

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 237*
Committee Substitute Favorable 7/6/05
Committee Substitute #2 Favorable 7/28/05

Short Title: Revise Mortgage Lending Act.

(Public)

Sponsors:

Referred to:

February 16, 2005

A BILL TO BE ENTITLED

1
2 AN ACT TO UPDATE THE MORTGAGE LENDING ACT BY ALLOWING
3 REGISTRATION OF LIMITED LOAN OFFICERS OF DEFINED AFFILIATED
4 MORTGAGE BANKERS AND TO ESTABLISH ADDITIONAL SUPERVISION
5 AND ENFORCEMENT AUTHORITY FOR THE COMMISSIONER OF BANKS.

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

1 (2b) Affiliated mortgage banker. – A licensed mortgage banker that meets
2 the criteria of either sub-subdivisions a., b., and c. of this subdivision
3 or sub-subdivisions d. and e. of this subdivision:

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

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

21 c. The licensee has a consolidated net worth of one hundred
22 million dollars (\$100,000,000) or more, or if the licensee does
23 not have the required net worth, its parent shall provide to the
24 Commissioner (i) evidence satisfactory to the Commissioner
25 that the parent has a net worth of one hundred million dollars
26 (\$100,000,000) or more, and (ii) an unconditional guarantee or
27 comparable instrument of surety satisfactory to the
28 Commissioner of the performance of the licensee of its
29 obligations under this Article.

30 d. The licensee is a direct or indirect wholly owned subsidiary of a
31 bank holding company or financial services holding company
32 subject to regulation by the Federal Reserve Board or the Office
33 of Thrift Supervision.

34 e. The licensee has a net worth of one hundred million dollars
35 (\$100,000,000) or, if the licensee does not have the required net
36 worth, (i) its parent, if it is not a bank holding company or
37 financial holding company, meets the requirements of
38 sub-subdivision c. of this subdivision or (ii) its parent, if such
39 parent is a bank holding company or financial holding
40 company, has total assets in excess of ten billion dollars
41 (\$10,000,000,000) and provides the Commissioner with the
42 unconditional guarantee or comparable instrument of surety
43 required by sub-subdivision c. of this subdivision.

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

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

- 1 (15) Mortgage loan. – A loan made to a natural person or persons primarily
2 for personal, family, or household use, primarily secured by either a
3 mortgage or a deed of trust on residential real property located in
4 North Carolina.
- 5 (15a) Parent. – The person that controls an affiliated mortgage banker, as
6 control is defined in subdivision (2a) of this section.
- 7 (16) Person. – An individual, partnership, limited liability company, limited
8 partnership, corporation, association, or other group engaged in joint
9 business activities, however organized.
- 10 (17) Qualified lender. – A person who is engaged as a mortgage lender in
11 North Carolina and is either a supervised or a nonsupervised
12 institution, as these terms are defined in 24 C.F.R. § 202.2, approved
13 by the United States Department of Housing and Urban Development.
- 14 (18) Qualified person. – A person who is employed as a loan officer by a
15 qualified lender, or by a mortgage banker or broker registered with the
16 Commissioner under former Article 19 of this Chapter, or who is a
17 general partner, manager, or officer of a qualified lender, registered
18 mortgage banker, or registered mortgage broker.
- 19 (19) Residential real property. – Real property located in the State of North
20 Carolina upon which there is located or is to be located one or more
21 single-family dwellings or dwelling units.
- 22 (20) Tablefunding. – A transaction where a licensee closes a loan in its own
23 name with funds provided by others, and the loan is assigned
24 simultaneously to the mortgage lender providing the funding within
25 one business day of the funding of the loan."

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

27 **"§ 53-243.02. License required; licensee records.**

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

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

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

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

14 A loan officer or limited loan officer shall not be employed simultaneously by more
15 than one affiliated mortgage banker, mortgage ~~broker~~ broker, or mortgage banker
16 licensed under this Article.

17 (d) Each affiliated mortgage banker, mortgage ~~broker~~ broker, and mortgage
18 banker licensed under this Article shall maintain on file with the Commissioner a list of
19 all loan officers or limited loan officers who are employed with the affiliated mortgage
20 banker, mortgage ~~broker~~ broker, or mortgage banker.

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

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

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

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

42 (3) The person is currently or has within the six-month period prior to the
43 date of the application been employed as and acting as a loan officer

1 for an exempt entity which entity is exempt by virtue of an exemption
2 claimed under G.S. 53-243.01(8)c.

3 (g) The Commissioner may deny or suspend the rights of a mortgage broker or
4 mortgage banker to employ a loan officer acting under subsection (f) of this section if
5 the Commissioner finds that the mortgage broker or mortgage banker, or the managing
6 principal thereof, makes the certification or undertaking set forth in subdivision (2) of
7 subsection (f) of this section not in good faith."

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

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 at the time of
11 application and at all times thereafter shall comply with the following requirements:

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

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

20 "(e) Every applicant for initial licensure shall pay a filing fee of one thousand
21 dollars (\$1,000) for licensure as a mortgage broker or mortgage banker or fifty dollars
22 (\$50.00) for licensure as a loan ~~officer~~, officer or limited loan officer, in addition to the
23 actual cost of obtaining credit reports and State and national criminal history record
24 checks."

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

27 **"§ 53-243.05A. Licensing for limited loan officers; qualifications, revoked,**
28 **suspended, or barred.**

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

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

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

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

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

39 c. Certify the applicant is qualified as a limited loan officer
40 subject to background checks, training, testing, and
41 fundamental education requirements.

42 d. Be jointly and severally liable for any and all claims and
43 damages of any type, including punitive damages pursuant to

1 Chapter 1D of the General Statutes arising out of the limited
2 loan officer's mortgage lending activities, as allowed by law.

3 (b) An applicant for a limited loan officer license may act provisionally as a
4 limited loan officer during the pendency of the application before the Commissioner for
5 up to 60 days after submission of the completed forms identified in subsection (a) of
6 this section and a written undertaking by the employing affiliated mortgage banker that
7 it will be responsible for all the applicant's mortgage banking activities.

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

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

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

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

26 **"§ 53-243.08. Managing principals and branch managers.**

27 Each mortgage broker or mortgage banker licensed under this Article shall have a
28 managing principal who operates the business under that person's full charge, control,
29 and supervision. Mortgage bankers and mortgage brokers, other than exclusive
30 mortgage brokers, may operate branch offices subject to the requirements of this
31 Article. Each principal and branch office of a mortgage broker or mortgage banker
32 licensed under this Article, ~~other than an exclusive mortgage broker qualifying under~~
33 ~~G.S. 53-243.05(e)(1a),~~ shall have a branch manager who meets the experience
34 requirements under ~~G.S. 53-243.05(e)(1).~~ G.S. 53-243.05(c)(1); provided, that an
35 affiliated mortgage banker may designate a branch manager who does not meet the
36 experience requirements so long as at or before the designation, it certifies that the
37 person has been employed by the affiliated mortgage banker for at least one year as a
38 loan officer, limited loan officer, or in a comparable position in another state. The
39 managing principal for a licensee's business may also serve as the branch manager of
40 one of the licensee's branch offices. Each mortgage broker or mortgage banker licensed
41 under this Article shall file a form as prescribed by the Commissioner indicating the
42 business's designation of managing principal and branch manager for each branch and
43 each individual's acceptance of the responsibility. Each mortgage broker or mortgage
44 banker licensed under this Article shall notify the Commissioner of any change in its

1 managing principal or branch manager designated for each branch. Any licensee who
2 does not comply with this provision shall have the licensee's license suspended pursuant
3 to G.S. 53-243.12 until the licensee, ~~other than an exclusive mortgage broker,~~ licensee
4 complies with this section. Any individual licensee who operates as a sole
5 proprietorship shall be considered a managing principal for the purposes of this Article."

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

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

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

13 (2) That any of the following circumstances apply to the applicant,
14 licensee, or any partner, member, manager, officer, director, loan
15 officer, limited loan officer, managing principal, or any person
16 occupying a similar status or performing similar functions or any
17 person directly or indirectly controlling the applicant or licensee. The
18 person:

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

23 b. Has violated or failed to comply with any provision of this
24 Article, rule adopted by the Commissioner, or order of the
25 Commissioner.

26 c. Has been convicted of any felony, or, within the past 10 years,
27 has been convicted of any misdemeanor involving mortgage
28 lending or any aspect of the mortgage lending business, or any
29 offense involving breach of trust, moral turpitude, or fraudulent
30 or dishonest dealing.

31 d. Is permanently or temporarily enjoined by any court of
32 competent jurisdiction from engaging in or continuing any
33 conduct or practice involving any aspect of the mortgage
34 lending business.

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

38 f. Is the subject of an order entered within the past five years by
39 the authority of any state with jurisdiction over that state's
40 mortgage brokerage or mortgage banking industry denying or
41 revoking that person's license as a mortgage broker or mortgage
42 banking industry or denying or revoking that person's license as
43 a mortgage broker or mortgage banker.

- 1 g. Does not meet the qualifications or the financial responsibility,
2 character, or general fitness requirements under G.S. 53-243.05
3 or any bond or capital requirements under this Article.
4 h. Has been the executive officer or controlling shareholder or
5 owned a controlling interest in any mortgage broker or
6 mortgage banker who has been subject to an order or injunction
7 described in sub-subdivision d., e., or f. of this subdivision.
8 i. Has failed to pay the proper filing or renewal fee under this
9 Article. However, the Commissioner may enter only a denial
10 order under this sub-subdivision, and the Commissioner shall
11 vacate the order when the deficiency has been corrected.
12 j. Has falsely certified attendance or completion of hours at an
13 approved mortgage lending continuing education course."

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