

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

3

HOUSE BILL 1523
Committee Substitute Favorable 4/30/09
Senate Commerce Committee Substitute Adopted 6/3/09

Short Title: S.A.F.E. Mortgage Licensing Act.

(Public)

Sponsors:

Referred to:

April 20, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO REWRITE THE NORTH CAROLINA MORTGAGE LENDING ACT IN
3 ORDER TO CONFORM TO THE REQUIREMENTS OF FEDERAL LAW.

4 Whereas, the General Assembly finds that activities of mortgage loan originators
5 and the origination or offering of financing for residential real property have a direct, valuable,
6 and immediate impact upon this State's consumers, this State's economy, and the
7 neighborhoods and communities of this State, and the housing and real estate industry; and

8 Whereas, North Carolina has had licensed mortgage loan originators and companies
9 that employ them since 2002, and such licensure has been essential for the protection of the
10 citizens of the State and the stability of the State's economy; and

11 Whereas, this legislation is necessary to bring North Carolina's mortgage lending
12 laws into compliance with the Housing and Economic Recovery Act of 2008, Public Law
13 110-289, Title V, enacted by Congress and signed into law on July 30, 2008; Now, therefore,
14 The General Assembly of North Carolina enacts:

15 **SECTION 1.** Article 19A of Chapter 53 of the General Statutes is repealed.

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

18 "Article 19B.

19 "The Secure and Fair Enforcement Mortgage Licensing Act.

20 **"§ 53-244.010. Title.**

21 This act may be cited as the "North Carolina Secure and Fair Enforcement (S.A.F.E.)
22 Mortgage Licensing Act."

23 **"§ 53-244.020. Purpose and construction.**

24 (a) Purpose. – A primary purpose of this Article is to protect consumers seeking
25 mortgage loans and to ensure that the mortgage lending industry operates without unfair,
26 deceptive, and fraudulent practices on the part of mortgage loan originators. Therefore, the
27 General Assembly establishes within this Article an effective system of supervision and
28 enforcement of the mortgage lending industry by giving the Commissioner of Banks broad
29 administrative authority to administer, interpret, and enforce this Article and adopt rules
30 implementing this Article in order to carry out the intentions of the General Assembly.

31 (b) Construction. – It is the intent of the General Assembly that provisions of this
32 Article be liberally construed to effect the purposes stated or clearly encompassed by the
33 Article.

34 **"§ 53-244.030. Definitions.**

35 For purposes of the Article, the following definitions apply:



- 1 (1) "Affiliate" means any company that controls, is controlled by, or is under
2 common control with another company, as set forth in the Bank Holding
3 Company Act of 1956 (12 U.S.C. § 1841, et seq.), as amended from time to
4 time.
- 5 (2) "Audited Statement of Financial Condition" means a statement of financial
6 condition prepared in accordance with generally accepted accounting
7 principles and certified by a certified public accountant as fairly and
8 accurately reflecting financial condition of the licensee as of the date
9 specified in the statement.
- 10 (2a) "Banking Commission" means the North Carolina Banking Commission. For
11 the purpose of complying with this Article by credit unions, Banking
12 Commission means the North Carolina Credit Union Commission.
- 13 (3) "Branch manager" means the individual who is assigned to, is in charge of,
14 and is responsible for the business operations of a branch office of a
15 mortgage broker or mortgage lender.
- 16 (4) "Branch office" means an office of a mortgage broker or mortgage lender
17 that is separate and distinct from the mortgage broker's or lender's principal
18 office and from which its employees engage in the mortgage business. A
19 branch office shall not be located at an individual's home or residence.
- 20 (5) "Certified Statement of Financial Condition" means a statement of financial
21 condition prepared in accordance with generally accepted accounting
22 principles and certified by the preparer or licensee as fairly and accurately
23 reflecting the financial condition of the licensee as of the date specified in
24 the statement.
- 25 (6) "Commissioner" means the North Carolina Commissioner of Banks and the
26 Commissioner's designees. For the purpose of compliance with this Article
27 by credit unions, Commissioner means the Administrator of the Credit
28 Union Division of the Department of Commerce.
- 29 (7) "Control" means the power, directly or indirectly, to direct the management
30 or policies of a company, whether through ownership of securities, by
31 contract, or otherwise. Any person that (i) is a director, general partner, or
32 executive officer; (ii) directly or indirectly has the right to vote ten percent
33 (10%) or more of a class of voting security or has the power to sell or direct
34 the sale of ten percent (10%) or more of a class of voting securities; (iii) in
35 the case of a limited liability company, is a managing member; or (iv) in the
36 case of a partnership, has the right to receive upon dissolution, or has
37 contributed, ten percent (10%) or more of the capital, is presumed to control
38 the company.
- 39 (8) "Depository institution" has the same meaning as in section 3 of the Federal
40 Deposit Insurance Act and includes any credit union whose share and
41 deposit accounts are insured by the National Credit Union Administration
42 under the Federal Credit Union Act.
- 43 (9) "Dwelling" means a residential structure that contains one to four units,
44 whether or not that structure is attached to real property. The term includes
45 an individual condominium unit, cooperative unit, manufactured home,
46 mobile home, or trailer if it is used as a residence.
- 47 (10) "Engaging in the mortgage business" means:
48 a. For compensation or gain, or in the expectation of compensation or
49 gain, either directly or indirectly, to accept or offer to accept an
50 application for a residential mortgage loan from prospective
51 borrowers, solicit or offer to solicit a residential mortgage loan from

- 1 prospective borrowers, negotiate the terms or conditions of a
2 residential mortgage loan with prospective borrowers, issue
3 residential mortgage loan commitments or interest rate guarantee
4 agreements to prospective borrowers, or engage in tablefunding of
5 residential mortgage loans, whether any such acts are done through
6 contact by telephone, by electronic means, by mail, or in person with
7 the borrowers or prospective borrowers.
- 8 b. To make or fund, or offer to make or fund, or advance funds on
9 residential mortgage loans for compensation or gain, or in the
10 expectation of compensation or gain.
- 11 c. To engage, whether for compensation or gain from another or on
12 one's own behalf, in the business of receiving any scheduled periodic
13 payments from a borrower pursuant to the terms of any residential
14 mortgage loan, including amounts for escrow accounts, and making
15 the payments of principal and interest and such other payments with
16 respect to the amounts received from the borrower as may be
17 required pursuant to the terms of the residential mortgage loan, the
18 residential mortgage loan servicing documents, or servicing contract,
19 or otherwise to meet the definition of the term "servicer" in 12 U.S.C.
20 § 2605(i)(2) with respect to residential mortgage loans.
- 21 (11) "Employee" means an individual who has an employment relationship with a
22 mortgage broker, mortgage lender, or mortgage servicer and who is treated
23 as a common law employee for purposes of compliance with the federal
24 income tax laws and whose income is reported on IRS Form W-2.
- 25 (11a) "Exclusive mortgage broker" means an individual who acts as a mortgage
26 broker exclusively for a single mortgage lender or mortgage broker licensee
27 or a single exempt mortgage lender and who is licensed pursuant to
28 G.S. 53-244.050(b)(3). Unless otherwise indicated, an exclusive mortgage
29 broker shall be subject to the requirements of a mortgage broker under this
30 Article.
- 31 (12) "Federal banking agencies" means the Board of Governors of the Federal
32 Reserve System, the Office of the Comptroller of the Currency, the Office of
33 Thrift Supervision, the National Credit Union Administration, and the
34 Federal Deposit Insurance Corporation.
- 35 (13) "Immediate family member" means a spouse, child, sibling, parent,
36 grandparent, or grandchild, or the spouse of an immediate family member.
37 This term includes stepparents, stepchildren, stepsiblings, and adoptive
38 relationships.
- 39 (14) "Individual" means a natural person.
- 40 (15) "Licensee" means a mortgage loan originator, mortgage broker, mortgage
41 lender, or mortgage servicer or other person who is licensed pursuant to this
42 Article.
- 43 (16) "Loan processor or underwriter" means an individual who performs clerical
44 or support duties as an employee at the direction of and subject to the
45 supervision and instruction of a person licensed or exempt from licensing
46 under this Article. Clerical or support duties may include, subsequent to the
47 receipt of an application:
- 48 a. The receipt, collection, distribution, and analysis of information
49 common for the processing or underwriting of a residential mortgage
50 loan; and

1 b. Communicating with a consumer to obtain the information necessary
2 for the processing or underwriting of a loan, to the extent that such
3 communication does not include offering or negotiating loan rates or
4 terms or counseling consumers about residential mortgage loan rates
5 or terms.

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

12 (17) "Loss mitigation specialist" means an employee of a mortgage servicer
13 authorized to (i) collect or receive payments, including payments of
14 principal, interest, escrow amounts, and other amounts due on existing
15 residential mortgage loans due and owing to the licensed lender or servicer
16 when the borrower is in default or in reasonably foreseeable likelihood of
17 default, (ii) work with the borrower to collect data, and (iii) make decisions
18 necessary to modify, either temporarily or permanently, certain terms of
19 those residential mortgage loans or to otherwise finalize collection through
20 the foreclosure process. Such decisions shall include any change in the
21 principal amount of the debt, the rate of annual interest charged, the term of
22 the loan, the waiver of any fees or charges, including late charges, the
23 deferral of payments, or any other similar matter.

24 (18) "Make a residential mortgage loan" means to advance funds, to offer to
25 advance funds, to make a commitment to advance funds to a borrower under
26 a mortgage loan, or to fund a residential mortgage loan.

27 (19) "Mortgage broker" means a person engaged in the mortgage business as
28 defined in sub-subdivision a. of subdivision (10) of this section.

29 (20) "Mortgage lender" means a person engaged in the mortgage business as
30 defined in sub-subdivision a. of subdivision (10) of this section. However,
31 the definition does not include a person who acts as a mortgage lender only
32 in a tablefunding transaction.

33 (21) "Mortgage loan originator" means:

34 a. An individual who for compensation or gain or in the expectation of
35 compensation or gain, whether through contact by telephone, by
36 electronic means, by mail, or in person with prospective borrowers,
37 either:

38 1. Takes a residential mortgage loan application or offers or
39 negotiates terms of a residential mortgage loan,

40 2. Accepts or offers to accept applications for mortgage loans,

41 3. Solicits or offers to solicit a mortgage loan,

42 4. Negotiates the terms or conditions of a mortgage loan, or

43 5. Issues mortgage loan commitments or interest rate guarantee
44 agreements to prospective borrowers.

45 b. The term includes an individual acting solely as a loss mitigation
46 specialist if the United States Department of Housing and Urban
47 Development issues a guideline, rule, regulation, or interpretative
48 letter that such individuals are loan originators as the term is defined
49 by § 1503 of Title V of the Housing and Economic Recovery Act of
50 2008, Public Law 110-289, and only to the extent of such an issuance
51 or determination.

- 1 c. The term does not include:
2 1. An individual engaged solely as a loan processor or
3 underwriter;
4 2. A person or entity that only performs real estate brokerage
5 activities and is licensed or registered as such in accordance
6 with State law, unless the person or entity is compensated by
7 a mortgage lender, a mortgage broker, or other mortgage loan
8 originator or by any agent of a mortgage lender, mortgage
9 broker, or other mortgage loan originator;
10 3. A person or entity solely involved in extensions of credit or
11 sale of time share instruments relating to time share plans, as
12 that term is defined in G.S. 93A-41(9a); or
13 4. An individual who only informs a prospective borrower of
14 the availability of persons engaged in the mortgage business,
15 does not take or assist in the completion of a loan application,
16 and does not discuss specific terms or conditions of a
17 mortgage loan. The taking of basic preapplication information
18 for facilitating a residential mortgage loan transaction, such
19 as the name and contact information of the prospective
20 borrower, the prospective borrower's own assessment of
21 creditworthiness, desired loan types, and resources to make a
22 down payment, but not including social security number,
23 credit score, credit or employment history, or specific rates of
24 a desired mortgage loan, to connect prospective borrowers to
25 persons engaged in the mortgage business does not prevent an
26 individual from qualifying for this exclusion.
27 (22) "Mortgage servicer" means a person engaged in the mortgage business who
28 directly or indirectly engages in the mortgage business as defined in
29 sub-subdivision c. of subdivision (10) of this section.
30 (23) "Nationwide Mortgage Licensing System and Registry" means the mortgage
31 licensing system developed and maintained by the Conference of State Bank
32 Supervisors and the American Association of Residential Mortgage
33 Regulators for the licensing and registration of licensed mortgage loan
34 originators.
35 (24) "Nontraditional mortgage product" means any residential mortgage loan
36 product other than a 30-year fixed rate mortgage.
37 (25) "Person" means an individual, partnership, limited liability company, limited
38 partnership, corporation, association, or other group engaged in joint
39 business activities however organized.
40 (26) "Principal office" means a principal place of business that shall consist of at
41 least one enclosed room or building of stationary construction in which
42 negotiations of mortgage loan transactions may be conducted and carried on
43 in privacy and in which all of the books, records, and files pertaining to
44 mortgage loan transactions relating to borrowers in this State are maintained.
45 A principal office shall not be located at an individual's home or residence.
46 (27) "Qualifying individual" means a person who meets the experience and other
47 requirements of G.S. 53-244.050(b) and who agrees to be primarily
48 responsible for the operations of a licensed mortgage broker or mortgage
49 lender or mortgage servicer.
50 (28) "Real estate brokerage activity" means any activity that involves offering or
51 providing real estate brokerage services to the public, including:

- 1 a. Acting as a real estate agent or real estate broker for a buyer, seller,
2 lessor, or lessee of real property;
3 b. Bringing together parties interested in the sale, purchase, lease,
4 rental, or exchange of real property;
5 c. Negotiating, on behalf of any party, any portion of a contract relating
6 to the sale, purchase, lease, rental, or exchange of real property, other
7 than in connection with providing financing with respect to any such
8 transaction;
9 d. Engaging in any activity for which a person engaged in the activity is
10 required to be registered or licensed as a real estate agent or real
11 estate broker under Chapter 93A of the General Statutes; and
12 e. Offering to engage in any activity, or act in any capacity, described
13 in sub-subdivision a., b., c., or d. of this subdivision.
14 (29) "Registered mortgage loan originator" means any individual who meets the
15 definition of mortgage loan originator, is registered with, and maintains a
16 unique identifier through the Nationwide Mortgage Licensing System and
17 Registry and is an employee of:
18 a. A depository institution;
19 b. A subsidiary that is owned and controlled by a depository institution
20 and regulated by a federal banking agency; or
21 c. An institution regulated by the Farm Credit Administration.
22 (30) "Residential mortgage loan or mortgage loan" means any loan made or
23 represented to be made to a natural person or persons primarily for personal,
24 family, or household use that is secured by a mortgage, deed of trust, or
25 other equivalent consensual security interest on a dwelling located within
26 this State or residential real estate upon which is constructed or intended to
27 be constructed a dwelling.
28 (31) "Residential real estate" means any real property located in this State upon
29 which is constructed or intended to be constructed a dwelling.
30 (32) "RESPA" means the Real Estate Settlement Procedures Act, 12 U.S.C. §
31 2601, et seq., as it may be hereafter amended.
32 (33) "Tablefunding" means a transaction in which a person closes a residential
33 mortgage loan in its own name but with funds provided by another and in
34 which the loan is assigned to the mortgage lender actually providing the
35 funds within one business day of the funding of the loan.
36 (34) "Unique identifier" means a number or other identifier assigned by protocols
37 established by the Nationwide Mortgage Licensing System and Registry.

38 **§ 53-244.040. License and registration requirements.**

39 (a) Except as provided in subsection (d) of this section, no person may engage in the
40 mortgage business or act as a mortgage loan originator with respect to any dwelling located in
41 this State without first obtaining and maintaining a license under this Article. It shall be
42 unlawful for any person, other than an exempt person, to act as a mortgage loan originator
43 without a mortgage loan originator license, which authorizes an individual who is employed by
44 a licensee holding a license as provided in subsection (b) of this section to conduct the business
45 of a mortgage loan originator.

46 (b) Four types of licenses are granted to entities under this Article, and it shall be
47 unlawful for any person, other than an exempt person, to engage in the mortgage business
48 without one of the following licenses:

- 49 (1) A mortgage broker license authorizes a person to act as a mortgage broker as
50 defined in G.S. 53-244.030(19)

1 (2) A mortgage lender license authorizes a person to act as a mortgage lender as
2 defined in G.S. 53-244.030(20), a mortgage broker as defined under
3 G.S. 53-244.030(19), and upon notice to the Commissioner, a mortgage
4 servicer as defined in G.S. 53-244.030(22).

5 (3) A mortgage servicer license authorizes a person to act only as a mortgage
6 servicer as defined in G.S. 53-244.030(22).

7 (4) An exclusive mortgage broker license authorizes a person to act as an
8 exclusive mortgage broker as defined in G.S. 53-244.030(11a).

9 (c) Each mortgage loan originator and person engaged in the mortgage business must
10 register with and maintain a valid unique identifier issued by the Nationwide Mortgage
11 Licensing System and Registry.

12 (d) The following are exempt from all provisions of this Article except the provisions of
13 G.S. 53-244.111:

14 (1) Registered mortgage loan originators as defined in G.S. 53-244.030(29);

15 (2) Any individual who offers or negotiates terms of a residential mortgage loan
16 with or on behalf of an immediate family member of the individual when
17 making the family member a residential mortgage loan;

18 (3) Any individual seller who offers or negotiates terms and makes a residential
19 mortgage loan secured by the dwelling that served as the selling individual's
20 residence;

21 (4) An attorney licensed pursuant to Chapter 84 of the General Statutes who
22 negotiates the terms of a residential mortgage loan on behalf of a client in
23 the course of and incident to the attorney's representation of the client, so
24 long as the attorney does not hold himself out as engaged in the mortgage
25 business and is not compensated by a mortgage lender, a mortgage broker, or
26 other mortgage loan originator when negotiating the terms of a residential
27 mortgage loan;

28 (5) Any entity described in G.S. 53-244.030(29)a., b., or c., upon acceptance of
29 the notice of exemption filed with the Commissioner as specified in
30 G.S. 53-244.050(g);

31 (6) Any officer or employee of an entity described in subdivision (5) of this
32 subsection when acting within the scope of his or her employment; or

33 (7) A State or federally chartered credit union, upon filing of a notice of
34 exemption with the Administrator of the Credit Union Division of the
35 Department of Commerce as specified in G.S. 53-244.050(g).

36 (e) Each mortgage broker, mortgage lender, or mortgage servicer licensed under this
37 Article shall have a qualifying individual who operates the business under that person's full
38 charge, control, and supervision. Each mortgage broker, mortgage lender, or mortgage servicer
39 licensed under this Article shall file through the Nationwide Mortgage Licensing System and
40 Registry a form acceptable to the Commissioner indicating the licensee's designation of
41 qualifying individual and each qualifying individual's acceptance of the responsibility. Each
42 mortgage broker, mortgage lender, or mortgage servicer licensed under this Article shall notify
43 the Commissioner within 15 days of any change in its designated qualifying individual. Any
44 individual licensee who operates as a sole proprietorship shall qualify as and be considered the
45 qualifying individual for the purposes of this subsection.

46 (f) Mortgage lenders and mortgage brokers may not operate branch offices, except as
47 permitted by this Article. Each principal office and each branch office of a mortgage broker or
48 mortgage lender licensed under this Article shall have a branch manager who meets the
49 experience requirements under G.S. 53-244.050(b). The qualifying individual for a licensee's
50 business also may serve as the branch manager of one of the licensee's branch offices. Each
51 mortgage broker or mortgage lender licensed under this Article shall file through the

1 Nationwide Mortgage Licensing System and Registry a form acceptable to the Commissioner
2 indicating the licensee's designation of branch manager for each branch. Each mortgage broker
3 or mortgage lender licensed under this Article shall notify the Commissioner within 15 days of
4 the change of any branch manager.

5 **"§ 53-244.050. License and registration application; claim of exemption.**

6 (a) Applicants for a license shall apply through the Nationwide Mortgage Licensing
7 System and Registry on a form acceptable to the Commissioner, including the following
8 information:

- 9 (1) The applicant's name and address, including street address, mailing address,
10 e-mail, telephone contact information, and social security number or
11 taxpayer identification number.
- 12 (2) The applicant's form and place of organization, if applicable.
- 13 (3) The applicant's proposed method of and locations for doing business, if
14 applicable.
- 15 (4) The qualifications and business history of the applicant and, if applicable,
16 the business history of any partner, officer, or director, any person occupying
17 a similar status or performing similar functions, or any person directly or
18 indirectly controlling the applicant, including:
 - 19 a. A description of any injunction or administrative order by any state
20 or federal authority to which the person is or has been subject;
 - 21 b. Any conviction, within the past 10 years, of a misdemeanor
22 involving moral turpitude or any fraud, false statement or omission,
23 any theft or wrongful taking of property, bribery, perjury, forgery,
24 counterfeiting, extortion, or conspiracy to commit any of these
25 offenses, or involving any financial service or financial service-
26 related business; and
 - 27 c. Any felony convictions.
- 28 (5) With respect to an application for licensing as a mortgage lender, mortgage
29 broker, or mortgage servicer, the applicant's financial condition, credit
30 history, and business history, and, with respect to an application for licensing
31 as a mortgage loan originator, the applicant's credit history and business
32 history.
- 33 (6) The applicant's consent to a federal and State criminal history record check
34 and a set of the applicant's fingerprints in a form acceptable to the
35 Commissioner. In the case of an applicant that is a person other than a
36 natural person, each individual who has control of the applicant or who is the
37 qualifying individual or a branch manager shall consent to a federal and
38 State criminal history record check and submit a set of that individual's
39 fingerprints pursuant to this subdivision.

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

- 42 (1) Each individual applicant for licensure as a mortgage loan originator or
43 qualifying individual shall:
 - 44 a. Be at least 18 years of age;
 - 45 b. Have satisfactorily completed, within the three years immediately
46 preceding the date of application, the mortgage lending prelicensing
47 education as required under G.S. 53-244.070; and
 - 48 c. Have passed, within the three years immediately preceding the date
49 of application, the test required under G.S. 53-244.080.

- 1 (2) Each applicant for licensure as a mortgage broker or mortgage lender or
2 mortgage servicer at the time of application shall comply with the following
3 requirements:
- 4 a. If the applicant is a sole proprietor, the applicant shall have at least
5 three years of experience in residential mortgage lending or other
6 experience or meet competency requirements as the Commissioner
7 may impose.
- 8 b. If the applicant is a corporation, limited liability company, general or
9 limited partnership, association, or other group engaged in a joint
10 enterprise, however organized, at least one of its principal officers,
11 managers, or general partners shall have three years of experience in
12 residential mortgage lending or other experience or meet competency
13 requirements as the Commissioner may impose.
- 14 c. If the applicant will be a qualifying individual or branch manager, the
15 applicant shall have at least three years of experience in residential
16 mortgage lending or other experience or meet competency
17 requirements as the Commissioner may impose.
- 18 (3) If an individual applicant to be licensed as a mortgage broker is a licensed
19 mortgage loan originator and meets the requirements for licensure as a
20 mortgage broker, but is not an employee as defined in G.S. 53-244.030(11)
21 and does not meet the experience requirements of G.S. 53-244.050(b)(2)a.,
22 the individual may be licensed as an exclusive mortgage broker upon
23 compliance with all of the following:
- 24 a. Successfully completes a 16-hour residential mortgage lending
25 course approved by the Commissioner supplementing the
26 prelicensing education required under G.S. 53-244.070.
- 27 b. Acts exclusively as a mortgage broker and shall be an agent for a
28 single mortgage lender or mortgage broker licensee or a single
29 exempt mortgage lender, who:
- 30 1. Shall be responsible for supervising the broker as required by
31 this Article and in accordance with a plan of supervision
32 approved by the Commissioner in the Commissioner's
33 discretion;
- 34 2. Shall sign the license application of the applicant; and
- 35 3. Shall be jointly and severally liable with the broker for any
36 claims arising from the broker's mortgage brokering
37 activities.
- 38 c. Shall be compensated on a basis that is not dependent upon the
39 interest rate, fees, or other terms of the loan brokered, provided that
40 this sub-subdivision shall not prohibit compensation based on the
41 principal balance of the loan.
- 42 d. Shall offer only fixed-term, fixed-rate, fully amortizing mortgage
43 loans originated by a single mortgage lender with substantially equal
44 monthly mortgage payments, unless the Commissioner shall approve,
45 in the Commissioner's discretion, the sale of other mortgage loan
46 products by that lender.
- 47 e. Shall not handle borrower or other third-party funds in connection
48 with the brokering or closing of mortgage loans.
- 49 f. Shall meet the surety bond requirement of a mortgage broker or
50 otherwise be covered by a surety bond provided by the mortgage
51 lender or broker licensee or exempt mortgage lender of the lesser of

1 five million dollars (\$5,000,000) or an amount equal to or greater
2 than the sum of the surety bond requirements for each exclusive
3 mortgage broker supervised by the broker or lender.

4 (c) In connection with an application for licensing as a mortgage loan originator,
5 mortgage lender, mortgage broker, or mortgage servicer, the applicant and its owners,
6 qualifying individual, and controlling persons shall furnish to the Nationwide Mortgage
7 Licensing System and Registry information concerning the applicant's identity, including:

8 (1) Fingerprints for submission to the Federal Bureau of Investigation and any
9 governmental agency or entity authorized to receive such information for a
10 state, national, and international criminal history background check.

11 (2) Personal history and experience in a form prescribed by the Nationwide
12 Mortgage Licensing System and Registry and the Commissioner to obtain:

13 a. Independent credit reports obtained from a consumer reporting
14 agency described in section 603(p) of the Fair Credit Reporting Act;
15 and

16 b. Information related to any administrative, civil, or criminal findings
17 by any governmental jurisdiction.

18 (3) The personal history may be obtained by the Commissioner at any time and
19 the fingerprint information shall be furnished upon the Commissioner's
20 request.

21 (4) An authorization for the Commissioner to obtain personal history or
22 fingerprint information at any time.

23 (d) For the purposes of this section and in order to reduce the points of contact that the
24 Federal Bureau of Investigation may have to maintain for purposes of the criminal information
25 required by this section, the Commissioner may use the Nationwide Mortgage Licensing
26 System and Registry as a channeling agent for requesting information from and distributing
27 information to the Department of Justice or any governmental agency.

28 (e) For the purposes of this section and in order to reduce the points of contact that the
29 Commissioner may have to maintain for purposes of the noncriminal information required by
30 this section, the Commissioner may use the Nationwide Mortgage Licensing System and
31 Registry as a channeling agent for requesting and distributing information to and from any
32 source so directed by the Commissioner.

33 (f) For purposes of this section, the Commissioner may request and the North Carolina
34 Department of Justice may provide a criminal record check to the Commissioner for any person
35 who has applied for or holds a mortgage lender, mortgage broker, mortgage servicer, or
36 mortgage loan originator license as provided by this section. The Commissioner shall provide
37 the Department of Justice, along with the request, the fingerprints of the person, any additional
38 information required by the Department of Justice, and a form signed by the person consenting
39 to the check of the criminal record and to the use of the fingerprints and other identifying
40 information required by the State or national repositories. The person's fingerprints shall be
41 forwarded to the State Bureau of Investigation for a search of the State's criminal history record
42 file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal
43 Bureau of Investigation for a national criminal history check. The Department of Justice may
44 charge a fee for each person for conducting the checks of criminal history records authorized
45 by this section.

46 (g) Except as provided by subsection (h) of this section, persons engaged in the
47 mortgage business and exempt from licensure pursuant to G.S. 53-244.040(d)(5) shall notify
48 the Commissioner in order to claim and confirm the exemption and to facilitate the referral of
49 consumers that contact the Commissioner. The Commissioner shall prescribe a form for such a
50 claim of exemption that shall contain:

51 (1) The name of the exempt person;

- 1 (2) The basis of the exempt status of the exempt person;
2 (3) The principal business address and contact information for the exempt
3 person; and
4 (4) The State or federal regulatory authority responsible for the exempt person's
5 supervision, examination, or regulation.

6 (h) A State or federally chartered credit union may claim and confirm an exemption
7 from this Article by notifying the Administrator of the Credit Union Division of the
8 Department of Commerce and providing substantially the same information required by
9 subsection (g) of this section.

10 (i) The Commissioner shall keep all information pursuant to this section privileged, in
11 accordance with applicable State law and federal guidelines, and the information shall be
12 confidential and shall not be a public record under Chapter 132 of the General Statutes.

13 **§ 53-244.060. Issuance of license.**

14 If an applicant satisfies the requirements of G.S. 53-244.050, the Commissioner shall issue
15 a mortgage lender, mortgage broker, mortgage servicer, or mortgage loan originator license
16 unless the Commissioner finds any of the following:

17 (1) The applicant has had a mortgage loan originator or mortgage lender,
18 mortgage broker, or mortgage servicer license revoked in any governmental
19 jurisdiction, except that a subsequent formal vacation of the revocation shall
20 not be deemed a revocation.

21 (2) The applicant or its controlling persons have been convicted of or plead
22 guilty or nolo contendere to a felony in a domestic, foreign, or military
23 court:

24 a. During the seven-year period preceding the date of the application
25 for licensing and registration; or

26 b. At any time preceding the date of application, if the felony involved
27 an act of fraud, dishonesty, a breach of trust, or money laundering.

28 A pardon of a conviction shall not be a conviction for purposes of this
29 subdivision.

30 (3) The applicant or any of its controlling persons have been convicted of or
31 plead guilty or nolo contendere to any charge in a domestic, foreign, or
32 military court, within the past five years, of a misdemeanor involving moral
33 turpitude or any fraud, false statement or omission, any theft or wrongful
34 taking of property, bribery, perjury, forgery, counterfeiting, extortion, or
35 conspiracy to commit any of these offenses, or involving any financial
36 service or financial service-related business.

37 (4) The applicant has demonstrated a lack of financial responsibility, character,
38 or general fitness such as to fail to command the confidence of the
39 community and to warrant a determination that the mortgage loan originator
40 or other licensee will operate honestly, fairly, and efficiently within the
41 purposes of this Article. For purposes of this subdivision, a person shows a
42 lack of financial responsibility when the person has shown a disregard in the
43 management of the person's own financial affairs. Evidence that a person has
44 not shown financial responsibility may include:

45 a. Current outstanding judgments, except judgments resulting solely
46 from medical expenses;

47 b. Current outstanding tax liens or other government liens and filings;

48 c. Foreclosures within the past three years; or

49 d. A pattern of serious delinquent accounts within the past three years.

50 (5) The mortgage loan originator applicant has failed to complete the
51 prelicensing education requirement described in G.S. 53-244.070.

- 1 (6) The mortgage loan originator applicant has failed to pass a written test that
2 meets the requirements described in G.S. 53-244.080.
- 3 (7) The mortgage lender, mortgage broker, or mortgage servicer applicant has
4 failed to meet the surety bond requirement described in G.S. 53-244.103.
- 5 (8) The mortgage lender, mortgage broker, or mortgage servicer applicant fails
6 to meet the minimum net worth requirement as described in
7 G.S. 53-244.104.
- 8 (9) The applicant's participation in the mortgage business will not be in the
9 public interest.

10 **"§ 53-244.070. Educational requirements for mortgage loan originators.**

11 (a) In order to be eligible to apply for a mortgage loan originator license, an individual
12 must complete at least 24 hours of prelicensing education approved in accordance with
13 subsection (b) of this section, which shall include:

- 14 (1) Three hours of federal law and regulations;
15 (2) Three hours of ethics, including instruction on fraud, consumer protection,
16 and fair lending issues;
17 (3) Two hours of training related to lending standards for nontraditional
18 mortgage products; and
19 (4) Four hours of North Carolina laws and regulations.

20 (b) Prelicensing education courses and the course providers shall be reviewed and
21 approved by the Nationwide Mortgage Licensing System and Registry using reasonable
22 standards consistently applied, subject to the Commissioner's approval of any course of study
23 required by subdivision (a)(4) of this section. Review and approval of a prelicensing education
24 course shall include review and approval of the course provider.

25 (c) Nothing in this section shall preclude any prelicensing education course, approved
26 by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer
27 of the applicant or an entity that is affiliated with the applicant by an agency contract, or any
28 subsidiary or affiliate of the employer or entity.

29 (d) Except as provided in subsection (e) of this section, prelicensing education may be
30 offered only in a classroom or classroom equivalent setting, as approved by the Nationwide
31 Mortgage Licensing System and Registry.

32 (e) An individual having successfully completed the prelicensing educational
33 requirements in any other state, if the requirements have been approved by the Nationwide
34 Mortgage Licensing System and Registry, shall be given credit for those hours toward the
35 completion of the prelicensing requirements in this State, other than the hours required under
36 subdivision (a)(4) of this section.

37 (f) An individual previously licensed under this Article whose license expires and who
38 requests a late renewal of license pursuant to G.S. 53-244.101 must prove that the individual
39 has completed all of the continuing education requirements for the preceding year.

40 **"§ 53-244.080. Testing requirements for mortgage loan originators.**

41 (a) An individual must pass a qualified written test, as defined by subsection (b) of this
42 section, developed by the Nationwide Mortgage Licensing System and Registry and
43 administered by a test provider approved by the Nationwide Mortgage Licensing System and
44 Registry. In addition, prior to licensure in this State, an individual must take a qualified written
45 test that tests the individual's knowledge and comprehension of North Carolina law and
46 regulation.

47 (b) A written test shall not be treated as a qualified written test unless the test
48 adequately measures the applicant's knowledge and comprehension in the following subject
49 areas:

- 50 (1) Ethics;
51 (2) Federal law and regulation pertaining to mortgage origination;

- 1 (3) North Carolina law and regulation pertaining to mortgage origination; and
2 (4) Federal and North Carolina law and regulations relating to fraud, consumer
3 protection, nontraditional mortgage products, and fair lending issues.

4 (c) Nothing in this section shall prohibit a test provider approved by the Nationwide
5 Mortgage Licensing System and Registry from providing a test at the location of the employer
6 of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or
7 the location of any entity which is licensed by North Carolina to engage in the mortgage
8 lending business.

9 (d) An applicant shall be considered to have passed a qualified written test provided the
10 applicant achieves a test score of at least seventy-five percent (75%) correct answers to
11 questions. In addition, an applicant shall not be considered to have passed a qualified written
12 test if the individual did not achieve a test score of at least seventy-five percent (75%) correct
13 answers to questions related to North Carolina law and regulation.

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

19 **"§ 53-244.090. License application fees.**

20 (a) Every applicant for initial licensure shall pay a nonrefundable filing fee of one
21 thousand two hundred fifty dollars (\$1,250) for licensure as a mortgage broker, mortgage
22 lender, or mortgage servicer, three hundred dollars (\$300.00) for licensure as an exclusive
23 mortgage broker, or one hundred twenty-five dollars (\$125.00) for licensure as a mortgage loan
24 originator. In addition, an applicant must pay the actual cost of obtaining a credit report, State
25 and national criminal history record checks, and the processing fees required by the Nationwide
26 Mortgage Licensing System and Registry.

27 (b) Each principal and each branch office of a mortgage broker or mortgage lender
28 licensed under the provisions of this Article shall be issued a separate license for which the
29 Commissioner shall assess a nonrefundable filing fee of one hundred twenty-five dollars
30 (\$125.00) in addition to the Nationwide Mortgage Licensing System and Registry processing
31 fee. A licensed mortgage broker or mortgage lender shall file with the Commissioner a notice
32 on a form prescribed by the Commissioner that identifies the address of the principal office and
33 each branch office and its designated branch manager. Payment of the license fee under
34 subsection (a) of this section shall be deemed to cover the location license fee for the principal
35 office of each mortgage lender, mortgage broker, or mortgage servicer without payment of an
36 additional one hundred twenty-five dollars (\$125.00) under this subsection.

37 **"§ 53-244.100. Active license requirements and assignability.**

38 (a) It is unlawful for any person to engage in the mortgage business without first
39 obtaining a license as a mortgage loan originator, mortgage lender, mortgage broker, or
40 mortgage servicer issued by the Commissioner under this Article. It is unlawful for any person
41 to employ, to compensate, or to appoint as its agent a mortgage loan originator unless the
42 person is a licensed mortgage loan originator under this Article. Persons defined in
43 G.S. 53-244.030(8) or G.S. 53-244.030(29) are not subject to this subsection.

44 (b) The license of a mortgage loan originator is not effective during any period when
45 that person is not employed by a mortgage lender, mortgage broker, or mortgage servicer
46 licensed under this Article. When a mortgage loan originator ceases to be employed by a
47 mortgage lender, mortgage broker, or mortgage servicer licensed under this Article, the
48 mortgage loan originator, and the mortgage lender, mortgage broker, or mortgage servicer
49 licensed under this Article by whom that person is employed shall promptly notify the
50 Commissioner in writing. The mortgage lender, mortgage broker, or mortgage servicer shall
51 include a statement of the specific reason for the termination of the mortgage loan originator's

1 employment. A mortgage loan originator shall not be employed simultaneously by more than
2 one mortgage lender, mortgage broker, or mortgage servicer licensed under this Article.

3 (c) Each mortgage lender, mortgage broker, and mortgage servicer licensed under this
4 Article shall maintain on file with the Commissioner a list of all mortgage loan originators who
5 are employed with the mortgage lender, mortgage broker, or mortgage servicer.

6 (d) No person, other than an exempt person, shall hold himself or herself out as a
7 mortgage lender, a mortgage broker, a mortgage servicer, or a mortgage loan originator unless
8 the person is licensed in accordance with this Article.

9 (e) Licenses issued under this Article are not assignable. Control of a licensee shall not
10 be acquired through a stock purchase, merger, or other device without the prior written consent
11 of the Commissioner. The Commissioner shall not give written consent if the Commissioner
12 finds that any of the grounds for denial, revocation, or suspension of a license are applicable to
13 the acquiring person.

14 **"§ 53-244.101. License renewal.**

15 (a) All licenses issued by the Commissioner under the provisions of this Article shall
16 expire annually on the 31st day of December following issuance or on any other date that the
17 Commissioner may determine. The license is invalid after that date and shall remain invalid
18 unless renewed under subsection (b) of this section.

19 (b) A license may be renewed on or after November 1 of each year by complying with
20 the requirements of subsection (c) of this section and by paying to the Commissioner, in
21 addition to the actual cost of obtaining credit reports and State and national criminal history
22 record checks and of processing fees of the nationwide system as the Commissioner shall
23 require, nonrefundable renewal fees as follows:

24 (1) Licensed mortgage lenders, licensed mortgage brokers, and licensed
25 mortgage servicers shall pay an annual renewal fee of six hundred
26 twenty-five dollars (\$625.00), licensed exclusive mortgage brokers shall pay
27 an annual renewal fee of three hundred dollars (\$300.00), and licensed
28 mortgage lenders and mortgage brokers shall pay one hundred twenty-five
29 dollars (\$125.00) for each licensed branch office.

30 (2) Licensed mortgage loan originators shall pay an annual renewal fee of
31 sixty-seven dollars and fifty cents (\$67.50).

32 (c) Licensees may apply to renew a mortgage loan originator, mortgage lender,
33 mortgage broker, and mortgage servicer license. The application for renewal shall demonstrate
34 that:

35 (1) The licensee continues to meet the initial minimum standards for licensure
36 under G.S. 53-244.060;

37 (2) The mortgage loan originator has satisfied the annual continuing education
38 requirements described in G.S. 53-244.102; and

39 (3) The licensee has paid all required fees for renewal of the license.

40 (d) If a mortgage lender, mortgage broker, or mortgage servicer's license is not renewed
41 prior to the expiration date, then the licensee shall pay two hundred fifty dollars (\$250.00) as a
42 nonrefundable late fee in addition to the renewal fee set forth in subsection (b) of this section. If
43 a mortgage loan originator's license is not renewed prior to the expiration date, then the licensee
44 shall pay a nonrefundable late fee of one hundred dollars (\$100.00) in addition to the renewal
45 fee set forth in subsection (b) of this section. In the event a licensee fails to obtain a
46 reinstatement of the license prior to March 1, the Commissioner shall require the licensee to
47 comply with the requirements for the initial issuance of a license under the provisions of this
48 Article.

49 (e) When required by the Commissioner, each person shall furnish to the Commissioner
50 the person's consent to a criminal history record check and a set of the person's fingerprints in a
51 form acceptable to the Commissioner or to the Nationwide Mortgage Licensing System and

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

5 **"§ 53-244.102. Continuing education for mortgage loan originators.**

6 (a) A licensed mortgage loan originator shall annually complete at least eight hours of
7 continuing education approved in accordance with subsection (b) of this section, including:

8 (1) Three hours of federal law and regulations;

9 (2) Two hours of ethics, including instruction on fraud, consumer protection,
10 and fair lending issues;

11 (3) Two hours of training related to lending standards for nontraditional
12 mortgage products; and

13 (4) One hour of North Carolina law and regulations.

14 (b) Continuing education courses shall be reviewed and approved by the Nationwide
15 Mortgage Licensing System and Registry based upon reasonable standards. Approval of a
16 continuing education course shall include approval of the course provider.

17 (c) Nothing in this section shall preclude any continuing education course, approved by
18 the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of
19 the mortgage loan originator or an entity affiliated with the mortgage loan originator by an
20 agency contract, or any subsidiary or affiliate of such employer or entity. Continuing education
21 may be offered either in a classroom, online, or by any other means approved by the
22 Nationwide Mortgage Licensing System and Registry.

23 (d) A licensed mortgage loan originator:

24 (1) Except for G.S. 53-244.070(a) and subsection (e) of this section, may only
25 receive credit for a continuing education course in the year in which the
26 course is taken; and

27 (2) May not take the same approved course in the same or successive years to
28 meet the annual requirements for continuing education.

29 (e) A licensed mortgage loan originator who is an approved instructor of an approved
30 continuing education course may receive credit for the licensed mortgage loan originator's own
31 annual continuing education requirement at the rate of two hours credit for every one hour
32 taught.

33 (f) A licensee having successfully completed the education requirements approved by
34 the Nationwide Mortgage Licensing System and Registry in subdivisions (a)(1), (a)(2), and
35 (a)(3) of this section for any state shall be accepted as credit toward completion of continuing
36 education requirements in North Carolina.

37 **"§ 53-244.103. Surety bond requirements.**

38 (a) Each mortgage loan originator shall be covered by a surety bond through
39 employment with a licensee in accordance with this section. The surety bond shall provide
40 coverage for each mortgage loan originator employed by the licensee in an amount as
41 prescribed by subsection (b) of this section and shall be in a form prescribed by the
42 Commissioner. The Commissioner may adopt rules with respect to the requirements for the
43 surety bonds as needed to accomplish the purposes of the Article.

44 (b) Licensees shall be required to post a surety bond with the Commissioner at
45 application to be subsequently adjusted as follows:

46 (1) A mortgage broker shall post a minimum surety bond of seventy-five
47 thousand dollars (\$75,000). Provided, however, if a mortgage broker has
48 originated mortgage loans in North Carolina in a 12-month period ending
49 December 31 in excess of ten million dollars (\$10,000,000) but less than
50 fifty million dollars (\$50,000,000), then the mortgage broker's minimum
51 bond amount shall be one hundred twenty-five thousand dollars (\$125,000),

1 and if a mortgage broker has originated mortgage loans in North Carolina in
2 a 12-month period ending December 31 of fifty million dollars
3 (\$50,000,000) or more, the mortgage broker's minimum bond shall be two
4 hundred fifty thousand dollars (\$250,000).

5 (2) A mortgage lender or mortgage servicer shall post a minimum surety bond
6 of one hundred fifty thousand dollars (\$150,000). Provided, however, if a
7 mortgage lender has originated mortgage loans in North Carolina in a
8 12-month period ending December 31 in excess of ten million dollars
9 (\$10,000,000) but less than fifty million dollars (\$50,000,000), then the
10 mortgage lender's minimum bond amount shall be two hundred fifty
11 thousand dollars (\$250,000), and if a mortgage lender has originated
12 mortgage loans in North Carolina in a 12-month period ending December 31
13 of fifty million dollars (\$50,000,000) or more, then the mortgage lender's
14 minimum bond shall be five hundred thousand dollars (\$500,000).

15 (3) Any increased surety bond required under subdivision (1) or (2) of this
16 subsection shall be filed with the Commissioner on or before May 31
17 immediately following the end of the 12-month December 31 period.

18 (c) The surety bond shall be in a form satisfactory to the Commissioner and shall run to
19 the State for the benefit of any claimants against the licensee to secure the faithful performance
20 of the obligations of the licensee under this Article. The aggregate liability of the surety shall
21 not exceed the principal sum of the bond. A party having a claim against the licensee may bring
22 suit directly on the surety bond, or the Commissioner may bring suit on behalf of any
23 claimants, either in one action or in successive actions. Consumer claims shall be given priority
24 in recovering from the bond. When an action is commenced on a licensee's bond, the
25 Commissioner may require the filing of a new bond. In this case, the licensee shall file a
26 replacement bond in the required amount within 30 days. Immediately upon recovery upon any
27 action on the bond the licensee shall file a new bond.

28 (d) In the Commissioner's discretion and upon written request of the licensee, the
29 Commissioner may waive the requirement of the bond for any licensee, if:

30 (1) The licensee has been licensed by the Commissioner for at least three years;

31 (2) The licensee can demonstrate a net worth, according to the most recent
32 audited financial statement, at least four times the required bond amount,
33 and the licensee certifies that its net worth will be maintained at or above
34 this level at all times and agrees to notify the Commissioner and to secure an
35 appropriate bond in the event the net worth falls below this level;

36 (3) The Commissioner believes the licensee has a satisfactory history of
37 resolving complaints from consumers and responding to findings of
38 investigations or examinations by the Commissioner; and

39 (4) The Commissioner has no reason to believe the licensee will be unable to
40 resolve complaints, respond to examination or investigative findings, or
41 fulfill financial obligations under this Article.

42 (e) If the Commissioner has waived the bond requirement of a licensee based on
43 subsection (d) of this section, the Commissioner may summarily reinstate the bond requirement
44 on any licensee if the Commissioner has reason to believe the licensee no longer meets the
45 standards in subsection (d) of this section. In this event, the licensee shall submit a bond, as
46 required in subsection (b) of this section, within 30 days. Failure to submit a bond as directed
47 by the Commissioner shall be grounds for summary suspension.

48 **"§ 53-244.104. Minimum net worth requirements.**

49 (a) A minimum net worth shall be continuously maintained for licensees in accordance
50 with this section. In the event that the mortgage loan originator is an employee or exclusive
51 agent of a person subject to this Article, the net worth of the person subject to this Article can

1 be used in lieu of the mortgage loan originator's minimum net worth requirement. The
2 minimum net worth to be maintained for each license is as follows:

3 (1) If the licensee is a mortgage lender, it shall maintain a net worth of at least
4 one hundred thousand dollars (\$100,000), including evidence of liquidity of
5 one million dollars (\$1,000,000), which may include a warehouse line of
6 credit of one million dollars (\$1,000,000) or other evidence of funding
7 capacity to conduct mortgage originations as documented by an unqualified
8 audited statement of financial condition.

9 (2) If the licensee is a mortgage servicer, it shall maintain a net worth of at least
10 one hundred thousand dollars (\$100,000), not including monies in any
11 escrow accounts held for others.

12 (3) If the licensee is a mortgage broker, it shall maintain a net worth of at least
13 twenty-five thousand dollars (\$25,000), including evidence of liquidity of
14 ten thousand dollars (\$10,000), as certified by the licensee in a certified
15 statement of financial condition.

16 (b) The Commissioner may adopt rules to require additional minimum net worth or
17 otherwise amend net worth requirements as are necessary to ensure licensees maintain adequate
18 financial responsibility and accomplish the purposes of this Article.

19 **"§ 53-244.105. Records, addresses, escrow funds, or trust accounts.**

20 (a) Every licensee shall make and keep the accounts, correspondence, memoranda,
21 papers, books, and other records as prescribed in rules adopted by the Commissioner. All
22 records shall be preserved for three years unless the Commissioner, by rule, prescribes
23 otherwise for particular types of records.

24 (b) No person shall make any false statement or knowingly and willfully make any
25 omission of a material fact in connection with any information or reports filed with the
26 Commissioner, a governmental agency, or the Nationwide Mortgage Licensing System and
27 Registry or in connection with any oral or written communication with the Commissioner or
28 another governmental agency. If the information contained in any document filed with the
29 Commissioner or the Nationwide Mortgage Licensing System and Registry is or becomes
30 inaccurate or incomplete in any material respect, the licensee or exempt entity shall within 30
31 days file a correcting amendment to the information contained in the document.

32 (c) Each mortgage broker licensee shall maintain and transact business from a principal
33 place of business in this State. The Commissioner may, by rule, impose terms and conditions
34 under which the records and files of a mortgage lender or mortgage servicer may be maintained
35 outside of this State. A principal place of business shall not be located at an individual's home
36 or residence. A mortgage lender, mortgage broker, or mortgage servicer licensee shall maintain
37 a record of the principal place of business with the Commissioner and report any change of
38 address of the principal place of business or any branch office within 15 days after the change.

39 (d) A licensee shall maintain in a segregated escrow fund or trust account any funds
40 which come into the licensee's possession but which are not the licensee's property and which
41 the licensee is not entitled to retain under the circumstances. The escrow fund or trust account
42 shall be held on deposit in a federally insured financial institution. Individual loan applicants' or
43 borrowers' accounts may be aggregated into a common trust fund so long as (i) interests in the
44 common fund can be individually tracked and accounted for and (ii) the common fund is kept
45 separate from and is not commingled with the licensee's own funds.

46 **"§ 53-244.106. Display of license.**

47 Each mortgage broker or mortgage lender licensed under this Article shall display, in plain
48 public view, the certificate of licensure issued by the Commissioner in its principal office and
49 in each branch office. Each mortgage loan originator licensed under this Article shall display,
50 in plain public view, in each branch office in which the individual acts as a mortgage loan
51 originator the certificate of licensure issued by the Commissioner.

"§ 53-244.107. Unique identifier shown.

The unique identifier of any mortgage loan originator or other person engaged in the mortgage business as defined in G.S. 53-244.030(10) shall be clearly shown on all residential mortgage loan application forms, solicitations, advertisements, including business cards or Web sites, and any other documents as established by rule or order of the Commissioner.

"§ 53-244.108. Reports.

Each mortgage lender, mortgage broker, or mortgage servicer licensee shall submit to the Commissioner and to the Nationwide Mortgage Licensing System and Registry reports of condition and any other reports requested by the Commissioner pursuant to G.S. 53-244.115(d). The reports shall be in the form and shall contain any information that the Commissioner or Nationwide Mortgage Licensing System and Registry may require.

"§ 53-244.109. Mortgage broker duties.

Any mortgage broker engaged in the mortgage business as defined by G.S. 53-244.030(10)a., in addition to duties imposed by other statutes or at common law, shall do all of the following:

- (1) Safeguard and account for any money handled for the borrower.
- (2) Follow reasonable and lawful instructions from the borrower.
- (3) Act with reasonable skill, care, and diligence.
- (4) Make reasonable efforts to secure a loan that is reasonably advantageous to the borrower considering all the circumstances, including the rates, charges, and repayment terms of the loan.
- (5) Timely and clearly disclose to the borrower material information that may be expected to influence the borrower's decision and is reasonably accessible to the mortgage broker, including the total compensation the mortgage broker expects to receive from any and all sources in connection with each loan option presented to the borrower.
- (6) Notify before closing each lender of the particulars of each of the other lender's loans if the mortgage broker knows that more than one mortgage loan will be made by different lenders contemporaneously to a borrower.
- (7) Ensure that any services offered to any applicant shall be available and offered to all similarly situated applicants on an equal basis.
- (8) In transactions where the mortgage broker has the ability to make credit decisions, use reasonable means to provide the borrower with prompt credit decisions on its loan applications and, where the credit is denied, to comply fully with the notification requirements of applicable State and federal law.
- (9) Ensure that advertising materials are designed to make customers and potential customers aware that the mortgage broker does not discriminate on any prohibited basis.
- (10) Represent the borrower's best interest in the course of brokering a mortgage loan.
- (11) Have a duty of loyalty to the borrower, which shall include a duty not to compromise a borrower's right or interest in favor of another's right or interest, including a right or interest of the mortgage broker.

"§ 53-244.110. Mortgage servicer duties.

Any mortgage servicer engaged in the mortgage business as defined by G.S. 53-244.030(10)c., in addition to duties imposed by other statutes or at common law, shall do all of the following:

- (1) Safeguard and account for any money handled for the borrower.
- (2) Follow reasonable and lawful instructions from the borrower.
- (3) Act with reasonable skill, care, and diligence.

- 1 (4) File with the Commissioner a complete, current schedule of the ranges of
2 costs and fees it charges borrowers for its servicing-related activities with its
3 application and renewal and with its supplemental filings made from time to
4 time.
- 5 (5) File with the Commissioner upon request a report in a form and format
6 acceptable to the Commissioner detailing the servicer's activities in this
7 State, including:
- 8 a. The number of mortgage loans the servicer is servicing.
9 b. The type and characteristics of the loans in this State.
10 c. The number of serviced loans in default, along with a breakdown of
11 30-, 60-, and 90-day delinquencies.
12 d. Information on loss mitigation activities, including details on
13 workout arrangements undertaken.
14 e. Information on foreclosures commenced in this State.
- 15 (6) At the time a servicer accepts assignment of servicing rights for a mortgage
16 loan, the servicer shall disclose to the borrower all of the following:
- 17 a. Any notice required by RESPA or by regulations promulgated
18 thereunder.
19 b. A schedule of the ranges and categories of its costs and fees for its
20 servicing-related activities, which shall comply with North Carolina
21 law and which shall not exceed those reported to the Commissioner.
22 c. A notice in a form and content acceptable to the Commissioner that
23 the servicer is licensed by the Commissioner and that complaints
24 about the servicer may be submitted to the Commissioner.
25 d. Any notice required by Article 2A, 4, or 10 of Chapter 45 of the
26 General Statutes.
- 27 (7) In the event of a delinquency or other act of default on the part of the
28 borrower, the mortgage servicer shall act in good faith to inform the
29 borrower of the facts concerning the loan and the nature and extent of the
30 delinquency or default and, if the borrower replies, to negotiate with the
31 borrower, subject to the mortgage servicer's duties and obligations under the
32 mortgage servicing contract, if any, to attempt a resolution or workout to the
33 delinquency.

34 **§ 53-244.111. Prohibited acts.**

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

- 37 (1) To misrepresent or conceal the material facts or make false promises likely
38 to influence, persuade, or induce an applicant for a mortgage loan or a
39 mortgagor to take a mortgage loan, or to pursue a course of
40 misrepresentation through agents or otherwise.
- 41 (2) To improperly refuse to issue a satisfaction of a mortgage.
- 42 (3) To fail to account for or to deliver to any person any funds, documents, or
43 other thing of value obtained in connection with a mortgage loan, including
44 money provided by a borrower for a real estate appraisal or a credit report,
45 which the mortgage lender, mortgage broker, mortgage servicer, or mortgage
46 loan originator is not entitled to retain under the circumstances.
- 47 (4) To pay, receive, or collect in whole or in part any commission, fee, or other
48 compensation for brokering or servicing a mortgage loan in violation of this
49 Article, including a mortgage loan brokered or serviced by any unlicensed
50 person other than an exempt person.

- 1 (5) To charge or collect any fee or rate of interest or to make or broker or
2 service any mortgage loan with terms or conditions or in a manner contrary
3 to the provisions of Chapter 24, 45, or 54 of the General Statutes.
- 4 (6) To advertise mortgage loans, including rates, margins, discounts, points,
5 fees, commissions, or other material information, including material
6 limitations on the loans, unless the person is able to make the mortgage loans
7 available to a reasonable number of qualified applicants.
- 8 (7) To fail to disburse funds in accordance with a written commitment or
9 agreement to make a mortgage loan.
- 10 (8) To engage in any transaction, practice, or course of business that is not in
11 good faith or fair dealing or that constitutes a fraud upon any person in
12 connection with the brokering or making or servicing of, or purchase or sale
13 of, any mortgage loan.
- 14 (9) To fail to pay promptly when due reasonable fees to a licensed appraiser for
15 appraisal services that are:
- 16 a. Requested from the appraiser in writing by the mortgage broker or
17 mortgage lender or an employee of the mortgage broker or mortgage
18 lender; and
- 19 b. Performed by the appraiser in connection with the origination or
20 closing of a mortgage loan for a customer or the mortgage broker or
21 mortgage lender.
- 22 (10) To broker a mortgage loan that contains a prepayment penalty if the
23 principal amount of the loan is one hundred fifty thousand dollars
24 (\$150,000) or less or if the loan is a rate spread home loan as defined in
25 G.S. 24-1.1F.
- 26 (11) To improperly influence or attempt to improperly influence the
27 development, reporting, result, or review of a real estate appraisal sought in
28 connection with a mortgage loan. Nothing in this subdivision shall be
29 construed to prohibit a mortgage lender, mortgage broker, or mortgage
30 servicer from asking the appraiser to do one or more of the following:
- 31 a. Consider additional appropriate property information.
- 32 b. Provide further detail, substantiation, or explanation for the
33 appraiser's value conclusion.
- 34 c. Correct errors in the appraisal report.
- 35 (12) To fail to comply with the mortgage loan servicing transfer, escrow account
36 administration, or borrower inquiry response requirements imposed by
37 sections 6 and 10 of RESPA and regulations adopted thereunder.
- 38 (13) To broker a rate spread adjustable rate mortgage loan without disclosing to
39 the borrower the terms and costs associated with a fixed rate loan from the
40 same lender at the lowest annual percentage rate for which the borrower
41 qualifies.
- 42 (14) To fail to comply with applicable State and federal laws and regulations
43 related to mortgage lending or mortgage servicing.
- 44 (15) To engage in unfair, misleading, or deceptive advertising related to a
45 solicitation for a mortgage loan.
- 46 (16) In connection with the brokering or making of a rate spread home loan as
47 defined under G.S. 24-1.1F, no lender shall provide nor shall any broker
48 receive any compensation that changes based on the terms of the loan. This
49 subdivision shall not prohibit compensation based on the principal balance
50 of the loan.

- 1 (17) For a mortgage servicer to fail to comply with the mortgage servicer's
2 obligations under Article 10 of Chapter 45 of the General Statutes.
- 3 (18) For a mortgage servicer to fail to provide written notice to a borrower upon
4 taking action to place hazard, homeowner's, or flood insurance on the
5 mortgaged property or to place such insurance when the mortgage servicer
6 knows or has reason to know that the insurance is in effect.
- 7 (19) For a mortgage servicer to place hazard, homeowner's, or flood insurance on
8 a mortgaged property for an amount that exceeds either the value of the
9 insurable improvements or the last known coverage amount of insurance.
- 10 (20) For a mortgage servicer to fail to provide to the borrower a refund of
11 unearned premiums paid by a borrower or charged to the borrower for
12 hazard, homeowner's, or flood insurance placed by a mortgage lender or
13 mortgage servicer if the borrower provides reasonable proof that the
14 borrower has obtained coverage such that the forced placement is no longer
15 necessary and the property is insured. If the borrower provides reasonable
16 proof within 12 months of the placement that no lapse in coverage occurred
17 such that the forced placement was not necessary, the mortgage servicer
18 shall refund the entire premium.
- 19 (21) For a mortgage servicer to refuse to reinstate a delinquent loan upon a tender
20 of payment made timely under the contract which is sufficient in amount,
21 based upon the last written statement received by the borrower, to pay all
22 past due amounts, outstanding or overdue charges, and restore the loan to a
23 nondelinquent status, but this reinstatement shall be available to a borrower
24 no more than twice in any 24-month period.
- 25 (22) For a person acting as a mortgage servicer to fail to mail, at least 45 days
26 before foreclosure is initiated, a notice addressed to the borrower at the
27 borrower's last known address with the following information:
- 28 a. An itemization of all past due amounts causing the loan to be in
29 default.
- 30 b. An itemization of any other charges that must be paid in order to
31 bring the loan current.
- 32 c. A statement that the borrower may have options available other than
33 foreclosure and that the borrower may discuss the options with the
34 mortgage lender, the mortgage servicer, or a counselor approved by
35 the U.S. Department of Housing and Urban Development (HUD).
- 36 d. The address, telephone number, and other contact information for the
37 mortgage lender, the mortgage servicer, or the agent for either of
38 them who is authorized to attempt to work with the borrower to avoid
39 foreclosure.
- 40 e. The name, address, telephone number, and other contact information
41 for one or more HUD-approved counseling agencies operating to
42 assist borrowers in North Carolina to avoid foreclosure.
- 43 f. The address, telephone number, and other contact information for the
44 consumer complaint section of the Office of the Commissioner of
45 Banks.
- 46 (23) To fail to make all payments from any escrow account held for the borrower
47 for insurance, taxes, and other charges with respect to the property in a
48 timely manner so as to ensure that no late penalties are assessed or other
49 negative consequences result regardless of whether the loan is delinquent,
50 unless there are not sufficient funds in the account to cover the payments and

1 the mortgage servicer has a reasonable basis to believe that recovery of the
2 funds will not be possible.

3 **"§ 53-244.112. Criminal penalties for unlicensed activity.**

4 Engaging in the mortgage business as defined by G.S. 53-244.030(10) or acting as a
5 mortgage loan originator without a license as required by the provisions of G.S. 53-244.040 is a
6 Class 3 misdemeanor. Each transaction involving unlicensed activity is a separate offense.

7 **"§ 53-244.113. Regulatory authority.**

8 (a) Unless otherwise provided, all actions, hearings, and procedures under this Article
9 shall be governed by Article 3A of Chapter 150B of the General Statutes.

10 (b) For purposes of this Article, the Commissioner shall be deemed to have complied
11 with the requirements of law concerning service of process upon mailing by certified mail any
12 notice required or permitted to a licensee under this Article, postage prepaid and addressed to
13 the last known address of the licensee on file with the Commissioner pursuant to
14 G.S. 53-244.105(c).

15 (c) Upon the issuance of any summary order permitted under this Article, including
16 summary suspensions and cease and desist orders, the Commissioner shall promptly notify the
17 person subject to the order that the order has been entered and the reasons for the order. Within
18 20 days of receiving notice of the order, the person subject to the order may request in writing a
19 hearing before the Commissioner. Upon receipt of such a request, the Commissioner shall
20 calendar a hearing within 15 days. If a licensee does not request a hearing, the order will
21 remain in effect unless it is modified or vacated by the Commissioner.

22 **"§ 53-244.114. Licensure authority.**

23 (a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or
24 renew a license of a licensee or applicant under this Article, or may restrict or limit the manner
25 in which a licensee, applicant, or any person who owns an interest in or participates in the
26 business of a licensee engages in the mortgage business, if the Commissioner finds both of the
27 following:

- 28 (1) That the order is in the public interest; and
29 (2) That any of the following circumstances apply to the applicant, licensee, or
30 any partner, member, manager, officer, director, loan officer, limited loan
31 officer, qualifying individual, or any person occupying a similar status or
32 performing similar functions or any person directly or indirectly controlling
33 the applicant or licensee. The person:
34 a. Has filed an application for licensure, report, or other document to
35 the Commissioner that, as of its effective date or as of any date after
36 filing, contained any statement that, in light of the circumstances
37 under which it was made, is false or misleading with respect to any
38 material fact;
39 b. Has violated or failed to comply with any provision of this Article,
40 rule adopted by the Commissioner, or order of the Commissioner;
41 c. Is permanently or temporarily enjoined by any court of competent
42 jurisdiction from engaging in or continuing any conduct or practice
43 involving any aspect of the mortgage business;
44 d. Is the subject of an order of the Commissioner denying or suspending
45 that person's license as a mortgage loan originator, mortgage broker,
46 mortgage lender, or mortgage servicer;
47 e. Is the subject of an order entered within the past five years by the
48 authority of any state with jurisdiction over that state's mortgage
49 brokerage, mortgage lending, or mortgage servicing industry denying
50 that person's license as a mortgage loan originator, mortgage broker,
51 mortgage lender, or mortgage servicer;

- 1 f. Fails at any time to meet the requirements of G.S. 53-244.060,
2 53-244.070, 53-244.080, 53-244.090, 53-244.100, 53-244.103, or
3 53-244.104;
4 g. Controls or has controlled any mortgage broker, mortgage lender, or
5 mortgage servicer who has been subject to an order or injunction
6 described in sub-subdivision c., d., or e. of this subdivision;
7 h. Has been the qualifying individual, branch manager, or mortgage
8 loan originator of a licensee who had knowledge of or reasonably
9 should have had knowledge of, or participated in, any activity that
10 resulted in the entry of an order under this Article suspending or
11 withdrawing the license of a licensee;
12 i. Has failed to respond to inquiries from the Commissioner or the
13 Commissioner's designee regarding any complaints filed against the
14 licensee which allege or appear to involve violation of this Article or
15 any law or rule affecting the mortgage lending business; or
16 j. Has failed to respond to and cooperate fully with notices from the
17 Commissioner or the Commissioner's designee relating to the
18 scheduling and conducting of an examination or investigation under
19 this Article.

20 (b) In the event the Commissioner has reason to believe that a licensee, individual, or
21 person subject to this Article may have violated or failed to comply with any provision of this
22 Article, the Commissioner may:

- 23 (1) Summarily order the licensee, individual, or person to cease and desist from
24 any harmful activities or violations of this Article; or
25 (2) Summarily suspend the license of the licensee under this Article.

26 These summary powers are in addition to the summary suspension procedures authorized
27 by G.S. 150B-3(c).

28 **"§ 53-244.115. Investigation and examination authority.**

29 (a) For purposes of initial licensing, license renewal, suspension, conditioning,
30 revocation, or termination, or general or specific inquiry, investigation, or examination to
31 determine compliance with this Article, the Commissioner may, at the expense of the applicant
32 or licensee, access, receive, and use any books, accounts, records, files, documents,
33 information, or evidence, including:

- 34 (1) Criminal, civil, and administrative history information, including
35 nonconviction data;
36 (2) Personal history and experience information, including independent credit
37 reports obtained from a consumer reporting agency described in section
38 603(p) of the Fair Credit Reporting Act; and
39 (3) Any other documents, information, or evidence the Commissioner deems
40 relevant to the inquiry, investigation, or examination regardless of the
41 location, possession, control, or custody of the documents, information, or
42 evidence.

43 (b) For purposes of investigating violations or complaints arising under this Article, or
44 for the purposes of examination, the Commissioner may review, investigate, or examine any
45 licensee, individual, or person subject to this Article as often as necessary in order to carry out
46 the purposes of this Article. The Commissioner may interview the officer, principals, person
47 with control, qualified individual, mortgage loan originators, employees, independent
48 contractors, agents, and customers of the licensee, individual, or person concerning their
49 business. The Commissioner may direct, subpoena, or order the attendance of and examine
50 under oath all persons whose testimony may be required about the loans or the business or
51 subject matter of any examination or investigation and may direct, subpoena, or order the

1 person to produce books, accounts, records, files, and any other documents the Commissioner
2 deems relevant to the inquiry. The reasonable cost of the investigation or examination shall be
3 charged against the licensee, individual, or person subject to this Article.

4 (c) Each licensee, individual, or person subject to this Article shall make available to
5 the Commissioner upon request the books and records relating to the operations of the licensee,
6 individual, or person. No licensee, individual, or person subject to investigation or examination
7 under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any
8 books, records, computer records, or other information. Each licensee, individual, or person
9 subject to this Article shall also make available for interview by the Commissioner the officers,
10 principals, persons with control, qualified individuals, mortgage loan originators, employees,
11 independent contractors, agents, and customers of the licensee, individual, or person
12 concerning their business.

13 (d) Each licensee, individual, or person subject to this Article shall make or compile
14 such reports or prepare other information as may be directed or requested by the Commissioner
15 in order to carry out the purposes of this section, including:

16 (1) Accounting compilations;

17 (2) Information lists and data concerning loan transactions in a format
18 prescribed by the Commissioner;

19 (3) Periodic reports, including:

20 a. Annual Report Questionnaire,

21 b. Servicer Activity Report,

22 c. Servicer Schedule of the Ranges of Costs and Fees,

23 d. Lender/Servicer Audited Statements of Financial Condition,

24 e. Broker Certified Statements of Financial Condition, and

25 f. Quarterly Loan Origination Reports.

26 (4) Any other information deemed necessary to carry out the purposes of this
27 section.

28 (e) In making any examination or investigation authorized by this Article, the
29 Commissioner may control access to any documents and records of the licensee or person
30 under examination or investigation. The Commissioner may take possession of the documents
31 and records or place a person in exclusive charge of the documents and records in the place
32 where they are usually kept. During the period of control, no individual or person shall remove
33 or attempt to remove any of the documents and records except pursuant to a court order or with
34 the consent of the Commissioner. Unless the Commissioner has reasonable grounds to believe
35 the documents or records of the licensee have been or are at risk of being altered or destroyed
36 for purposes of concealing a violation of this Article, the licensee or owner of the documents
37 and records shall have access to the documents or records as necessary to conduct its ordinary
38 business.

39 (f) In order to carry out the purposes of this section, the Commissioner may:

40 (1) Retain attorneys, accountants, or other professionals and specialists as
41 examiners, auditors, or investigators to conduct or assist in the conduct of
42 examinations or investigations;

43 (2) Enter into agreements or relationships with other government officials or
44 regulatory associations in order to improve efficiencies and reduce
45 regulatory burden by sharing resources, standardized or uniform methods or
46 procedures, documents, records, information, or evidence obtained under
47 this section;

48 (3) Use, hire, contract, or employ public or privately available analytical
49 systems, methods, or software to examine or investigate the licensee,
50 individual, or person subject to this Article;

- 1 (4) Accept and rely on examination or investigation reports made by other
2 government officials, within or without this State; or
- 3 (5) Accept audit reports made by an independent certified public accountant for
4 the licensee, individual, or person in the course of that part of the
5 examination covering the same general subject matter as the audit and may
6 incorporate the audit report in the report of the examination, report of
7 investigation, or other writing of the Commissioner.
- 8 (g) In addition to the authority granted by G.S. 53-244.113 and G.S. 53-244.115, the
9 Commissioner is authorized to take action, including summary suspension of the license, if the
10 licensee fails, within 20 days or a lesser time if specifically requested for good cause, to:
- 11 (1) Respond to inquiries from the Commissioner or the Commissioner's
12 designee regarding any complaints filed against the licensee that allege or
13 appear to involve violation of this Article or any law or rule affecting the
14 mortgage lending business;
- 15 (2) Respond to and cooperate fully with notices from the Commissioner or the
16 Commissioner's designee relating to the scheduling and conducting of an
17 examination or investigation under this Article; or
- 18 (3) Consent to a criminal history record check. The refusal shall constitute
19 grounds for the Commissioner to deny licensure to the applicant as well as to
20 any entity:
- 21 a. By whom or by which the applicant is employed,
22 b. Over which the applicant has control, or
23 c. As to which the applicant is the current or proposed qualifying
24 individual or a current or proposed branch manager.
- 25 (h) The authority of this section shall remain in effect, whether a licensee, individual, or
26 person subject to this Article acts or claims to act under any licensing law of the State, or
27 claims to act without such authority.
- 28 **§ 53-244.116. Disciplinary authority.**
- 29 (a) The Commissioner may, by order:
- 30 (1) Take any action authorized under G.S. 53-244.113.
- 31 (2) Impose a civil penalty upon a licensee, individual, or person subject to this
32 Article, or upon any partner, officer, director, or other person occupying a
33 similar status or performing similar functions on behalf of a licensee or other
34 person subject to this Article for any violation of or failure to comply with
35 this Article. The civil penalty shall not exceed twenty-five thousand dollars
36 (\$25,000) for each violation of or failure to comply with this Article. Each
37 violation of or failure to comply with this Article shall be a separate and
38 distinct violation.
- 39 (3) Impose a civil penalty upon a licensee, individual, or person subject to this
40 Article, or upon any partner, officer, director, or other person occupying a
41 similar status or performing similar functions on behalf of a licensee or other
42 person subject to this Article for any violation of or failure to comply with
43 any directive or order of the Commissioner. The civil penalty shall not
44 exceed twenty-five thousand dollars (\$25,000) for each violation of or
45 failure to comply with any directive or order of the Commissioner. Each
46 violation of or failure to comply with any directive or order of the
47 Commissioner shall be a separate and distinct violation.
- 48 (4) Require a licensee, individual, or person subject to this Article to disgorge
49 and pay to a borrower or other individual any amounts received by the
50 licensee, individual, or person subject to the Article, including any employee

1 of the person, to the extent that the amounts were collected in violation of
2 Chapter 24 of the General Statutes or in excess of those allowed by law.

3 (5) Prohibit licensees under this Article from engaging in acts and practices in
4 connection with residential mortgage loans that the Commissioner finds to
5 be unfair, deceptive, designed to evade the laws of this State, or that are not
6 in the best interest of the borrowing public.

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

12 (c) The requirements of this Article apply to any person who seeks to avoid its
13 application by any device, subterfuge, or pretense whatsoever, including structuring a loan in a
14 manner to avoid classification of the loan as a residential mortgage loan.

15 **"§ 53-244.117. Foreclosure suspension.**

16 In the event the Commissioner shall have evidence that a material violation of law has
17 occurred in the origination or servicing of a loan then being foreclosed or then delinquent and
18 in threat of foreclosure, and that the putative violation would be sufficient in law or equity to
19 base a claim or affirmative defense that would affect the validity or enforceability of the
20 underlying contract or the right to foreclose, then the Commissioner may notify the clerk of
21 superior court, and the clerk shall suspend foreclosure proceedings on the mortgage for 60 days
22 from the date of the notice. In the event that the Commissioner notifies the clerk, the
23 Commissioner shall also notify the servicer, if known, and provide an opportunity to cure the
24 violation or provide information to the Commissioner to rebut the evidence of the suspected
25 violation. If the violation is cured or the information satisfies the Commissioner that no
26 material violation has occurred, the Commissioner shall notify the clerk so that the foreclosure
27 proceeding may be resumed. The authority granted to the Commissioner in this section is in
28 addition to any powers or authority granted to the Commissioner under Chapter 45 of the
29 General Statutes.

30 **"§ 53-244.118. Rule-making authority; records.**

31 (a) The Commissioner may adopt any rules that the Commissioner deems necessary to
32 carry out the provisions of this Article, to provide for the protection of the borrowing public, to
33 prohibit unfair or deceptive practices, to instruct mortgage lenders, mortgage brokers, mortgage
34 servicers, or mortgage loan originators in interpreting this Article, and to implement and
35 interpret the provisions of G.S. 24-1.1E, 24-1.1F, and 24-10.2 as they apply to licensees under
36 this Article.

37 (b) The Commissioner shall keep a list of all applicants for licensure under this Article
38 or claimants of exempt status under G.S. 53-244.050(g) that includes the date of application,
39 name, place of residence, and whether the license or claim of exempt status was granted or
40 denied.

41 (c) The Commissioner shall keep a current roster showing the names and places of
42 business of all licensees that shows their respective mortgage loan originators and a roster of
43 exempt persons required to file a notice under G.S. 53-244.050(g). The roster shall:

44 (1) Be kept on file in the office of the Commissioner;

45 (2) Contain information regarding all orders or other actions taken against the
46 licensees and other persons; and

47 (3) Be open to public inspection.

48 **"§ 53-244.119. Commissioner's participation in nationwide registry.**

49 (a) The Commissioner shall require mortgage loan originators to be licensed and
50 registered through the Nationwide Mortgage Licensing System and Registry. In order to carry
51 out this requirement, the Commissioner is authorized to participate in the Nationwide Mortgage

1 Licensing System and Registry. For this purpose, the Commissioner may establish by rule any
2 requirements as necessary, including:

3 (1) Background checks for:

4 a. Criminal history through fingerprint or other databases;

5 b. Civil or administrative records;

6 c. Credit history; or

7 d. Any other information as deemed necessary by the Nationwide
8 Mortgage Licensing System and Registry.

9 (2) The payment of fees to apply for, renew, or amend licenses through the
10 Nationwide Mortgage Licensing System and Registry;

11 (3) The setting or resetting as necessary of renewal or reporting dates; and

12 (4) Requirements for amending or surrendering a license or any other activities
13 as the Commissioner deems necessary for participation in the Nationwide
14 Mortgage Licensing System and Registry.

15 (b) The Commissioner is authorized to establish relationships or contracts with the
16 Nationwide Mortgage Licensing System and Registry or other entities designated by the
17 Nationwide Mortgage Licensing System and Registry to collect and maintain records and
18 process transaction fees or other fees related to licensees or other persons subject to this Article.

19 (c) For the purpose of participating in the Nationwide Mortgage Licensing System and
20 Registry, the Commissioner is authorized to waive or modify, in whole or in part, any or all of
21 the requirements of this Article and to establish new requirements as reasonably necessary to
22 participate in the Nationwide Mortgage Licensing System and Registry.

23 (d) The Commissioner is authorized to enter into agreements to license the use of the
24 proprietary software owned by the Office of the Commissioner of Banks to banking, mortgage,
25 or financial services supervisory agencies of other states.

26 **"§ 53-244.120. Confidentiality of information.**

27 (a) Notwithstanding any State law to the contrary, the Commissioner shall report
28 enforcement actions under this Article and may report other relevant information to the
29 Nationwide Mortgage Licensing System and Registry.

30 (b) The Commissioner is authorized to enter agreements or sharing arrangements with
31 other governmental agencies, the Conference of State Bank Supervisors, the American
32 Association of Residential Mortgage Regulators, or other associations representing
33 governmental agencies and may share otherwise confidential information pursuant to these
34 written agreements.

35 (c) The requirements of G.S. 53-99(b) regarding the privacy or confidentiality of any
36 information or material provided under subsections (a) and (b) of this section, and any privilege
37 arising under any other federal or State law with respect to such information or material, shall
38 continue to apply to the information or material after it has been disclosed to an entity
39 described in subsection (a) or (b) of this section. Information or material held by such an entity
40 shall not be subject to disclosure under any State law governing the disclosure to the public of
41 information held by an officer or agency of the State. The entities described in subsections (a)
42 and (b) of this section may share information and material with all State and federal regulatory
43 officials with mortgage industry oversight authority without the loss of privilege or the loss of
44 confidentiality protections provided by State or federal law.

45 (d) Any provision of Chapter 132 of the General Statutes relating to the disclosure of
46 confidential supervisory information or of any information or material described in subsection
47 (a) of this section that is inconsistent with this section shall be superseded by the requirements
48 of this section.

49 (e) The confidentiality provisions contained in subsection (c) of this section shall not
50 apply with respect to the information or material relating to the employment history of and
51 publicly adjudicated disciplinary and enforcement actions against mortgage lenders, mortgage

1 brokers, mortgage servicers, or mortgage loan originators that are included in the Nationwide
2 Mortgage Licensing System and Registry for access by the public.

3 **"§ 53-244.121. Review by Banking Commission.**

4 The Banking Commission may review any rule, regulation, order, or act of the
5 Commissioner made pursuant to or with respect to the provisions of this Article, and any
6 person aggrieved by any rule, regulation, order, or act may, pursuant to G.S. 53-92(d), appeal to
7 the Banking Commission for review upon giving 20 days' written notice after the rule,
8 regulation, order, or act is adopted or issued. The notice of appeal shall specifically state the
9 grounds for appeal and, in the case of an appeal from a contested case proceeding before the
10 Commissioner, shall set forth in numbered order the assignments of error for review by the
11 Banking Commission. Failure to specify the assignments of error shall constitute grounds to
12 dismiss the appeal. Failure to comply with the briefing schedule as provided by the Banking
13 Commission shall also constitute grounds to dismiss the appeal. Notwithstanding any other
14 provision of law, any party aggrieved by a decision of the Banking Commission shall be
15 entitled to an appeal pursuant to G.S. 53-92(d)."

16 **SECTION 3. Severability.** – If any provision of this act or its application to any
17 person or circumstance is held invalid, the remainder of the act or the application of the
18 provision to other persons or circumstances is not affected. Any provision of this act deemed by
19 HUD to conflict with its interpretation of the S.A.F.E. Act, Title V, shall be interpreted,
20 applied, or amended in such a way as to comply with the S.A.F.E. Act as interpreted by HUD.
21 The Commissioner shall adopt rules or take such other actions as necessary to ensure the
22 continued jurisdiction over and supervision of the mortgage business in this State to the fullest
23 extent possible.

24 **SECTION 4. Rules.** – Unless inconsistent with the provisions of Article 19B of
25 Chapter 53 of the General Statutes, as enacted by Section 2 of this act, the rules adopted
26 pursuant to former Article 19A of Chapter 53 of the General Statutes governing mortgage
27 bankers and brokers and loan officers shall remain in effect until superseded by rules adopted
28 under Article 19B of Chapter 53 of the General Statutes, as enacted by Section 2 of this act.

29 **SECTION 5. Transition.** – All persons licensed and in good standing pursuant to
30 Article 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this act, as of the
31 effective date of this act, shall maintain their status as licensees and shall be subject to the
32 provisions of Article 19B, as enacted by Section 2 of this act, in accordance with the following
33 transitional rules:

- 34 (1) All persons licensed and in good standing pursuant to Article 19A of
35 Chapter 53 of the General Statutes as of the effective date of this act shall
36 have the following licensed status:
- 37 a. Any person licensed as a loan officer pursuant to Article 19A of
38 Chapter 53 of the General Statutes shall be deemed to be licensed as
39 a mortgage loan originator as defined in G.S. 53-244.030(21), as
40 enacted by Section 2 of this act.
 - 41 b. Any person licensed as a mortgage banker pursuant to Article 19A of
42 Chapter 53 of the General Statutes shall be deemed to be licensed as
43 a mortgage lender as defined in G.S. 53-244.030(20), as enacted by
44 Section 2 of this act.
 - 45 c. Any person licensed as a mortgage broker pursuant to Article 19A of
46 Chapter 53 of the General Statutes shall be deemed to be licensed as
47 a mortgage broker as defined in G.S. 53-244.030(19).
 - 48 d. Any person licensed as a mortgage servicer pursuant to Article 19A
49 of Chapter 53 of the General Statutes shall be deemed to be licensed
50 as a mortgage servicer as defined in G.S. 53-244.030(22).

1 e. Any person licensed as an exclusive mortgage broker pursuant to
2 Article 19A of Chapter 53 of the General Statutes shall be deemed to
3 be licensed as an exclusive mortgage broker as defined in
4 G.S. 53-244.030(11a), as enacted by Section 2 of this act; provided
5 that the exclusive mortgage broker obtains a separate license as a
6 mortgage loan originator no later than July 31, 2010, and if such
7 license has not been obtained by that date, the license of the
8 exclusive mortgage broker shall be subject to summary suspension.

9 f. Any person licensed as a limited loan officer pursuant to Article 19A
10 of Chapter 53 of the General Statutes shall be permitted to act as a
11 licensed mortgage loan originator as defined in G.S. 53-244.030(21),
12 as enacted by Section 2 of this act; provided that the limited loan
13 officer obtains a mortgage loan originator license no later than
14 December 31, 2009, and if such license has not been obtained by that
15 date, the license of the limited loan officer will expire.

16 (2) For the renewal period ending December 31, 2009, any person deemed a
17 mortgage loan originator pursuant to sub-subdivision (1)a. of this section
18 must have met the requirements of this act for renewal, including the initial
19 license requirements of G.S. 53-244.060, except G.S. 53-244.060(5) and
20 G.S. 53-244.060(6), provided that the mortgage loan originator would have
21 met the requirements for continuing education under G.S. 53-243.07(b), as
22 repealed by Section 1 of this act. After December 31, 2009, applicants for
23 renewal must meet all requirements for renewal under G.S. 53-244.101.

24 (3) Persons who maintain a bond posted and accepted by the Commissioner as
25 satisfying G.S. 53-243.05(f), as repealed by Section 1 of this act, shall be
26 deemed to comply with the requirements of G.S. 53-244.103, as enacted by
27 Section 2 of this act, through December 31, 2009.

28 (4) To the extent that loss mitigation specialists are included in the definition of
29 a mortgage loan originator through an action by the U.S. Department of
30 Housing and Urban Development, the Commissioner shall take necessary
31 steps to license these individuals as mortgage loan originators in a timely
32 fashion in a manner that ensures this act fulfills the requirements of the
33 S.A.F.E. Act to maintain jurisdiction and supervision of the mortgage
34 business to the fullest extent possible.

35 (5) Any person who has been enjoined by the Commissioner of Banks or a court
36 of competent jurisdiction from serving in any capacity defined under Article
37 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this
38 act, shall not be allowed to apply for or act in any similar capacity as defined
39 by G.S. 53-244.030, as enacted by Section 2 of this act. Any person whose
40 license under Article 19A of Chapter 53 of the General Statutes, as repealed
41 by Section 1 of this act, was subject to any terms, conditions, or affirmative
42 duties imposed by the Commissioner of Banks or a court of competent
43 jurisdiction shall be subject to the same terms, conditions, or affirmative
44 duties for any similar license issued under G.S. 53-244.060 or renewed
45 under G.S. 53-244.101, as enacted by Section 2 of this act.

46 **SECTION 6.** Except as otherwise provided by Section 5 of this act, this act
47 becomes effective July 31, 2009, and applies to all applications for licensure as a mortgage loan
48 originator, mortgage lender, mortgage broker, or mortgage servicer filed on or after that date.