law or equity that would affect the foreclosure issue. Also requires that the mortgage servicer be provided with an opportunity to cure the violation or offer rebuttal evidence to the Commissioner regarding the suspected violation. If the mortgage services cures or successfully rebuts the evidences, requires the Commissioner to notify the Clerk that the foreclosure proceeding may be resumed. Effective January 1, 2009, and applies to servicing activities begun on loans entered into on or after that date.

Specifies that a licensee under the article must respond within 20 days (was, promptly), or a lesser time if requested for good cause to inquiries and/or notices from the Commissioner or the Commissioner's designee (was, delegates) or the Commission is authorized to take action.

June 18, 2008

H 2463. REGULATE MORTGAGE SERVICERS. Filed 5/21/08. House committee substitute makes the following changes to 2nd edition.

Amends GS 53-243.01, deleting the definition for *managing principal*.

Enacts new GS 45-21.16B directing the Clerk of Superior Court to suspend foreclosure proceedings, including any hearing or order for sale, for 60 days upon notice by the Commissioner of Banks as provided in proposed new GS 53-243.12(n). Provides that for the suspension period, all deadlines under GS Chapter 45, Article 2A, are suspended. Directs that when the 60-day suspension period ends, the trustee or mortgagee may proceed with a hearing as required under GS 45-21.16 by providing written notice of the new date at least 10 days prior to the hearing date to all parties. Provides that the trustee or mortgagee is not required to comply with the provisions of GS 45-21.16 if the clerk enters a suspension order (1) after the entry of any authorization by the clerk pursuant to GS 45-21.16 and (2) before the 10-day upset bid period expires. Instead, the trustee or mortgagee is directed to advertise and hold the sale in accordance with GS 45-21.16A, GS 45-21.17, and GS 45-21.17A.

Amends GS 45-91, adding the obligations of mortgage servicers set forth in GS 53-243.11 to the list of requirements with which a mortgage servicer must comply.

Amends GS 45-94 (remedies) to add conforming language regarding the authority of the Clerk of Superior Court to suspend foreclosure proceedings for 60 days upon notice from the Commissioner of Banks as provided in proposed GS 53-243.12(n).

Provides that proposed GS 53-243.12(n) as amended by GS 45-94 and proposed GS 45-21.16B applies to foreclosure proceedings filed on or after (was, servicing activities commenced on loans entered into on or after) January 1, 2009. Provides that Sections 12 (amendments to GS 53-243.15) and 21 (effective dates) are effective when the act becomes law.

Makes additional technical changes and grammatical corrections.

July 1, 2008

H 2463. REGULATE MORTGAGE SERVICERS. Filed 5/21/08. Senate committee substitute makes the following changes to 3rd edition. Adds a further amendment to GS 53-243.14 changing a violation of GS 53-243.02 (engaging in the business of mortgage broker or mortgage banker without a license) from a Class I felony to a Class 3 misdemeanor.

July 3, 2008

H 2463. REGULATE MORTGAGE SERVICERS. Filed 5/21/08. Senate amendment makes the following changes to 4th edition. Amends proposed GS 53-243.11(21) as follows: (1) increases the amount of time during which a notice is required to at least 45 (was, 30) days before foreclosure is initiated and (2) amends the information that must be included in the notice to include contact information for one (was, three) or more HUD-approved counseling agencies.

July 7, 2008

H 2463. REGULATE MORTGAGE SERVICERS. Filed 5/21/08. Senate amendment makes the following changes to 4th edition, as amended. Amends the definition of *exempt person* in GS 53-243.01 by amending the proposed language in k. to provide that all provisions of the Article

applicable to mortgage servicers are applicable to any mortgage banker or employee of a mortgage banker acting as a mortgage servicer, except as provided in GS 53-243.15(c) (was, including filing a claim of exemption under GS 53-243.15) Amends GS 53-243.15 to add subsection (c) providing that the statute's filing requirements do not apply to the individual employees of an exempt person.

August 20, 2008

SL 2008-228 (H 2463). REGULATE MORTGAGE SERVICERS. *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.* Summarized in *Daily Bulletin* 5/21/08, 6/11/08, 6/18/08, 7/1/08, 7/3/08, and 7/7/08. Enacted August 17, 2008. Sections 12 and 21 are effective August 17, 2008. Subsection (n) of GS 53-243.12, as amended by Sections 9, 18, and 20 of this act, and the remainder of this act are effective January 1, 2009.