

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 2463  
Committee Substitute Favorable 6/11/08

Short Title: Regulate Mortgage Servicers.

(Public)

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Sponsors:

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Referred to:

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May 26, 2008

A BILL TO BE ENTITLED

1  
2 AN ACT TO REGULATE MORTGAGE SERVICING; TO REQUIRE MORTGAGE  
3 SERVICER LICENSURE UNDER THE MORTGAGE LENDING ACT; AND TO  
4 MAKE TECHNICAL AND CLARIFYING CHANGES TO THE MORTGAGE  
5 LENDING ACT.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 53-243.01 reads as rewritten:

8 "**§ 53-243.01. Definitions.**

9 The following definitions apply in this Article:

- 10 (1) Act as a mortgage broker. – To act, for compensation or gain, or in the  
11 expectation of compensation or gain, either directly or indirectly, by  
12 accepting or offering to accept an application for a mortgage loan,  
13 soliciting or offering to solicit a mortgage loan, negotiating the terms  
14 or conditions of a mortgage loan, issuing mortgage loan commitments  
15 or interest rate guarantee agreements to borrowers, or engaging in  
16 tablefunding of mortgage loans, whether such acts are done through  
17 contact by telephone, by electronic means, by mail, or in person with  
18 the borrowers or potential borrowers.
- 19 (2) Act as a mortgage lender. – To engage in the business of making  
20 mortgage loans for compensation or gain.
- 21 (3) Act as a mortgage servicer. – To engage, whether for compensation or  
22 gain from another or on its own behalf, in the business of receiving  
23 any scheduled periodic payments from a borrower pursuant to the  
24 terms of any mortgage loan, including amounts for escrow accounts,  
25 and making the payments of principal and interest and such other  
26 payments with respect to the amounts received from the borrower as  
27 may be required pursuant to the terms of the mortgage loan, the  
28 mortgage servicing loan documents, or servicing contract.

1           ~~(2a)~~(4)   Affiliate. – Any company that controls, is controlled by, or is under  
2 common control with another company, as set forth in the Bank  
3 Holding Company Act of 1956 (12 U.S.C. § 1841), et seq., as  
4 amended from time to time. For purposes of this subdivision, the term  
5 control means ownership of all of the voting stock or comparable  
6 voting interest of the controlled person.

7           ~~(2b)~~(5)   Affiliated mortgage banker. – A licensed mortgage banker that meets  
8 the criteria of either sub-subdivisions a., b., and c. of this subdivision  
9 or sub-subdivisions d. and e. of this subdivision:

10           a.       The licensee, by itself or with its affiliates, is licensed in five or  
11 more states to engage in the mortgage lending business and (i)  
12 is supervised by a state or federal regulatory agency whose  
13 regulatory scheme has been determined by the Commissioner to  
14 be substantially similar to that of North Carolina, (ii) is  
15 organized and supervised under the laws of a state that has  
16 adopted a model licensing law endorsed by the Commissioner;  
17 or (iii) is supervised by a state or federal agency that is a party  
18 to an interstate compact, or has otherwise entered into a  
19 cooperative reciprocal agreement by which the state or federal  
20 regulatory agency and the State of North Carolina, directly or  
21 by duly authorized act of the Commissioner, have mutually  
22 agreed to recognize state licensing laws which have specific  
23 enumerated criteria.

24           b.       The licensee, including its affiliates and wholly owned  
25 subsidiaries, has more than 100 employees that are licensed  
26 pursuant to this Article.

27           c.       The licensee has a consolidated net worth of one hundred  
28 million dollars (\$100,000,000) or more, or if the licensee does  
29 not have the required net worth, its parent shall provide to the  
30 Commissioner (i) evidence satisfactory to the Commissioner  
31 that the parent has a net worth of one hundred million dollars  
32 (\$100,000,000) or more, and (ii) an unconditional guarantee or  
33 comparable instrument of surety satisfactory to the  
34 Commissioner of the performance of the licensee of its  
35 obligations under this Article.

36           d.       The licensee is a direct or indirect wholly owned subsidiary of a  
37 bank holding company or financial services holding company  
38 subject to regulation by the Federal Reserve Board or the Office  
39 of Thrift Supervision.

40           e.       The licensee has a net worth of one hundred million dollars  
41 (\$100,000,000) or, if the licensee does not have the required net  
42 worth, (i) its parent, if it is not a bank holding company or  
43 financial holding company, meets the requirements of  
44 sub-subdivision c. of this subdivision or (ii) its parent, if such

1 parent is a bank holding company or financial holding  
2 company, has total assets in excess of ten billion dollars  
3 (\$10,000,000,000) and provides the Commissioner with the  
4 unconditional guarantee or comparable instrument of surety  
5 required by sub-subdivision c. of this subdivision.

6 ~~(3)~~(6) Branch manager. – The individual whose principal office is physically  
7 located in, who is in charge of, and who is responsible for the business  
8 operations of a branch office of a mortgage broker or mortgage banker.

9 ~~(4)~~(7) Branch office. – An office of the licensee acting as a mortgage broker  
10 or mortgage banker that is separate and distinct from the licensee's  
11 principal office. A branch office shall not be located at an individual's  
12 home or residence.

13 ~~(5)~~(8) Commissioner. – The North Carolina Commissioner of Banks and the  
14 Commissioner's designees. For purposes of compliance with this  
15 Article by credit unions, Commissioner means the Administrator of the  
16 Credit Union Division of the Department of Commerce.

17 ~~(6)~~(9) Control. – ~~Except as provided in subdivision (2a) of this section,~~  
18 ~~"control" means the power to vote more than twenty percent (20%) of~~  
19 ~~outstanding voting shares or other interests of a corporation,~~  
20 ~~partnership, limited liability company, association, or trust. The power,~~  
21 ~~directly or indirectly, to direct the management or policies of a~~  
22 ~~company, whether through ownership of securities, by contract, or~~  
23 ~~otherwise. Any person that (i) is a director, general partner, or~~  
24 ~~executive officer; (ii) directly or indirectly has the right to vote ten~~  
25 ~~percent (10%) or more of a class of a voting security or has the power~~  
26 ~~to sell or direct the sale of ten percent (10%) or more of a class of~~  
27 ~~voting securities; (iii) in the case of a Limited Liability Company, is a~~  
28 ~~managing member; or (iv) in the case of a partnership, has the right to~~  
29 ~~receive upon dissolution, or has contributed, ten percent (10%) or~~  
30 ~~more of the capital, is presumed to control the company.~~

31 ~~(7)~~(10) Employee. – An individual, who has an employment relationship,  
32 acknowledged by both the individual and the mortgage broker or  
33 mortgage banker or mortgage servicer and is treated as ~~an~~ a common  
34 law employee for purposes of compliance with the federal income tax  
35 ~~laws.~~ laws and whose income is reported on IRS Form W-2.

36 ~~(7a)~~(11) Exclusive mortgage broker. – An individual who acts as a mortgage  
37 broker exclusively for a single mortgage banker or single exempt  
38 person and who is licensed under the provisions of  
39 G.S. 53-243.05(c)(1a).

40 ~~(8)~~(12) Exempt person. – The term includes any of the following:

- 41 a. Any agency of the federal government or any state or municipal  
42 government granting or servicing mortgage loans under specific  
43 authority of the laws of any state or the United States.

- 1           b. Any employee of a licensee whose responsibilities are limited  
2           to clerical and administrative tasks for his or her employer and  
3           who does not solicit borrowers, accept applications, or negotiate  
4           the terms of loans on behalf of the employer.
- 5           c. Any person authorized to engage in business as a bank or a  
6           wholly owned subsidiary of a bank, a farm credit system,  
7           savings institution, or a wholly owned subsidiary of a savings  
8           institution, or credit union or a wholly owned subsidiary of a  
9           credit union, under the laws of the United States, this State, or  
10          any other state. Except for G.S. 53-243.11 and G.S. 53-243.15,  
11          this Article does not apply to the exempt persons set forth in  
12          this ~~sub-subdivision (8)~~ sub-subdivision.
- 13          d. Any licensed real estate agent or broker who is performing  
14          those activities subject to the regulation of the North Carolina  
15          Real Estate Commission. Notwithstanding the above, an exempt  
16          person does not include a real estate agent or broker who  
17          receives compensation of any kind in connection with the  
18          referral, placement, or origination of a mortgage loan.
- 19          e. Any officer or employee of an exempt person described in  
20          sub-subdivision c. of this subdivision when acting in the scope  
21          of employment for the exempt person.
- 22          f. Any person who, acting as seller, seller and lender and servicer  
23          in a residential real estate transaction, receives and services in  
24          one calendar year no more than five purchase money notes  
25          secured by mortgages, deeds of trust, or other security  
26          instruments on the real estate sold as security for a the purchase  
27          money obligation.
- 28          g. The North Carolina Housing Finance Agency as established by  
29          Article 122A of the General Statutes and the North Carolina  
30          Agricultural Finance Authority as established by Article 122D  
31          of the General Statutes.
- 32          h. Any nonprofit corporation qualifying under section 501(c)(3) of  
33          the Internal Revenue Code which makes or services mortgage  
34          loans to promote home ownership or home improvements for  
35          the disadvantaged, provided that such corporation is not  
36          primarily in the business of soliciting or brokering or servicing  
37          mortgage loans.
- 38          i. Any life insurance companies licensed to do business in North  
39          Carolina with regard to provisions concerning mortgage  
40          lenders.
- 41          j. A North Carolina licensed attorney who, in the practice of law  
42          or in performing as a trustee, accepts payments related to a loan  
43          closing, default, foreclosure, loss mitigation, or litigation or  
44          settlement of a dispute or legal claim related to a loan.

- 1 k. A mortgage banker licensed under this Article and any  
2 employee of a mortgage banker licensed under this Article is  
3 exempt from the requirement to obtain a separate license as a  
4 mortgage servicer, provided, however, that all provisions of this  
5 Article applicable to mortgage servicers are applicable to any  
6 mortgage banker or any employee of a mortgage banker acting  
7 as a mortgage servicer, including filing a claim of exemption  
8 under G.S. 53-243.15.
- 9 ~~(9)~~(13) Licensee. – A loan officer, limited loan officer, mortgage broker, ~~or~~  
10 ~~mortgage banker~~ mortgage banker, or mortgage servicer who is  
11 licensed pursuant to this Article.
- 12 ~~(10)~~(14) Loan officer. – An individual who, in exchange for compensation as an  
13 employee of another person, accepts or offers to accept applications  
14 for mortgage ~~loans~~ loans, or who solicits or offers to solicit a mortgage  
15 loan, negotiates the terms or conditions of a mortgage loan, issues  
16 mortgage loan commitments or interest rate guarantee agreements to  
17 borrowers, whether such acts are done through contact by telephone,  
18 by electronic means, by mail, or in person with the borrowers or  
19 potential borrowers. The definition of loan officer shall not include any  
20 exempt person described in sub-subdivision ~~(8)b.~~(12)b. of this section.
- 21 ~~(10a)~~(15) Limited loan officer. – An individual who, in exchange for  
22 compensation as an employee of an affiliated mortgage banker,  
23 directly solicits, negotiates, offers, or makes commitments for  
24 mortgage loans. The definition of limited loan officer shall not include  
25 any exempt person described in sub-subdivision ~~(8)b.~~(12)b. of this  
26 section.
- 27 ~~(11)~~(16) Make a mortgage loan. – To close a mortgage loan, to advance funds,  
28 to offer to advance funds, or to make a commitment to advance funds  
29 to a borrower under a mortgage loan.
- 30 ~~(13)~~(17) Mortgage banker. – A person who acts as a mortgage lender as that  
31 term is defined in subdivision (2) of this section. However, the  
32 definition does not include a person who acts as a mortgage lender  
33 only in tablefunding transactions.
- 34 ~~(14)~~(18) Mortgage broker. – A person who acts as a mortgage broker as that  
35 term is defined in subdivision (1) of this section. The term "mortgage  
36 broker" includes an exclusive mortgage broker, except when expressly  
37 provided otherwise.
- 38 ~~(15)~~(19) Mortgage loan. – A loan made to a natural person or persons primarily  
39 for personal, family, or household use, primarily secured by either a  
40 mortgage or a deed of trust on residential real property located in  
41 North Carolina.
- 42 (20) Mortgage servicer. – A person who directly or indirectly acts as a  
43 mortgage servicer as that term is defined in subdivision (3) of this

- 1                    section or who otherwise meets the definition of 'servicer' in RESPA,  
 2                    12 U.S.C. § 2605(i), with respect to mortgage loans.  
 3            ~~(15a)~~(21) Parent. – The person that controls an affiliated mortgage  
 4            ~~banker, banker, mortgage broker, or mortgage servicer,~~ as control is  
 5            defined in subdivision ~~(2a)~~(4) of this section.  
 6            ~~(16)~~(22) Person. – An individual, partnership, limited liability company, limited  
 7            partnership, corporation, association, or other group engaged in joint  
 8            business activities, however organized.  
 9            ~~(17)~~(23) Qualified lender. – A person who is engaged as a mortgage lender in  
 10           North Carolina and is either a supervised or a nonsupervised  
 11           institution, as these terms are defined in 24 C.F.R. § 202.2, approved  
 12           by the United States Department of Housing and Urban Development.  
 13           ~~(18)~~(24) Qualified person. – A person who is employed as a loan officer by a  
 14           qualified lender, or by a mortgage banker or broker registered with the  
 15           Commissioner under former Article 19 of this Chapter, or who is a  
 16           general partner, manager, or officer of a qualified lender, registered  
 17           mortgage banker, or registered mortgage broker.  
 18           (25) Qualified servicer. – A person who is engaged in the business of acting  
 19           as a mortgage servicer in North Carolina and who has been approved  
 20           by the United States Department of Housing and Urban Development  
 21           to service FHA loans or has been approved as a servicer by either the  
 22           Federal National Mortgage Association or by the Federal Home Loan  
 23           Mortgage Corporation.  
 24           (26) Qualifying individual. – A person who meets the requirements of  
 25           G.S. 53-243.05(c) and who agrees to be primarily responsible for the  
 26           operations of a licensed mortgage broker or mortgage banker or  
 27           mortgage servicer.  
 28           ~~(19)~~(27) Residential real property. – Real property located in the State of North  
 29           Carolina upon which there is located or is to be located one or more  
 30           single-family dwellings or dwelling units.  
 31           (28) RESPA. – The Real Estate Settlement Procedures Act, 12 U.S.C. §  
 32           2601, et seq., as it may be hereafter amended.  
 33           ~~(20)~~(29) Tablefunding. – A transaction where a licensee closes a loan in its own  
 34           name with funds provided by others, and the loan is assigned  
 35           simultaneously to the mortgage lender providing the funding within  
 36           one business day of the funding of the loan."

37            **SECTION 2.** G.S. 53-243.02 reads as rewritten:

38            **"§ 53-243.02. License required; licensee records.**

- 39            (a) Other than an exempt person, it is unlawful for any person in this State to act  
 40            as a mortgage ~~broker or broker,~~ mortgage banker, or mortgage servicer, or directly or  
 41            indirectly to engage in the business of a mortgage ~~broker or a broker,~~ mortgage  
 42            ~~banker, banker, or mortgage servicer,~~ without first obtaining a license from the  
 43            Commissioner under the provisions of this Article. This Article shall apply to any

1 person who seeks to avoid its application by any direct or indirect device, subterfuge,  
2 artifice, or pretense whatsoever.

3 ...

4 (e) No person, other than an exempt person, shall hold himself or herself out as a  
5 mortgage banker, an affiliated mortgage banker, a mortgage broker, a mortgage  
6 servicer, a limited loan officer, or a loan officer unless such person is licensed in  
7 accordance with this Article.

8 (f) Any person who has completed and filed with the Commissioner the  
9 application and all documents required for licensure as a loan officer other than  
10 documents relating to the required examination and the mortgage lending fundamentals  
11 course may act as a loan officer during the period before action is taken on the  
12 application by the Commissioner, if:

13 (1) The Commissioner has not denied, revoked, or taken any adverse  
14 action with respect to an application filed by or license held by such  
15 person during the five-year period ending on the date of filing of the  
16 application;

17 (2) The loan officer is employed by a licensed mortgage broker or  
18 mortgage banker, and the ~~managing principal~~qualifying individual of  
19 such mortgage broker or mortgage banker (i) certifies to the  
20 Commissioner in writing that the ~~managing principal~~qualifying  
21 individual reasonably believes that the application of the person for  
22 licensure as a loan officer meets or exceeds all of the relevant  
23 requirements of this Article for licensure and (ii) undertakes in writing  
24 that the ~~managing principal~~qualifying individual and the employer will  
25 be responsible for the acts of the applicant during the period that such  
26 application is pending; and

27 (3) The person is currently or has within the six-month period prior to the  
28 date of the application been employed as and acting as a loan officer  
29 for an exempt entity which entity is exempt by virtue of an exemption  
30 claimed under G.S. ~~53-243.01(8)~~53-243.01(12)c.

31 (g) The Commissioner may deny or suspend the rights of a mortgage broker or  
32 mortgage banker to employ a loan officer acting under subsection (f) of this section if  
33 the Commissioner finds that the mortgage broker or mortgage banker, or the ~~managing~~  
34 ~~principal~~qualifying individual thereof, makes the certification or undertaking set forth in  
35 subdivision (2) of subsection (f) of this section not in good faith."

36 **SECTION 3.** G.S. 53-243.05 reads as rewritten:

37 **"§ 53-243.05. Qualifications for licensure; issuance.**

38 (a) Any person, other than an exempt person, desiring to obtain a license  
39 pursuant to this Article shall make written application for licensure to the Commissioner  
40 on forms prescribed by the Commissioner. In accordance with rules adopted by the  
41 Commission, the application shall contain any information the Commissioner deems  
42 necessary regarding the following:

- 1 (1) The applicant's name and address (including street address, mailing  
2 address, e-mail, and telephone contact information) and social security  
3 number, number or taxpayer identification number.
- 4 (2) The applicant's form and place of organization, if applicable.
- 5 (3) The applicant's proposed method of and locations for doing business,  
6 if applicable.
- 7 (4) The qualifications and business history of the applicant and, if  
8 applicable, the business history of any partner, officer, or director, any  
9 person occupying a similar status or performing similar functions, or  
10 any person directly or indirectly controlling the applicant, including:  
11 (i) a description of any injunction or administrative order by any state  
12 or federal authority to which the person is or has been subject; (ii) a  
13 ~~conviction~~ conviction, within the past 10 years, of a misdemeanor  
14 involving fraudulent dealings or moral turpitude or relating to any  
15 aspect of the residential mortgage lending business any fraud, false  
16 statement or omission, any theft or wrongful taking of property,  
17 bribery, perjury, forgery, counterfeiting, extortion, or conspiracy to  
18 commit any of these offenses; or involving any financial service or  
19 financial-service related business; (iii) any felony convictions.
- 20 (5) With respect to an application for licensing as a mortgage ~~banker or~~  
21 ~~broker,~~ banker, mortgage broker, or mortgage servicer, the applicant's  
22 financial condition, credit history, and business history; and with  
23 respect to the application for licensing as a loan officer, the applicant's  
24 credit history and business history.
- 25 (6) The applicant's consent to a federal and State criminal history record  
26 check and a set of the applicant's fingerprints in a form acceptable to  
27 the Commissioner. In the case of an applicant that is a corporation,  
28 partnership, limited liability company, association, or trust, each  
29 individual who has control of the applicant or who is the ~~managing~~  
30 ~~principal~~ qualifying individual or a branch manager shall consent to a  
31 federal and State criminal history record check and submit a set of that  
32 individual's fingerprints pursuant to this subdivision. Refusal to  
33 consent to a criminal history record check constitutes grounds for the  
34 Commissioner to deny licensure to the applicant as well as to any  
35 entity (i) by whom or by which the applicant is employed, (ii) over  
36 which the applicant has control, or (iii) as to which the applicant is the  
37 current or proposed ~~managing principal~~ qualifying individual or a  
38 current or proposed branch manager.
- 39 (b) In addition to the requirements imposed by the Commissioner under  
40 subsection (a) of this section, each individual applicant for licensure as a loan officer  
41 shall:
- 42 (1) Be at least 18 years of age.
- 43 (2) Have satisfactorily completed, within the three years immediately  
44 preceding the date application is made, a mortgage lending



1 fundamentals course approved by the Commissioner. The course shall  
2 consist of at least eight hours of classroom instruction in subjects  
3 related to mortgage lending approved by the Commissioner. In  
4 addition, the applicant shall have satisfactorily completed a written  
5 examination approved by the Commissioner or possess residential  
6 mortgage lending education or experience in residential mortgage  
7 lending transactions that the Commissioner deems equivalent to the  
8 course.

9 (c) In addition to the requirements under subsection (a) of this section, each  
10 applicant for licensure as a mortgage broker or mortgage banker or mortgage servicer at  
11 the time of application and at all times thereafter shall comply with the following  
12 requirements:

13 (1) Except as provided for in subdivision (1a) of this subsection, if the  
14 applicant is a sole proprietor, the applicant shall have at least three  
15 years of experience in residential mortgage lending or other experience  
16 or competency requirements as the Commissioner may impose.  
17 Experience as an exclusive mortgage broker or as a limited loan officer  
18 shall not constitute mortgage-lending experience under this  
19 subdivision.

20 (1a) If an individual applicant to be licensed as a mortgage broker meets all  
21 other requirements for licensure under this section but does not meet  
22 the requirements of subdivision (1) of this subsection, the individual  
23 applicant may be licensed as an exclusive mortgage broker upon  
24 compliance with all of the following:

25 a. Successfully complete both a residential mortgage-lending  
26 course approved by the Commissioner of not less than 40 hours  
27 of classroom instruction, and a written examination approved  
28 by the Commissioner.

29 b. Act exclusively as a mortgage broker for a single mortgage  
30 banker licensee or single exempt mortgage banker for whom the  
31 broker shall be deemed an agent, who shall be responsible for  
32 supervising the broker as required by this Article, who shall  
33 sign the license application of the applicant, and who shall be  
34 jointly and severally liable with the broker for any claims  
35 arising out of the broker's mortgage lending activities.

36 c. Shall be compensated for the broker's mortgage brokering  
37 activities on a basis that is not dependent upon the loan amount,  
38 interest rate, fees, or other terms of the loans brokered.

39 d. Shall not handle borrower or other third-party funds in  
40 connection with the brokering or closing of mortgage loans.

41 (2) If the applicant is a general or limited partnership, at least one of its  
42 general partners shall have the experience as described under  
43 subdivision (1) of this subsection.

1 (3) If the applicant is a corporation, at least one of its principal officers  
2 shall have the experience as described under subdivision (1) of this  
3 subsection.

4 (4) If the applicant is a limited liability company, at least one of its  
5 managers shall have the experience as described under subdivision (1)  
6 of this subsection.

7 (d) Each applicant shall identify one person meeting the requirements of  
8 subsection (c) of this section to serve as the applicant's ~~managing principal~~qualifying  
9 individual.

10 (e) Every applicant for initial licensure shall pay a filing fee not to exceed one  
11 thousand two hundred fifty dollars (\$1,250) for licensure as a mortgage ~~broker or~~broker,  
12 mortgage ~~banker~~banker, or mortgage servicer or sixty-seven dollars and fifty cents  
13 (\$67.50) for licensure as a loan officer or limited loan officer, in addition to the actual  
14 cost of obtaining credit reports and State and national criminal history record checks.

15 (f) A mortgage banker or mortgage servicer shall post a surety bond in the  
16 amount of one hundred fifty thousand dollars (\$150,000), and a mortgage broker shall  
17 post a surety bond in the amount of fifty thousand dollars (\$50,000). The surety bond  
18 shall be in a form satisfactory to the Commissioner and shall run to the State for the  
19 benefit of any claimants against the licensee to secure the faithful performance of the  
20 obligations of the licensee under this Article. The aggregate liability of the surety shall  
21 not exceed the principal sum of the bond. A party having a claim against the licensee  
22 may bring suit directly on the surety bond, or the Commissioner may bring suit on  
23 behalf of any claimants, either in one action or in successive actions. Consumer claims  
24 shall be given priority in recovering from the bond. Any appropriate deposit of cash or  
25 securities shall be accepted in lieu of any bond that is required. An audited financial  
26 statement from a qualified lender or qualified servicer showing a net worth of two  
27 hundred fifty thousand dollars (\$250,000) or more shall be accepted in lieu of any bond  
28 required.

29 (g) Any general partner, manager of a limited liability company, or officer of a  
30 corporation who individually meets the requirements under subsection (b) of this  
31 section shall, upon payment of the applicable fee, meet the qualifications for licensure  
32 as a loan officer subject to the provisions of subsection (i) of this section.

33 (h) Each principal office and each branch office of a mortgage broker or  
34 mortgage banker licensed under the provisions of this Article shall be issued a separate  
35 license. A licensed mortgage broker or mortgage banker shall file with the  
36 Commissioner an application on a form prescribed by the Commissioner that identifies  
37 the address of the principal office and each branch office and branch manager. A filing  
38 fee not to exceed one hundred twenty-five dollars (\$125.00) shall be assessed by the  
39 Commissioner for each branch office issued a license.

40 (i) If the Commissioner determines that an applicant meets the qualifications for  
41 licensure and finds that the financial responsibility, character, and general fitness of the  
42 applicant are such as to command the confidence of the community and to warrant  
43 belief that the business will be operated honestly and fairly, the Commissioner shall  
44 issue a license to the applicant. In addition, for an applicant qualifying as an exclusive

1 mortgage broker, the Commissioner shall determine if the mortgage broker/mortgage  
2 banker relationship is in the public interest."

3 **SECTION 4.** G.S. 53-243.06 reads as rewritten:

4 "**§ 53-243.06. License renewal; termination.**

5 (a) All licenses issued by the Commissioner under the provisions of this Article  
6 shall expire annually on the ~~30th day of June~~ 31st day of December following issuance  
7 or on any other date that the Commissioner may determine. The license shall become  
8 invalid after that date unless renewed. A license may be renewed ~~45 days prior to the~~  
9 ~~expiration date~~ on or after November 1 by compliance with subsection (b1) of this  
10 section and by paying to the Commissioner, in addition to the actual cost of obtaining  
11 credit reports and State and national criminal history record checks and of processing  
12 fees of the nationwide system as the Commissioner may require, a renewal fee as  
13 follows:

- 14 (1) Licensed mortgage bankers and licensed mortgage servicers shall pay  
15 an annual fee not to exceed six hundred twenty-five dollars (\$625.00)  
16 and one hundred twenty-five dollars (\$125.00) for each branch office.
- 17 (2) Licensed mortgage brokers shall pay an annual fee not to exceed six  
18 hundred twenty-five dollars (\$625.00) and one hundred twenty-five  
19 dollars (\$125.00) for each branch office. Licensed exclusive mortgage  
20 brokers shall pay an annual fee not to exceed six hundred twenty-five  
21 dollars (\$625.00).
- 22 (3) Licensed loan officers shall pay an annual fee not to exceed  
23 sixty-seven dollars and fifty cents (\$67.50).

24 (b) If a mortgage ~~banker~~ banker, mortgage servicer, or mortgage broker license is  
25 not renewed prior to the applicable expiration date, then ~~an additional two hundred fifty~~  
26 dollars (\$250.00) in addition to the renewal fee under subsection (a) of this section shall  
27 be assessed as a late fee to any renewal. If a loan officer or limited loan officer license is  
28 not renewed prior to the applicable expiration date, then ~~an additional fifty one hundred~~  
29 dollars (~~\$50.00~~ \$100.00) in addition to the renewal fee under subsection (a) of this  
30 section shall be assessed as a late fee to any renewal. In the event a licensee fails to  
31 obtain a reinstatement of the license ~~within 90 days after the date the license expires,~~  
32 prior to March 1, the Commissioner may require the licensee to comply with the  
33 requirements for the initial issuance of a license under the provisions of this Article.

34 (b1) When required by the Commissioner, each individual described in  
35 G.S. 53-245.05(a)(6) shall furnish to the Commissioner his or her consent to a criminal  
36 history record check and a set of his or her fingerprints in a form acceptable to the  
37 Commissioner. Refusal to consent to a criminal history record check may constitute  
38 grounds for the Commissioner to deny renewal of the license of the person as well as  
39 the license of any other person by which he or she is employed, over which he or she  
40 has control, or as to which he or she is the current or proposed ~~managing~~  
41 principal qualifying individual or a current or proposed branch manager.

42 (c) Licenses issued under this Article are not assignable. Control of a licensee  
43 shall not be acquired through a stock purchase or other device without the prior written  
44 consent of the Commissioner. The Commissioner shall not give written consent if the

1 Commissioner finds that any of the grounds for denial, revocation, or suspension of a  
2 license pursuant to G.S. 53-243.12 are applicable to the acquiring person."

3 **SECTION 5.** G.S. 53-243.08 reads as rewritten:

4 "**§ 53-243.08. ~~Managing principals~~Qualifying individuals and branch managers.**

5 Each mortgage broker or mortgage banker or mortgage servicer licensed under this  
6 Article shall have a ~~managing principal~~qualifying individual who operates the business  
7 under that person's full charge, control, and supervision. Mortgage bankers and  
8 mortgage brokers, other than exclusive mortgage brokers, may operate branch offices  
9 subject to the requirements of this Article. Each principal and branch office of a  
10 mortgage broker or mortgage banker licensed under this Article, shall have a branch  
11 manager who meets the experience requirements under G.S. 53-243.05(c)(1); provided,  
12 that an affiliated mortgage banker may designate a branch manager who does not meet  
13 the experience requirements so long as at or before the designation, it certifies that the  
14 person has been employed by the affiliated mortgage banker for at least one year as a  
15 loan officer, limited loan officer, or in a comparable position in another state. The  
16 ~~managing principal~~qualifying individual for a licensee's business may also serve as the  
17 branch manager of one of the licensee's branch offices. Each mortgage broker or  
18 mortgage banker licensed under this Article shall file a form as prescribed by the  
19 Commissioner indicating the business's designation of ~~managing principal~~qualifying  
20 individual and branch manager for each branch and each individual's acceptance of the  
21 responsibility. Each mortgage broker or mortgage banker licensed under this Article  
22 shall notify the Commissioner of any change in its ~~managing principal~~qualifying  
23 individual or branch manager designated for each branch. Each mortgage servicer  
24 licensed under this Article shall file a form prescribed by the Commissioner indicating  
25 the business's designation of its qualifying individual and shall notify the Commissioner  
26 of any change in its qualifying individual. Any licensee who does not comply with this  
27 provision shall have the licensee's license suspended pursuant to G.S. 53-243.12 until  
28 the licensee complies with this section. Any individual licensee who operates as a sole  
29 proprietorship shall be considered a ~~managing principal~~qualifying individual for the  
30 purposes of this Article."

31 **SECTION 6.** G.S. 53-243.09 reads as rewritten:

32 "**§ 53-243.09. Offices; address changes; display of license.**

33 (a) Each mortgage broker licensee shall maintain and transact business from a  
34 principal place of business in this State. A principal place of business in this State shall  
35 consist of at least one enclosed room or building of stationary construction in which  
36 negotiations of mortgage loan transactions of others may be conducted and carried on in  
37 privacy and in which all of the books, records, and files pertaining to mortgage loan  
38 transactions relating to borrowers in this State are maintained. However, the  
39 Commissioner may, by rule, impose terms and conditions under which the records and  
40 files may be maintained outside of this State. A principal place of business shall not be  
41 located at an individual's home or residence.

42 (b) A mortgage banker or mortgage broker or mortgage servicer licensee shall  
43 report any change of address of the principal place of business or any branch office  
44 within 15 days after the change.

1 (c) Each mortgage broker or mortgage banker licensed under this Article shall  
2 display in plain public view the certificate of licensure issued by the Commissioner in  
3 its principal office and in each branch office. Each loan officer licensed under this  
4 Article shall ~~display~~ display, in plain public view, in each branch office in which the  
5 officer acts as a loan officer the certificate of licensure issued by the Commissioner."

6 **SECTION 7.** G.S. 53-243.10 reads as rewritten:

7 "**§ 53-243.10. Mortgage broker ~~duties~~duties; mortgage servicer duties.**

8 (a) A mortgage broker, including any mortgage broker licensee and any person  
9 ~~required to be licensed~~ acting as a mortgage broker under this Article, ~~shall~~, in addition  
10 to duties imposed by other statutes or at common law, shall do all of the following:

- 11 (1) Safeguard and account for any money handled for the borrower.
- 12 (2) Follow reasonable and lawful instructions from the borrower.
- 13 (3) Act with reasonable skill, care, and diligence.
- 14 (4) Make reasonable efforts to secure a loan that is reasonably  
15 advantageous to the borrower considering all the circumstances,  
16 including the rates, charges, and repayment terms of the loan.
- 17 (5) Timely and clearly disclose to the borrower material information as  
18 specified by the Commission that may be expected to influence the  
19 borrower's decision and is reasonably accessible to the mortgage  
20 broker, including the total compensation the mortgage broker expects  
21 to receive from any and all sources in connection with each loan  
22 option presented to the borrower.
- 23 (6) Notify before closing each lender of the particulars of each of the other  
24 lender's loans if the mortgage broker knows that more than one  
25 mortgage loan will be made by different lenders contemporaneously to  
26 a borrower secured by the same real property.
- 27 (7) Ensure that any services offered to any applicant shall be available and  
28 offered to all similarly situated applicants on an equal basis.
- 29 (8) In transactions where the broker has the ability to make credit  
30 decisions, use reasonable means to provide the borrower with prompt  
31 credit decisions on its loan applications and, where the credit is denied,  
32 to comply fully with the notification requirements of applicable state  
33 and federal law.
- 34 (9) Ensure that ~~its~~ advertising materials are designed to make customers  
35 and potential customers aware that ~~one~~ the mortgage broker does not  
36 discriminate on any prohibited basis.

37 (b) A mortgage servicer licensed or acting under this Article, in addition to duties  
38 imposed by other statutes or at common law, shall do all of the following:

- 39 (1) Safeguard and account for any money handled for the borrower.
- 40 (2) Follow reasonable and lawful instructions from the borrower.
- 41 (3) Act with reasonable skill, care, and diligence.
- 42 (4) With its application and renewal and with its supplemental filings  
43 made from time to time, file with the Commissioner a complete,

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

35            **SECTION 8.** G.S. 53-243.11 reads as rewritten:

36        "**§ 53-243.11. Prohibited activities.**

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

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

- 1 (3) To fail to account for or to deliver to any person any funds, documents,  
2 or other thing of value obtained in connection with a mortgage loan,  
3 including money provided by a borrower for a real estate appraisal or a  
4 credit report, which the mortgage banker, servicer, broker, or loan  
5 officer is not entitled to retain under the circumstances.
- 6 (4) To pay, receive, or collect in whole or in part any commission, fee, or  
7 other compensation for brokering a mortgage loan in violation of this  
8 Article, including a mortgage loan brokered by any unlicensed person  
9 other than an exempt person.
- 10 (5) To charge or collect any fee or rate of interest or to make or broker or  
11 service any mortgage loan with terms or conditions or in a manner  
12 contrary to the provisions of ~~Chapter 24~~ Chapter 24, Chapter 45, or  
13 Chapter 54 of the General Statutes.
- 14 (6) To advertise mortgage loans, including rates, margins, discounts,  
15 points, fees, commissions, or other material information, including  
16 material limitations on the loans, unless the person is able to make the  
17 mortgage loans available to a reasonable number of qualified  
18 applicants.
- 19 (7) To fail to disburse funds in accordance with a written commitment or  
20 agreement to make a mortgage loan.
- 21 (8) To engage in any transaction, practice, or course of business that is not  
22 in good faith or fair dealing or that constitutes a fraud upon any  
23 person, in connection with the brokering or making or servicing of, or  
24 purchase or sale of, any mortgage loan.
- 25 (9) To fail promptly to pay when due reasonable fees to a licensed  
26 appraiser for appraisal services that are:
- 27 a. Requested from the appraiser in writing by the mortgage broker  
28 or mortgage banker or an employee of the mortgage broker or  
29 mortgage banker; and
- 30 b. Performed by the appraiser in connection with the origination or  
31 closing of a mortgage loan for a customer or the mortgage  
32 broker or mortgage banker.
- 33 (10) To broker a mortgage loan that contains a prepayment penalty if the  
34 principal amount of the loan is one hundred fifty thousand dollars  
35 (\$150,000) or less or if the loan is a rate spread home loan as defined  
36 in G.S. 24-1.1F.
- 37 (11) To improperly influence or attempt to improperly influence the  
38 development, reporting, result, or review of a real estate appraisal  
39 sought in connection with a mortgage loan. Nothing in this subdivision  
40 shall be construed to prohibit a mortgage ~~broker or mortgage banker~~  
41 broker, mortgage banker, or mortgage servicer from asking the  
42 appraiser to do one or more of the following:
- 43 a. Consider additional appropriate property information.

- 1                   b.     Provide further detail, substantiation, or explanation for the  
2                   appraiser's value conclusion.
- 3                   c.     Correct errors in the appraisal report.
- 4           (12)    To fail to comply with the mortgage loan servicing transfer, escrow  
5           account administration, or borrower inquiry response requirements  
6           imposed by sections 6 and 10 of the Real Estate Settlement Procedures  
7           Act (RESPA), 12 U.S.C. § 2605 and § 2609, and regulations adopted  
8           thereunder by the Secretary of the Department of Housing and Urban  
9           Development.
- 10           (13)   To broker a rate spread adjustable rate mortgage loan without  
11           disclosing to the borrower the terms and costs associated with a fixed  
12           rate loan from the same lender at the lowest annual percentage rate for  
13           which the borrower qualifies.
- 14           (14)   To fail to comply with applicable federal laws and regulations related  
15           to mortgage ~~lending~~, lending, or mortgage servicing.
- 16           (15)   To engage in unfair, misleading, or deceptive advertising related to a  
17           solicitation for a mortgage loan.
- 18           (16)   For a mortgage servicer to fail to comply with the mortgage servicer's  
19           obligations under Article 10 of Chapter 45 of the North Carolina  
20           General Statutes.
- 21           (17)   For a person acting as a mortgage servicer to fail to provide written  
22           notice to a borrower upon taking action to place hazard, homeowner's,  
23           or flood insurance on the mortgaged property or to place such  
24           insurance when the person acting as a mortgage servicer knows or has  
25           reason to know that such insurance is in effect.
- 26           (18)   For a person acting as a mortgage servicer to place hazard,  
27           homeowner's, or flood insurance on a mortgaged property for an  
28           amount that exceeds either the value of the insurable improvements or  
29           the last known coverage amount of insurance.
- 30           (19)   For a person acting as a mortgage servicer to fail to provide to the  
31           borrower a refund of unearned premiums paid by a borrower or  
32           charged to the borrower for hazard, homeowner's, or flood insurance  
33           placed by a lender if the borrower provides reasonable proof that the  
34           borrower has obtained coverage such that the forced placement is no  
35           longer necessary and the property is insured. If the borrower provides  
36           reasonable proof within 12 months of the placement that no lapse in  
37           coverage occurred such that the forced placement was not necessary,  
38           the servicer shall refund the entire premium.
- 39           (20)   For a person acting as a mortgage servicer to refuse to reinstate a  
40           delinquent loan upon a tender of payment made timely under the  
41           contract which is sufficient in amount, based upon the last written  
42           statement received by borrower, to pay all past due amounts,  
43           outstanding or overdue charges and restore the loan to a nondelinquent



status, but this reinstatement shall be available to a borrower no more than twice in any 24-month period.

(21) For a person acting as a mortgage servicer to fail to mail, at least 30 days before foreclosure is initiated, a notice addressed to the borrower at the borrower's last known address with the following information:

a. An itemization of all past due amounts causing the loan to be in default.

b. An itemization of any other charges that must be paid in order to bring the loan current.

c. A statement that the borrower may have options available other than foreclosure, and that the borrower may discuss such options with the mortgage lender, the servicer, or a counselor approved by the U.S. Department of Housing and Urban Development.

d. The address, telephone number, and other contact information for the mortgage lender, the servicer, or the agent for either of them who is authorized to attempt to work with the borrower to avoid foreclosure.

e. The name, address, telephone number, and other contact information for three or more HUD-approved counseling agencies operating to assist borrowers in North Carolina to avoid foreclosure.

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

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

**SECTION 9.** G.S. 53-243.12 reads as rewritten:

**"§ 53-243.12. Disciplinary authority.**

(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this Article or may restrict or limit the activities relating to mortgage loans of any licensee or any person who owns an interest in or participates in the business of a licensee, if the Commissioner finds both of the following:

(1) That the order is in the public interest.

(2) That any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, limited loan officer, ~~managing principal, qualifying individual,~~ or any person occupying a similar status or performing similar

1 functions or any person directly or indirectly controlling the applicant  
2 or licensee. The person:

- 3 a. Has filed an application for license that, as of its effective date  
4 or as of any date after filing, contained any statement that, in  
5 light of the circumstances under which it was made, is false or  
6 misleading with respect to any material fact.
- 7 b. Has violated or failed to comply with any provision of this  
8 Article, rule adopted by the Commissioner, or order of the  
9 Commissioner.
- 10 c. Has been convicted of any felony, or, within the past 10 years,  
11 has been convicted of any misdemeanor involving ~~mortgage~~  
12 ~~lending or any aspect of the mortgage lending business, or any~~  
13 ~~offense involving breach of trust, moral turpitude, or fraudulent~~  
14 ~~or dishonest dealing, or financial services or a financial~~  
15 ~~services-related business or any fraud, false statements or~~  
16 ~~omissions, theft or any wrongful taking of property, bribery,~~  
17 ~~perjury, forgery, counterfeiting, extortion, or a conspiracy to~~  
18 ~~commit any of these offenses.~~
- 19 d. Is permanently or temporarily enjoined by any court of  
20 competent jurisdiction from engaging in or continuing any  
21 conduct or practice involving any aspect of the mortgage  
22 lending business.
- 23 e. Is the subject of an order of the Commissioner denying,  
24 suspending, or revoking that person's license as a mortgage  
25 ~~broker or mortgage banker.~~broker, mortgage banker, or  
26 mortgage servicer.
- 27 f. Is the subject of an order entered within the past five years by  
28 the authority of any state with jurisdiction over that state's  
29 mortgage ~~brokerage or mortgage banking~~brokerage, mortgage  
30 banking, or mortgage-servicing industry denying or revoking  
31 that person's license as a mortgage ~~broker or mortgage banking~~  
32 ~~industry or denying or revoking that person's license as a~~  
33 ~~mortgage broker or mortgage banker.~~broker, mortgage servicer,  
34 or mortgage banker.
- 35 g. Does not meet the qualifications or the financial responsibility,  
36 character, or general fitness requirements under G.S. 53-243.05  
37 or any bond or capital requirements under this Article.
- 38 h. Has been the executive officer or controlling shareholder or  
39 owned a controlling interest in any mortgage broker or  
40 mortgage banker or mortgage servicer who has been subject to  
41 an order or injunction described in sub-subdivision d., e., or f.  
42 of this subdivision.
- 43 i. Has failed to pay the proper filing or renewal fee under this  
44 Article. However, the Commissioner may enter only a denial

1 order under this sub-subdivision, and the Commissioner shall  
2 vacate the order when the deficiency has been corrected.

3 j. Has falsely certified attendance or completion of hours at an  
4 approved mortgage lending continuing education course.

5 (b) The Commissioner may, by order, summarily postpone or suspend the license  
6 of a licensee pending final determination of any proceeding under this section. Upon  
7 entering the order, the Commissioner shall promptly notify the applicant or licensee that  
8 the order has been entered and the reasons for the order. The Commissioner shall  
9 calendar a hearing within 15 days after the Commissioner receives a written request for  
10 a hearing. If a licensee does not request a hearing and the Commissioner does not  
11 request a hearing, the order will remain in effect until it is modified or vacated by the  
12 Commissioner. If a hearing is requested or ordered by the Commissioner, after notice of  
13 and opportunity for hearing, the Commissioner may modify or vacate the order or  
14 extend it until final determination.

15 (c) The Commissioner may, by order, impose a civil penalty upon a licensee or  
16 any partner, officer, director, or other person occupying a similar status or performing  
17 similar functions on behalf of a licensee for any violation of this Article. The civil  
18 penalty shall not exceed ten thousand dollars (\$10,000) for each violation of this Article  
19 by a mortgage ~~broker or mortgage banker~~, broker, mortgage banker, or mortgage  
20 servicer. The Commissioner may impose a civil penalty of up to ten thousand dollars  
21 (\$10,000) for each violation of this Article by a person other than a licensee or exempt  
22 person.

23 (d) In addition to other powers under this Article, upon finding that any action of  
24 a person is in violation of this Article, the Commissioner may order the person to cease  
25 from the prohibited action. If the person subject to the order fails to appeal the order of  
26 the Commissioner in accordance with G.S. 53-243.03, or if the person appeals and the  
27 appeal is denied or dismissed, and the person continues to engage in the prohibited  
28 action in violation of the Commissioner's order, the person shall be subject to a civil  
29 penalty of up to twenty-five thousand dollars (\$25,000) for each violation of the  
30 Commissioner's order. The penalty provision of this section shall be in addition to and  
31 not in lieu of any other provision of law applicable to a licensee for the licensee's failure  
32 to comply with an order of the Commissioner.

33 (e) Unless otherwise provided, all actions and hearings under this Article shall be  
34 governed by Chapter 150B of the General Statutes.

35 (f) When a licensee is accused of any act, omission, or misconduct that would  
36 subject the licensee to disciplinary action, the licensee, with the consent and approval of  
37 the Commissioner, may surrender the license and all the rights and privileges pertaining  
38 to it for a period of time established by the Commissioner. A person who surrenders a  
39 license shall not be eligible for or submit any application for licensure under this  
40 Article.

41 (g) If the Commissioner has reasonable grounds to believe that a licensee or other  
42 person has violated the provisions of this Article or that facts exist that would be the  
43 basis for an order against a licensee or other person, the Commissioner may at any time,  
44 either personally or by a person duly designated by the Commissioner, investigate or

1 examine the loans and business of the licensee and examine the books, accounts,  
2 records, and files of any licensee or other person relating to the complaint or matter  
3 under investigation. The Commissioner may require any licensee or other person to  
4 submit a consent to a criminal history record check and a set of that person's fingerprints  
5 in a form acceptable to the Commissioner in connection with any examination or  
6 investigation. Refusal to submit the requested criminal history record check or a set of  
7 fingerprints shall be grounds for disciplinary action. The reasonable cost of this  
8 investigation or examination shall be charged against the licensee.

9 (h) The Commissioner may issue subpoenas to require the attendance of and to  
10 examine under oath all persons whose testimony the Commissioner deems relative to  
11 the person's business.

12 (i) The Commissioner may from time to time, at the expense of the  
13 ~~Commissioner's office, licensee,~~ conduct routine examinations of the books and records  
14 of any licensee in order to determine the compliance with this Article and any rules  
15 adopted pursuant to the authority of G.S. 53-243.04.

16 (j) In addition to the rights described under this section, the Commissioner may  
17 require a licensee to pay to a borrower or other individual any amounts received by the  
18 licensee or its employees in violation of Chapter 24 of the General ~~Statutes, Statutes,~~ or,  
19 if a servicer, in excess of those allowed by law to servicers.

20 (k) If the Commissioner finds that the ~~managing principal, qualifying individual,~~  
21 branch manager, or loan officer of a licensee had knowledge of or reasonably should  
22 have had knowledge of, or participated in, any activity that results in the entry of an  
23 order under this section suspending or withdrawing the license of a licensee, the  
24 Commissioner may prohibit the branch manager, ~~managing principal, qualifying~~  
25 individual, or loan officer from serving as a branch manager, ~~managing~~  
26 principal, qualifying individual, or loan officer for any period of time the Commissioner  
27 deems necessary.

28 (l) In addition to the authority to require criminal history background checks as  
29 set forth in G.S. 53-243.05 and G.S. 53-243.06, the Commissioner shall have the  
30 authority to require a criminal history background check at any other time as a condition  
31 of continued licensure. Upon the request of the Commissioner, a licensee shall furnish  
32 to the Commissioner the licensee's consent to a criminal history record check and a set  
33 of the licensee's fingerprints in a form acceptable to the Commissioner. Refusal to  
34 consent to a criminal history record check under this subsection may constitute grounds  
35 for the Commissioner to suspend or revoke the license of the licensee.

36 (m) Subject to the provisions of G.S. 53-243.03, the Commissioner may, by order,  
37 prohibit licensees under this Article from engaging in acts and practices in connection  
38 with mortgage loans that the Commissioner finds to be unfair, deceptive, designed to  
39 evade the laws of this State, or that are not in the best interest of the borrowing public.

40 (n) In the event the Commissioner shall have evidence that a material violation of  
41 law has occurred in the origination or servicing of a loan then being foreclosed or then  
42 delinquent and in threat of foreclosure, and that the putative violation would be  
43 sufficient in law or equity to base a claim or affirmative defense which would affect the  
44 validity or enforceability of the underlying contract or the right to foreclose, then the

1 Commissioner may notify the Clerk of Superior Court, and the Clerk shall suspend  
2 foreclosure proceedings on the mortgage for 60 days from the date of the notice. In the  
3 event that the Commissioner notifies the Clerk, the Commissioner shall also notify the  
4 servicer, if known, and provide an opportunity to cure the violation or provide  
5 information to the Commissioner to rebut the evidence of the suspected violation. If the  
6 violation is cured or the information satisfies the Commissioner that no material  
7 violation has occurred, the Commissioner shall notify the Clerk so that the foreclosure  
8 proceeding may be resumed.

9 (o) The Commissioner shall be deemed to have complied with the requirements  
10 of law concerning service of process upon mailing by certified mail any notice required  
11 or permitted to a licensee under this Article, postage prepaid and addressed to the last  
12 known address of the licensee on file with the Commissioner pursuant to  
13 G.S. 53-243.13(d).

14 (p) The Commissioner is authorized to take action, including suspension of the  
15 license, if the licensee fails to respond within 20 days, or within a lesser time if  
16 specifically requested for good cause, to inquiries from the Commissioner or the  
17 Commissioner's designee regarding any complaints filed against the licensee which  
18 allege or appear to involve violation of this Article or any law or rule affecting the  
19 mortgage lending business.

20 (q) The Commissioner is authorized to take action, including suspension of the  
21 license, if the licensee fails to respond within 20 days, or within a lesser time if  
22 specifically requested for good cause, to and cooperate fully with notices from the  
23 Commissioner or the Commissioner's designee relating to the scheduling and  
24 conducting of an examination or investigation under this Article."

25 **SECTION 10.** G.S. 53-243.13(e) reads as rewritten:

26 "(e) A licensee shall maintain in a segregated escrow fund or trust account any  
27 funds which come into the licensee's possession, but which are not the licensee's  
28 property and which the licensee is not entitled to retain under the circumstances. The  
29 escrow fund or trust account shall be held on deposit in a federally insured financial  
30 institution. Individual loan applicants' or borrowers' accounts may be aggregated into a  
31 common trust fund so long as (i) interests in the common fund can be individually  
32 tracked and accounted for, and (ii) the common fund is kept separate from and is not  
33 commingled with the licensee's own funds."

34 **SECTION 11.** G.S. 53-243.14 reads as rewritten:

35 **"§ 53-243.14. Criminal penalty.**

36 A violation of G.S. 53-243.02 is a Class I felony. Each transaction involving the  
37 unlawful making or brokering or servicing of a mortgage loan is a separate offense."

38 **SECTION 12.** G.S. 53-243.15 reads as rewritten:

39 **"§ 53-243.15. Filing required for exempt persons; civil penalty.**

40 (a) All exempt persons described in G.S. ~~53-243.01(8)~~53-243.01(12) who are  
41 engaged in the mortgage brokerage or mortgage banking business on October 1, 2002,  
42 or who are engaged in the mortgage-servicing business on October 1, 2008, shall be  
43 required to file a form with the Commissioner on or before that date. All exempt  
44 persons, who commence mortgage brokerage or mortgage banking business in this State

1 after October 1, 2002, or who commence mortgage servicing in this State after October  
2 1, 2008, shall file the form with the Commissioner upon commencement of the  
3 business. This form, prescribed by the Commissioner, shall contain all of the following  
4 information:

- 5 (1) The name of the respective exempt person.
- 6 (2) The basis of the exempt status of the exempt person.
- 7 (3) The principal business address of the exempt person.
- 8 (4) The State or federal regulatory authority responsible for the exempt  
9 person's supervision, examination, or regulation, if any.

10 (b) In addition to any other measures the exempt person may be subject to under  
11 this Article, failure by an exempt person to file the required form shall not affect the  
12 exempt status of the person. However, the exempt person shall be subject to a civil  
13 penalty set by the Commissioner that shall not exceed the sum of two hundred fifty  
14 dollars (\$250.00) for each year the form is not filed. No person required to file under  
15 this section may transact business in this State as a mortgage banker or mortgage broker  
16 or mortgage servicer unless the person has filed the prescribed form with the  
17 Commissioner in accordance with this section."

18 **SECTION 13.** G.S. 53-243.16(b) reads as rewritten:

19 "(b) In addition, if a person described in subsection (a) of this section is a  
20 corporation, partnership, limited liability company, association, or trust, the Department  
21 of Justice may provide a criminal history record check to the Commissioner for any  
22 person who has control of that person, or who is the ~~managing principal~~qualifying  
23 individual or a branch manager of that person."

24 **SECTION 14.** G.S. 53-243.17(c) reads as rewritten:

25 "(c) Notwithstanding any other provision of this section, the Commissioner retains  
26 full authority and discretion under this Article to license mortgage brokers, mortgage  
27 bankers, mortgage servicers, loan officers, and limited loan officers and to enforce this  
28 Article to its fullest extent. Nothing in this section shall be deemed to be a reduction or  
29 derogation of that authority and discretion."

30 **SECTION 15.** G.S. 24-1.1E(a)(4a) reads as rewritten:

31 "(4a) 'Mortgage broker' is as defined in G.S. ~~53-243.01(14)~~53-243.01."

32 **SECTION 16.** G.S. 24-1.1F(a)(4) reads as rewritten:

33 "(4) Mortgage broker. – A mortgage broker as defined in  
34 G.S. ~~53-243.01(14)~~53-243.01."

35 **SECTION 17.** G.S. 66-106(b) reads as rewritten:

36 "(b) Except for mortgage loans as defined in G.S. ~~53-243.01(15)~~53-243.01, this  
37 Article shall not apply to any party approved as a mortgagee by the Secretary of  
38 Housing and Urban Development, the Federal Housing Administration, the Veterans  
39 Administration, a National Mortgage Association or any federal agency; nor to any  
40 party currently designated and compensated by a North Carolina licensed insurance  
41 company as its agent to service loans it makes in this State; nor to any insurance  
42 company registered with and licensed by the North Carolina Insurance Commissioner;  
43 nor, with respect to residential mortgage loans, to any residential mortgage banker or  
44 mortgage broker licensed pursuant to Article 19A of Chapter 53 of the General Statutes

1 or exempt from licensure pursuant to G.S. ~~53-243.01(8)~~53-243.01(12) and  
2 G.S. 53-243.02; nor to any attorney-at-law, public accountant, or dealer registered under  
3 the North Carolina Securities Act, acting in the professional capacity for which such  
4 attorney-at-law, public accountant, or dealer is registered or licensed under the laws of  
5 the State of North Carolina. Provided further that subdivision (1)(ii) above shall not  
6 apply to any lender whose loans or advances to any person, firm or corporation in North  
7 Carolina aggregate more than one million dollars (\$1,000,000) in the preceding calendar  
8 year."

9           **SECTION 18.** Subsection (n) of G.S. 53-243.12, as amended by Section 9 of  
10 this act, becomes effective January 1, 2009, and applies to servicing activities  
11 commenced on loans entered into on or after that date. The remainder of this act  
12 becomes effective January 1, 2009, and applies to anyone engaged in the business of  
13 mortgage servicing on or after that date.