

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 55
Committee Substitute Favorable 7/4/91

Short Title: Mortgage Banker/Broker Provisions.

(Public)

Sponsors:

Referred to:

February 11, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW REGULATING MORTGAGE BANKERS,
3 MORTGAGE BROKERS, AND MORTGAGE SERVICERS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 53-233 reads as rewritten:

6 "ARTICLE 19.

7 "**REGISTRATION OF MORTGAGE BANKERS AND BROKERS. BANKERS,**
8 **MORTGAGE BROKERS, AND MORTGAGE SERVICERS.**

9 "**§ 53-233. Title and scope.**

10 (a) This Article shall be known and cited as the "~~Registration Requirements Act~~
11 ~~for Certain Makers of Mortgages and Deeds of Trust on Residential Real Property~~".
12 'Residential Mortgage Loan Registration Act'.

13 (b) No person, partnership, corporation, banking organization, or other entity,
14 shall ~~make or broker~~ make, broker, or service a residential mortgage loan as defined in
15 this Article, unless either (i) the ~~maker or broker~~ maker, broker, or servicer of the
16 mortgage loan is an exempt person or organization as defined in ~~G.S. 53-234(6)~~, G.S. 53-
17 234, or (ii) has complied with ~~the provisions of this Article~~. Nothing in this Article shall
18 be construed to apply to the purchase of loans or participations in loans or the
19 commitment by an entity to fund loans made by registrants or exempt persons or
20 organizations. No person or entity may service a purchased loan without first being
21 registered with the Commissioner, unless the servicer is an exempt person or
22 organization as defined in G.S. 53-234."

23 Sec. 2. G.S. 53-234 reads as rewritten:

1 **"§ 53-234. Definitions.**

2 The following definitions apply in this Article:

- 3 - (1) ~~" Mortgage loan" means a loan to a natural person or~~
4 ~~persons made primarily for personal, family or household use,~~
5 ~~primarily secured by either a mortgage or a deed of trust on~~
6 ~~residential real property.~~
- 7 (2) ~~" Residential real property" means real property located in this State~~
8 ~~upon which there is located or there is to be located one or more single~~
9 ~~family dwellings or dwelling units.~~
- 10 (3) ~~" Mortgage banker" means a person or entity who or which for~~
11 ~~compensation or gain, either directly or indirectly, advances funds,~~
12 ~~offers to advance funds, or makes a commitment to advance funds to~~
13 ~~an applicant for a mortgage loan.~~
- 14 (4) ~~" Mortgage broker" means a person or entity in the business of~~
15 ~~soliciting, processing, placing or negotiating mortgage loans for others~~
16 ~~or offering to process, place or negotiate mortgage loans for others.~~
- 17 (5) ~~" Soliciting, processing, placing or negotiating a mortgage loan" means~~
18 ~~for compensation or gain, either directly or indirectly, accepting or~~
19 ~~offering to accept an application for a mortgage loan, assisting or~~
20 ~~offering to assist in the processing of an application for a mortgage~~
21 ~~loan, soliciting or offering to solicit a mortgage loan on behalf of a~~
22 ~~third party or negotiating or offering to negotiate the terms or~~
23 ~~conditions of a mortgage loan with a lender on behalf of a third party.~~
- 24 (6) ~~" Exempt person or organization" means:~~
- 25 (a) ~~Any lender authorized to engage in business as a bank, a farm~~
26 ~~credit system, life insurance company, savings institution, or~~
27 ~~credit union, under the laws of the United States or the State of~~
28 ~~North Carolina and subsidiaries and affiliates of such lenders,~~
29 ~~which subsidiaries and affiliates are subject to the general~~
30 ~~supervision or regulation of the lender or subject to audit or~~
31 ~~examination by a regulatory body or agency of the United~~
32 ~~States or the State of North Carolina; the entities listed in this~~
33 ~~sub-subdivision, and their officers and employees, are not~~
34 ~~subject to any of the provisions of this Article; or~~
- 35 (b) ~~Any licensed real estate agent or broker, who is performing~~
36 ~~those activities subject to the regulation of the North Carolina~~
37 ~~Real Estate Commission. Notwithstanding the above, an~~
38 ~~exempt person does not include a real estate agent or broker~~
39 ~~who receives direct compensation or income in connection with~~
40 ~~the placement of a mortgage loan; or~~
- 41 (c) ~~Any person who, as seller, receives in one calendar year no~~
42 ~~more than ten mortgages, deeds of trust, or other security~~
43 ~~instruments on real estate as security for a purchase money~~
44 ~~obligation; or~~

- 1 (d) ~~The North Carolina Housing Finance Agency as established by~~
2 ~~Chapter 122A of the General Statutes and the North Carolina~~
3 ~~Agricultural Finance Authority as established by Chapter 122D~~
4 ~~of the General Statutes; or~~
- 5 (e) ~~Any agency of the federal government or any state or municipal~~
6 ~~government granting first mortgage loans under specific~~
7 ~~authority of the laws of any state or the United States.~~
- 8 (7) ~~" Registrant" means any person or entity who or which is registered~~
9 ~~pursuant to G.S. 53-236:~~
- 10 (a) ~~Which engages in the business of making mortgage loans in this~~
11 ~~State; or~~
- 12 (b) ~~Which engages in the business of soliciting, processing, placing~~
13 ~~or negotiating mortgage loans for others, or offering to process,~~
14 ~~place or negotiate mortgage loans for others.~~
- 15 (8) ~~" Commissioner" means the Commissioner of Banks of this State.~~
- 16 (1) ~~Commissioner. The North Carolina Commissioner of Banks.~~
- 17 (2) ~~Exempt person or organization. Any of the following:~~
- 18 a. ~~A lender authorized to engage in business as a bank, a farm~~
19 ~~credit system, life insurance company, savings institution, or~~
20 ~~credit union under the laws of the United States or any state,~~
21 ~~and subsidiaries and affiliates of these lenders, which are~~
22 ~~subject to the general supervision or regulation of the lender or~~
23 ~~subject to audit or examination by the Federal Deposit~~
24 ~~Insurance Corporation, the Federal Reserve Board, the Office of~~
25 ~~the Comptroller of the Currency, the Office of Thrift~~
26 ~~Supervision, National Credit Union Administration, or a~~
27 ~~successor to any of those financial institution regulatory~~
28 ~~agencies, or a financial institution regulatory agency created~~
29 ~~under state law; the entities listed in this sub-subdivision, and~~
30 ~~their officers and employees, are not subject to this Article.~~
- 31 b. ~~A licensed real estate agent or real estate broker, who is~~
32 ~~performing those activities subject to the regulation of the North~~
33 ~~Carolina Real Estate Commission. Notwithstanding the above,~~
34 ~~an exempt person does not include a real estate agent or real~~
35 ~~estate broker who receives direct compensation or income in~~
36 ~~connection with the placement of a mortgage loan.~~
- 37 c. ~~A person who, as seller, receives in one calendar year no more~~
38 ~~than 10 mortgages, deeds of trust, or other security instruments~~
39 ~~on real estate as security for a purchase money obligation.~~
- 40 d. ~~A person making two or less mortgage loans in any period of 12~~
41 ~~consecutive months.~~
- 42 e. ~~A person servicing 10 or less mortgage loans in any period of~~
43 ~~12 consecutive months.~~

- 1 f. The North Carolina Housing Finance Agency as established by
2 Chapter 122A of the General Statutes.
- 3 g. An agency of the federal government or a state or municipal
4 government granting first mortgage loans under specific
5 authority of the laws of any state or the United States.
- 6 h. Bona fide officers, partners, or employees of registrants.
- 7 (3) Mortgage banker. A person or entity who or which for compensation
8 or gain, either directly or indirectly, advances funds, offers to advance
9 funds, or makes a commitment to advance funds to an applicant for a
10 mortgage loan.
- 11 (4) Mortgage broker. A person or entity in the business of soliciting,
12 processing, placing, or negotiating mortgage loans for others or
13 offering to process, place, or negotiate mortgage loans for others.
- 14 (5) Mortgage loan. A loan to a natural person made primarily for
15 personal, family, or household use, primarily secured by either a
16 mortgage or a deed of trust on residential real property.
- 17 (6) Mortgage servicer. A person who or which for compensation or gain,
18 directly or as an agent for another, engages in servicing mortgage
19 loans.
- 20 (7) Registrant. A person or entity who or which is registered under this
21 Article that:
- 22 a. Engages in the business of making mortgage loans in this State;
23 b. Engages in the business of soliciting, processing, placing, or
24 negotiating mortgage loans for others, or offering to process,
25 place, or negotiate mortgage loans for others; or
26 c. Services mortgage loans in this State.
- 27 (8) Residential real property. Real property located in this State upon
28 which there is located or there is to be located one or more single
29 family dwellings or dwelling units.
- 30 (9) Servicing. Collecting for a lender, note owner, note holder, or for a
31 registrant's own account, payments of principal, payments of interest,
32 payments of trust items including hazard insurance and taxes on a
33 residential mortgage loan in accordance with the terms of any
34 mortgage, deed of trust, or other loan agreement. Servicing shall also
35 include loan payment follow up, delinquency loan follow up, loan
36 analysis, and any notifications to the borrower that are necessary to
37 enable the borrower to keep the loan current and in good standing.
- 38 (10) Soliciting, processing, placing, or negotiating a mortgage loan. For
39 compensation or gain, either directly or indirectly, accepting or
40 offering to accept an application for a mortgage loan, assisting or
41 offering to assist in the processing of an application for a mortgage
42 loan, soliciting or offering to solicit a mortgage loan on behalf of a
43 third party, or negotiating or offering to negotiate the terms or
44 conditions of a mortgage loan with a lender on behalf of a third party."

1 Sec. 3. G.S. 53-235 reads as rewritten:

2 **"§ 53-235. Registration requirements of mortgage bankers and bankers, mortgage**
3 **brokers, brokers, and mortgage servicers.**

4 (a) No mortgage ~~banker, as defined in G.S. 53-234(3),~~ banker shall engage in the
5 business of making mortgage loans without first being registered with the
6 Commissioner in accordance with the registration procedure provided in this Article and
7 ~~such regulations as may be promulgated~~ any rules adopted by the Commissioner.

8 (b) No mortgage ~~broker, as defined in G.S. 53-234(4),~~ broker shall engage in the
9 business of processing, placing or negotiating a mortgage loan or offering to process,
10 place or negotiate a mortgage loan in this State without first being registered with the
11 Commissioner in accordance with the registration procedure provided in this Article and
12 ~~such such regulations as may be promulgated~~ any rules adopted by the Commissioner.

13 (b1) No mortgage loan servicer shall engage in servicing any mortgage loan
14 without first being registered with the Commissioner in accordance with the registration
15 procedure provided by this Article and any rules adopted by the Commissioner.

16 (c) Notwithstanding subsections ~~(a) and (b)~~ (a), (b), and (b1) of this section, ~~the~~
17 ~~registration provisions of this Article shall not apply to any exempt persons or entities as~~
18 ~~defined by G.S. 53-234(6).~~ exempt persons or organizations are not required to register
19 with the Commissioner, so long as they have received written confirmation of
20 exemption from registration.

21 (d) Notwithstanding any other ~~provision of law,~~ an affiliate operating in the same
22 office or subsidiary operating in the same office of a licensee under the North Carolina
23 Consumer Finance Act shall register with the Commissioner in accordance with the
24 registration procedures provided in this Article: ~~Provided, however, such affiliate or~~
25 ~~subsidiary shall be~~ Article, but is exempt from the payment of any required fees under
26 this Article."

27 Sec. 4. G.S. 53-236 reads as rewritten:

28 **"§ 53-236. Registration procedures.**

29 (a) An application to become registered as a mortgage ~~banker or a mortgage broker~~
30 banker, a mortgage broker, or a mortgage loan servicer shall be in writing, under oath,
31 and in ~~such any form as shall be prescribed by the Commissioner.~~ ~~Such~~ The application
32 shall contain the name and complete business and residential address or addresses of the
33 applicant, or if the applicant is a partnership, association, corporation or other form of
34 business organization, the names and complete business and residential addresses of
35 each member, director and principal officer ~~to~~ other form of business organization.

36 (b) The application shall also include an affirmation of financial solvency noting
37 ~~such any capitalization requirements as may be required by the Commissioner, and such~~
38 and any descriptions of the business activities, financial responsibility, educational
39 background and general character and fitness of the applicant as may be required by the
40 Commissioner. The Commissioner may accept a verifiable line of credit in lieu of a
41 minimum capital requirement. ~~Such~~ The application shall be accompanied by a fee,
42 payable to the Commissioner, of five hundred dollars (\$500.00)."

43 Sec. 5. G.S. 53-237 reads as rewritten:

44 **"§ 53-237. Registration by the Commissioner.**

1 (a) Upon the filing of an application for registration, if the Commissioner finds
2 that the financial responsibility, experience, character, and general fitness of the
3 applicant, and of ~~the members thereof~~ its members if the applicant is a partnership or
4 association, and of ~~the~~ its officers and directors ~~thereof~~ if the applicant is a corporation,
5 ~~are such as to will~~ command the confidence of the community and to warrant warrant the
6 belief that the business will be operated honestly and fairly, within the purposes of this
7 Article, ~~he shall thereupon~~ the Commissioner shall register the applicant as a mortgage
8 ~~banker or banker,~~ a mortgage broker, or a mortgage servicer, whichever is applicable, on
9 a roll maintained for that purpose at the Commission of Banks, and shall issue a
10 certificate attesting to ~~such~~ the registration. If the Commissioner does not so find, ~~he~~ the
11 Commissioner shall not register ~~such~~ the applicant, and shall notify the applicant of the
12 denial. The Commissioner shall transmit the certificate to the applicant.

13 (b) Upon the receipt of ~~such~~ the certificate, a ~~mortgage banker or a mortgage broker,~~
14 ~~shall be authorized to~~ registrant may engage in the business for which the registration
15 certificate was issued.

16 (c) Each certificate issued to a registrant shall state the address or addresses at
17 which the business is to be conducted and shall state fully the name of the registrant,
18 and the date of the registration. A copy of ~~such~~ the certificate shall be prominently
19 posted in each place of business of the registrant. ~~Such~~ The certificate ~~shall not be~~ is not
20 transferable or assignable."

21 Sec. 6. G.S. 53-238 reads as rewritten:

22 "**§ 53-238. Prohibited activities of mortgage ~~bankers and~~ bankers, mortgage**
23 **brokers, brokers, and mortgage servicers.**

24 Mortgage ~~bankers and~~ bankers, mortgage brokers ~~brokers,~~ and mortgage servicers are
25 prohibited from the following activities:

- 26 (1) Misrepresenting the material facts or making false promises likely to
27 influence, persuade, or induce an applicant for a mortgage loan or a
28 mortgagor to take a mortgage loan, or pursuing a course of
29 misrepresentation through agents or otherwise;
- 30 (2) Misrepresenting or concealing of material factors, terms or conditions
31 of a transaction to which he is a party, pertinent to an applicant for a
32 mortgage loan or a mortgagor;
- 33 (3) Failing to disburse funds in accordance with a written commitment or
34 agreement to make a mortgage loan;
- 35 (4) Improperly refusing to issue a satisfaction of a mortgage;
- 36 (5) Failing to account for or deliver to any person any personal property
37 obtained in connection with a mortgage loan such as money, funds,
38 deposit, check, draft, mortgage, or other document, or thing of value,
39 which has come into his hands and which is not his property, or which
40 he is not in law or equity entitled to retain;
- 41 (6) Engaging in any transaction, practice, or course of business which is
42 not in good faith or fair dealing, or which operates a fraud upon any
43 person, in connection with the making of or purchase or sale of any
44 mortgage loan."

1 Sec. 7. Article 19 of Chapter 53 of the General Statutes is amended by
2 adding a new section to read:

3 **"§ 53-238.1. Limitation on mortgage broker fees.**

4 No mortgage broker required to be registered under this Article shall:

- 5 (1) Receive compensation from a borrower until a written commitment to
6 make a mortgage loan is given to the borrower by a mortgage lender,
7 except documented costs for credit reports and appraisals;
- 8 (2) Receive compensation from a mortgage lender of which the mortgage
9 broker is a principal stockholder, partner, trustee, director, officer, or
10 employee;
- 11 (3) Receive compensation from a borrower in connection with any
12 mortgage loan transaction in which the mortgage broker is the lender
13 or principal stockholder, partner, trustee, director, or officer of the
14 lender;
- 15 (4) Receive compensation from the borrower other than that specified in a
16 written agreement signed by the borrower; or
- 17 (5) Receive compensation in excess of one-quarter of one percent (1/4 of
18 1%) of a mortgage loan or one hundred fifty dollars (\$150.00),
19 whichever is less, for negotiating, placing, or finding the mortgage
20 loan where the mortgage broker, or a person affiliated with the
21 mortgage broker, has otherwise acted as a real estate broker, real estate
22 agent, or real estate salesman in connection with the sale of the real
23 estate that secures the mortgage loan and the mortgage broker or
24 affiliated person has received or will receive any other compensation
25 or thing of value from the lender, borrower, seller, or any other person.

26 As used in this section, the term 'person affiliated with the mortgage broker' means a
27 person who is a subsidiary, stockholder, partner, trustee, director, officer, or employee
28 of a mortgage broker, and a corporation ten percent (10%) or more of the capital stock
29 of which is owned by a mortgage broker or by a person who is a subsidiary,
30 stockholder, partner, trustee, director, officer, or employee of a mortgage broker."

31 Sec. 8. Article 19 of Chapter 53 of the General Statutes is amended by
32 adding a new section to read:

33 **"§ 53-238.2. Transfer of servicing; notices.**

34 Whenever the servicing of a residential mortgage is transferred or sold by a
35 mortgage banker, mortgage broker, or mortgage servicer, notice shall be given to the
36 mortgagor in accordance with the mortgage servicing transfer disclosure provisions of
37 the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq., as
38 amended."

39 Sec. 9. Article 19 of Chapter 53 of the General Statutes is amended by
40 adding a new section to read:

41 **"§ 53-238.3. Escrow funds.**

42 Mortgage bankers, mortgage brokers, and mortgage servicers under this Article shall
43 comply with the mortgage escrow accounts provision of the Real Estate Settlement
44 Procedures Act of 1974, 12 U.S.C. § 2609, as amended."

1 Sec. 10. G.S. 53-239 reads as rewritten:

2 "**§ 53-239. Cease and desist; revocation of registration certificate.**

3 (a) Upon the finding that any action of a mortgage ~~banker or banker,~~ a mortgage
4 ~~broker broker,~~ or a mortgage servicer may be in violation of this Article, or of any law or
5 ~~regulation rule of this State or of the federal government or any agency thereof, State, the~~
6 United States, or any agency of this State or the United States, the Commissioner, after
7 reasonable notice to the mortgage ~~banker or banker,~~ mortgage ~~broker broker,~~ or mortgage
8 servicer, and an opportunity for the mortgage ~~banker or banker,~~ mortgage ~~broker broker,~~
9 or mortgage servicer to be heard, shall order it to cease and desist from ~~such the~~ the action.

10 (b) If the mortgage ~~banker or banker,~~ mortgage ~~broker broker,~~ or mortgage
11 servicer fails to appeal ~~such the~~ the cease and desist order of the Commissioner in
12 accordance with G.S. 53-240 ~~hereof~~ and continues to engage in ~~such the~~ the action in
13 violation of the Commissioner's order to cease and desist ~~such the~~ the action, it ~~shall be is~~
14 subject to a penalty of one thousand dollars (\$1,000) for each ~~such~~ action it takes in
15 violation of the Commissioner's order. The penalty provision of this section ~~shall be is~~
16 in addition to and not in lieu of any other ~~provision of law~~ applicable to a mortgage
17 ~~banker or banker,~~ a mortgage ~~broker broker,~~ or a mortgage servicer for the mortgage
18 ~~banker or mortgage broker's~~ its failure to comply with an order of the Commissioner.

19 (c) The Commissioner may, upon the finding that a mortgage ~~banker or banker,~~ a
20 mortgage ~~broker broker,~~ or a mortgage servicer has engaged in a course of conduct
21 which is in violation of this Article, revoke the registration of ~~such the~~ the mortgage ~~banker~~
22 ~~or banker,~~ mortgage ~~broker broker,~~ or mortgage servicer temporarily or permanently in
23 the discretion of the Commissioner.

24 (d) Nothing in this Article shall limit any statutory or common law right of any
25 person to bring any action in any court for any act, or the right of the State to punish any
26 person for any violation of any law."

27 Sec. 11. G.S. 66-106 reads as rewritten:

28 "**§ 66-106. Definitions. Definitions; applicability of Article.**

29 (a) For purposes of this Article the following definitions apply:

- 30 (1) A ~~'loan broker' is any~~ Loan broker. A person, firm, or corporation who,
31 in return for any consideration from any person, promises to (i)
32 procure for ~~such the~~ the person, or assist ~~such the~~ the person in procuring, a
33 loan from any third party; or (ii) consider whether or not it will make a
34 loan to ~~such the~~ the person.
- 35 (2) A ~~'loan' is an~~ Loan. An agreement to advance money or property in
36 return for the promise to make payments therefor, whether ~~such the~~ the
37 agreement is styled as a loan, a lease or otherwise.

38 ~~Provided, that this~~

39 (b) This Article shall not apply to any party approved as a mortgagee by the Secretary
40 of Housing and Urban Development, the Federal Housing Administration, the Veterans
41 Administration, a National Mortgage Association or any federal agency; nor to any
42 party currently designated and compensated by a North Carolina licensed insurance
43 company as its agent to service loans it makes in this State; nor to any insurance
44 company registered with and licensed by the North Carolina Insurance Commissioner;

1 nor to any attorney-at-law, public accountant, or dealer registered under the North
2 Carolina Securities Act, acting in the professional capacity for which ~~such~~the attorney-
3 at-law, public accountant, or dealer is registered or licensed under the laws of ~~the State of~~
4 North Carolina. Provided further that subdivision (1)(ii) above shall not apply to any
5 lender whose loans or advances to any person, firm or corporation in North Carolina
6 aggregate more than one million dollars (\$1,000,000) in the preceding calendar year. A
7 person, firm, corporation, or other entity engaged exclusively in making or brokering
8 residential mortgage loans and registered with and subject to the jurisdiction of the
9 Commissioner of Banks under Article 19 of Chapter 53 of the General Statutes is,
10 unless otherwise exempted by this section, subject to this Article but is exempt from the
11 payment of any registration fees."

12 Sec. 12. This act becomes effective October 1, 1991.