

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1179*

Short Title: Mortgage Lenders and Brokers Licensure.

(Public)

Sponsors: Representatives Cole and Brubaker (Primary Sponsors).

Referred to: Financial Institutions.

April 12, 2001

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE LAWS CONCERNING THE LICENSURE OF
3 MORTGAGE LENDERS AND BROKERS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 19 of Chapter 53 of the North Carolina General
6 Statutes is repealed.

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

9 Article 19A.
10 "Residential Mortgage Lenders and Brokers Licensure Act.

11 **"§ 53-243.01. Title and scope.**

12 This Article shall be known and cited as the 'Residential Mortgage Lenders and
13 Brokers Licensure Act.'

14 **"§ 53-243.02. Legislative findings.**

15 The General Assembly finds that the activities of mortgage lenders and mortgage
16 brokers and the offering of financing for residential real property have a direct and
17 immediate impact upon the housing industry, neighborhoods and communities, and
18 homeowners and potential homeowners of this State. The General Assembly further
19 finds that it is essential for the protection of the citizens of this State and the stability of
20 the State's economy to establish reasonable standards governing the business practices
21 of mortgage lenders and mortgage brokers and to provide for adequate supervision and
22 regulation of mortgage lenders and mortgage brokers. This Act is intended to be
23 remedial and shall be liberally construed to accomplish its purposes.

24 **"§ 53-243.03. Definitions.**

25 As used in this Article, the term:

26 (1) 'Affiliate' means, when used with reference to a specified company, a
27 company which directly, indirectly, or through one or more

1 intermediaries controls, is controlled by, or is under common control
2 with the specified company.

3 (2) 'Audit' means a certified audit of the licensee's books and records and
4 systems of internal control performed by an independent certified
5 public accountant in accordance with generally accepted accounting
6 principles and generally accepted auditing standards. An audit shall
7 include a statement of financial condition.

8 (3) 'Holding company' means any bank holding company or financial
9 holding company as defined in section 2 of the Bank Holding
10 Company Act of 1956, 12 U.S.C. § 1841, as the same may be amended
11 from time to time.

12 (4) 'Borrower' means one or more individuals who obtain or seek to obtain
13 a mortgage loan, including an applicant or applicants for a mortgage
14 loan.

15 (5) 'Branch office' means any location, other than a licensee's principal
16 place of business:

17 a. At which the licensee makes or brokers mortgage loans;

18 b. At which the licensee's advertising, promotional material, or
19 signage suggests that the licensee makes or brokers mortgage
20 loans; or

21 c. Which, due to the actions of the licensee or any employee or
22 independent contractor of the licensee, may be reasonably
23 construed by the public as a branch office of the licensee where
24 the licensee makes or brokers mortgage loans.

25 (6) 'Commission' means the State Banking Commission.

26 (7) 'Commissioner' means the Commissioner of Banks of this State.

27 (8) 'Company' means any corporation, limited liability company,
28 partnership, business trust, association, or other similar organization.

29 (9) 'Control,' 'controlling,' 'controlled by,' and 'under common control
30 with,' mean the possession, directly or indirectly, of the power to direct
31 or cause the direction of the management and policies of a company,
32 whether through the ownership of voting stock of the company, the
33 ownership of voting stock of any entity which possesses that power, or
34 otherwise. Control of a company shall be presumed to exist if any
35 person, directly or indirectly, owns, controls, or holds with power to
36 vote twenty-five percent (25%) or more of the voting stock of the
37 company or of any entity which owns, controls, or holds with power to
38 vote twenty-five percent (25%) or more of the voting stock of the
39 company, but no person shall be deemed to control a company solely
40 by reason of being an officer or director of that company.

41 (10) 'Depository institution' means any of the following:

42 a. Any bank as defined in section 2(c) of the Bank Holding
43 Company Act of 1956, 12 U.S.C. § 1841(c), as amended from
44 time to time;

1 b. Any savings association or savings bank as defined in section 3
2 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813, as
3 amended from time to time; and

4 c. Any insured credit union as defined in section 1 of the Federal
5 Credit Union Act, 12 U.S.C. § 1752, as amended from time to
6 time.

7 (11) 'Employee' means an individual employed in the service of a mortgage
8 lender or a mortgage broker for wages, salary, commissions, or other
9 direct compensation. An employee is subject to income tax
10 withholding and other lawful deductions by his or her employer as a
11 condition of employment and is subject to the right of the employer to
12 direct and control the actions of the employee.

13 (12) 'Exempt person' means any person exempt from any portion of this
14 Article pursuant to G.S. 53-243.04.

15 (13) 'Flipping' shall have the same meaning as in G.S. 24-10.2.

16 (14) 'Independent contractor' means a person who contracts with a
17 mortgage lender, a mortgage broker, or an exempt person to perform a
18 service where the independent contractor: (i) is not directed or
19 controlled by the mortgage lender, mortgage broker, or exempt person,
20 or (ii) is required to maintain separate records regarding his, her, or its
21 contract for services in respect to, but not limited to, accounting and
22 taxes.

23 (15) 'Individual' means one or more natural persons.

24 (16) 'License' means a license issued by the Commissioner under this
25 Article which authorizes a person to act as a mortgage lender, a
26 mortgage broker, or both a mortgage lender and a mortgage broker.

27 (17) 'Licensee' means a person who is issued a license pursuant to this
28 Article.

29 (18) 'Loan commitment' and 'commitment' mean a written statement by a
30 mortgage lender setting forth the terms and conditions upon which the
31 mortgage lender is willing to make a particular mortgage loan to a
32 particular borrower.

33 (19) 'Make a mortgage loan' (or any similar phrase) means to advance
34 funds, offer to advance funds, or make a commitment to advance funds
35 to a borrower for a mortgage loan.

36 (20) 'Managing broker' means the individual in charge of and responsible
37 for the operation of the principal place of business or a branch office of
38 a licensed mortgage broker, including supervision of all employees of
39 the licensed broker at that location.

40 (21) 'Managing loan officer' means the individual in charge of and
41 responsible for the operation of the principal place of business or a
42 branch office of a licensed mortgage lender, including supervision of
43 all employees of the licensed mortgage lender at that location.

- 1 (22) 'Misrepresent' means to make a false statement of a substantive fact
2 with reckless disregard for the truth of the statement or with
3 knowledge that the statement is false, or to engage, with the intent to
4 deceive or mislead, in any conduct which leads to a false belief which
5 is material to the transaction.
- 6 (23) 'Mortgage broker' means any person who (i) holds himself, herself, or
7 itself out to a borrower or the general public as a mortgage broker, or
8 (ii) performs mortgage brokering services. The term 'mortgage broker'
9 includes any person who closes a mortgage loan in such a person's
10 own name with funds provided by another person in a table funded
11 mortgage loan transaction; the mortgage lender in any table funded
12 mortgage loan transaction is the person who advances the loan
13 proceeds and to whom the obligation is initially assigned at or after
14 settlement.
- 15 (24) 'Mortgage brokering' and 'mortgage brokering services' mean
16 attempting to or actually negotiating, placing, finding, or obtaining a
17 mortgage loan for a borrower from a third-party mortgage lender in
18 return for compensation or in anticipation of compensation to be paid,
19 either directly or indirectly, by the borrower, the mortgage lender, or
20 both the borrower and the mortgage lender.
- 21 (25) 'Mortgage lender' means a person who (i) holds himself, herself, or
22 itself out to a borrower or the general public as a mortgage lender, or
23 (ii) makes a mortgage loan. In a table funded mortgage loan
24 transaction originated by a mortgage broker who closes the mortgage
25 loan in the mortgage broker's own name, the person who advances the
26 loan funds and to whom the obligation is initially assigned at or after
27 settlement is the mortgage lender.
- 28 (26) 'Mortgage loan' means a loan made to a borrower which is incurred by
29 the borrower primarily for personal, family, or household purposes and
30 which is primarily secured by a mortgage or deed of trust upon an
31 interest in real property located in this State upon which there is
32 located or there is to be located a one-to-four family dwelling occupied
33 or to be occupied by the borrower as the borrower's principal dwelling,
34 regardless of where the loan is made. For purposes of this Article,
35 'mortgage loan' shall not include any loan that is made primarily for a
36 business, commercial, or agricultural purpose.
- 37 (27) 'Net worth' shall be computed in accordance with generally accepted
38 accounting principles and shall be reported annually on a certified
39 statement of financial condition.
- 40 (28) 'Person' means any individual, sole proprietorship, estate, trust, firm,
41 corporation, limited liability company, partnership, association, or
42 legal or commercial entity, or group of individuals, however
43 organized.

- 1 (29) 'Principal broker' means the individual in charge of and responsible for
2 the mortgage brokering activities of a licensed mortgage broker,
3 including supervision of all managing brokers and other employees of
4 the licensed mortgage broker.
- 5 (30) 'Principal loan officer' means the individual in charge of and
6 responsible for the mortgage lending activities of a licensed mortgage
7 lender, including supervision of all managing loan officers and other
8 employees of the licensed mortgage lender.
- 9 (31) 'Principal place of business' means a licensee's primary business office
10 as designated on the application for a license or any amendment
11 thereto.
- 12 (32) 'Principals of a company' mean the directors, managers, general
13 partners and principal officers of a company, and any individual who
14 owns a controlling interest in the company. The 'principals of a
15 company' which provide mortgage brokering services expressly
16 include each principal broker and each managing broker. The
17 'principals of a company' which make mortgage loans expressly
18 include each principal loan officer and each managing loan officer.
- 19 (33) 'Subsidiary' means, when used with reference to a specified company,
20 any company that is at least majority-owned or majority-controlled by
21 the specified company, whether directly, indirectly, or through one or
22 more intermediaries.
- 23 (34) 'Table funded mortgage loan transaction' means a settlement at which a
24 mortgage loan is funded by an advance of loan funds and a subsequent
25 assignment of the loan from the person identified as the lender in the
26 loan documents to the person advancing the funds.
- 27 (35) 'This State' means the State of North Carolina.
- 28 (36) 'Total compensation' means all payments made to the broker in
29 connection with a mortgage loan, whether paid by the borrower or by
30 the lender, including payments made before, at the time of, or after the
31 loan closing.
- 32 (37) 'Total loan amount' means the same as the term 'total loan amount' as
33 used in section 226.32 of Title 12 of the Code of Federal Regulations,
34 and the same shall be calculated in accordance with the Federal
35 Reserve Board's Official Staff Commentary thereto.

36 **"§ 53-243.04. Exempt persons.**

- 37 (a) The following persons shall not be subject to any of the provisions of this
38 Article:
- 39 (1) Any depository institution and any subsidiary of a depository
40 institution.
- 41 (2) The United States of America, the State of North Carolina or any other
42 state, and any agency, division, corporate instrumentality, or quasi-
43 governmental agency of the federal government or any state, county,
44 or municipal government, including without limitation: the North

1 Carolina Housing Finance Agency, the North Carolina Agricultural
2 Finance Authority, Fannie Mae, the Federal Home Loan Mortgage
3 Corporation, the Government National Mortgage Association, the
4 United States Department of Housing and Urban Development, the
5 Federal Housing Administration, the Department of Veterans Affairs,
6 the Farmers Home Administration, and the Federal Land Banks and
7 Production Credit Associations.

8 (3) Any employee of any exempt person described in this subsection when
9 acting within the course and scope of his or her employment.

10 (b) The following persons shall not be subject to any of the provisions of this
11 Article relating to mortgage lenders other than G.S. 53-243.05, 53-243.22, and 53-
12 243.28:

13 (1) Any insurance company duly licensed in this or any other state and
14 qualified to do business in North Carolina.

15 (2) Any pension plan which makes mortgage loans solely to plan
16 participants from plan assets.

17 (3) Any nonprofit corporation qualifying under section 501(c)(3) of the
18 Internal Revenue Code making mortgage loans to promote home
19 ownership or improvements for the disadvantaged.

20 (4) Any person who makes a mortgage loan to the extent such person's
21 mortgage-lending activities are limited as follows:

22 a. Any person who makes three or fewer mortgage loans in any
23 calendar year with the person's own funds for the person's own
24 investment and who does not hold himself, herself, or itself out
25 to the general public as a mortgage lender or a mortgage broker.

26 b. Any person who makes a mortgage loan while acting in a
27 fiduciary capacity conferred by authority of any court.

28 c. Any person who, as seller, receives in one calendar year no
29 more than 10 deeds of trust as security for purchase money
30 obligations.

31 d. Any person who makes a mortgage loan to a bona fide
32 employee of such person as an employee benefit.

33 e. Any person who makes a mortgage loan to a borrower related to
34 the lender by blood or marriage.

35 (5) Any employee of an exempt person described in subdivision (1), (2),
36 (3), or (4) of this subsection, when assisting in the activities described
37 in those subdivisions under the supervision of his or her employer.

38 (c) The following persons shall not be subject to any of the provisions of this
39 Article relating to mortgage brokers other than G.S. 53-243.05, 53-243.22, and 53-
40 243.28:

41 (1) Any attorney licensed to practice law in this State when rendering
42 services as an attorney; provided a licensed attorney shall not be
43 considered an exempt person if the attorney holds himself or herself
44 out to the general public as a mortgage broker.

1 (2) Any licensed real estate agent or broker when rendering services as a
2 real estate agent or broker subject to regulation and supervision by the
3 North Carolina Real Estate Commission; provided, a real estate agent
4 or broker shall not be considered an exempt person if the real estate
5 agent or broker receives any fee, commission, or other payment for
6 mortgage brokering services or holds himself or herself out to the
7 general public as a mortgage broker.

8 (3) Any person who brokers no more than three mortgage loans in this
9 State in any calendar year, provided the person is licensed as a
10 mortgage broker under the laws of any other state.

11 (4) Any employee of an exempt person described in subdivision (1), (2),
12 or (3) of this subsection, when assisting in the activities described in
13 those subdivisions under the supervision of his or her employer.

14 (d) Any employee of a holding company, a subsidiary of a bank holding
15 company, or an affiliate of a depository institution when providing mortgage brokering
16 services to a borrower in the course and scope of his or her employment shall not be
17 subject to the provisions of this Article relating to mortgage brokers, other than G.S. 53-
18 243.05, 53-243.22, and 53-243.28 where the lender involved in the loan is an affiliate of
19 the employee's employer and the affiliate is (i) a licensed mortgage lender, (ii) a
20 depository institution, or (iii) a subsidiary of a depository institution.

21 (e) Notwithstanding any other provisions of this section, any person other than a
22 person exempt under subsection (a) of this section who holds himself, herself, or itself
23 out to a borrower or to the general public as a mortgage broker must be licensed under
24 this Article.

25 (f) An employee of a licensed mortgage lender shall not be subject to any of the
26 provisions of this Article relating to mortgage lenders, other than G.S. 53-243.05, 53-
27 243.22, 53-243.25, 53-243.26, and 53-243.28, when acting within the course and scope
28 of his or her employment.

29 (g) An employee of a licensed mortgage broker shall not be subject to any of the
30 provisions of this Article relating to mortgage brokers other than G.S. 53-243.04, 53-
31 243.20, 53-243.21, 53-243.22, 53-243.25, 53-243.26, and 53-243.28, provided he or she
32 (i) performs only clerical and ministerial tasks, (ii) is under the direct and continuous
33 supervision of a principal broker or a managing broker who has a current mortgage
34 broker license, (iii) is not holding himself or herself out to the general public as a
35 mortgage broker, and (iv) is acting within the course and scope of his or her
36 employment.

37 (h) The burden of establishing the right to any exemption under this Article shall
38 rest upon the party claiming the benefit of the exemption.

39 **"§ 53-243.05. Mortgage loans subject to this Article.**

40 Mortgage loans shall be subject to the provisions of this Article without regard to
41 where or how the loan is made. Any person who provides mortgage brokering services
42 or mortgage lending services by mail, telephone, or electronic means in connection with
43 mortgage loans is subject to the provisions of this Article. Any person who solicits or

1 makes mortgage loans by mail, telephone, or electronic means is subject to the
2 provisions of this Article.

3 **"§ 53-243.06. Validity of mortgage loans.**

4 This Article shall not be construed to alter the validity or enforceability of any
5 existing or future mortgage loan under common or other statutory laws provided that
6 this section shall not be construed as a limitation of the rights of a borrower to pursue all
7 available remedies for violations of the provisions of this Article.

8 **"§ 53-243.07. License requirement.**

9 (a) It is unlawful for any person other than an exempt person to act as a mortgage
10 lender, or to hold himself, herself, or itself out to a borrower or to the general public as a
11 mortgage lender, without a current mortgage lender license issued by the
12 Commissioner.

13 (b) It is unlawful for any person other than an exempt person to act as a mortgage
14 broker, or to hold himself or herself out to a borrower or to the general public as a
15 mortgage broker, without a current mortgage broker license issued by the
16 Commissioner.

17 **"§ 53-243.08. Application for license.**

18 (a) An application for a license under this Article shall be in writing, under oath,
19 and in a form prescribed by the Commissioner.

20 (b) The Commissioner may require each applicant for a license to provide any
21 information reasonably necessary for the Commissioner to make a determination of the
22 applicant's eligibility for a license and to provide appropriate supervision of the
23 applicant if a license is granted.

24 (c) A completed license application form shall be accompanied by the following:

25 (1) Evidence of the financial requirements of G.S. 53-243.13.

26 (2) If applicable, an application for branch office permits.

27 (3) Evidence that the applicant and its employees and agents satisfy the
28 training and experience requirements prescribed by the Commissioner.

29 (4) If the applicant is a company, documentation that the company is duly
30 incorporated, registered, or otherwise formed as a lawful entity under
31 the laws of the state in which it was organized and that the company is
32 duly authorized to transact business in this State.

33 (5) Any fees required by G.S. 53-243.31.

34 **"§ 53-243.09. Renewal of licenses.**

35 (a) On or before March 1 of each year, each licensee shall apply to renew each
36 license issued in his, her, or its name by the Commissioner under this Article by
37 submitting to the Commissioner a license renewal application in a form prescribed by
38 the Commissioner.

39 (b) The Commissioner may require any applicant for the renewal of a license to
40 provide any information reasonably necessary for the Commissioner to make a
41 determination that the applicant continues to be eligible for a license and that the
42 applicant will continue to be subject to appropriate supervision of the Commissioner
43 upon renewal.

1 (c) A completed license renewal application shall be accompanied by the
2 following:

3 (1) Evidence that the licensee continues to satisfy the financial
4 responsibility requirements of G.S. 53-243.13;

5 (2) If applicable, an application for the renewal of branch office permits;
6 and

7 (3) Any fees required by G.S. 53-243.31.

8 (d) Any licensee who submits a completed license renewal application in a
9 timely manner, including all supporting documents and supplemental information and
10 all applicable fees, shall be permitted to continue to operate pending final approval or
11 disapproval of the license renewal application if final approval or disapproval is not
12 granted prior to May 1.

13 (e) Any person holding a license who fails to file a proper license renewal
14 application on or before March 1 and who files a license renewal application thereafter
15 but before April 1 may be required to pay, in addition to the renewal fee, a late filing
16 penalty as provided in G.S. 53-243.30.

17 (f) Each license shall expire immediately and automatically on April 30 without
18 further action by the Commissioner if the licensee fails to file a proper license renewal
19 application as provided for in this section.

20 (g) If the Commissioner determines that the efficient operation of the
21 Commissioner's office and the orderly administration and enforcement of the law
22 warrants a modification of the annual renewal of licenses issued under this Article, and
23 that the modification may be made consistent with the protection of the borrowing
24 public, then the Commissioner may permit license renewals for a period not to exceed
25 three years in lieu of the annual renewal of licenses required by this section. The
26 Commissioner may modify or extend renewal dates to stagger the deadlines throughout
27 the calendar year. The Commissioner may adopt any rules, regulations, and orders
28 necessary or advisable to accomplish any modification.

29 **"§ 53-243.10. Investigation of applicants; approval and denial of applications.**

30 (a) Upon receipt of an application for a license or for the renewal of a license, the
31 Commissioner shall conduct any investigation the Commissioner deems necessary to
32 determine whether the applicant qualifies for the issuance or renewal of the requested
33 license. The Commissioner's investigation may include matters relating to the financial
34 responsibility, criminal record, credit history, experience, training, character, and
35 general fitness of the applicant, its principals, and its employees.

36 (b) The Commissioner shall not approve an application for a license unless the
37 Commissioner makes the following findings:

38 (1) That the financial responsibility, criminal record, credit history,
39 experience, training, character, or general fitness of the applicant, its
40 principals, or its employees (i) are such that the applicant will
41 command the confidence of the community, and (ii) warrant the belief
42 that the business of the applicant has been, or will be, operated
43 honestly, fairly, and in an ethical manner consistent with the laws of
44 this State and rules and regulations adopted by the Commission;

1 (2) The applicant is in material compliance with all provisions of this
2 Article;

3 (3) All material requirements for the renewal of a license have been met;
4 and

5 (4) No grounds exist which would justify disciplinary action against the
6 applicant under G.S. 53-243.25.

7 (c) The Commissioner shall approve an application for renewal of an existing
8 license unless the Commissioner finds that one or more of the criteria for license set
9 forth in subsection (b) of this section are not met.

10 (d) If an application for a license or the renewal of a license is denied, the
11 Commissioner shall promptly notify the applicant of the denial and the reasons for the
12 denial.

13 **"§ 53-243.11. License.**

14 Each license issued under this Article shall state the name of the licensee and the
15 address of the principal place of business of the licensee. The licensee shall post a copy
16 of the license in a conspicuous place in the licensee's principal place of business. A
17 license shall not be transferred or assigned, by operation of law or otherwise. No
18 licensee shall transact business as a mortgage lender or as a mortgage broker under any
19 name other than that designated in the license. Every license shall remain in force until
20 it expires or until it is surrendered, revoked, or suspended. The expiration, surrender,
21 revocation, or suspension of a license shall not affect any preexisting legal right or
22 obligation of a licensee.

23 **"§ 53-243.12. Change of control.**

24 (a) Except as provided in this section, no person shall acquire a twenty-five
25 percent (25%) or larger controlling interest in a licensee unless that person first:

26 (1) Files an application for change of control with the Commissioner in a
27 form prescribed by the Commissioner;

28 (2) Delivers the information to the Commissioner as the Commissioner
29 may require concerning the financial responsibility, criminal record,
30 credit history, experience, training, character, and general fitness of the
31 applicant (if the applicant is an individual) or of the applicant and its
32 principals (if the applicant is a company);

33 (3) Provides evidence that the licensee continues to satisfy the financial
34 responsibility requirements of G.S. 53-243.13; and

35 (4) Pays the required fee as provided in G.S. 53-243.31.

36 (b) Upon receipt of an application for a change of control, the Commissioner
37 shall conduct any investigation the Commissioner deems necessary to determine
38 whether the application should be approved or denied. The Commissioner's
39 investigation may include matters relating to the financial responsibility, criminal
40 record, credit history, experience, training, character, and general fitness of the
41 applicant, its principals, and its employees.

42 (c) Subject to subsection (d) of this section, the Commissioner shall approve the
43 application for a change of control and permit the applicant to acquire the interest in the
44 licensee if the Commissioner finds that the applicant, and its principals, if applicable,

1 have the financial responsibility, criminal record, credit history, experience, training,
2 character, and general fitness such as to command the confidence of the community and
3 to warrant the belief that the business of the licensee will be operated honestly, fairly,
4 and in an ethical manner consistent with the laws of this State and rules and regulations
5 adopted by the Commission.

6 (d) The Commissioner may deny an application for change of control if:

7 (1) The Commissioner cannot make the findings specified in subsection
8 (c) of this section;

9 (2) The applicant or the licensee is not in material compliance with the
10 provisions of this Article;

11 (3) All material requirements for the approval of the change of control
12 have not been met; or

13 (4) Any grounds exist which would justify disciplinary action against the
14 applicant or the licensee under G.S. 53-243.25.

15 (e) The Commissioner shall grant or deny the application for change of control
16 within 60 days from the date a completed application accompanied by the required
17 information and the required fee is filed, unless the period is extended by order of the
18 Commissioner reciting the reasons for the extension. If the application is denied, the
19 Commissioner shall promptly notify the applicant of the denial and the reasons for the
20 denial.

21 (f) The provisions of this section shall not apply to:

22 (1) The acquisition of an interest in a licensee by merger or consolidation
23 by or with (i) a person affiliated through common ownership or control
24 with the licensee, or (ii) a person licensed under this Article or an
25 exempt person; or

26 (2) The acquisition of an interest in a licensee by a person by bequest,
27 descent, survivorship, or by operation of law.

28 **"§ 53-243.13. Financial responsibility requirements.**

29 (a) Each licensee under this Article shall have and continuously maintain the
30 following as long as the license remains in effect:

31 (1) For any person who holds both a mortgage lender license and a
32 mortgage broker license, a surety bond in an amount set by the
33 Commissioner, but not less than two hundred thousand dollars
34 (\$200,000) and not more than one million dollars (\$1,000,000).

35 (2) For any person who holds a mortgage lender license, a surety bond in
36 an amount set by the Commissioner, but not less than one hundred
37 thousand dollars (\$100,000) and not more than five hundred thousand
38 dollars (\$500,000).

39 (3) For any individual who holds a mortgage broker license, a surety bond
40 in an amount set by the Commissioner, but not less than fifty thousand
41 dollars (\$50,000) and not more than two hundred fifty thousand dollars
42 (\$250,000).

43 (b) An individual may satisfy the requirements of subsection (a) of this section as
44 follows:

- 1 (1) If the individual is licensed as a mortgage lender or as both a mortgage
2 lender and a mortgage broker, the individual shall obtain a surety bond
3 in his or her own name which satisfies the requirements of subsection
4 (c) of this section.
- 5 (2) If the individual is licensed only as a mortgage broker, the individual
6 may either (i) obtain a surety bond in his or her own name, which
7 satisfies the requirements of subsection (c) of this section, or (ii) be
8 covered under the terms of a surety bond issued to his or her employer
9 that is issued in accordance with subdivision (3) of this subsection.
- 10 (3) Any company employing one or more licensed mortgage brokers may
11 obtain a bond in the name of the company which by its terms covers
12 certain named individuals who are licensed as mortgage brokers
13 employed by the company; the amount of the bond shall be equal to or
14 in excess of the total of the bond amounts set by this section for each
15 broker covered by the company bond.

16 (c) Any surety bond required or permitted by this section shall be issued by a
17 bonding company or an insurance company authorized to do business in this State. The
18 bond shall be in a form satisfactory to the Commissioner. The licensee shall be the
19 obligor. The aggregate liability for any claims on a bond shall not exceed the face
20 amount of the bond. No surety obligation on a bond shall be terminated unless at least
21 90 days' prior written notice is given by the surety to the obligor and the Commissioner.
22 The bond shall run to the Commissioner for the benefit of this State and any persons
23 damaged by the failure of the obligor or the obligor's employees to comply with the
24 provisions of this Article. The bond shall be conditioned upon the licensee conducting
25 his, her, or its licensed business in conformity with this Article and all applicable laws.
26 Any person who may be damaged by noncompliance of a licensee or any employee of
27 the licensee with any condition of the bond may proceed on the bond against the
28 principal or surety thereon, or both, to recover damages. No such proceeding shall
29 preclude other remedies available to those persons, including other remedies under this
30 Article.

31 (d) As an alternative to the surety bond required by subsection (a) or (b) of this
32 section, the Commissioner may allow the financial responsibility requirements of this
33 section to be satisfied by a licensee where the licensee has maintained for at least three
34 years preceding the date of application for license or application for renewal, a net
35 worth of at least five million dollars (\$5,000,000).

36 **"§ 53-243.14. Principal loan officer and managing loan officer requirements.**

37 (a) Each licensed mortgage lender shall designate a principal loan officer. The
38 principal loan officer shall be in charge of and responsible for the mortgage lending
39 activities of the licensee, including general supervision of all managing loan officers
40 and other employees of the licensee. The principal loan officer may also be designated
41 as the managing loan officer for the principal place of business or for one branch office.
42 Each licensed mortgage lender shall maintain on file with the Commissioner a form
43 prescribed by the Commissioner designating the principal loan officer and confirming
44 the principal loan officer's acceptance of that responsibility.

1 **(b)** Each licensed mortgage lender shall designate a separate managing loan
2 officer for the principal place of business and for each branch office. An individual shall
3 not be designated as a managing loan officer for more than one location. The managing
4 loan officer shall have his or her office at that location and shall be responsible for the
5 direct control and continuous supervision of the licensee's business and employees at
6 that location. Each licensed mortgage lender shall maintain a form on file with the
7 Commissioner as prescribed by the Commissioner designating the identity and location
8 of the principal place of business or branch office, as the case may be, the name and
9 address of the designated managing loan officer assigned to that location, and the
10 individual's acceptance of the responsibility.

11 **(c)** The Commissioner may prescribe the qualifications required for principal
12 loan officers and managing loan officers.

13 **(d)** Each licensed mortgage lender shall report any change in the identity of any
14 designated principal loan officer or managing loan officer to the Commissioner in
15 writing and in a form prescribed by the Commissioner within 30 days following the
16 change.

17 **"§ 53-243.15. Principal broker and managing broker requirements.**

18 **(a)** Each licensed mortgage broker shall designate an individual who is duly
19 licensed under this Article as a mortgage broker as his, her, or its principal broker. The
20 principal broker shall be in charge of and responsible for the mortgage brokering
21 activities of the licensee, including general supervision of all managing brokers and
22 other employees of the licensee. The principal broker may also be designated as the
23 managing broker for the principal place of business or for one branch office. If the
24 licensee is an individual operating as a sole proprietor or independent contractor, the
25 principal broker shall be the licensee. Each licensed mortgage broker shall maintain on
26 file with the Commissioner a form prescribed by the Commissioner designating the
27 principal broker and confirming the principal broker's acceptance of the responsibility.

28 **(b)** Each licensed mortgage broker shall designate a separate managing broker for
29 the principal place of business and for each branch office. Each individual designated as
30 a managing broker must be duly licensed under this Article as a mortgage broker. An
31 individual shall not be designated as a managing broker for more than one location. The
32 managing broker shall have his or her office at that location and shall be responsible for
33 the direct control and continuous supervision of the licensee's business and employees
34 at that location. Each licensed mortgage broker shall maintain a form on file with the
35 Commissioner as prescribed by the Commissioner designating the identity and location
36 of the principal place of business or branch office, as the case may be, the name and
37 address of the designated managing broker assigned to that location, and the individual's
38 acceptance of that responsibility.

39 **(c)** The Commissioner may prescribe the qualifications required for principal
40 brokers and managing brokers.

41 **(d)** Each licensed mortgage broker shall report any change in the identity of any
42 designated principal broker or managing broker to the Commissioner in writing and in a
43 form prescribed by the Commissioner within 30 days following the change.

44 **"§ 53-243.16. Record-keeping requirements.**

1 (a) Each licensee shall maintain any books, accounts, records, and documents
2 regarding mortgage loans subject to this Chapter prescribed by the Commissioner to
3 enable the Commissioner to determine the licensee's compliance with this Article;
4 provided, however, if federal law prescribes record-keeping requirements for any
5 licensee, the Commissioner shall not impose obligations under this Article for that
6 licensee that are more burdensome than those imposed under federal law.

7 (b) A licensee shall keep the books, accounts, records, and documents in a secure
8 location under conditions which will not lead to their damage or destruction. The
9 Commissioner may require the books, accounts, records, and documents to be produced
10 and available at any reasonable and convenient location in this State for inspection and
11 examination.

12 (c) If the Commissioner determines that it is more effective and cost-efficient to
13 perform a review or examination of the books, accounts, records, and documents of a
14 licensee at an out-of-state location, the Commissioner may require the books, accounts,
15 records, and documents to be produced and made available at any reasonable and
16 convenient location outside of this State.

17 (d) A licensee shall satisfy the record retention requirements prescribed by the
18 Commissioner. A licensee may dispose of any record which has been retained for the
19 prescribed period; provided, however, if federal law prescribes record-retention
20 requirements for any licensee, the Commissioner shall not impose obligations under this
21 Article for such licensee that are more burdensome than those imposed under federal
22 law.

23 (e) A licensee may cause any or all books, accounts, records, and documents kept
24 by it to be recorded, copied, or reproduced by any document imaging or other electronic
25 means or by any other photographic, photostat, or miniature photographic or
26 reproduction process of any kind which is capable of conversion into written form
27 within a reasonable time and which correctly, accurately, and permanently copies,
28 reproduces, or forms a medium for copying or reproducing the original record on a film
29 or other durable material.

30 (f) Any electronic imaging, photographic, photostat, or miniature photographic
31 copy or reproduction of any kind, including electronic or computer-generated data,
32 which is capable of conversion into written form within a reasonable time, shall be
33 deemed to be an original record for all purposes and shall be treated as an original
34 record in all courts and administrative agencies for the purpose of its admissibility in
35 evidence. A facsimile, exemplification, or certified copy of any photographic copy or
36 reproduction shall, for all purposes, be deemed a facsimile, exemplification, or certified
37 copy of the original record.

38 **"§ 53-243.17. Reporting requirements.**

39 (a) Each licensee shall by March 31 of each year file a written report with the
40 Commissioner containing information necessary to determine the licensee's compliance
41 with the provisions of this Article and any other information prescribed by the
42 Commissioner concerning the licensee's business and operations during the preceding
43 calendar year. Reports shall be under oath and in the form prescribed by the
44 Commissioner.

1 **(b)** Each person licensed as a mortgage lender, a mortgage broker, or as both a
2 mortgage lender and a mortgage broker shall file with the Commissioner an audit of the
3 licensee's operations during the licensee's preceding fiscal year and the licensee's
4 financial condition at the end of the preceding fiscal year within 120 days after the end
5 of the licensee's fiscal year.

6 **(c)** Any licensee who fails to prepare and file a report or audit required by this
7 section within the time prescribed by this section shall pay a late filing fee as required
8 by G.S. 53-243.31.

9 **"§ 53-243.18. Branch offices.**

10 **(a)** A licensee shall be fully responsible for the administration, operation, control,
11 and oversight of the licensee's branch offices.

12 **(b)** No licensee shall open any branch office without first obtaining a branch
13 office permit for that branch office from the Commissioner.

14 **(c)** An application for a branch office permit under this Article shall be in writing
15 and in a form prescribed by the Commissioner. The Commissioner may require each
16 applicant for a branch office permit to provide any information reasonably necessary for
17 the Commissioner to supervise the branch office effectively. An application for a branch
18 office of a licensed mortgage lender shall include the name and address of the managing
19 loan officer who will have responsibility for supervision of the branch office. An
20 application for a branch office of a licensed mortgage broker shall include the name and
21 address of the managing broker who will have responsibility for supervision of the
22 branch office. A completed application for a branch office permit shall be accompanied
23 by any fees required by G.S. 53-243.30.

24 **(d)** An application for a branch office permit submitted with an application for a
25 license shall be considered in conjunction with, and as part of, the license application. If
26 the application for a license is approved, the Commissioner may approve the application
27 for a branch office permit; if the application for a license is denied, the Commissioner
28 shall deny the application for a branch office permit. If the application is approved, the
29 applicant shall give written notice to the Commissioner within 30 days after the licensee
30 commences business at the branch office.

31 **(e)** The Commissioner may deny an application for a branch office permit if the
32 Commissioner finds that:

- 33 **(1)** The applicant has not conducted business under this Article efficiently,
34 fairly, ethically, in the public interest, and in accordance with the laws
35 of this State and the rules and regulations adopted by the Commission;
- 36 **(2)** The licensee's surety bond is insufficient to cover the licensee's
37 employees and activities;
- 38 **(3)** The licensee's staff at the branch office does not satisfy training and
39 experience requirements prescribed by the Commissioner;
- 40 **(4)** The licensee has not accepted full financial responsibility for the
41 operation and activities of the branch office;
- 42 **(5)** The applicant is not in material compliance with any provision of this
43 Article;

1 (6) All material requirements for the issuance of the branch office permit
2 have not been met; or

3 (7) Any grounds exist which would justify disciplinary action against the
4 applicant under G.S. 53-243.25.

5 (f) An application for a branch permit shall be deemed approved if notice to the
6 contrary has not been mailed by the Commissioner to the applicant within 30 days after
7 the date the completed application, accompanied by all required information and the
8 required fee, is filed, unless the period is extended by the order of the Commissioner.
9 The Commissioner shall promptly notify the applicant of the denial and the reasons for
10 the denial.

11 (g) Branch office permits must be renewed in conjunction with the renewal of the
12 licensee's license. Fees payable by a licensee for the renewal of the licensee's branch
13 office permits are specified in G.S. 53-243.30.

14 (h) No later than 30 business days after a change is effective, the licensee shall
15 notify the Commissioner in writing of the closing or relocation of any branch office.
16 Each notice shall be in writing, in a form prescribed by the Commissioner, and
17 accompanied by any fees required by G.S. 53-243.30.

18 (i) A licensee shall post a copy of the branch office permit in a conspicuous
19 place in the branch office.

20 (j) A branch permit shall not be transferred or assigned, whether by operation of
21 law or otherwise.

22 (k) Unless an individual licensee's personal residence is specifically designated
23 as a branch office, an individual licensee's personal residence shall not be considered a
24 branch office.

25 **"§ 53-243.19. Undertakings and responsibilities of licensees.**

26 Each licensee has a continuing obligation and responsibility to satisfy the following:

27 (1) A licensee shall maintain a staff with the training and experience
28 prescribed by the Commissioner.

29 (2) A licensee shall promptly report to the Commissioner the conviction of
30 the licensee or of any principal or employee of the licensee of (i) any
31 crime in any jurisdiction which involves fraud, dishonest dealing, or
32 any other act of morale turpitude, or (ii) any felony in any jurisdiction.
33 For the purposes of this section, a person shall be deemed to have been
34 convicted of a crime if either (i) that person has pleaded guilty, no
35 contest, or nolo contendere before a court or federal magistrate, or (ii)
36 that person has been found guilty by the decision or judgment of a
37 court or federal magistrate or by the verdict of a jury, irrespective of
38 the pronouncement of sentence or the suspension thereof. A person
39 shall not be deemed to have been convicted of a crime if that person's
40 conviction has been set aside, reversed, or otherwise abrogated by
41 lawful judicial process or if the person convicted of the crime has
42 received a pardon therefor from the President of the United States or
43 the governor or other pardoning authority in the jurisdiction where the
44 person was convicted.

- 1 (3) A licensee shall account for any funds, documents, or other thing of
2 value which comes into the licensee's possession, which is not the
3 licensee's property, and which the licensee is not entitled to retain
4 under the circumstances.
- 5 (4) Within 30 days after the commencement of an action or proceeding
6 and within 30 days after the entry of a judgment or order, a licensee
7 shall give written notice to the Commissioner of the following:
- 8 a. Any administrative proceeding or order which is initiated or
9 entered against the licensee or any principal, or employee of the
10 licensee related to or arising out of mortgage brokering or the
11 making of mortgage loans;
- 12 b. Any action or proceeding which is brought against the licensee
13 or any principal, or employee of the licensee by any person
14 where the action is brought under this Article or involves a
15 claim against the surety bond filed with the Commissioner to
16 satisfy the requirements of G.S. 53-243.13;
- 17 c. Any judgment which is entered against the licensee or any
18 principal, or employee of the licensee arising out of an action
19 brought under this Article or involving a claim against the
20 surety bond filed with the Commissioner to satisfy the
21 requirements of G.S. 53-243.13; or
- 22 d. Any bankruptcy or insolvency proceeding which is instituted by
23 or against the licensee or any principal, or employee of the
24 licensee.
- 25 (5) A licensee shall notify the Commissioner in writing of any material
26 change to the information required on the most recent application for a
27 license or the renewal of a license within 30 days of the change.
- 28 (6) A licensee shall comply with the provisions of this Article, all rules
29 and regulations adopted by the Commission pursuant to G.S. 53-
30 243.30, and all orders issued by the Commissioner under this Article.

31 **§ 53-243.20. Specific duties of a mortgage broker.**

32 A mortgage broker, including any licensee and any person required to be licensed
33 under this Article, shall, in addition to duties imposed by other statutes or at common
34 law:

- 35 (1) Safeguard and account for any money handled for the borrower;
36 (2) Follow reasonable and lawful instructions from the borrower;
37 (3) Act with reasonable skill, care, and diligence;
38 (4) Disclose to the borrower information reasonably accessible to the
39 mortgage broker which might reasonably be expected to influence the
40 borrower's decision;
- 41 (5) Make reasonable efforts to secure a mortgage loan with rates, charges,
42 and repayment terms that are advantageous to the borrower; and
- 43 (6) If the broker presents the borrower with a loan that contains a
44 prepayment penalty, the broker shall advise the borrower in writing, at

1 or before the time that a Good Faith Estimate is given to the borrower,
2 whether the borrower qualifies for a loan on comparable terms without
3 a prepayment penalty.

4 "**§ 53-243.21. Additional protections for loans involving substantial lender paid**
5 **broker fees.**

6 A mortgage loan shall be subject to the limitations and prohibited acts and practices
7 set out in G.S. 24-1.1E(b), (c), and (d) if, in consideration of or in connection with the
8 brokering of a loan, a lender pays to a broker a fee in excess of: (i) two percent (2%) of
9 the loan amount for a loan that has no points and fees other than fees described in G.S.
10 24-1.1E and broker fees paid directly by the borrower, or (ii) one percent (1%) of the
11 loan amount for all other mortgage loans.

12 "**§ 53-243.22. Prohibited activities of mortgage lenders and mortgage brokers.**

13 (a) It shall be unlawful for any mortgage lender or mortgage broker, including
14 any licensee, any exempt person other than a person exempt under the provisions of
15 G.S. 53-243.04(a), and any person required to be licensed under this Article to:

- 16 (1) Misrepresent the material facts or knowingly make false promises
17 likely to influence, persuade, or induce a borrower to take a mortgage
18 loan, or knowingly pursue a course of misrepresentation through
19 agents or otherwise;
- 20 (2) Misrepresent to, or conceal from a borrower, material factors, terms, or
21 conditions of a mortgage loan transaction;
- 22 (3) Participate in a transaction where disclosures mandated by the Truth-
23 in-Lending Act, 15 U.S.C. § 1601, et seq., or the Real Estate
24 Settlement Procedures Act, 12 U.S.C. § 3500.1, et seq., are not made;
- 25 (4) Fail to disburse funds in accordance with agreements;
- 26 (5) Improperly refuse to issue a satisfaction of a mortgage loan in
27 violation of G.S. 45-36.3;
- 28 (6) Fail to account for any funds, documents, or other thing of value which
29 comes into the possession of the mortgage lender or mortgage broker,
30 which is not the property of the mortgage lender or mortgage broker,
31 and which the mortgage lender or mortgage broker is not entitled to
32 retain under the circumstances;
- 33 (7) Engage in any transaction, practice, or course of business which is not
34 in good faith or fair dealing or which operates a fraud upon any person
35 or that violates the provisions of G.S. 24-1.1E or G.S. 24-10.2 or is
36 prohibited by the provisions of Chapter 75 of the General Statutes;
- 37 (8) Advertise a mortgage loan product unless the product will be available
38 to a significant number of borrowers responding to the advertisement;
- 39 (9) Fraudulently or deceitfully advertise a mortgage loan or misrepresent
40 the terms, conditions, or charges incident to a mortgage loan in any
41 advertisement;
- 42 (10) Use any sign or written or printed paper or any communication in any
43 medium indicating that a person is a bank, a savings bank, trust
44 company, or place of banking, or use the word 'bank,' 'savings bank,'

1 'banking,' 'banker,' 'trust,' 'trust company,' or the equivalent or plural or
2 phonetic equivalent of any of these words in connection with any
3 business unless the business is a banking entity as defined in G.S. 53-
4 127, provided that the use of the term 'mortgage banker' or 'mortgage
5 banking' in connection with the business of mortgage lending as
6 defined in this Article shall not be deemed to be a violation of this
7 section;

- 8 (11) Recommend or encourage default on an existing loan or other debt
9 prior to and in connection with the closing or planned closing of a
10 mortgage loan that refinances all or any portion of such existing loan
11 or debt;
12 (12) Hold himself, herself, or itself out to the general public as a mortgage
13 lender or as a mortgage broker unless the person is either an exempt
14 person or a licensee under this Article;
15 (13) Fail to disclose, at the first significant contact with borrowers, all fees
16 to be paid to the broker by the borrower or lender, including the
17 amount and method of calculation, in writing on a form prescribed by
18 the Commissioner;
19 (14) When engaged in mortgage brokering, knowingly or intentionally
20 engage in the unfair act or practice of 'flipping', as defined in G.S. 53-
21 243.03;
22 (15) For a mortgage broker to broker a loan the terms of which include a
23 prepayment penalty that is precluded under the terms of G.S. 24-
24 1.1A(b)(1);
25 (16) Engage in a practice or course of business which violates the
26 provisions of G.S. 58-43-5;
27 (17) Fail to pay promptly for completed appraisals or other services ordered
28 by or for the mortgage lender or mortgage broker; or
29 (18) To influence or attempt to influence through direct or indirect means
30 the outcome of a real estate appraisal sought in connection with a
31 mortgage loan, or to otherwise engage in a practice or course of
32 business which induces or attempts to induce a real estate appraiser to
33 violate the Uniform Standards of Professional Appraisal Practice in
34 connection with a mortgage loan.

35 **§ 53-243.23. Complaints; investigations; examinations.**

36 (a) Any person having reason to believe that a provision of this Article has been
37 violated by a person who is required to be licensed under this Article may file a written
38 complaint with the Commissioner setting forth details of the alleged violation.

39 (b) The Commissioner shall refer written complaints relating to any exempt
40 person to State or federal regulatory agencies responsible for regulation or oversight of
41 that person or to federal or State law enforcement authorities. The Commission shall
42 notify the complainants of those referrals.

43 (c) The Commissioner shall conduct a public or private investigation of any
44 person required to be licensed under this Article when the Commissioner has reason to

1 believe, either upon complaint or otherwise, that the person has violated or is about to
2 violate the provisions of this Article.

3 (d) Upon reasonable notice, the Commissioner may conduct examinations of any
4 licensee or any person required to be licensed under this Article to determine the
5 person's compliance with the provisions of this Article.

6 (e) The costs of an investigation or an examination shall be paid as follows:

7 (1) If the Commissioner finds as a result of an investigation that the
8 person investigated has violated, in a material way, the provisions of
9 this Article, the person investigated shall pay the costs of the
10 investigation and reimburse the Office of the Commissioner for the
11 expenses for each examiner and investigator designated by the
12 Commissioner who participated in the investigation. Otherwise, the
13 costs of an investigation shall be borne by the Office of the
14 Commissioner.

15 (2) The Commissioner shall annually determine examination costs and
16 may include in those costs reimbursement of all expenses, including
17 salary, for each examiner designated by the Commissioner who
18 participates in the examination. The costs of all examinations shall be
19 borne by the person examined.

20 (3) Payment of investigation and examination costs shall be due within 30
21 days after receipt of an invoice from the Commissioner. If the person
22 invoiced fails to pay the costs of an investigation or an examination,
23 the Commissioner may bring an action for the recovery of the costs in
24 any court of competent jurisdiction.

25 **"§ 53-243.24. Powers of the Commissioner.**

26 The Commissioner shall be responsible for the administration and enforcement of
27 this Article. In furtherance of that duty, and in addition to any other powers the
28 Commissioner has under this Article, the Commissioner shall have the following
29 powers:

30 (1) To issue and serve subpoenas for witnesses and documents relevant to
31 any inquiry authorized by this Article, to compel their attendance and
32 production, and to administer oaths in connection therewith.

33 (2) To require information with regard to any application, report,
34 investigation, or examination as the Commissioner may deem
35 necessary, with due regard to the paramount interest of the public as to
36 the experience, training, background, criminal record, credit history,
37 honesty, truthfulness, integrity, and competency of the person, its
38 principals, its employees, and its agents.

39 (3) To institute proceedings in any court of competent jurisdiction in
40 furtherance of the purposes of this Article.

41 (4) To appoint designees, investigators, supervisors, experts, special
42 assistants, and other agents as needed to effectively and efficiently
43 administer this Article. Any person so appointed or designated shall

1 have all powers delegated by the Commissioner, including the powers
2 granted the Commissioner in this section.

- 3 (5) To conduct checks of criminal records and credit records for any
4 licensee, applicant, or employee or agent of a licensee or applicant.

5 **"§ 53-243.25. Disciplinary action; license violations.**

6 (a) In addition to any other powers or authority granted to the Commissioner
7 under this Article, whenever the Commissioner finds that grounds for disciplinary
8 action exist under this section, the Commissioner may impose one or more of the
9 following disciplinary measures against any person required to be licensed under this
10 Article and the person's principals and employees:

- 11 (1) Deny any application or approve an application under such reasonable
12 conditions as the Commissioner specifies.
13 (2) Revoke a license or branch office permit.
14 (3) Suspend a license or branch office permit, subject to reinstatement
15 upon satisfying all reasonable conditions that the Commissioner
16 specifies.
17 (4) Place a licensee on provisional status for a period of time and subject
18 to all reasonable conditions that the Commissioner specifies.
19 (5) Issue a public letter of warning or a public reprimand.
20 (6) Issue cease and desist orders.
21 (7) Require an increase in a licensee's surety bond within the limits
22 specified in G.S. 53-243.13.
23 (8) Enter into consent agreements.
24 (9) Require a person to disgorge profits.
25 (10) Impose civil money penalties in an amount up to five thousand dollars
26 (\$5,000) for each incident or violation.

27 (b) Each of the following acts constitutes an independent ground for which the
28 disciplinary actions specified in subsection (a) of this section may be taken:

- 29 (1) Being convicted of (i) a crime in any jurisdiction which involves fraud,
30 dishonest dealing, or any other act of moral turpitude, or (ii) a felony
31 in any jurisdiction. For the purposes of this section, a person shall be
32 deemed to have been convicted of a crime if the person has pleaded
33 guilty, no contest, or nolo contendere before a court or federal
34 magistrate, or has been found guilty thereof by the decision or
35 judgment of a court or federal magistrate or by the verdict of a jury,
36 irrespective of the pronouncement of sentence or the suspension
37 thereof, unless the plea or decision, judgment, or verdict has been set
38 aside, reversed, or otherwise abrogated by lawful judicial process or
39 unless the person convicted of the crime has received a pardon therefor
40 from the President of the United States or the governor or other
41 pardoning authority in the jurisdiction where the person was convicted.
42 (2) Fraud, misrepresentation, deceit, negligence, or incompetence in
43 providing mortgage brokering services, making a mortgage loan, or in
44 connection with any mortgage loan transaction.

- 1 (3) Making a material misstatement of fact on an initial or renewal
2 application.
- 3 (4) Failure to place immediately upon receipt, and maintain until
4 authorized to disburse, any money entrusted to the licensee by a person
5 dealing with the licensee as a mortgage broker or mortgage lender in a
6 trust account or a segregated account in a federally insured financial
7 institution.
- 8 (5) Failure to account for any funds, documents, or other thing of value
9 which comes into the licensee's possession, which is not the licensee's
10 property, and that the licensee is not entitled to retain under the
11 circumstances.
- 12 (6) Failure to disburse funds in accordance with agreements.
- 13 (7) Any misuse, misapplication, or misappropriation of funds or other
14 personal property entrusted to his, her, or its care and to which he, she,
15 or it has no current property right at the time of entrustment.
- 16 (8) Having a license or the equivalent to practice any profession or
17 occupation revoked, suspended, or otherwise acted against, including
18 the denial of licensure by a licensing authority of this State or any
19 other state or the federal government for fraud, dishonest dealing, or
20 any other act of moral turpitude.
- 21 (9) Failure to comply with any order or consent agreement made or issued
22 under this Article.
- 23 (10) Acting as a mortgage broker in violation of G.S. 53-243.07.
- 24 (11) Acting as a mortgage lender in violation of G.S. 53-243.07.
- 25 (12) Failure to pay any fee, charge, or civil money penalty under this
26 Article in a timely manner.
- 27 (13) Failure to maintain, preserve, or keep available for examination all
28 books, accounts, records, and other documents required under this
29 Article.
- 30 (14) Refusal to permit an investigation or examination of books and
31 records, or refusal to comply with a lawful subpoena.
- 32 (15) Repeatedly and materially underestimating closing costs in
33 communication to borrowers.
- 34 (16) Failure to comply with, or violation of, any other provision of this
35 Article, any rules adopted pursuant to this Article, or any applicable
36 federal or State laws or rules.
- 37 (17) Commission of fraud, misrepresentation, concealment, dishonest
38 dealing by trick, scheme, or device, culpable negligence, or breach of
39 trust in any business transaction; or aiding, assisting, or conspiring
40 with another person engaged in any such misconduct in furtherance
41 thereof.
- 42 (18) Failure to continuously satisfy the financial requirements of G.S. 53-
43 243.13.

1 (c) If the licensee is an individual, the licensee is subject to the disciplinary
2 action specified in subsection (a) of this section for any act or condition described in
3 subsection (b) of this section by the licensee or any of the licensee's employees. If the
4 licensee is a company, the licensee is subject to the disciplinary action specified in
5 subsection (a) of this section for any act or condition described in subsection (b) of this
6 section by the licensee, any principal of the company, or any employee or agent of the
7 company.

8 (d) An individual employed by a person required to be licensed under this Article
9 is subject to the disciplinary action specified in this section arising from the individual's
10 own conduct.

11 **"§ 53-243.26. Notice and hearing.**

12 (a) Consistent with Article 3A of Chapter 150B of the General Statutes, a party
13 shall be afforded notice and an opportunity for hearing before any of the enforcement or
14 disciplinary actions enumerated in G.S. 53-243.25 shall be concluded by the
15 Commissioner; provided, however, that in cases involving extraordinary circumstances
16 requiring immediate action, including, without limitation, an effort to prevent imminent
17 loss or damage to a consumer or to the general public, the Commissioner may take
18 action without notice or a hearing, but the Commissioner shall promptly afford, upon
19 written request, a subsequent hearing to rescind or modify any action so taken.

20 (b) On any enforcement or disciplinary action taken or proposed to be taken by
21 the Commissioner, the person against whom the action is taken or proposed to be taken
22 shall be entitled to an informal hearing, provided the applicant requests an informal
23 hearing in writing within 20 days after the Commissioner has mailed or otherwise
24 delivered notice of the action. In the event of an informal hearing, which shall be held
25 with reasonable promptness in the offices of the Commissioner in Raleigh, the
26 Commissioner shall reconsider the matter and, after the informal hearing, issue a written
27 order affirming, modifying, or canceling the enforcement or disciplinary action. The
28 right of a person to an informal hearing under this subsection shall be in addition to and
29 not in derogation of the person's rights to an administrative hearing and judicial review
30 under Article 3A and Article 4 of Chapter 150B of the General Statutes.

31 **"§ 53-243.27. Confidentiality of records.**

32 (a) Except as provided in subsection (b) of this section, the following shall be
33 confidential under G.S. 53-99(b)(7b):

- 34 (1) Records of applications for licenses, license renewals, and changes of
35 control, and all investigations and proceedings relating thereto; and
- 36 (2) Records of investigations and examinations conducted under this
37 Article and information obtained by the Commissioner in the course of
38 the Commissioner's duties under this Article.

39 (b) Notwithstanding the confidentiality restrictions contained in this section, the
40 Commissioner may:

- 41 (1) Refer complaints relating to any exempt person to State or federal
42 regulatory agencies responsible for regulation or oversight of the
43 exempt person or to law enforcement authorities and may notify
44 complainants of these referrals. In the case of referrals, the safeguards

1 to confidentiality already in place within the applicable agencies or
2 authorities shall be deemed adequate.

3 (2) Share confidential information obtained under this Article with other
4 State or federal regulatory agencies or law enforcement authorities. In
5 the case of sharing under this subdivision, the safeguards to
6 confidentiality already in place within the applicable agencies or
7 authorities shall be deemed adequate.

8 (3) Compile and publish statistical information relating to mortgage
9 lenders and mortgage brokers extracted from confidential records,
10 provided identifying information is not disclosed.

11 (4) Make public disclosure of the following to the public:

12 a. Information contained in any application other than tax
13 identification numbers, financial information, and business
14 plans relating to the applicant or any of its principals or
15 employees;

16 b. Information concerning any surety bond obtained to satisfy the
17 requirements of G.S. 53-243.13;

18 c. Information concerning the number of written complaints filed
19 against any person during the preceding three years, and a
20 statement of how many of those complaints were referred to
21 federal or State regulatory agencies or law enforcement
22 authorities; withdrawn by the complainant, remain pending; or
23 resulted in disciplinary action pursuant to G.S. 53-243.25; and

24 d. Information concerning any violation of this Article or any rule,
25 regulation, or order under this Article, provided the information
26 is derived from disciplinary action pursuant to G.S. 53-243.25
27 which is or has the effect of a final order.

28 **"§ 53-243.28. Enforcement by borrowers.**

29 (a) Any person damaged by the failure of an exempt person, other than a person
30 exempt under the provision of G.S. 53-243.04(a), to comply with the provisions of G.S.
31 53-243.22, and any person damaged by the failure of any other mortgage lender or
32 mortgage broker to comply with the provisions of G.S. 53-243.19, 53-243.20, 53-
33 243.21, or 53-243.22 may file an action in civil court to recover damages or to obtain
34 other legal and equitable relief.

35 (b) Subject to the provisions of G.S. 53-243.06, upon a showing that a mortgage
36 lender or a mortgage broker required to be licensed under this Article was not licensed
37 at the time the mortgage lender made a mortgage loan to a borrower or a mortgage
38 broker provided mortgage brokering services to a borrower, the unlicensed mortgage
39 lender or mortgage broker shall not be entitled to recover or retain any fees or charges
40 connected with the loan.

41 (c) In any suit instituted by a borrower who alleges that the defendant violated
42 this Article, a reasonable attorney's fee shall be awarded to the attorney representing the
43 prevailing party, be taxed as a part of the court costs, and be payable by the losing party,
44 upon a finding by the presiding judge that:

1 (1) The party charged with the violation has willfully engaged in the act or
2 practice, and there was an unwarranted refusal by the party to fully
3 resolve the matter which constitutes the basis of the suit; or

4 (2) The party instituting the action knew, or should have known, the action
5 was frivolous and malicious.

6 (d) For conduct which constitutes a violation of this Article which also
7 constitutes a violation of Chapter 24 or Chapter 75 of the General Statutes, any person
8 seeking damages or penalties under the provisions of this Article may recover damages
9 either under this Article, under Chapter 24, or under Chapter 75, but no person may
10 recover damages for the same conduct under more than one of these statutes.

11 (e) The duties imposed on mortgage brokers or mortgage lenders by this Article
12 or by other common or statutory law shall not be subject to waiver or disclaimer.

13 (f) Any remedies available to a borrower under this Article are supplemental to
14 the power of the Commission to impose disciplinary action or otherwise enforce the
15 provisions of this Article.

16 (g) Nothing in this Article shall limit any statutory or common law right of any
17 person to bring any action in any court for any act, or the right of this State to punish
18 any person for any violation of any law.

19 "**§ 53-243.29. Making or brokering loans without a license is a felony.**"

20 The making of a mortgage loan by a mortgage lender required to be licensed under
21 this Article who is not licensed or the provision of mortgage brokering services by a
22 mortgage broker who is required to be licensed under this Article but is not licensed
23 shall be a Class I felony.

24 "**§ 53-243.30. Rules and regulations.**"

25 At the request of the Commissioner, the Commission may adopt rules and
26 regulations to effect the purposes of this Article, to provide for the protection of the
27 borrowing public, and to assist mortgage lenders and mortgage brokers in interpreting
28 this Article. This Article does not repeal the existing rules and regulations to the extent
29 that those rules and regulations are not inconsistent with the provisions of the Article.

30 "**§ 53-243.31. Fees.**"

31 The following fees may be set from time to time by the Commissioner, not to exceed
32 the amounts set forth in this section.

33 (1) Application for initial license.

34 a. Application for a mortgage lender license.

35 1. Nonrefundable application fee of one thousand dollars
36 (\$1,000); and

37 2. Initial license fee (which shall be refunded if the
38 application for license is denied) of eight hundred dollars
39 (\$800.00).

40 b. Application for a mortgage broker license.

41 1. Nonrefundable application fee of two hundred dollars
42 (\$200.00); and

- 1 2. Initial license fee (which shall be refunded if the
2 application for license is denied) of two hundred dollars
3 (\$200.00).
- 4 c. Application for both a mortgage lender license and a mortgage
5 broker license.
- 6 1. Nonrefundable application fee of one thousand one
7 hundred dollars (\$1,100); and
- 8 2. Initial license fee (which shall be refunded if the
9 application for license is denied) of nine hundred dollars
10 (\$900.00).
- 11 (2) Application for the renewal of existing license.
- 12 a. Application to renew a mortgage lender license – nonrefundable
13 renewal fee of eight hundred dollars (\$800.00).
- 14 b. Application to renew a mortgage broker license –
15 nonrefundable renewal fee of two hundred dollars (\$200.00).
- 16 c. Application to renew both a mortgage lender license and
17 mortgage broker license – nonrefundable renewal fee of nine
18 hundred dollars (\$900.00).
- 19 (3) Branch office permits.
- 20 a. Initial permit fee – two hundred dollars (\$200.00) per branch
21 office. Permit fees paid in conjunction with an initial
22 application for a license shall be refunded if the application for
23 a license is denied; otherwise, the initial permit fee is
24 nonrefundable.
- 25 b. Nonrefundable permit renewal fee of two hundred dollars
26 (\$200.00) for each branch office, not to exceed a total of five
27 thousand dollars (\$5,000) per calendar year for all branch
28 offices.
- 29 (4) Change of control application – nonrefundable fee of five hundred
30 dollars (\$500.00).
- 31 (5) Miscellaneous fees.
- 32 a. Filing notice of change of principal place of business – fifty
33 dollars (\$50.00).
- 34 b. Filing notice of closing or relocation of a branch office – fifty
35 dollars (\$50.00).
- 36 c. Late filing penalty – one hundred dollars (\$100.00).

37 **§ 53-243.32. Licensure of mortgage bankers and brokers under prior law.**

38 (a) Persons required to be licensed pursuant to G.S. 53-243.07 shall have until
39 April 30, 2002, to become licensed under this Article for the period beginning May 1,
40 2002.

41 (b) Any mortgage banker or mortgage broker which, upon the effective date of
42 this Article, is registered with the Commissioner under the former Article 19 of Chapter
43 53 of the General Statutes, shall be automatically licensed hereunder for the period
44 ending April 30, 2002, provided the registrant:

- 1 (1) Is in good standing with the Commissioner. For the purposes of this
2 subdivision, 'good standing' shall mean that a mortgage banker or
3 mortgage broker is not an adverse party to a pending administrative
4 proceeding, enforcement proceeding, civil or criminal action, or other
5 legal proceeding by the Commissioner or the Attorney General of this
6 State or another state.
- 7 (2) Is not subject to the terms of any consent agreement, final agency
8 decision, or court order limiting the mortgage banker's or mortgage
9 broker's authority to engage in that business in this State.
- 10 (3) Shall be subject to and shall comply with the provisions of G.S. 53-
11 243.09 on or before March 1, 2002.
- 12 (4) Shall designate, in the case of a mortgage lender, its principal loan
13 officer and the managing loan officer of each branch office required by
14 G.S. 53-243.14; and in the case of a mortgage broker, its principal
15 mortgage broker and the managing mortgage broker of each branch
16 office as required by G.S. 53-243.15."

17 **SECTION 3.** G.S. 53-99(b)(7b) reads as written:

18 "~~(7b) Records of examinations and investigations of registrants under the~~
19 ~~Mortgage Bankers and Brokers Act, Article 19 of this Chapter; Except~~
20 ~~as provided in G.S. 53-243.27, records of applications, investigations,~~
21 ~~and examinations under the Residential Mortgage Lenders and Brokers~~
22 ~~Licensure Act, Article 19A of this Chapter;".~~

23 **SECTION 4.** G.S. 66-106 reads as rewritten:

24 "**§ 66-106. Definitions.**

25 For purposes of this Article the following definitions apply:

- 26 (1) A 'loan broker' is any person, firm, or corporation who, in return for
27 any consideration from any person, promises to (i) procure for such
28 person, or assist such person in procuring, a loan from any third party;
29 or (ii) consider whether or not it will make a loan to such person.
- 30 (2) A 'loan' is an agreement to advance money or property in return for the
31 promise to make payments therefor, whether such agreement is styled
32 as a loan, credit card, line of credit, a lease or otherwise.

33 Provided, that this Article shall not apply to any party approved as a mortgagee by the
34 Secretary of Housing and Urban Development, the Federal Housing Administration, the
35 Veterans Administration, a National Mortgage Association or any federal agency; nor to
36 any party currently designated and compensated by a North Carolina licensed insurance
37 company as its agent to service loans it makes in this State; nor to any insurance
38 company registered with and licensed by the North Carolina Insurance Commissioner;
39 nor, with respect to residential mortgage loans, to any residential mortgage banker or
40 mortgage broker ~~registered with the Commissioner of Banks pursuant to Article 19 of~~
41 ~~Chapter 53 or exempt from such registration pursuant to G.S. 53-234(6); licensed or~~
42 exempt from licensure pursuant to Article 19A of Chapter 53 of the General Statutes;
43 nor to any attorney-at-law, public accountant, or dealer registered under the North
44 Carolina Securities Act, acting in the professional capacity for which such

1 attorney-at-law, public accountant, or dealer is registered or licensed under the laws of
2 the State of North Carolina. Provided further that subdivision (1)(ii) above shall not
3 apply to any lender whose loans or advances to any person, firm or corporation in North
4 Carolina aggregate more than one million dollars (\$1,000,000) in the preceding calendar
5 year."

6 **SECTION 5.** This act becomes effective April 1, 2002.