

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

HOUSE BILL 616
RATIFIED BILL

AN ACT AMENDING THE SECURE AND FAIR ENFORCEMENT MORTGAGE LICENSING ACT TO PROVIDE FOR THE LICENSURE OF A TRANSITIONAL MORTGAGE LOAN ORIGINATOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-244.030 reads as rewritten:

"§ 53-244.030. Definitions.

For purposes of the Article, the following definitions apply:

...
(15) "Licensee" means a mortgage loan originator, transitional mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer or other person who is licensed pursuant to this Article.

...
(33a) "Transitional mortgage loan originator" means an individual who is authorized to act as a mortgage loan originator subject to a transitional mortgage loan originator license which is limited to a term of no more than 120 days and is not subject to reapplication, renewal, or extension by the Commissioner.

....
SECTION 2. G.S. 53-244.040 reads as rewritten:

"§ 53-244.040. License and registration requirements.

(a) Except as provided in subsection (d) of this section, no person may engage in the mortgage business or act as a mortgage loan originator with respect to any dwelling located in this State without first obtaining and maintaining a license under this Article. It shall be unlawful for any person, other than an exempt ~~person~~, person or a person licensed as a transitional mortgage loan originator, to act as a mortgage loan originator without a mortgage loan originator license, which authorizes an individual who is employed by a licensee holding a license as provided in subsection (b) of this section to conduct the business of a mortgage loan originator.

(a1) In anticipation of satisfaction of all requirements necessary to obtain a license as a mortgage loan originator under this Article, a transitional mortgage loan originator license may be granted to an individual who has an active license to originate mortgage loans pursuant to the laws of any state or territory of the United States other than North Carolina, provided the individual registers, is fingerprinted, and maintains a unique identifier with the Nationwide Mortgage Licensing System and Registry at the time the individual submits a transitional mortgage loan originator application to the Commissioner. A transitional mortgage loan originator license may also be issued to a registered loan originator for the purpose of satisfying all requirements necessary to obtain a license as a mortgage loan originator under this Article if permitted by a guideline, rule, regulation, or interpretive letter which clarifies section 1503 of Title V of the Housing and Economic Recovery Act of 2008, P.L. 110-289, and only to the extent of such an issuance or determination.

....
SECTION 3. G.S. 53-244.050 reads as rewritten:

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

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



- ...
- (1a) Each individual applicant for licensure as a transitional mortgage loan originator shall:
- a. Be at least 18 years of age;
 - b. Have an active license to originate mortgage loans pursuant to the laws of any state or territory of the United States other than North Carolina;
 - c. Have a valid unique identifier, registration, and fingerprints on file with the Nationwide Mortgage Licensing System and Registry;
 - d. Have been employed for a period of no less than two years as a mortgage loan originator; and
 - e. Have provided certification of employment with a mortgage lender or mortgage broker licensed under this Article, including an attestation by the employer that the applicant is in his or her employ.

...

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

...

(f) For purposes of this section, the Commissioner may request and the North Carolina Department of Justice may provide a criminal record check to the Commissioner for any person who has applied for or holds a mortgage lender, mortgage broker, mortgage servicer, ~~or mortgage loan originator~~ originator, or transitional mortgage loan originator license as provided by this section. The Commissioner shall provide the Department of Justice, along with the request, the fingerprints of the person, any additional information required by the Department of Justice, and a form signed by the person consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The person's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Department of Justice may charge a fee for each person for conducting the checks of criminal history records authorized by this section.

...."

SECTION 4. G.S. 53-244.060 reads as rewritten:
"§ 53-244.060. **Issuance of license.**

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

- ...
- (4) The applicant has demonstrated a lack of financial responsibility, character, or general fitness such as to fail to command the confidence of the community and to warrant a determination that the mortgage loan ~~originator~~ originator, transitional mortgage loan originator, or other licensee will operate honestly, fairly, and efficiently within the purposes of this Article. For purposes of this subdivision, a person shows a lack of financial responsibility when the person has shown a disregard in the management of the person's own financial affairs. Evidence that a person has not shown financial responsibility may include:

...."

SECTION 5. G.S. 53-244.090 reads as rewritten:
"§ 53-244.090. **License application fees.**

(a) Every applicant for initial licensure shall pay a nonrefundable filing fee of one thousand two hundred fifty dollars (\$1,250) for licensure as a mortgage broker, mortgage lender, or mortgage servicer, three hundred dollars (\$300.00) for licensure as an exclusive mortgage broker, or one hundred twenty-five dollars (\$125.00) for licensure as a mortgage loan ~~originator~~ originator or transitional mortgage loan originator. In addition, an applicant must pay

the actual cost of obtaining a credit report, State and national criminal history record checks, and the processing fees required by the Nationwide Mortgage Licensing System and Registry.

...."

SECTION 6. G.S. 53-244.100 reads as rewritten:

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

(a) It is unlawful for any person to engage in the mortgage business without first obtaining a license as a mortgage loan originator, transitional mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer issued by the Commissioner under this Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a mortgage loan originator unless the person is a licensed mortgage loan originator or a transitional mortgage loan originator under this Article. Persons defined in G.S. 53-244.030(8) or G.S. 53-244.030(29) are not subject to this subsection.

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

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

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

...."

SECTION 7. G.S. 53-244.103 reads as rewritten:

"§ 53-244.103. Surety bond requirements.

(a) Each mortgage loan originator or transitional mortgage loan originator shall be covered by a surety bond through employment with a licensee in accordance with this section. The surety bond shall provide coverage for each mortgage loan originator or transitional mortgage loan originator employed by the licensee in an amount as prescribed by subsection (b) of this section and shall be in a form prescribed by the Commissioner. The Commissioner may adopt rules with respect to the requirements for the surety bonds as needed to accomplish the purposes of the Article.

...."

SECTION 8. G.S. 53-244.104 reads as rewritten:

"§ 53-244.104. Minimum net worth requirements.

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

...."

SECTION 9. G.S. 53-244.106 reads as rewritten:

"§ 53-244.106. Display of license.

Each mortgage broker or mortgage lender licensed under this Article shall display, in plain public view, the certificate of licensure issued by the Commissioner in its principal office and in each branch office. Each mortgage loan originator or transitional mortgage loan originator licensed under this Article shall display, in plain public view, in each branch office in which the

individual acts as a mortgage loan originator or transitional mortgage loan originator the certificate of licensure issued by the Commissioner."

SECTION 10. G.S. 53-244.107 reads as rewritten:

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

The unique identifier of any mortgage loan ~~originator~~ originator, transitional mortgage loan originator, or other person engaged in the mortgage business as defined in G.S. 53-244.030(11) shall be clearly shown on all residential mortgage loan application forms, solicitations, advertisements, including business cards or Web sites, and any other documents as established by rule or order of the Commissioner."

SECTION 11. G.S. 53-244.111 reads as rewritten:

"§ 53-244.111. **Prohibited acts.**

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

- ...
- (3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report, which the mortgage lender, mortgage broker, mortgage servicer, ~~or mortgage loan originator~~ originator, or transitional mortgage loan originator is not entitled to retain under the circumstances.

....."
SECTION 12. G.S. 53-244.114 reads as rewritten:

"§ 53-244.114. **Licensure 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 manner in which a licensee, applicant, or any person who owns an interest in or participates in the business of a licensee engages in the mortgage business, if the Commissioner finds both of the following:

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

- ...
- d. Is the subject of an order of the Commissioner denying or suspending that person's license as a mortgage loan ~~originator~~ originator, transitional mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer;
- e. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage brokerage, mortgage lending, or mortgage servicing industry denying that person's license as a mortgage loan ~~originator~~ originator, transitional mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer;
- ...
- h. Has been the qualifying individual, branch manager, ~~or mortgage loan originator~~ originator, or transitional mortgage loan originator of a licensee who had knowledge of or reasonably should have had knowledge of, or participated in, any activity that resulted in the entry of an order under this Article suspending or withdrawing the license of a licensee;

....."
SECTION 13. G.S. 53-244.115 reads as rewritten:

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

...

(b) For purposes of investigating violations or complaints arising under this Article, or for the purposes of examination, the Commissioner may review, investigate, or examine any licensee, individual, or person subject to this Article as often as necessary in order to carry out

the purposes of this Article. The Commissioner may interview the officer, principals, person with control, qualified individual, mortgage loan ~~originators, originators, transitional mortgage loan originators~~, employees, independent contractors, agents, and customers of the licensee, individual, or person concerning their business. The Commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the Commissioner deems relevant to the inquiry. The assessment set forth in G.S. 53-244.100A is for the purpose of meeting the cost of regulation under this Article. Any investigation or examination that, in the opinion of the Commissioner of Banks, requires extraordinary review, investigation, or special examination shall be subject to the actual costs of additional expenses and the hourly rate for the staff's time, to be determined annually by the Banking Commission.

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

...."

SECTION 14. G.S. 53-244.118 reads as rewritten:

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

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

...

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

...."
SECTION 15. G.S. 53-244.119 reads as rewritten:

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

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

...."
SECTION 16. G.S. 53-244.120 reads as rewritten:

"§ 53-244.120. Confidentiality of information.

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

SECTION 17. This act becomes effective September 1, 2013, and applies to applications for licensure as a transitional mortgage loan originator filed on or after that date.
In the General Assembly read three times and ratified this the 16th day of July, 2013.

s/ Daniel J. Forest
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

Pat McCrory
Governor

Approved _____ .m. this _____ day of _____, 2013