

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 464

Short Title: Amend Mortgage Banker Regis.

(Public)

Sponsors: Representatives Smith and Brubaker.

Referred to: Financial Institutions.

March 23, 1993

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGULATING MORTGAGE BANKERS AND
MORTGAGE BROKERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-233(a) reads as rewritten:

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

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

"§ 53-234. Definitions.

The following definitions apply in this Article:

(1) 'Commission' means the State Banking Commission.

(1a) 'Commissioner' means the Commissioner of Banks of this State.

~~(+)(1b)~~ 'Mortgage loan' means a loan to a natural person or persons made primarily for personal, family or household use, primarily secured by either a mortgage or a deed of trust on residential real property.

(2) 'Residential real property' means real property located in this State upon which there is located or there is to be located one or more single family dwellings or dwelling units.

(3) 'Mortgage banker' means a person or entity who or which for compensation or gain, either directly or indirectly, advances funds, offers to advance funds, or makes a commitment to advance funds to an applicant for a mortgage loan.

- 1 (4) 'Mortgage broker' means a person or entity in the business of
2 soliciting, processing, placing or negotiating mortgage loans for others
3 or offering to process, place or negotiate mortgage loans for others.
- 4 (5) 'Soliciting, processing, placing or negotiating a mortgage loan' means
5 for compensation or gain, either directly or indirectly, accepting or
6 offering to accept an application for a mortgage loan, assisting or
7 offering to assist in the processing of an application for a mortgage
8 loan, soliciting or offering to solicit a mortgage loan on behalf of a
9 third party or negotiating or offering to negotiate the terms or
10 conditions of a mortgage loan with a lender on behalf of a third party.
- 11 (6) 'Exempt person or organization' ~~means:~~means any of the following:
- 12 (a)a. Any lender authorized to engage in business as a bank,
13 a farm credit system, life insurance company, savings
14 institution, or credit union, under the laws of the
15 United States or ~~the State of North Carolina~~any state
16 and subsidiaries and affiliates of such lenders, which
17 subsidiaries and affiliates are subject to the general
18 supervision or regulation of the lender or subject to
19 audit or examination by ~~a regulatory body or agency of~~
20 ~~the United States or the State of North Carolina;~~the
21 Federal Deposit Insurance Corporation, the Federal
22 Reserve Board, the Office of the Comptroller of the
23 Currency, the Office of Thrift Supervision, the
24 National Credit Union Administration, or any
25 successor to any of those financial institution
26 regulatory agencies, or a financial institution
27 regulatory agency created under state law; the entities
28 listed in this sub-subdivision, and their officers and
29 employees, are not subject to any of the provisions of
30 this Article; or Article.
- 31 (b)b. Any licensed real estate agent or real estate broker,
32 who is performing those activities subject to the
33 regulation of the North Carolina Real Estate
34 Commission. Notwithstanding the above, an exempt
35 person does not include a real estate agent or real
36 estate broker who receives direct compensation or
37 income in connection with the placement of a
38 mortgage ~~loan;~~or loan.
- 39 (c)c. Any person who, as seller, receives in one calendar
40 year no more than ten mortgages, deeds of trust, or
41 other security instruments on real estate as security for
42 a purchase money ~~obligation;~~or obligation.
- 43 c1. Any person making two or less mortgage loans in any
44 period of 12 consecutive months.

- 1 ~~(d)~~d. The North Carolina Housing Finance Agency as
 2 established by Chapter 122A of the General Statutes
 3 and the North Carolina Agricultural Finance Authority
 4 as established by Chapter 122D of the General Statutes;
 5 ~~or Statutes.~~
 6 ~~(e)~~e. Any agency of the federal government or any state or
 7 municipal government granting first mortgage loans
 8 under specific authority of the laws of any state or the
 9 United States.
 10 f. Bona fide officers, partners, or employees of
 11 registrants.
 12 (7) 'Registrant' means any person or entity who or which is registered
 13 pursuant to G.S. 53-236:
 14 ~~(a)~~a. Which engages in the business of making mortgage
 15 loans in this State; or
 16 ~~(b)~~b. Which engages in the business of soliciting,
 17 processing, placing or negotiating mortgage loans for
 18 others, or offering to process, place or negotiate
 19 mortgage loans for others.
 20 (8) 'Commissioner' means the ~~Commissioner of Banks of this State.~~
 21 Sec. 3. G.S. 53-235(c) reads as rewritten:
 22 "(c) Notwithstanding subsections (a) and (b) of this section, ~~the registration~~
 23 ~~provisions of this Article shall not apply to any exempt persons or entities as defined by G.S.~~
 24 ~~53-234(6). exempt persons or organizations as defined by G.S. 53-234 are not required to~~
 25 register with the Commissioner so long as they have received written confirmation of
 26 exemption from registration."
 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
 30 broker shall be in writing, under oath, and in such form as shall be prescribed by the
 31 Commissioner. Such application shall contain the name and complete business and
 32 residential address or addresses of the applicant, or if the applicant is a partnership,
 33 association, corporation or other form of business organization, the names and complete
 34 business and residential addresses of each member, director and principal officer
 35 thereof.
 36 (b) The application shall also include an affirmation of financial solvency noting
 37 ~~such compliance with the capitalization and bonding requirements as may be required by~~
 38 ~~the Commissioner, that the Commission may prescribe by rule, and such descriptions of~~
 39 the business activities, financial responsibility, educational background and general
 40 character and fitness of the applicant as may be required by the Commissioner. In
 41 addition, the Commissioner shall obtain, as prescribed by rule, a credit report with
 42 respect to each applicant for registration as a mortgage banker or mortgage broker. Such
 43 The application shall be accompanied by a fee, payable to the Commissioner, of five
 44 hundred dollars ~~(\$500.00).~~ ~~(\$500.00)~~ together with the costs of any credit reports."

1 Sec. 5. G.S. 53-237(a) reads as rewritten:

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

15 Sec. 6. G.S. 53-239 reads as rewritten:

16 **"§ 53-239. Enforcement of this Article; cease and desist; revocation of**
17 **registration certificate.**

18 (a) Upon the finding that any action of a mortgage banker or a mortgage broker
19 may be in violation of this Article, or of any ~~law or regulation rule adopted hereunder, of~~
20 ~~this State or of the federal government or any agency thereof,~~ the Commissioner, after
21 reasonable notice to the mortgage banker or mortgage broker, and an opportunity for the
22 mortgage banker or mortgage broker to be heard, shall order it to cease and desist from
23 such action.

24 (b) If the mortgage banker or mortgage broker fails to appeal such cease and
25 desist order of the Commissioner in accordance with G.S. 53-240 hereof and continues
26 to engage in such action in violation of the Commissioner's order to cease and desist
27 such action, it shall be subject to a penalty of one thousand dollars (\$1,000) for each
28 such action it takes in violation of the Commissioner's order. The penalty provision of
29 this section shall be in addition to and not in lieu of any other provision of law
30 applicable to a mortgage banker or a mortgage broker for the mortgage banker or
31 mortgage broker's failure to comply with an order of the Commissioner.

32 (c) ~~The Commissioner may, upon the~~ Upon a finding that a mortgage banker or a
33 mortgage broker has engaged in a course of conduct which is in violation of violated this
34 Article, Article or any rule adopted hereunder, or committed any act which would not
35 support registration of the mortgage banker or mortgage broker under G.S. 53-137(a),
36 the Commissioner may revoke the registration of the mortgage banker or mortgage
37 broker temporarily or permanently, in the discretion of the Commissioner. ~~revoke the~~
38 ~~registration of such mortgage banker or mortgage broker temporarily or permanently in the~~
39 ~~discretion of the Commissioner.~~

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

1 (e) The Commissioner shall enforce this Article and may make investigations,
2 subpoena witnesses, and conduct hearings as to violations of this Article or any rule
3 adopted hereunder."

4 Sec. 7. Chapter 53 of the General Statutes is amended by adding the
5 following new section to read:

6 **"§ 53-239.1. Examinations; audits; books and records.**

7 (a) The Commissioner may conduct or cause to be conducted an examination or
8 audit of the books and records of any mortgage banker or mortgage broker at any time
9 when the Commissioner deems it proper. The mortgage banker or mortgage broker
10 shall pay the cost of the examination or audit and such costs shall be prescribed by rule.
11 The refusal of access to the books and records of the mortgage banker or mortgage
12 broker shall be cause for revocation of the certificate of registration.

13 (b) A mortgage banker or mortgage broker shall keep and use in an office such
14 books, accounts, and records as will enable the Commissioner to determine whether the
15 mortgage banker or mortgage broker is complying with this Article and rules adopted
16 pursuant to this Article."

17 Sec. 8. G.S. 53-240 reads as rewritten:

18 **"§ 53-240. Appeal of Commissioner's decision.**

19 ~~Notwithstanding any other provision of law, any aggrieved party may, within 30~~
20 ~~days after final decision of the Commissioner and by written notice to the~~
21 ~~Commissioner, appeal directly to the North Carolina Court of Appeals for judicial~~
22 ~~review on the record. In the event of an appeal, the Commissioner shall certify the~~
23 ~~record to the Clerk of the Court of Appeals within 30 days thereafter. Such record shall~~
24 ~~include all memoranda, briefs and any other documents, data, information or evidence~~
25 ~~submitted by any party to such proceeding except for material such as trade secrets~~
26 ~~normally not available through commercial publication for which such party has made a~~
27 ~~claim of confidentiality and requested exclusion from the record which the~~
28 ~~Commissioner deems confidential. All factual information contained in any report of~~
29 ~~examination or investigation submitted to or obtained by the Commissioner's staff shall~~
30 ~~also be made a part of the record unless deemed confidential by the Commissioner. An~~
31 ~~aggrieved party in a proceeding under this Article may, within 30 days after final~~
32 ~~decision of the Commissioner, appeal the decision to the Commission. The~~
33 ~~Commission shall have the authority to approve, disapprove, or modify the~~
34 ~~Commissioner's decision. Notwithstanding any other provision of law, an aggrieved~~
35 ~~party to a decision of the Commission shall be entitled to an appeal pursuant to G.S. 53-~~
36 ~~92."~~

37 Sec. 9. G.S. 53-241 reads as rewritten:

38 **"§ 53-241. Rules and regulations. Rules.**

39 ~~Notwithstanding the provision of G.S. 53-95, the Commissioner~~ The Commission may
40 promulgate adopt such reasonable rules and regulations as may be necessary to effectuate
41 the purpose of this Article, to provide for the protection of the borrowing public, and to
42 instruct mortgage lenders in interpreting this Article."

43 Sec. 10. G.S. 66-106 reads as rewritten:

44 **"§ 66-106. Definitions.**

1 For purposes of this Article the following definitions apply:

2 (1) A 'loan broker' is any person, firm, or corporation who, in return for
3 any consideration from any person, promises to (i) procure for ~~such~~the
4 person, or assist ~~such~~the person in procuring, a loan from any third
5 party; or (ii) consider whether or not it will make a loan to ~~such~~the
6 person.

7 (2) A 'loan' is an agreement to advance money or property in return for the
8 promise to make payments therefor, whether ~~such~~the agreement is
9 styled as a loan, a lease or otherwise.

10 Provided, that this Article shall not apply to any party approved as a mortgagee by the
11 Secretary of Housing and Urban Development, the Federal Housing Administration, the
12 Veterans Administration, a National Mortgage Association or any federal agency; nor to
13 any party currently designated and compensated by a North Carolina licensed insurance
14 company as its agent to service loans it makes in this State; nor to any insurance
15 company registered with and licensed by the North Carolina Insurance Commissioner;
16 nor to any attorney-at-law, public accountant, or dealer registered under the North
17 Carolina Securities Act, acting in the professional capacity for which ~~such~~the attorney-
18 at-law, public accountant, or dealer is registered or licensed under the laws of the State
19 of North Carolina. Provided further that subdivision (1)(ii) above shall not apply to any
20 lender whose loans or advances to any person, firm or corporation in North Carolina
21 aggregate more than one million dollars (\$1,000,000) in the preceding calendar year.
22 Any person, firm, corporation, or other entity engaged exclusively in making or
23 brokering residential mortgage loans and registered with and subject to the jurisdiction
24 of the Commissioner of Banks under Article 19 of Chapter 53 of the General Statutes
25 shall, unless otherwise exempted by this section, be subject to this Article but shall be
26 exempt from the payment of any registration fees."

27 Sec. 11. This act becomes effective October 1, 1993, and applies to mortgage
28 loan applications submitted on or after that date.