

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 866

Short Title: Mortgage Lenders and Brokers Licensure.

(Public)

Sponsors: Senator Gulley.

Referred to: Commerce.

April 13, 1999

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

The General Assembly of North Carolina enacts:

Section 1. Article 19 of Chapter 53 of the General Statutes reads as rewritten:

"ARTICLE 19.

~~"Registration of Mortgage Bankers and Brokers.~~

"Residential Mortgage Lenders and Brokers Licensure Act.

"§ 53-232.99. Legislative findings.

The General Assembly finds that the activities of lenders and brokers offering financing for residential real property have a direct and immediate impact upon the housing industry, neighborhoods and communities, and homeowners and potential homeowners of this State. The General Assembly further finds that it is essential for the protection of the citizens of this State and the stability of the State's economy to establish reasonable standards governing the business practices of mortgage lenders and mortgage brokers.

"§ 53-233. Title and scope.

(a) This Article shall be known and cited as the ~~"Registration Requirements Act for Certain Makers of Mortgages and Deeds of Trust on Residential Real Property"~~. "Residential Mortgage Lenders and Brokers Licensure Act."

(b) No person, partnership, corporation, banking organization, or other entity, shall make or broker a residential mortgage loan as defined in this Article, unless either (i) the

maker or broker of the mortgage loan (i) is an exempt person or organization as defined in ~~G.S. 53-234(6)~~, G.S. 53-234(2), or (ii) has been licensed and has otherwise complied with the provisions of this Article. ~~Nothing in this Article shall be construed to apply to the purchase of loans or participations in loans or the commitment by an entity to fund loans made by registrants or exempt persons or organizations.~~

"§ 53-234. Definitions.

The following definitions apply in this Article:

- (1) ~~"Mortgage loan" means a loan to a natural person or persons made primarily for personal, family or household use, primarily secured by either a mortgage or a deed of trust on residential real property.~~
- (2) ~~"Residential real property" means real property located in this State upon which there is located or there is to be located one or more single family dwellings or dwelling units.~~
- (3) ~~"Mortgage banker" means a person or entity who or which for compensation or gain, either directly or indirectly, advances funds, offers to advance funds, or makes a commitment to advance funds to an applicant for a mortgage loan.~~
- (4) ~~"Mortgage broker" means a person or entity in the business of soliciting, processing, placing or negotiating mortgage loans for others or offering to process, place or negotiate mortgage loans for others.~~
- (5) ~~"Soliciting, processing, placing or negotiating a mortgage loan" means for compensation or gain, either directly or indirectly, accepting or offering to accept an application for a mortgage loan, assisting or offering to assist in the processing of an application for a mortgage loan, soliciting or offering to solicit a mortgage loan on behalf of a third party or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a lender on behalf of a third party.~~
- (6) ~~"Exempt person or organization" means:~~
 - (a) ~~Any supervised or any nonsupervised institution, as these terms are defined in 24 C.F.R. section 202.2, approved by the United States Department of Housing and Urban Development, or any lender authorized to engage in business as a bank, a farm credit system, life insurance company, savings institution, or credit union, under the laws of the United States or the State of North Carolina and subsidiaries and affiliates of such lenders, which subsidiaries and affiliates are subject to the general supervision or regulation of the lender or subject to audit or examination by a regulatory body or agency of the United States or the State of North Carolina; the entities listed in this sub-subdivision, and their officers and employees, are not subject to any of the provisions of this Article; or~~

- ~~(b) Any licensed real estate agent or broker, who is performing those activities subject to the regulation of the North Carolina Real Estate Commission. Notwithstanding the above, an exempt person does not include a real estate agent or broker who receives direct compensation or income in connection with the placement of a mortgage loan; or~~
- ~~(c) Any person who, as seller, receives in one calendar year no more than ten mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation; or~~
- ~~(d) The North Carolina Housing Finance Agency as established by Chapter 122A of the General Statutes and the North Carolina Agricultural Finance Authority as established by Chapter 122D of the General Statutes; or~~
- ~~(e) Any agency of the federal government or any state or municipal government granting first mortgage loans under specific authority of the laws of any state or the United States.~~
- ~~(7) "Registrant" means any person or entity who or which is registered pursuant to G.S. 53-236:
 - ~~(a) Which engages in the business of making mortgage loans in this State; or~~
 - ~~(b) Which engages in the business of soliciting, processing, placing or negotiating mortgage loans for others, or offering to process, place or negotiate mortgage loans for others.~~~~
- ~~(8) "Commissioner" means the Commissioner of Banks of this State.~~
- ~~(1) Commissioner. -- The Commissioner of Banks of this State.~~
- ~~(2) Exempt person or organization. -- Any of the following:
 - ~~a. Any licensed real estate agent or broker who is performing those activities subject to the regulation of the North Carolina Real Estate Commission unless the real estate agent or broker receives direct compensation or income in connection with the placement of a mortgage loan.~~
 - ~~b. Any person who, as seller, receives in one calendar year no more than 10 mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation.~~
 - ~~c. The North Carolina Housing Finance Agency as established by Chapter 122A of the General Statutes and the North Carolina Agricultural Finance Authority as established by Chapter 122D of the General Statutes.~~
 - ~~d. Any agency of the federal government or any state or municipal government granting first mortgage loans under specific authority of the laws of any state or the United States.~~~~

- (3) Licensee. -- Any person who is issued a license pursuant to G.S. 53-236.
- (4) Mortgage broker. -- A person who, for compensation or the expectation of compensation, procures a mortgage loan for a person from a third party, or assists a person in obtaining a mortgage loan and who, in connection with such activities, performs one or more of the following services:
- a. Solicits mortgage loans on behalf of any borrower or lender.
 - b. Solicits, provides assistance in making application, or accepts mortgage loan applications.
 - c. Processes applications for mortgage loans, including property and credit reviews.
 - d. Negotiates or offers to negotiate the terms of mortgage loans with lenders or borrowers.
 - e. Issues commitments or lock-in agreements to borrowers on behalf of lenders.
 - f. Any other service or activity by which the mortgage broker interposes between borrowers and mortgage lenders.
- (5) Mortgage lender. -- A person who for compensation or gain or in the expectation of compensation or gain, either directly or indirectly, advances funds, offers to advance funds, or makes a commitment to advance funds to an applicant for a mortgage loan, including tablefunding of a mortgage loan.
- (6) Mortgage loan. -- A loan to a natural person made primarily for personal, family, or household use, and secured primarily by either a mortgage or a deed of trust on residential real property.
- (7) Person. -- A natural person, corporation, association, limited liability company, partnership, or other business entity.
- (8) Place of operation. -- Any location, including a personal residence, where a licensee holds himself or herself out to the public as engaging in business as a mortgage lender or mortgage broker.
- (9) Residential real property. -- Real property located in this State upon which there is located or there is to be located one or more single family dwellings or dwelling units.
- (10) Tablefunding. -- A settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

"§ 53-235. Registration requirements of mortgage bankers and mortgage brokers. Mortgage lender and mortgage broker licensure.

(a) ~~No~~ It shall be unlawful for any person to act as a mortgage banker-lender, as defined in G.S. 53-234(3), shall engage in the business of making mortgage loans G.S. 53-234(5), without first being registered with licensed by the Commissioner in accordance

with the ~~registration procedure provided in provisions of~~ this Article and such regulations as may be promulgated by the Commissioner.

(b) ~~No~~ ~~It shall be unlawful for any person to act as a mortgage broker, as defined in G.S. 53-234(4), shall engage in the business of processing, placing or negotiating a mortgage loan or offering to process, place or negotiate a mortgage loan in this State without first being registered with~~ licensed by the Commissioner in accordance with the ~~registration procedure provided in provisions of~~ this Article and such regulations as may be promulgated by the Commissioner; ~~provided, however, any person or entity registered as a mortgage banker pursuant to subsection (a) of this section shall not be required to separately register as a mortgage broker to engage in such activity.~~ Commissioner.

(b1) Any person who intends to act as both a mortgage broker and mortgage lender shall be separately licensed in each capacity.

(c) Notwithstanding subsections (a) and (b) of this section, the ~~registration licensure provisions of this Article shall not apply to any exempt persons or entities as defined by G.S. 53-234(6).~~ G.S. 53-234(2).

(d) ~~Notwithstanding any other provision of law, an affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act shall register with the Commissioner in accordance with the registration procedures provided in this Article: Provided, however, such affiliate or subsidiary shall be exempt from the payment of any required fees under this Article.~~

"§ 53-236. Registration procedures. Application for licensure.

(a) An application to become ~~registered~~ licensed as a mortgage ~~banker~~ lender or a mortgage broker shall be ~~in writing, under oath, and in such form as shall be prescribed by the Commissioner. Such application shall contain the name and complete business and residential address or addresses of the applicant, or if the applicant is a partnership, association, corporation or other form of business organization, the names and complete business and residential addresses of each member, director and principal officer thereof.~~ submitted to the Commissioner by any person who acts or intends to act as a mortgage lender or mortgage broker as defined in this Article. A separate application for licensure shall be submitted by each of the following:

- (1) Any natural person who acts as a mortgage lender or mortgage broker, as defined in this Article, without regard to whether the person is employed by, an agent of, or otherwise associated with a licensed mortgage broker or mortgage lender. A natural person employed by a depository institution, as defined in section 501(a)(2) of the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. § 1735f-7a(a)(2)), or an entity licensed under G.S. 58-6.7 as an insurance company shall not be required to apply for licensure, while acting as an employee of the entity, if the entity is licensed under this Article.

- (2) Any partnership, corporation, or other business entity whose officers, partners, employees, or agents act as mortgage lenders or mortgage brokers as defined in this Article.

(a1) Each application shall be in writing, under oath, and in a form prescribed by the Commissioner, and shall contain: (i) if the applicant is a natural person, the applicant's name and complete business and residential addresses; (ii) if the applicant is a partnership, association, or other form of business organization, the applicant's name and principal business address and the names and complete business and residential addresses of each member of the partnership, association, or other business organization; and (iii) if the applicant is a corporation, the applicant's name and principal business address, the date and place of incorporation, and the names and complete business and residential addresses of each director and principal officer of the corporation. If the applicant is a partnership, corporation, or other business entity, the application shall also contain the name and any other information the Commissioner shall require for every natural person who shall act as a mortgage lender or mortgage broker, as defined in this Article, on behalf of the applicant, and the date of issuance of each person's license or application for license. The application shall include the address of each place where the applicant intends to conduct business.

(b) The application shall also include an affirmation of financial solvency noting such capitalization requirements as may be required by the Commissioner, and such descriptions of the business activities, financial responsibility, educational background and general character and fitness of the applicant as may be required by the Commissioner. ~~Such application shall be accompanied by a fee, payable to the Commissioner, of five hundred dollars (\$500.00).~~

(c) An applicant shall submit to the Commissioner with the application for licensure the following fee for investigating the application, which shall be nonrefundable, and shall pay the following license fee for the current calendar year:

- (1) Natural persons shall pay a five hundred dollar (\$500.00) fee, which shall also include the fee for the initial license.
- (2) All other applicants shall pay a one thousand dollar (\$1,000) fee and an additional one thousand dollar (\$1,000) license fee.
- (3) An applicant who maintains more than one place of operation shall, in addition to the fees required in this subsection, pay a two hundred fifty dollar (\$250.00) license fee for each place of operation, but no applicant shall be required to pay a license fee for additional places of operation in excess of three thousand dollars (\$3,000). License fees shall be refunded if the application for licensure is denied.

"§ 53-236A. Bond required.

(a) Prior to the issuance of a license, the applicant shall file with the Commissioner and shall keep in force for as long as the license remains in effect, a bond, to be approved by the Commissioner, in which the applicant shall be the obligor in an amount required by the Commissioner, but not less than the amount required in this

section. The aggregate liability for any claims on a bond shall not exceed the amount of the bond. No surety obligation on a bond shall be terminated unless at least 60 days' prior written notice is given by the surety to the obligor and the Commissioner. When a person is licensed to conduct an activity authorized under this Chapter at more than one place of operation, the Commissioner may accept a single bond covering the person at all places of operation.

(b) The bonds set by the Commissioner shall be not less than the following amounts:

- (1) Twenty-five thousand dollars (\$25,000) for any mortgage lender or mortgage broker who is a natural person.
- (2) Fifty thousand dollars (\$50,000) for any mortgage broker who is not a natural person.
- (3) One hundred thousand dollars (\$100,000) for any mortgage lender who is not a natural person.

(c) The bond shall run to the State for the benefit of the State and any persons who may have a cause of action against the obligor of the bond under the provisions of this Article. The bond shall be conditioned that the obligor shall faithfully conform to and abide by the provisions of this Article and all rules, regulations, and orders issued by the Commissioner under this Article, and shall pay to the State and any persons any monies that may become due or owing to the State or persons from the obligor under the provisions of this Article. Any person who may be damaged by the noncompliance of a licensee with any condition of the bond may proceed on the bond against the principal or surety or both, to recover damages. The proceeding shall not preclude other remedies available to the person, including other remedies under this Article.

(d) If a licensee fails to maintain the bond required by this section, the license issued under this Article shall expire immediately without further action from the Commissioner.

"§ 53-237. Registration-Licensure granted by the Commissioner.

(a) Upon the filing of an application for registration, licensure, if the Commissioner finds that the applicant has complied with the applications requirements provided in G.S. 53-236, the bonding requirements provided in G.S. 53-236A, and any regulations adopted or orders issued by the Commissioner, and further finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant is a partnership or association, and of the officers and directors thereof if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly, within the purposes of this Article, he shall thereupon register the applicant as a mortgage banker or a lender, mortgage broker, broker, or both, whichever is applicable, on a roll maintained for that purpose at the Commission of Banks, and shall issue a certificate attesting to such registration. issue a license to the applicant. If the Commissioner does not so find, he shall not register such issue a license to the applicant,

and shall notify the applicant of the denial. The Commissioner shall transmit the ~~certificate~~ license to the applicant.

(b) Upon the receipt of such ~~certificate~~, ~~license~~, a mortgage ~~banker~~ lender or a mortgage broker, shall be authorized to engage in the business for which the ~~registration~~ ~~certificate~~ license was issued.

(c) Each ~~certificate~~ license issued to a ~~registrant~~ licensee shall state the address ~~or~~ addresses at which the business is to be conducted of the licensee's place of operation and shall state fully the name of the ~~registrant~~, ~~licensee~~, and the date of the ~~registration~~ issuance of the license. A separate license shall be issued for each place of operation listed on the application. A copy of such ~~certificate~~ the license shall be prominently posted in each place of business of the ~~registrant~~ licensee. Such ~~certificate~~ The license shall not be transferable or assignable.

(d) Each license shall expire immediately and without further action from the Commissioner on December 31 of the year in which it is issued, unless renewed as provided in G.S. 53- 237A. Each licensee shall surrender to the Commissioner any expired license within 30 days of the expiration of the license.

"§ 53-237A. Renewal of licenses.

On or before December 1 of each year, each licensee shall renew the license issued by the Commissioner by submitting to the Commissioner an application for renewal, in a form to be prescribed by the Commissioner, and the following renewal fee:

- (1) Five hundred dollars (\$500.00) for any natural person.
- (2) One thousand dollars (\$1,000) for all other licensees.
- (3) An additional two hundred fifty dollars (\$250.00) for each additional place of operation up to a maximum of three thousand dollars (\$3,000).

"§ 53-237B. Mortgage loans to residents of this State.

Mortgage loans solicited and made by mail, telephone, or electronic means to residents of this State shall be subject to the provisions of this Article without regard to the location where the mortgage loan was legally made. No person shall engage in the business of a mortgage lender or mortgage broker nor shall any person solicit or make mortgage loans by mail, telephone, or electronic means to residents of this State unless the person is duly licensed under the terms of this Article.

"§ 53-237C. Use of other name or places of operations; change of place of operation; change of management or control; charges or convictions.

(a) No licensee shall broker or make any loan provided for by this Article under any other name or at any other place of operation than that named in the license issued by the Commissioner. Not more than one place of operation shall be maintained under the same license. Prior to a licensee changing or closing a place of operation, the licensee shall give 30 days' written notice to the Commissioner and shall pay a nonrefundable fee of one hundred dollars (\$100.00). Upon receipt of the notice and fee, the Commissioner shall issue an amendment to the license stating the change of place of operation and the date of the change, and the amendment shall be authority for the operation of business at the new place of operation.

(b) A licensee shall notify the Commissioner of any change in control of the licensee's business within 30 days of the change. A licensee, other than a depository institution, as defined in section 501(a)(2) of the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. § 1735f- 7a(a)(2)), or an entity licensed under G.S. 58-6.7 as an insurance company, shall notify the Commissioner of every change in senior management personnel and membership of the board of directors of the licensee's business within 30 days of the change. Upon receipt of the notice, the Commissioner shall issue an amendment to the license stating the change and the date of the change, and the amendment shall be authority for the continued operation of the business.

(c) A licensee shall notify the Commissioner if the licensee or any principal officer, director, or ultimate equitable owner of ten percent (10%) or more of the licensee's business is indicted or charged for, convicted of, or enters a plea of nolo contendere or plea of guilty to any crime or administrative violation that involves fraud, dishonest dealing, or any other act of moral turpitude in any jurisdiction not later than 30 business days after the indictment, charge, conviction, entering of plea, or final administrative action occurs.

"§ 53-237D. Obligations of mortgage lenders and mortgage brokers engaged in tablefunding.

A mortgage lender or mortgage broker engaged in tablefunding shall act exclusively as an agent for the borrower. The agency shall impose on the mortgage lender or mortgage broker a fiduciary duty to represent the borrower's interest in the securing of mortgage credit, including the duty to: (i) safeguard and account for any money handled for the borrower; (ii) be loyal to the borrower and follow reasonable and lawful instructions from the borrower; (iii) act with reasonable skill, care, and diligence; (iv) disclose to the borrower any information that might influence his or her decision to borrow; and (v) make reasonable effort to secure a mortgage loan with rates, charges, and repayment terms that are most advantageous to the borrower considering the borrower's particular circumstances.

"§ 53-237E. Obligations of mortgage lenders.

No licensee shall act as a mortgage broker in any transaction in which the licensee is also acting as a mortgage lender. Each mortgage lender required to be licensed under this Article shall, for at least seven years after a contract is executed pursuant to this Article, retain the original contract between the mortgage broker and the prospective borrower, a copy of the settlement statement, an account of fees received in connection with the loan, any correspondence, papers, or records relating to the loan, and any other documents required by the Commissioner.

"§ 53-237F. Annual reporting by licensees.

(a) Each licensee shall file with the Commissioner by March 31 of each year a report that provides any information the Commissioner may require concerning: (i) the business and operations conducted by the licensee in this State during the preceding calendar year, and (ii) each individual employed by or otherwise associated with the licensee who was acting as a mortgage lender or mortgage broker during the preceding

calendar year. The report shall be made under oath and in the form prescribed by the Commissioner and shall include information necessary to determine the licensee's compliance with the provisions of this Article and other laws and regulations of this State and any other information the Commissioner may require, including the total number of mortgage loans brokered, the total dollar amounts of all loans brokered, the total commissions or other compensation paid by any mortgage lender in connection with the mortgage loans, and the total fees received by any mortgage lender.

(b) The failure of any licensee to submit an annual report in the manner required by this Article and any rules promulgated under this Article shall be grounds for revocation of the license issued by the Commissioner or the imposition of late filing fees in an amount to be determined by the Commissioner.

(c) The Commissioner shall make and publish annually an analysis and compilation of the reports submitted pursuant to this section.

"§ 53-237G. Licensees required to keep records; inspection of records by Commission; inspection fees.

(a) All licensees shall keep, use in the licensee's business, and make available for inspection by the Commissioner, upon request, any books, accounts, records, and data compilations that will enable the Commissioner to determine whether the licensee is in compliance with the provisions of this Article and the rules, regulations, and orders promulgated by the Commissioner under this Article. Licensees shall preserve the books, accounts, records, and data compilations for at least seven years after making the final entry on any loan recorded in the books, accounts, records, or data compilations. For purposes of conducting an inspection, the Commissioner or the Commissioner's representative shall have access to the licensee's offices and places of business, books, accounts, papers, records, and files and may require the attendance and testimony of any person deemed necessary to the conduct and operation of the licensee's business. The Commissioner or the Commissioner's representative shall also have the authority granted under this section if the Commissioner or the Commissioner's representative has reason to believe a person is acting as a mortgage lender or mortgage broker but the person is not licensed under this Article.

(b) The licensee shall pay the costs of an inspection authorized under this section, and payment shall be due within 30 days after receipt of an invoice from the Commissioner. The Commissioner shall annually determine inspection costs and may include in such costs expenses that are necessary for travel outside of the State to conduct an inspection. If the licensee fails to pay the costs of an inspection, the Commissioner may bring an action for the recovery of the costs in any court of competent jurisdiction.

(c) Notwithstanding any provision of general or special law to the contrary, the service of a subpoena for business records that is delivered to a licensee's office within this State shall be deemed to have been served at the location, whether within or outside this State, where the original business records or documents are kept or maintained.

"§ 53-238. Prohibited activities of mortgage ~~bankers~~ lenders and mortgage brokers.

Mortgage ~~bankers~~ lenders and mortgage brokers are prohibited from the following activities:

- (1) Misrepresenting the material facts or making false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or pursuing a course of misrepresentation through agents or ~~otherwise;~~ otherwise.
- (2) Misrepresenting or concealing of material factors, terms or conditions of a transaction to which he is a party, pertinent to an applicant for a mortgage loan or a ~~mortgagor;~~ mortgagor.
- (3) Failing to disburse funds in accordance with a written commitment or agreement to make a mortgage ~~loan;~~ loan.
- (4) Improperly refusing to issue a satisfaction of a ~~mortgage;~~ mortgage.
- (5) Failing to account for or deliver to any person any personal property obtained in connection with a mortgage loan such as money, funds, deposit, check, draft, mortgage, or other document, or thing of value, which has come into his hands and which is not his property, or which he is not in law or equity entitled to ~~retain;~~ retain.
- (5a) Providing broker services for mortgage loans without making reasonable efforts to secure a loan with rates, charges, and repayment terms that are the most advantageous for the borrower's particular circumstances.
- (5b) Making, directly or indirectly, any residential mortgage loan with the intent to foreclose on the borrower's property. For purposes of this subdivision, there is a presumption that a person has made a residential mortgage loan with the intent to foreclose on the borrower's property if the following circumstances can be demonstrated:
 - a. Lack of a substantial benefit to the borrower.
 - b. Lack of probability of full payment of the loan by the borrower.
 - c. A significant proportion of similar loans by the person have been foreclosed.
- (5c) Discriminating in the making or brokering of a mortgage loan on the basis of the borrower's or potential borrower's race, sex, age, national origin, religion, or handicap.
- (5d) Advertising mortgage loan products unless the advertising will make the products available to a reasonable number of qualified applicants responding to the advertisement.
- (5e) Fraudulently or deceitfully advertising a mortgage loan or misrepresenting the terms, conditions, or charges incident to a mortgage loan in any advertisement.
- (5f) Using any sign or written or printed paper indicating that a business operated by the lender or broker is a bank, savings bank, trust company, or place of banking, or using the word 'bank', 'savings bank', 'banking', 'banker', or 'trust company', or the

equivalent in connection with any business unless the business is a banking entity as defined in G.S. 53-127.

(6) Engaging in any transaction, practice, or course of business which that is not in good faith or fair dealing, or which operates a fraud upon any person, in connection with the making of or purchase or sale of any mortgage-loan: loan or that violates the provisions of Chapter 24 of the General Statutes or is prohibited by the provisions of Chapter 75 of the General Statutes.

"§ 53-238A. Prohibition against dealing with unlicensed brokers or lenders.

It shall be unlawful to participate in the brokering or making of a mortgage loan with any individual or to purchase, sell, or otherwise transfer or acquire a mortgage loan from any individual who is subject to the provisions of this Article but is not licensed.

"§ 53-238B. Suspension and revocation of licenses.

The Commissioner may suspend or revoke any license issued pursuant to this Article if, after notice and opportunity for hearing, the Commissioner issues written findings that the licensee has:

- (1) Violated this Article, any rules adopted pursuant to this Article, or any applicable federal or State laws or rules.
- (2) Made a false statement on the application for licensure.
- (3) Refused to permit an investigation authorized under this Article.
- (4) Failed to comply with an order issued by the Commissioner.
- (5) Demonstrated incompetence or untrustworthiness to engage in business as a mortgage lender or mortgage broker.
- (6) Been convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit.

"§ 53-239. Cease and desist; revocation of registration certificate. revocation of registration certificate. Enforcement by the Commissioner.

(a) Upon the finding that any action of a mortgage banker-lender or a mortgage broker may be in violation of this Article, or of any law or regulation of this State or of the federal government or any agency thereof, the Commissioner, after reasonable notice to the mortgage banker-lender or mortgage broker, and an opportunity for the mortgage banker-lender or mortgage broker to be heard, shall order it to cease and desist from such action-action, and may also impose a penalty of not more than five thousand dollars (\$5,000) for each initial violation and ten thousand dollars (\$10,000) for any subsequent violation and order the mortgage lender or mortgage broker to make restitution to any person injured as a result of the violation.

(b) If the mortgage banker or mortgage broker fails to appeal such cease and desist order of the Commissioner in accordance with G.S. 53-240 hereof and continues to engage in such action in violation of the Commissioner's order to cease and desist such action, it shall be subject to a penalty of one thousand dollars (\$1,000) for each such action it takes in violation of the Commissioner's order. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a mortgage banker or a mortgage broker for the mortgage banker or mortgage broker's

~~failure to comply with an order of the Commissioner. The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C 457.2.~~

~~(e) The Commissioner may, upon the finding that a mortgage banker or a mortgage broker has engaged in a course of conduct which is in violation of this Article, revoke the registration of such mortgage banker or mortgage broker temporarily or permanently in the discretion of the Commissioner.~~

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

(b) A contract or loan shall be void and the mortgage lender or mortgage broker shall have no right to collect or receive any principal, interest, or charges if the mortgage lender or mortgage broker, after receiving an order from the Commissioner directing the mortgage lender or mortgage broker to cease and desist and assessing a penalty, continues to perform duties or exercise powers authorized in this Article without satisfying the penalty, reaching a satisfactory resolution with the Commissioner, or securing a decision from a court of competent jurisdiction vacating the order.

"§ 53-240. Appeal of Commissioner's decision.

The Banking Commission shall have full authority to review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article; and any person aggrieved by any such rule, regulation, order, or act may appeal to the Banking Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the Banking Commission shall be entitled to an appeal pursuant to G.S. 53-92.

"§ 53-240A. Enforcement by borrowers.

(a) Any contract or loan made knowingly and willfully in violation of this Article shall be void, and the mortgage lender shall have no right to collect or receive any principal, interest, or charges. If a contract or loan is made in violation of this Article and there is no finding of a knowing and willful violation, the lender shall have no right to collect or receive any interest or charges but shall have a right to collect and receive the principal amount loaned.

(b) Any person damaged by the failure of a mortgage lender or mortgage broker to comply with the provisions of this Article or any regulations or orders under this Article may file an action in civil court to recover damages, and attorneys' fees shall be awarded to the person if he or she prevails.

(c) If a mortgage loan is made in violation of any provision of this Article, the person making the transaction and every licensee, director, or officer who participated in making the transaction shall be jointly and severally liable to every party to the transaction in an action for damages brought by the parties. It shall be a defense to liability under this subsection that the person acted in good faith and without knowledge

and, with the exercise of due diligence, could not have known of the act committed in violation of this Article.

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

"§ 53-241. Rules and regulations.

The Banking Commission may adopt such reasonable rules and regulations as may be necessary or desirable to effectuate the purpose of this Article, to provide for the protection of the borrowing public, and to instruct mortgage lenders in interpreting this Article. Article, including regulations defining unfair and deceptive practices, financial stability, general character and fitness, training and experience requirements, record keeping, and reporting.

~~"§ 53-242. Fees.~~

~~In addition to the initial application for registration fee of five hundred dollars (\$500.00) required by G.S. 53-236, all registrants shall pay an annual fee of two hundred fifty dollars (\$250.00)."~~

"§§ 53-243, 53-244: Reserved for future-codification purposes."

Section 2. This act is effective when it becomes law.