

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

4

HOUSE BILL 1523
Committee Substitute Favorable 4/30/09
Senate Commerce Committee Substitute Adopted 6/3/09
Fourth Edition Engrossed 6/10/09

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

(Public)

Sponsors:

Referred to:

April 20, 2009

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE NORTH CAROLINA MORTGAGE LENDING ACT IN
ORDER TO CONFORM TO THE REQUIREMENTS OF FEDERAL LAW.

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

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

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

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 Article 19A of Chapter 53 of the General Statutes is repealed.

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

"Article 19B.

"The Secure and Fair Enforcement Mortgage Licensing Act.

"§ 53-244.010. Title.

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

"§ 53-244.020. Purpose and construction.

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

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

"§ 53-244.030. Definitions.



* H 1 5 2 3 - V - 4 *

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

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

- 1 borrowers, solicit or offer to solicit a residential mortgage loan from
2 prospective borrowers, negotiate the terms or conditions of a
3 residential mortgage loan with prospective borrowers, issue
4 residential mortgage loan commitments or interest rate guarantee
5 agreements to prospective borrowers, or engage in tablefunding of
6 residential mortgage loans, whether any such acts are done through
7 contact by telephone, by electronic means, by mail, or in person with
8 the borrowers or prospective borrowers.
- 9 b. To make or fund, or offer to make or fund, or advance funds on
10 residential mortgage loans for compensation or gain, or in the
11 expectation of compensation or gain.
- 12 c. To engage, whether for compensation or gain from another or on
13 one's own behalf, in the business of receiving any scheduled periodic
14 payments from a borrower pursuant to the terms of any residential
15 mortgage loan, including amounts for escrow accounts, and making
16 the payments of principal and interest and such other payments with
17 respect to the amounts received from the borrower as may be
18 required pursuant to the terms of the residential mortgage loan, the
19 residential mortgage loan servicing documents, or servicing contract,
20 or otherwise to meet the definition of the term "servicer" in 12 U.S.C.
21 § 2605(i)(2) with respect to residential mortgage loans.
- 22 (11) "Employee" means an individual who has an employment relationship with a
23 mortgage broker, mortgage lender, or mortgage servicer and who is treated
24 as a common law employee for purposes of compliance with the federal
25 income tax laws and whose income is reported on IRS Form W-2.
- 26 (11a) "Exclusive mortgage broker" means an individual who acts as a mortgage
27 broker exclusively for a single mortgage lender or mortgage broker licensee
28 or a single exempt mortgage lender and who is licensed pursuant to
29 G.S. 53-244.050(b)(3). Unless otherwise indicated, an exclusive mortgage
30 broker shall be subject to the requirements of a mortgage broker under this
31 Article.
- 32 (12) "Federal banking agencies" means the Board of Governors of the Federal
33 Reserve System, the Office of the Comptroller of the Currency, the Office of
34 Thrift Supervision, the National Credit Union Administration, and the
35 Federal Deposit Insurance Corporation.
- 36 (13) "Immediate family member" means a spouse, child, sibling, parent,
37 grandparent, or grandchild, or the spouse of an immediate family member.
38 This term includes stepparents, stepchildren, stepsiblings, and adoptive
39 relationships.
- 40 (14) "Individual" means a natural person.
- 41 (15) "Licensee" means a mortgage loan originator, mortgage broker, mortgage
42 lender, or mortgage servicer or other person who is licensed pursuant to this
43 Article.
- 44 (16) "Loan processor or underwriter" means an individual who performs clerical
45 or support duties as an employee at the direction of and subject to the
46 supervision and instruction of a person licensed or exempt from licensing
47 under this Article. Clerical or support duties may include, subsequent to the
48 receipt of an application:
- 49 a. The receipt, collection, distribution, and analysis of information
50 common for the processing or underwriting of a residential mortgage
51 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 5. An individual who is a salesperson for a licensed
28 manufactured housing retailer that performs the purely
29 administrative and clerical tasks of physically handling or
30 transmitting to a licensed mortgage loan originator on behalf
31 of a prospective borrower an application and other forms
32 completed by the prospective borrower. Nothing in this
33 subpart prohibits a salesperson, upon the written request of a
34 mortgage loan originator and after a prospective borrower
35 completes an application, from pulling and transmitting a
36 credit report with the application.

37 (22) "Mortgage servicer" means a person engaged in the mortgage business who
38 directly or indirectly engages in the mortgage business as defined in
39 sub-subdivision c. of subdivision (10) of this section.

40 (23) "Nationwide Mortgage Licensing System and Registry" means the mortgage
41 licensing system developed and maintained by the Conference of State Bank
42 Supervisors and the American Association of Residential Mortgage
43 Regulators for the licensing and registration of licensed mortgage loan
44 originators.

45 (24) "Nontraditional mortgage product" means any residential mortgage loan
46 product other than a 30-year fixed rate mortgage.

47 (25) "Person" means an individual, partnership, limited liability company, limited
48 partnership, corporation, association, or other group engaged in joint
49 business activities however organized.

50 (26) "Principal office" means a principal place of business that shall consist of at
51 least one enclosed room or building of stationary construction in which

1 negotiations of mortgage loan transactions may be conducted and carried on
2 in privacy and in which all of the books, records, and files pertaining to
3 mortgage loan transactions relating to borrowers in this State are maintained.
4 A principal office shall not be located at an individual's home or residence.

5 (27) "Qualifying individual" means a person who meets the experience and other
6 requirements of G.S. 53-244.050(b) and who agrees to be primarily
7 responsible for the operations of a licensed mortgage broker or mortgage
8 lender or mortgage servicer.

9 (28) "Real estate brokerage activity" means any activity that involves offering or
10 providing real estate brokerage services to the public, including:

11 a. Acting as a real estate agent or real estate broker for a buyer, seller,
12 lessor, or lessee of real property;

13 b. Bringing together parties interested in the sale, purchase, lease,
14 rental, or exchange of real property;

15 c. Negotiating, on behalf of any party, any portion of a contract relating
16 to the sale, purchase, lease, rental, or exchange of real property, other
17 than in connection with providing financing with respect to any such
18 transaction;

19 d. Engaging in any activity for which a person engaged in the activity is
20 required to be registered or licensed as a real estate agent or real
21 estate broker under Chapter 93A of the General Statutes; and

22 e. Offering to engage in any activity, or act in any capacity, described
23 in sub-subdivision a., b., c., or d. of this subdivision.

24 (29) "Registered mortgage loan originator" means any individual who meets the
25 definition of mortgage loan originator, is registered with, and maintains a
26 unique identifier through the Nationwide Mortgage Licensing System and
27 Registry and is an employee of:

28 a. A depository institution;

29 b. A subsidiary that is owned and controlled by a depository institution
30 and regulated by a federal banking agency; or

31 c. An institution regulated by the Farm Credit Administration.

32 (30) "Residential mortgage loan or mortgage loan" means any loan made or
33 represented to be made to a natural person or persons primarily for personal,
34 family, or household use that is secured by a mortgage, deed of trust, or
35 other equivalent consensual security interest on a dwelling located within
36 this State or residential real estate upon which is constructed or intended to
37 be constructed a dwelling.

38 (31) "Residential real estate" means any real property located in this State upon
39 which is constructed or intended to be constructed a dwelling.

40 (32) "RESPA" means the Real Estate Settlement Procedures Act, 12 U.S.C. §
41 2601, et seq., as it may be hereafter amended.

42 (33) "Tablefunding" means a transaction in which a person closes a residential
43 mortgage loan in its own name but with funds provided by another and in
44 which the loan is assigned to the mortgage lender actually providing the
45 funds within one business day of the funding of the loan.

46 (34) "Unique identifier" means a number or other identifier assigned by protocols
47 established by the Nationwide Mortgage Licensing System and Registry.

48 **"§ 53-244.040. License and registration requirements.**

49 (a) Except as provided in subsection (d) of this section, no person may engage in the
50 mortgage business or act as a mortgage loan originator with respect to any dwelling located in
51 this State without first obtaining and maintaining a license under this Article. It shall be

1 unlawful for any person, other than an exempt person, to act as a mortgage loan originator
2 without a mortgage loan originator license, which authorizes an individual who is employed by
3 a licensee holding a license as provided in subsection (b) of this section to conduct the business
4 of a mortgage loan originator.

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

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

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

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

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

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

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

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

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

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

30 (4) An attorney licensed pursuant to Chapter 84 of the General Statutes who
31 negotiates the terms of a residential mortgage loan on behalf of a client in
32 the course of and incident to the attorney's representation of the client, so
33 long as the attorney does not hold himself out as engaged in the mortgage
34 business and is not compensated by a mortgage lender, a mortgage broker, or
35 other mortgage loan originator when negotiating the terms of a residential
36 mortgage loan;

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

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

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

45 (e) Each mortgage broker, mortgage lender, or mortgage servicer licensed under this
46 Article shall have a qualifying individual who operates the business under that person's full
47 charge, control, and supervision. Each mortgage broker, mortgage lender, or mortgage servicer
48 licensed under this Article shall file through the Nationwide Mortgage Licensing System and
49 Registry a form acceptable to the Commissioner indicating the licensee's designation of
50 qualifying individual and each qualifying individual's acceptance of the responsibility. Each
51 mortgage broker, mortgage lender, or mortgage servicer licensed under this Article shall notify

1 the Commissioner within 15 days of any change in its designated qualifying individual. Any
2 individual licensee who operates as a sole proprietorship shall qualify as and be considered the
3 qualifying individual for the purposes of this subsection.

4 (f) Mortgage lenders and mortgage brokers may not operate branch offices, except as
5 permitted by this Article. Each principal office and each branch office of a mortgage broker or
6 mortgage lender licensed under this Article shall have a branch manager who meets the
7 experience requirements under G.S. 53-244.050(b). The qualifying individual for a licensee's
8 business also may serve as the branch manager of one of the licensee's branch offices. Each
9 mortgage broker or mortgage lender licensed under this Article shall file through the
10 Nationwide Mortgage Licensing System and Registry a form acceptable to the Commissioner
11 indicating the licensee's designation of branch manager for each branch. Each mortgage broker
12 or mortgage lender licensed under this Article shall notify the Commissioner within 15 days of
13 the change of any branch manager.

14 **"§ 53-244.050. License and registration application; claim of exemption.**

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

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

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

- 1 (1) Each individual applicant for licensure as a mortgage loan originator or
2 qualifying individual shall:
3 a. Be at least 18 years of age;
4 b. Have satisfactorily completed, within the three years immediately
5 preceding the date of application, the mortgage lending prelicensing
6 education as required under G.S. 53-244.070; and
7 c. Have passed, within the three years immediately preceding the date
8 of application, the test required under G.S. 53-244.080.
- 9 (2) Each applicant for licensure as a mortgage broker or mortgage lender or
10 mortgage servicer at the time of application shall comply with the following
11 requirements:
12 a. If the applicant is a sole proprietor, the applicant shall have at least
13 three years of experience in residential mortgage lending or other
14 experience or meet competency requirements as the Commissioner
15 may impose.
16 b. If the applicant is a corporation, limited liability company, general or
17 limited partnership, association, or other group engaged in a joint
18 enterprise, however organized, at least one of its principal officers,
19 managers, or general partners shall have three years of experience in
20 residential mortgage lending or other experience or meet competency
21 requirements as the Commissioner may impose.
22 c. If the applicant will be a qualifying individual or branch manager, the
23 applicant shall have at least three years of experience in residential
24 mortgage lending or other experience or meet competency
25 requirements as the Commissioner may impose.
- 26 (3) If an individual applicant to be licensed as a mortgage broker is a licensed
27 mortgage loan originator and meets the requirements for licensure as a
28 mortgage broker, but is not an employee as defined in G.S. 53-244.030(11)
29 and does not meet the experience requirements of G.S. 53-244.050(b)(2)a.,
30 the individual may be licensed as an exclusive mortgage broker upon
31 compliance with all of the following:
32 a. Successfully completes a 16-hour residential mortgage lending
33 course approved by the Commissioner supplementing the
34 prelicensing education required under G.S. 53-244.070.
35 b. Acts exclusively as a mortgage broker and shall be an agent for a
36 single mortgage lender or mortgage broker licensee or a single
37 exempt mortgage lender, who:
38 1. Shall be responsible for supervising the broker as required by
39 this Article and in accordance with a plan of supervision
40 approved by the Commissioner in the Commissioner's
41 discretion;
42 2. Shall sign the license application of the applicant; and
43 3. Shall be jointly and severally liable with the broker for any
44 claims arising from the broker's mortgage brokering
45 activities.
46 c. Shall be compensated on a basis that is not dependent upon the
47 interest rate, fees, or other terms of the loan brokered, provided that
48 this sub-subdivision shall not prohibit compensation based on the
49 principal balance of the loan.
50 d. Shall offer only fixed-term, fixed-rate, fully amortizing mortgage
51 loans originated by a single mortgage lender with substantially equal

1 monthly mortgage payments and without a prepayment penalty,
2 unless the Commissioner shall approve, in the Commissioner's
3 discretion, the sale of other mortgage loan products for that lender.

4 e. Shall not handle borrower or other third-party funds in connection
5 with the brokering or closing of mortgage loans.

6 f. Shall meet the surety bond requirement of a mortgage broker or
7 otherwise be covered by a surety bond provided by the mortgage
8 lender or broker licensee or exempt mortgage lender of the lesser of
9 five million dollars (\$5,000,000) or an amount equal to or greater
10 than the sum of the surety bond requirements for each exclusive
11 mortgage broker supervised by the broker or lender.

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

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

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

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

24 b. Information related to any administrative, civil, or criminal findings
25 by any governmental jurisdiction.

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

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

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

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

41 (f) For purposes of this section, the Commissioner may request and the North Carolina
42 Department of Justice may provide a criminal record check to the Commissioner for any person
43 who has applied for or holds a mortgage lender, mortgage broker, mortgage servicer, or
44 mortgage loan originator license as provided by this section. The Commissioner shall provide
45 the Department of Justice, along with the request, the fingerprints of the person, any additional
46 information required by the Department of Justice, and a form signed by the person consenting
47 to the check of the criminal record and to the use of the fingerprints and other identifying
48 information required by the State or national repositories. The person's fingerprints shall be
49 forwarded to the State Bureau of Investigation for a search of the State's criminal history record
50 file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal
51 Bureau of Investigation for a national criminal history check. The Department of Justice may

1 charge a fee for each person for conducting the checks of criminal history records authorized
2 by this section.

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

8 (1) The name of the exempt person;

9 (2) The basis of the exempt status of the exempt person;

10 (3) The principal business address and contact information for the exempt
11 person; and

12 (4) The State or federal regulatory authority responsible for the exempt person's
13 supervision, examination, or regulation.

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

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

21 **"§ 53-244.060. Issuance of license.**

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

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

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

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

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

36 A pardon of a conviction shall not be a conviction for purposes of this
37 subdivision.

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

45 (4) The applicant has demonstrated a lack of financial responsibility, character,
46 or general fitness such as to fail to command the confidence of the
47 community and to warrant a determination that the mortgage loan originator
48 or other licensee will operate honestly, fairly, and efficiently within the
49 purposes of this Article. For purposes of this subdivision, a person shows a
50 lack of financial responsibility when the person has shown a disregard in the

1 management of the person's own financial affairs. Evidence that a person has
2 not shown financial responsibility may include:

- 3 a. Current outstanding judgments, except judgments resulting solely
4 from medical expenses;
5 b. Current outstanding tax liens or other government liens and filings;
6 c. Foreclosures within the past three years; or
7 d. A pattern of serious delinquent accounts within the past three years.
8 (5) The mortgage loan originator applicant has failed to complete the
9 prelicensing education requirement described in G.S. 53-244.070.
10 (6) The mortgage loan originator applicant has failed to pass a written test that
11 meets the requirements described in G.S. 53-244.080.
12 (7) The mortgage lender, mortgage broker, or mortgage servicer applicant has
13 failed to meet the surety bond requirement described in G.S. 53-244.103.
14 (8) The mortgage lender, mortgage broker, or mortgage servicer applicant fails
15 to meet the minimum net worth requirement as described in
16 G.S. 53-244.104.
17 (9) The applicant's participation in the mortgage business will not be in the
18 public interest.

19 **§ 53-244.070. Educational requirements for mortgage loan originators.**

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

- 23 (1) Three hours of federal law and regulations;
24 (2) Three hours of ethics, including instruction on fraud, consumer protection,
25 and fair lending issues;
26 (3) Two hours of training related to lending standards for nontraditional
27 mortgage products; and
28 (4) Four hours of North Carolina laws and regulations.

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

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

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

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

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

49 **§ 53-244.080. Testing requirements for mortgage loan originators.**

50 (a) An individual must pass a qualified written test, as defined by subsection (b) of this
51 section, developed by the Nationwide Mortgage Licensing System and Registry and

1 administered by a test provider approved by the Nationwide Mortgage Licensing System and
2 Registry. In addition, prior to licensure in this State, an individual must take a qualified written
3 test that tests the individual's knowledge and comprehension of North Carolina law and
4 regulation.

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

8 (1) Ethics;

9 (2) Federal law and regulation pertaining to mortgage origination;

10 (3) North Carolina law and regulation pertaining to mortgage origination; and

11 (4) Federal and North Carolina law and regulations relating to fraud, consumer
12 protection, nontraditional mortgage products, and fair lending issues.

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

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

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

28 **"§ 53-244.090. License application fees.**

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

36 (b) Each principal and each branch office of a mortgage broker or mortgage lender
37 licensed under the provisions of this Article shall be issued a separate license for which the
38 Commissioner shall assess a nonrefundable filing fee of one hundred twenty-five dollars
39 (\$125.00) in addition to the Nationwide Mortgage Licensing System and Registry processing
40 fee. A licensed mortgage broker or mortgage lender shall file with the Commissioner a notice
41 on a form prescribed by the Commissioner that identifies the address of the principal office and
42 each branch office and its designated branch manager. Payment of the license fee under
43 subsection (a) of this section shall be deemed to cover the location license fee for the principal
44 office of each mortgage lender, mortgage broker, or mortgage servicer without payment of an
45 additional one hundred twenty-five dollars (\$125.00) under this subsection.

46 **"§ 53-244.100. Active license requirements and assignability.**

47 (a) It is unlawful for any person to engage in the mortgage business without first
48 obtaining a license as a mortgage loan originator, mortgage lender, mortgage broker, or
49 mortgage servicer issued by the Commissioner under this Article. It is unlawful for any person
50 to employ, to compensate, or to appoint as its agent a mortgage loan originator unless the

1 person is a licensed mortgage loan originator under this Article. Persons defined in
2 G.S. 53-244.030(8) or G.S. 53-244.030(29) are not subject to this subsection.

3 (b) The license of a mortgage loan originator is not effective during any period when
4 that person is not employed by a mortgage lender, mortgage broker, or mortgage servicer
5 licensed under this Article. When a mortgage loan originator ceases to be employed by a
6 mortgage lender, mortgage broker, or mortgage servicer licensed under this Article, the
7 mortgage loan originator, and the mortgage lender, mortgage broker, or mortgage servicer
8 licensed under this Article by whom that person is employed shall promptly notify the
9 Commissioner in writing. The mortgage lender, mortgage broker, or mortgage servicer shall
10 include a statement of the specific reason for the termination of the mortgage loan originator's
11 employment. A mortgage loan originator shall not be employed simultaneously by more than
12 one mortgage lender, mortgage broker, or mortgage servicer licensed under this Article.

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

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

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

24 **"§ 53-244.101. License renewal.**

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

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

34 (1) Licensed mortgage lenders, licensed mortgage brokers, and licensed
35 mortgage servicers shall pay an annual renewal fee of six hundred
36 twenty-five dollars (\$625.00), licensed exclusive mortgage brokers shall pay
37 an annual renewal fee of three hundred dollars (\$300.00), and licensed
38 mortgage lenders and mortgage brokers shall pay one hundred twenty-five
39 dollars (\$125.00) for each licensed branch office.

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

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

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

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

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

50 (d) If a mortgage lender, mortgage broker, or mortgage servicer's license is not renewed
51 prior to the expiration date, then the licensee shall pay two hundred fifty dollars (\$250.00) as a

1 nonrefundable late fee in addition to the renewal fee set forth in subsection (b) of this section. If
2 a mortgage loan originator's license is not renewed prior to the expiration date, then the licensee
3 shall pay a nonrefundable late fee of one hundred dollars (\$100.00) in addition to the renewal
4 fee set forth in subsection (b) of this section. In the event a licensee fails to obtain a
5 reinstatement of the license prior to March 1, the Commissioner shall require the licensee to
6 comply with the requirements for the initial issuance of a license under the provisions of this
7 Article.

8 (e) When required by the Commissioner, each person shall furnish to the Commissioner
9 the person's consent to a criminal history record check and a set of the person's fingerprints in a
10 form acceptable to the Commissioner or to the Nationwide Mortgage Licensing System and
11 Registry. Refusal to consent to a criminal history record check shall constitute grounds for the
12 Commissioner to deny renewal of the license of the person as well as the license of any other
13 person by whom the person is employed, over which the person has control, or as to which the
14 person is the current or proposed qualifying individual or current or proposed branch manager.

15 **"§ 53-244.102. Continuing education for mortgage loan originators.**

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

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

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

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

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

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

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

33 (d) A licensed mortgage loan originator:

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

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

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

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

47 **"§ 53-244.103. Surety bond requirements.**

48 (a) Each mortgage loan originator shall be covered by a surety bond through
49 employment with a licensee in accordance with this section. The surety bond shall provide
50 coverage for each mortgage loan originator employed by the licensee in an amount as
51 prescribed by subsection (b) of this section and shall be in a form prescribed by the

1 Commissioner. The Commissioner may adopt rules with respect to the requirements for the
2 surety bonds as needed to accomplish the purposes of the Article.

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

5 (1) A mortgage broker shall post a minimum surety bond of seventy-five
6 thousand dollars (\$75,000). Provided, however, if a mortgage broker has
7 originated mortgage loans in North Carolina in a 12-month period ending
8 December 31 in excess of ten million dollars (\$10,000,000) but less than
9 fifty million dollars (\$50,000,000), then the mortgage broker's minimum
10 bond amount shall be one hundred twenty-five thousand dollars (\$125,000),
11 and if a mortgage broker has originated mortgage loans in North Carolina in
12 a 12-month period ending December 31 of fifty million dollars
13 (\$50,000,000) or more, the mortgage broker's minimum bond shall be two
14 hundred fifty thousand dollars (\$250,000).

15 (2) A mortgage lender or mortgage servicer shall post a minimum surety bond
16 of one hundred fifty thousand dollars (\$150,000). Provided, however, if a
17 mortgage lender has originated mortgage loans in North Carolina in a
18 12-month period ending December 31 in excess of ten million dollars
19 (\$10,000,000) but less than fifty million dollars (\$50,000,000), then the
20 mortgage lender's minimum bond amount shall be two hundred fifty
21 thousand dollars (\$250,000), and if a mortgage lender has originated
22 mortgage loans in North Carolina in a 12-month period ending December 31
23 of fifty million dollars (\$50,000,000) or more, then the mortgage lender's
24 minimum bond shall be five hundred thousand dollars (\$500,000).

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

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

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

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

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

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

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

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

7 **"§ 53-244.104. Minimum net worth requirements.**

8 (a) A minimum net worth shall be continuously maintained for licensees in accordance
9 with this section. In the event that the mortgage loan originator is an employee or exclusive
10 agent of a person subject to this Article, the net worth of the person subject to this Article can
11 be used in lieu of the mortgage loan originator's minimum net worth requirement. The
12 minimum net worth to be maintained for each license is as follows:

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

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

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

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

29 **"§ 53-244.105. Records, addresses, escrow funds, or trust accounts.**

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

34 (b) No person shall make any false statement or knowingly and willfully make any
35 omission of a material fact in connection with any information or reports filed with the
36 Commissioner, a governmental agency, or the Nationwide Mortgage Licensing System and
37 Registry or in connection with any oral or written communication with the Commissioner or
38 another governmental agency. If the information contained in any document filed with the
39 Commissioner or the Nationwide Mortgage Licensing System and Registry is or becomes
40 inaccurate or incomplete in any material respect, the licensee or exempt entity shall within 30
41 days file a correcting amendment to the information contained in the document.

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

49 (d) A licensee shall maintain in a segregated escrow fund or trust account any funds
50 which come into the licensee's possession but which are not the licensee's property and which
51 the licensee is not entitled to retain under the circumstances. The escrow fund or trust account

1 shall be held on deposit in a federally insured financial institution. Individual loan applicants' or
2 borrowers' accounts may be aggregated into a common trust fund so long as (i) interests in the
3 common fund can be individually tracked and accounted for and (ii) the common fund is kept
4 separate from and is not commingled with the licensee's own funds.

5 **"§ 53-244.106. Display of license.**

6 Each mortgage broker or mortgage lender licensed under this Article shall display, in plain
7 public view, the certificate of licensure issued by the Commissioner in its principal office and
8 in each branch office. Each mortgage loan originator licensed under this Article shall display,
9 in plain public view, in each branch office in which the individual acts as a mortgage loan
10 originator the certificate of licensure issued by the Commissioner.

11 **"§ 53-244.107. Unique identifier shown.**

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

16 **"§ 53-244.108. Reports.**

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

22 **"§ 53-244.109. Mortgage broker duties.**

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

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

- 1 (11) Have a duty of loyalty to the borrower, which shall include a duty not to
2 compromise a borrower's right or interest in favor of another's right or
3 interest, including a right or interest of the mortgage broker.

4 **"§ 53-244.110. Mortgage servicer duties.**

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

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

44 **"§ 53-244.111. Prohibited acts.**

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

- 47 (1) To misrepresent or conceal the material facts or make false promises likely
48 to influence, persuade, or induce an applicant for a mortgage loan or a
49 mortgagor to take a mortgage loan, or to pursue a course of
50 misrepresentation through agents or otherwise.
51 (2) To improperly refuse to issue a satisfaction of a mortgage.

- 1 (3) To fail to account for or to deliver to any person any funds, documents, or
2 other thing of value obtained in connection with a mortgage loan, including
3 money provided by a borrower for a real estate appraisal or a credit report,
4 which the mortgage lender, mortgage broker, mortgage servicer, or mortgage
5 loan originator is not entitled to retain under the circumstances.
- 6 (4) To pay, receive, or collect in whole or in part any commission, fee, or other
7 compensation for brokering or servicing a mortgage loan in violation of this
8 Article, including a mortgage loan brokered or serviced by any unlicensed
9 person other than an exempt person.
- 10 (5) To charge or collect any fee or rate of interest or to make or broker or
11 service any mortgage loan with terms or conditions or in a manner contrary
12 to the provisions of Chapter 24, 45, or 54 of the General Statutes.
- 13 (6) To advertise mortgage loans, including rates, margins, discounts, points,
14 fees, commissions, or other material information, including material
15 limitations on the loans, unless the person is able to make the mortgage loans
16 available to a reasonable number of qualified applicants.
- 17 (7) To fail to disburse funds in accordance with a written commitment or
18 agreement to make a mortgage loan.
- 19 (8) To engage in any transaction, practice, or course of business that is not in
20 good faith or fair dealing or that constitutes a fraud upon any person in
21 connection with the brokering or making or servicing of, or purchase or sale
22 of, any mortgage loan.
- 23 (9) To fail to pay promptly when due reasonable fees to a licensed appraiser for
24 appraisal services that are:
- 25 a. Requested from the appraiser in writing by the mortgage broker or
26 mortgage lender or an employee of the mortgage broker or mortgage
27 lender; and
- 28 b. Performed by the appraiser in connection with the origination or
29 closing of a mortgage loan for a customer or the mortgage broker or
30 mortgage lender.
- 31 (10) To broker a mortgage loan that contains a prepayment penalty if the
32 principal amount of the loan is one hundred fifty thousand dollars
33 (\$150,000) or less or if the loan is a rate spread home loan as defined in
34 G.S. 24-1.1F.
- 35 (11) To improperly influence or attempt to improperly influence the
36 development, reporting, result, or review of a real estate appraisal sought in
37 connection with a mortgage loan. Nothing in this subdivision shall be
38 construed to prohibit a mortgage lender, mortgage broker, or mortgage
39 servicer from asking the appraiser to do one or more of the following:
- 40 a. Consider additional appropriate property information.
- 41 b. Provide further detail, substantiation, or explanation for the
42 appraiser's value conclusion.
- 43 c. Correct errors in the appraisal report.
- 44 (12) To fail to comply with the mortgage loan servicing transfer, escrow account
45 administration, or borrower inquiry response requirements imposed by
46 sections 6 and 10 of RESPA and regulations adopted thereunder.
- 47 (13) To broker a rate spread adjustable rate mortgage loan without disclosing to
48 the borrower the terms and costs associated with a fixed rate loan from the
49 same lender at the lowest annual percentage rate for which the borrower
50 qualifies.

- 1 (14) To fail to comply with applicable State and federal laws and regulations
2 related to mortgage lending or mortgage servicing.
- 3 (15) To engage in unfair, misleading, or deceptive advertising related to a
4 solicitation for a mortgage loan.
- 5 (16) In connection with the brokering or making of a rate spread home loan as
6 defined under G.S. 24-1.1F, no lender shall provide nor shall any broker
7 receive any compensation that changes based on the terms of the loan. This
8 subdivision shall not prohibit compensation based on the principal balance
9 of the loan.
- 10 (17) For a mortgage servicer to fail to comply with the mortgage servicer's
11 obligations under Article 10 of Chapter 45 of the General Statutes.
- 12 (18) For a mortgage servicer to fail to provide written notice to a borrower upon
13 taking action to place hazard, homeowner's, or flood insurance on the
14 mortgaged property or to place such insurance when the mortgage servicer
15 knows or has reason to know that the insurance is in effect.
- 16 (19) For a mortgage servicer to place hazard, homeowner's, or flood insurance on
17 a mortgaged property for an amount that exceeds either the value of the
18 insurable improvements or the last known coverage amount of insurance.
- 19 (20) For a mortgage servicer to fail to provide to the borrower a refund of
20 unearned premiums paid by a borrower or charged to the borrower for
21 hazard, homeowner's, or flood insurance placed by a mortgage lender or
22 mortgage servicer if the borrower provides reasonable proof that the
23 borrower has obtained coverage such that the forced placement is no longer
24 necessary and the property is insured. If the borrower provides reasonable
25 proof within 12 months of the placement that no lapse in coverage occurred
26 such that the forced placement was not necessary, the mortgage servicer
27 shall refund the entire premium.
- 28 (21) For a mortgage servicer to refuse to reinstate a delinquent loan upon a tender
29 of payment made timely under the contract which is sufficient in amount,
30 based upon the last written statement received by the borrower, to pay all
31 past due amounts, outstanding or overdue charges, and restore the loan to a
32 nondelinquent status, but this reinstatement shall be available to a borrower
33 no more than twice in any 24-month period.
- 34 (22) For a person acting as a mortgage servicer to fail to mail, at least 45 days
35 before foreclosure is initiated, a notice addressed to the borrower at the
36 borrower's last known address with the following information:
- 37 a. An itemization of all past due amounts causing the loan to be in
38 default.
- 39 b. An itemization of any other charges that must be paid in order to
40 bring the loan current.
- 41 c. A statement that the borrower may have options available other than
42 foreclosure and that the borrower may discuss the options with the
43 mortgage lender, the mortgage servicer, or a counselor approved by
44 the U.S. Department of Housing and Urban Development (HUD).
- 45 d. The address, telephone number, and other contact information for the
46 mortgage lender, the mortgage servicer, or the agent for either of
47 them who is authorized to attempt to work with the borrower to avoid
48 foreclosure.
- 49 e. The name, address, telephone number, and other contact information
50 for one or more HUD-approved counseling agencies operating to
51 assist borrowers in North Carolina to avoid foreclosure.

1 f. The address, telephone number, and other contact information for the
2 consumer complaint section of the Office of the Commissioner of
3 Banks.

4 (23) To fail to make all payments from any escrow account held for the borrower
5 for insurance, taxes, and other charges with respect to the property in a
6 timely manner so as to ensure that no late penalties are assessed or other
7 negative consequences result regardless of whether the loan is delinquent,
8 unless there are not sufficient funds in the account to cover the payments and
9 the mortgage servicer has a reasonable basis to believe that recovery of the
10 funds will not be possible.

11 **"§ 53-244.112. Criminal penalties for unlicensed activity.**

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

15 **"§ 53-244.113. Regulatory authority.**

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

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

23 (c) Upon the issuance of any summary order permitted under this Article, including
24 summary suspensions and cease and desist orders, the Commissioner shall promptly notify the
25 person subject to the order that the order has been entered and the reasons for the order. Within
26 20 days of receiving notice of the order, the person subject to the order may request in writing a
27 hearing before the Commissioner. Upon receipt of such a request, the Commissioner shall
28 calendar a hearing within 15 days. If a licensee does not request a hearing, the order will
29 remain in effect unless it is modified or vacated by the Commissioner.

30 **"§ 53-244.114. Licensure authority.**

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

36 (1) That the order is in the public interest; and

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

42 a. Has filed an application for licensure, report, or other document to
43 the Commissioner that, as of its effective date or as of any date after
44 filing, contained any statement that, in light of the circumstances
45 under which it was made, is false or misleading with respect to any
46 material fact;

47 b. Has violated or failed to comply with any provision of this Article,
48 rule adopted by the Commissioner, or order of the Commissioner;

49 c. Is permanently or temporarily enjoined by any court of competent
50 jurisdiction from engaging in or continuing any conduct or practice
51 involving any aspect of the mortgage business;

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

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

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

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

36 "**§ 53-244.115. Investigation and examination authority.**

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

- 42 (1) Criminal, civil, and administrative history information, including
43 nonconviction data;
44 (2) Personal history and experience information, including independent credit
45 reports obtained from a consumer reporting agency described in section
46 603(p) of the Fair Credit Reporting Act; and
47 (3) Any other documents, information, or evidence the Commissioner deems
48 relevant to the inquiry, investigation, or examination regardless of the
49 location, possession, control, or custody of the documents, information, or
50 evidence.

1 **(b)** For purposes of investigating violations or complaints arising under this Article, or
2 for the purposes of examination, the Commissioner may review, investigate, or examine any
3 licensee, individual, or person subject to this Article as often as necessary in order to carry out
4 the purposes of this Article. The Commissioner may interview the officer, principals, person
5 with control, qualified individual, mortgage loan originators, employees, independent
6 contractors, agents, and customers of the licensee, individual, or person concerning their
7 business. The Commissioner may direct, subpoena, or order the attendance of and examine
8 under oath all persons whose testimony may be required about the loans or the business or
9 subject matter of any examination or investigation and may direct, subpoena, or order the
10 person to produce books, accounts, records, files, and any other documents the Commissioner
11 deems relevant to the inquiry. The reasonable cost of the investigation or examination shall be
12 charged against the licensee, individual, or person subject to this Article.

13 **(c)** Each licensee, individual, or person subject to this Article shall make available to
14 the Commissioner upon request the books and records relating to the operations of the licensee,
15 individual, or person. No licensee, individual, or person subject to investigation or examination
16 under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any
17 books, records, computer records, or other information. Each licensee, individual, or person
18 subject to this Article shall also make available for interview by the Commissioner the officers,
19 principals, persons with control, qualified individuals, mortgage loan originators, employees,
20 independent contractors, agents, and customers of the licensee, individual, or person
21 concerning their business.

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

- 25 **(1)** Accounting compilations;
- 26 **(2)** Information lists and data concerning loan transactions in a format
27 prescribed by the Commissioner;
- 28 **(3)** Periodic reports, including:
 - 29 **a.** Annual Report Questionnaire,
 - 30 **b.** Servicer Activity Report,
 - 31 **c.** Servicer Schedule of the Ranges of Costs and Fees,
 - 32 **d.** Lender/Servicer Audited Statements of Financial Condition,
 - 33 **e.** Broker Certified Statements of Financial Condition, and
 - 34 **f.** Quarterly Loan Origination Reports.
- 35 **(4)** Any other information deemed necessary to carry out the purposes of this
36 section.

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

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

- 49 **(1)** Retain attorneys, accountants, or other professionals and specialists as
50 examiners, auditors, or investigators to conduct or assist in the conduct of
51 examinations or investigations;

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

1 exceed twenty-five thousand dollars (\$25,000) for each violation of or
2 failure to comply with any directive or order of the Commissioner. Each
3 violation of or failure to comply with any directive or order of the
4 Commissioner shall be a separate and distinct violation.

5 (4) Require a licensee, individual, or person subject to this Article to disgorge
6 and pay to a borrower or other individual any amounts received by the
7 licensee, individual, or person subject to the Article, including any employee
8 of the person, to the extent that the amounts were collected in violation of
9 Chapter 24 of the General Statutes or in excess of those allowed by law.

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

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

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

22 **"§ 53-244.117. Foreclosure suspension.**

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

37 **"§ 53-244.118. Rule-making authority; records.**

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

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

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

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

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

3 (3) Be open to public inspection.

4 **"§ 53-244.119. Commissioner's participation in nationwide registry.**

5 (a) The Commissioner shall require mortgage loan originators to be licensed and
6 registered through the Nationwide Mortgage Licensing System and Registry. In order to carry
7 out this requirement, the Commissioner is authorized to participate in the Nationwide Mortgage
8 Licensing System and Registry. For this purpose, the Commissioner may establish by rule any
9 requirements as necessary, including:

10 (1) Background checks for:

11 a. Criminal history through fingerprint or other databases;

12 b. Civil or administrative records;

13 c. Credit history; or

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

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

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

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

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

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

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

33 **"§ 53-244.120. Confidentiality of information.**

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

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

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

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

5 (e) The confidentiality provisions contained in subsection (c) of this section shall not
6 apply with respect to the information or material relating to the employment history of and
7 publicly adjudicated disciplinary and enforcement actions against mortgage lenders, mortgage
8 brokers, mortgage servicers, or mortgage loan originators that are included in the Nationwide
9 Mortgage Licensing System and Registry for access by the public.

10 **"§ 53-244.121. Review by Banking Commission.**

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

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

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

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

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

- 1 c. Any person licensed as a mortgage broker pursuant to Article 19A of
2 Chapter 53 of the General Statutes shall be deemed to be licensed as
3 a mortgage broker as defined in G.S. 53-244.030(19).
- 4 d. Any person licensed as a mortgage servicer pursuant to Article 19A
5 of Chapter 53 of the General Statutes shall be deemed to be licensed
6 as a mortgage servicer as defined in G.S. 53-244.030(22).
- 7 e. Any person licensed as an exclusive mortgage broker pursuant to
8 Article 19A of Chapter 53 of the General Statutes shall be deemed to
9 be licensed as an exclusive mortgage broker as defined in
10 G.S. 53-244.030(11a), as enacted by Section 2 of this act; provided
11 that the exclusive mortgage broker obtains a separate license as a
12 mortgage loan originator no later than July 31, 2010, and if such
13 license has not been obtained by that date, the license of the
14 exclusive mortgage broker shall be subject to summary suspension.
- 15 f. Any person licensed as a limited loan officer pursuant to Article 19A
16 of Chapter 53 of the General Statutes shall be permitted to act as a
17 licensed mortgage loan originator as defined in G.S. 53-244.030(21),
18 as enacted by Section 2 of this act; provided that the limited loan
19 officer obtains a mortgage loan originator license no later than
20 December 31, 2009, and if such license has not been obtained by that
21 date, the license of the limited loan officer will expire.
- 22 (2) For the renewal period ending December 31, 2009, any person deemed a
23 mortgage loan originator pursuant to sub-subdivision (1)a. of this section
24 must have met the requirements of this act for renewal, including the initial
25 license requirements of G.S. 53-244.060, except G.S. 53-244.060(5) and
26 G.S. 53-244.060(6), provided that the mortgage loan originator would have
27 met the requirements for continuing education under G.S. 53-243.07(b), as
28 repealed by Section 1 of this act. After December 31, 2009, applicants for
29 renewal must meet all requirements for renewal under G.S. 53-244.101.
- 30 (3) Persons who maintain a bond posted and accepted by the Commissioner as
31 satisfying G.S. 53-243.05(f), as repealed by Section 1 of this act, shall be
32 deemed to comply with the requirements of G.S. 53-244.103, as enacted by
33 Section 2 of this act, through December 31, 2009.
- 34 (4) To the extent that loss mitigation specialists are included in the definition of
35 a mortgage loan originator through an action by the U.S. Department of
36 Housing and Urban Development, the Commissioner shall take necessary
37 steps to license these individuals as mortgage loan originators in a timely
38 fashion in a manner that ensures this act fulfills the requirements of the
39 S.A.F.E. Act to maintain jurisdiction and supervision of the mortgage
40 business to the fullest extent possible.
- 41 (5) Any person who has been enjoined by the Commissioner of Banks or a court
42 of competent jurisdiction from serving in any capacity defined under Article
43 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this
44 act, shall not be allowed to apply for or act in any similar capacity as defined
45 by G.S. 53-244.030, as enacted by Section 2 of this act. Any person whose
46 license under Article 19A of Chapter 53 of the General Statutes, as repealed
47 by Section 1 of this act, was subject to any terms, conditions, or affirmative
48 duties imposed by the Commissioner of Banks or a court of competent
49 jurisdiction shall be subject to the same terms, conditions, or affirmative
50 duties for any similar license issued under G.S. 53-244.060 or renewed
51 under G.S. 53-244.101, as enacted by Section 2 of this act.

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