

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

2

HOUSE BILL 237*
Committee Substitute Favorable 7/6/05

Short Title: Revise Mortgage Lending Act.

(Public)

Sponsors:

Referred to:

February 16, 2005

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE MORTGAGE LENDING ACT BY ALLOWING
REGISTRATION OF LIMITED LOAN OFFICERS OF DEFINED AFFILIATED
MORTGAGE BANKERS AND TO ESTABLISH ADDITIONAL SUPERVISION
AND ENFORCEMENT AUTHORITY FOR THE COMMISSIONER OF BANKS.

The General Assembly of North Carolina enacts:

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

"§ 53-243.01. Definitions.

The following definitions apply in this Article:

- (1) Act as a mortgage broker. – To act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by accepting or offering to accept an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage loan commitments or interest rate guarantee agreements to borrowers, or engaging in tablefunding of mortgage loans, whether such acts are done through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.
- (2) Act as a mortgage lender. – To engage in the business of making mortgage loans for compensation or gain.
- (2a) Affiliate. – Any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841), et seq., as amended from time to time. For purposes of this subdivision, the term control means ownership of all of the voting stock or comparable voting interest of the controlled person.
- (2b) Affiliated mortgage banker. – A licensed mortgage banker that meets the criteria of either sub-subdivisions a., b., and c. of this subdivision or sub-subdivisions d. and e. of this subdivision:

- 1 a. The licensee, by itself or with its affiliates, is licensed in five or
2 more states to engage in the mortgage lending business and (i)
3 is supervised by a state or federal regulatory agency whose
4 regulatory scheme has been determined by the Commissioner to
5 be substantially similar to that of North Carolina, (ii) is
6 organized and supervised under the laws of a state that has
7 adopted a model licensing law endorsed by the Commissioner;
8 or (iii) is supervised by a state or federal agency that is a party
9 to an interstate compact, or has otherwise entered into a
10 cooperative reciprocal agreement by which the state or federal
11 regulatory agency and the State of North Carolina, directly or
12 by duly authorized act of the Commissioner, have mutually
13 agreed to recognize state licensing laws which have specific
14 enumerated criteria.
- 15 b. The licensee, including its affiliates and wholly owned
16 subsidiaries, has more than 100 employees that are licensed
17 pursuant to this Article.
- 18 c. The licensee has a consolidated net worth of one hundred
19 million dollars (\$100,000,000) or more, or if the licensee does
20 not have the required net worth, its parent shall provide to the
21 Commissioner (i) evidence satisfactory to the Commissioner
22 that the parent has a net worth of one hundred million dollars
23 (\$100,000,000) or more, and (ii) an unconditional guarantee or
24 comparable instrument of surety satisfactory to the
25 Commissioner of the performance of the licensee of its
26 obligations under this Article.
- 27 d. The licensee is a direct or indirect wholly owned subsidiary of a
28 bank holding company or financial services holding company
29 subject to regulation by the Federal Reserve Board or the Office
30 of Thrift Supervision.
- 31 e. The licensee has a net worth of one hundred million dollars
32 (\$100,000,000) or, if the licensee does not have the required net
33 worth, (i) its parent, if it is not a bank holding company or
34 financial holding company, meets the requirements of
35 sub-subdivision c. of this subdivision or (ii) its parent, if such
36 parent is a bank holding company or financial holding
37 company, has total assets in excess of ten billion dollars
38 (\$10,000,000,000) and provides the Commissioner with the
39 unconditional guarantee or comparable instrument of surety
40 required by sub-subdivision c. of this subdivision.
- 41 (3) Branch manager. – The individual whose principal office is physically
42 located in, who is in charge of, and who is responsible for the business
43 operations of a branch office of a mortgage broker or mortgage banker.

- 1 (4) Branch office. – An office of the licensee acting as a mortgage broker
2 or mortgage banker that is separate and distinct from the licensee's
3 principal office.
- 4 (5) Commissioner. – The North Carolina Commissioner of Banks and the
5 Commissioner's designees. For purposes of compliance with this
6 Article by credit unions, Commissioner means the Administrator of the
7 Credit Union Division of the Department of Commerce.
- 8 (6) Control. – ~~The~~ Except as provided in subdivision (2a) of this section,
9 "control" means the power to vote more than twenty percent (20%) of
10 outstanding voting shares or other interests of a corporation,
11 partnership, limited liability company, association, or trust.
- 12 (7) Employee. – An individual, who has an employment relationship,
13 acknowledged by both the individual and the mortgage broker or
14 mortgage banker and is treated as an employee for purposes of
15 compliance with the federal income tax laws.
- 16 (7a) Exclusive mortgage broker. – An individual who acts as a mortgage
17 broker exclusively for a single mortgage banker or single exempt
18 person and who is licensed under the provisions of
19 G.S. 53-243.05(c)(1a).
- 20 (8) Exempt person. – The term includes any of the following:
- 21 a. Any agency of the federal government or any state or municipal
22 government granting mortgage loans under specific authority of
23 the laws of any state or the United States.
- 24 b. Any employee of a licensee whose responsibilities are limited
25 to clerical and administrative tasks for his or her employer and
26 who does not solicit borrowers, accept applications, or negotiate
27 the terms of loans on behalf of the employer.
- 28 c. Any person authorized to engage in business as a bank or a
29 wholly owned subsidiary of a bank, a farm credit system,
30 savings institution, or a wholly owned subsidiary of a savings
31 institution, or credit union or a wholly owned subsidiary of a
32 credit union, under the laws of the United States, this State, or
33 any other state. Except for G.S. 53-243.11 and G.S. 53-243.15,
34 this Article does not apply to the exempt persons set forth in
35 this sub-subdivision (8)c.
- 36 d. Any licensed real estate agent or broker who is performing
37 those activities subject to the regulation of the North Carolina
38 Real Estate Commission. Notwithstanding the above, an exempt
39 person does not include a real estate agent or broker who
40 receives compensation of any kind in connection with the
41 referral, placement, or origination of a mortgage loan.
- 42 e. Any officer or employee of an exempt person described in
43 sub-subdivision c. of this subdivision when acting in the scope
44 of employment for the exempt person.

- 1 f. Any person who, as seller, receives in one calendar year no
- 2 more than five mortgages, deeds of trust, or other security
- 3 instruments on real estate as security for a purchase money
- 4 obligation.
- 5 g. The North Carolina Housing Finance Agency as established by
- 6 Article 122A of the General Statutes and the North Carolina
- 7 Agricultural Finance Authority as established by Article 122D
- 8 of the General Statutes.
- 9 h. Any nonprofit corporation qualifying under section 501(c)(3) of
- 10 the Internal Revenue Code which makes mortgage loans to
- 11 promote home ownership or home improvements for the
- 12 disadvantaged, provided that such corporation is not primarily
- 13 in the business of soliciting or brokering mortgage loans.
- 14 i. Any life insurance companies licensed to do business in North
- 15 Carolina with regard to provisions concerning mortgage
- 16 lenders.
- 17 (9) Licensee. – A loan officer, limited loan officer, mortgage broker, or
- 18 mortgage banker who is licensed pursuant to this Article.
- 19 (10) Loan officer. – An individual who, in exchange for compensation as an
- 20 employee of another person, accepts or offers to accept applications
- 21 for mortgage loans. The definition of loan officer shall not include any
- 22 exempt person described in sub-subdivision (8)b. of this section.
- 23 (10a) Limited loan officer. – An individual who, in exchange for
- 24 compensation as an employee of an affiliated mortgage banker,
- 25 directly solicits, negotiates, offers, or makes commitments for
- 26 mortgage loans. The definition of limited loan officer shall not include
- 27 any exempt person described in sub-subdivision (8)b. of this section.
- 28 (11) Make a mortgage loan. – To close a mortgage loan, to advance funds,
- 29 to offer to advance funds, or to make a commitment to advance funds
- 30 to a borrower under a mortgage loan.
- 31 (12) Managing principal. – A person who meets the requirements of
- 32 G.S. 53-243.05(c) and who agrees to be primarily responsible for the
- 33 operations of a licensed mortgage broker or mortgage banker.
- 34 (13) Mortgage banker. – A person who acts as a mortgage lender as that
- 35 term is defined in subdivision (2) of this section. However, the
- 36 definition does not include a person who acts as a mortgage lender
- 37 only in tablefunding transactions.
- 38 (14) Mortgage broker. – A person who acts as a mortgage broker as that
- 39 term is defined in subdivision (1) of this section. The term "mortgage
- 40 broker" includes an exclusive mortgage broker, except when expressly
- 41 provided otherwise.
- 42 (15) Mortgage loan. – A loan made to a natural person or persons primarily
- 43 for personal, family, or household use, primarily secured by either a

1 mortgage or a deed of trust on residential real property located in
2 North Carolina.

3 (15a) Parent. – The person that controls an affiliated mortgage banker, as
4 control is defined in subdivision (2a) of this section.

5 (16) Person. – An individual, partnership, limited liability company, limited
6 partnership, corporation, association, or other group engaged in joint
7 business activities, however organized.

8 (17) Qualified lender. – A person who is engaged as a mortgage lender in
9 North Carolina and is either a supervised or a nonsupervised
10 institution, as these terms are defined in 24 C.F.R. § 202.2, approved
11 by the United States Department of Housing and Urban Development.

12 (18) Qualified person. – A person who is employed as a loan officer by a
13 qualified lender, or by a mortgage banker or broker registered with the
14 Commissioner under former Article 19 of this Chapter, or who is a
15 general partner, manager, or officer of a qualified lender, registered
16 mortgage banker, or registered mortgage broker.

17 (19) Residential real property. – Real property located in the State of North
18 Carolina upon which there is located or is to be located one or more
19 single-family dwellings or dwelling units.

20 (20) Tablefunding. – A transaction where a licensee closes a loan in its own
21 name with funds provided by others, and the loan is assigned
22 simultaneously to the mortgage lender providing the funding within
23 one business day of the funding of the loan."

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

25 **"§ 53-243.02. License required; licensee records.**

26 (a) Other than an exempt person, it is unlawful for any person in this State to act
27 as a mortgage broker or mortgage banker, or directly or indirectly to engage in the
28 business of a mortgage broker or a mortgage banker, without first obtaining a license
29 from the Commissioner under the provisions of this Article.

30 (b) It is unlawful for any natural person to engage in the solicitation and
31 acceptance of applications for mortgage loans without first obtaining a license as a loan
32 officer, limited loan officer, mortgage banker, or mortgage broker issued by the
33 Commissioner under the provisions of this Article. It is unlawful for any person to
34 employ, to compensate, or to appoint as its agent a loan officer unless the loan officer is
35 licensed as a loan officer under this Article. Exempt persons shall not be subject to this
36 subsection.

37 (c) The license of a loan officer or limited loan officer is not effective during any
38 period when that person is not employed by a mortgage ~~broker~~ broker, affiliated
39 mortgage banker, or mortgage banker licensed under this Article. The license of an
40 exclusive mortgage broker is not effective during any period when that person is not
41 authorized to act as a single licensee or exempt person pursuant to
42 G.S. 53-243.05(c)(1a).

43 When a loan officer or a limited loan officer ceases to be employed by a mortgage
44 ~~broker~~ broker, affiliated mortgage banker, or mortgage banker licensed under this

1 Article, the loan ~~officer~~ officer, limited loan officer, and the mortgage ~~broker~~ broker,
2 affiliated mortgage banker, or mortgage banker licensed under this Article by whom
3 that person is employed shall promptly notify the Commissioner in writing. When the
4 authority of an exclusive mortgage broker to act on behalf of the principal licensee or
5 exempt person identified in G.S. 53-243.05(c)(1a) has been terminated, the exclusive
6 mortgage broker and the licensee or exempt person for whom the exclusive mortgage
7 broker is an agent shall promptly notify the Commissioner in writing. The mortgage
8 broker, affiliated mortgage banker, mortgage banker, or exempt person's notice shall
9 include a statement of the specific reason or reasons for, as applicable, the termination
10 of the loan officer's or limited loan officer's employment or exclusive mortgage broker's
11 authority.

12 A loan officer or limited loan officer shall not be employed simultaneously by more
13 than one mortgage broker or mortgage banker licensed under this Article.

14 (d) Each mortgage broker and mortgage banker licensed under this Article shall
15 maintain on file with the Commissioner a list of all loan officers or limited loan officers
16 who are employed with the mortgage broker or mortgage banker.

17 (e) No person, other than an exempt person, shall hold himself or herself out as a
18 mortgage banker, a mortgage broker, limited loan officer, or loan officer unless such
19 person is licensed in accordance with this Article.

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

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

29 (2) The loan officer is employed by a licensed mortgage broker or
30 mortgage lender, and the managing principal of such mortgage broker
31 or mortgage lender (i) certifies to the Commissioner in writing that the
32 managing principal reasonably believes that the application of the
33 person for licensure as a loan officer meets or exceeds all of the
34 relevant requirements of this Article for licensure and (ii) undertakes
35 in writing that the managing principal and the employer will be
36 responsible for the acts of the applicant during the period that such
37 application is pending; and

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

42 (g) The Commissioner may deny or suspend the rights of a mortgage broker or
43 mortgage lender to employ a loan officer acting under subsection (f) of this section if
44 the Commissioner finds that the mortgage broker or mortgage lender, or the managing

1 principal thereof, makes the certification or undertaking set forth in subdivision (2) of
2 subsection (f) of this section not in good faith."

3 **SECTION 3.** G.S. 53-243.05(c)(1) reads as rewritten:

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

7 (1) Except as provided for in subdivision (1a) of this subsection, if the
8 applicant is a sole proprietor, the applicant shall have at least three
9 years of experience in residential mortgage lending or other experience
10 or competency requirements as the Commissioner may impose.
11 Experience as an exclusive mortgage broker or as a limited loan officer
12 shall not constitute mortgage-lending experience under this
13 subdivision."

14 **SECTION 4.** G.S. 53-243.05(e) reads as rewritten:

15 "(e) Every applicant for initial licensure shall pay a filing fee of one thousand
16 dollars (\$1,000) for licensure as a mortgage broker or mortgage banker or fifty dollars
17 (\$50.00) for licensure as a loan ~~officer~~, officer or limited loan officer, in addition to the
18 actual cost of obtaining credit reports and State and national criminal history record
19 checks."

20 **SECTION 5.** Article 19A of Chapter 53 of the General Statutes is amended
21 by adding a new section to read:

22 "**§ 53-243.05A. Licensing for limited loan officers; qualifications, revoked,**
23 **suspended, or barred.**

24 (a) An affiliated mortgage banker shall notify the Commissioner when it hires a
25 limited loan officer on forms prescribed by the Commissioner. The form shall contain
26 any information the Commissioner deems necessary including the name, social security
27 number, address, and business location of the limited loan officer. Limited loan officers
28 employed by an affiliated mortgage banker shall:

29 (1) Be at least 18 years of age.

30 (2) Work exclusively for an affiliated mortgage banker. The affiliated
31 mortgage banker who hires the limited loan officer shall:

32 a. Supervise the limited loan officer as required by this Article.

33 b. Sign the notification form regarding the hiring of the applicant.

34 c. Certify the applicant is qualified as a limited loan officer
35 subject to background checks, training, testing, and
36 fundamental education requirements.

37 d. Be jointly and severally liable for any and all claims and
38 damages of any type, including punitive damages pursuant to
39 Chapter 1D of the General Statutes arising out of the limited
40 loan officer's mortgage lending activities, as allowed by law.

41 (b) An applicant for a limited loan officer license may act provisionally as a
42 limited loan officer during the pendency of the application before the Commissioner
43 upon submission of the completed forms identified in subsection (a) of this section and

1 a written undertaking by the employing affiliated mortgage banker that it will be
2 responsible for all the applicant's mortgage banking activities.

3 (c) Systems, programs, and procedures used by the affiliated mortgage banker for
4 employment background checks, training, testing, and education by the affiliated
5 mortgage banker shall be submitted to and reviewed by the Commissioner who may
6 approve those which are comparable and functionally equivalent to those for loan
7 officers under G.S. 53-243.05 and G.S. 53-243.07. The Commissioner must be notified
8 of any material changes or modifications to such approved systems, programs, and
9 procedures. The Commissioner may approve those systems, programs, and procedures
10 used by the affiliated mortgage banker for these purposes that meet or exceed programs
11 otherwise accredited by the Commissioner or that have been approved for the affiliated
12 mortgage banker by at least five other states in which the affiliated mortgage banker is
13 licensed and whose licensing requirements are substantially similar to those of North
14 Carolina.

15 (d) Except as specified in this section, limited loan officers are subject to
16 licensing standards and disciplinary authority in the same way as loan officers under
17 this Article.

18 (e) A person whose license is revoked, suspended, or barred under this section is
19 prohibited from participating in the mortgage lending business in this State."

20 **SECTION 6.** G.S. 53-243.08 reads as rewritten:

21 "**§ 53-243.08. Managing principals and branch managers.**

22 Each mortgage broker or mortgage banker licensed under this Article shall have a
23 managing principal who operates the business under that person's full charge, control,
24 and supervision. Mortgage bankers and mortgage brokers, other than exclusive
25 mortgage brokers, may operate branch offices subject to the requirements of this
26 Article. Each principal and branch office of a mortgage broker or mortgage banker
27 licensed under this Article, ~~other than an exclusive mortgage broker qualifying under~~
28 ~~G.S. 53-243.05(e)(1a),~~ shall have a branch manager who meets the experience
29 requirements under ~~G.S. 53-243.05(e)(1).~~ G.S. 53-243.05(c)(1); provided, that an
30 affiliated mortgage banker may designate a branch manager who does not meet the
31 experience requirements so long as at or before the designation, it certifies that the
32 person is competent in terms of training and experience to perform the duties of a
33 branch manager. The managing principal for a licensee's business may also serve as the
34 branch manager of one of the licensee's branch offices. Each mortgage broker or
35 mortgage banker licensed under this Article shall file a form as prescribed by the
36 Commissioner indicating the business's designation of managing principal and branch
37 manager for each branch and each individual's acceptance of the responsibility. Each
38 mortgage broker or mortgage banker licensed under this Article shall notify the
39 Commissioner of any change in its managing principal or branch manager designated
40 for each branch. Any licensee who does not comply with this provision shall have the
41 licensee's license suspended pursuant to G.S. 53-243.12 until the ~~licensee, other than an~~
42 ~~exclusive mortgage broker,~~ licensee complies with this section. Any individual licensee
43 who operates as a sole proprietorship shall be considered a managing principal for the
44 purposes of this Article."

1 **SECTION 7.** G.S. 53-243.12(a) reads as rewritten:

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

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

8 (2) That any of the following circumstances apply to the applicant,
9 licensee, or any partner, member, manager, officer, director, loan
10 officer, limited loan officer, managing principal, or any person
11 occupying a similar status or performing similar functions or any
12 person directly or indirectly controlling the applicant or licensee. The
13 person:

14 a. Has filed an application for license that, as of its effective date
15 or as of any date after filing, contained any statement that, in
16 light of the circumstances under which it was made, is false or
17 misleading with respect to any material fact.

18 b. Has violated or failed to comply with any provision of this
19 Article, rule adopted by the Commissioner, or order of the
20 Commissioner.

21 c. Has been convicted of any felony, or, within the past 10 years,
22 has been convicted of any misdemeanor involving mortgage
23 lending or any aspect of the mortgage lending business, or any
24 offense involving breach of trust, moral turpitude, or fraudulent
25 or dishonest dealing.

26 d. Is permanently or temporarily enjoined by any court of
27 competent jurisdiction from engaging in or continuing any
28 conduct or practice involving any aspect of the mortgage
29 lending business.

30 e. Is the subject of an order of the Commissioner denying,
31 suspending, or revoking that person's license as a mortgage
32 broker or mortgage banker.

33 f. Is the subject of an order entered within the past five years by
34 the authority of any state with jurisdiction over that state's
35 mortgage brokerage or mortgage banking industry denying or
36 revoking that person's license as a mortgage broker or mortgage
37 banking industry or denying or revoking that person's license as
38 a mortgage broker or mortgage banker.

39 g. Does not meet the qualifications or the financial responsibility,
40 character, or general fitness requirements under G.S. 53-243.05
41 or any bond or capital requirements under this Article.

42 h. Has been the executive officer or controlling shareholder or
43 owned a controlling interest in any mortgage broker or

- 1 mortgage banker who has been subject to an order or injunction
2 described in sub-subdivision d., e., or f. of this subdivision.
3 i. Has failed to pay the proper filing or renewal fee under this
4 Article. However, the Commissioner may enter only a denial
5 order under this sub-subdivision, and the Commissioner shall
6 vacate the order when the deficiency has been corrected.
7 j. Has falsely certified attendance or completion of hours at an
8 approved mortgage lending continuing education course."

9 **SECTION 8.** This act is effective when it becomes law.