

April 16, 2009

**H 1523. S.A.F.E. MORTGAGE LICENSING ACT.** Filed 4/16/09. *TO REWRITE THE NORTH CAROLINA MORTGAGE LENDING ACT IN ORDER TO CONFORM TO THE REQUIREMENTS OF FEDERAL LAW.*

Repeals Article 19A of GS Chapter 53 (Mortgage Lending Act).

Enacts new Article 19B of GS Chapter 53, entitled The Secure and Fair Enforcement Mortgage Licensing Act, to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry operates without unfair, deceptive, and fraudulent practices on the part of mortgage loan originators. Establishes a definition section. Defines *mortgage loan originator* as an individual who for compensation or gain or in the expectation of compensation or gain, whether through contact by telephone, by electronic means, by mail, or in person with prospective borrowers, either: (1) takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan, (2) accepts or offers to accept applications for mortgage loans, (3) solicits or offers to solicit a mortgage loan, (4) negotiates the terms or conditions of a mortgage loan, or (5) issues mortgage loan commitments or interest rate guarantee agreements to prospective borrowers. The term includes an individual acting solely as a loss mitigation specialist if the US Department of Housing and Urban Development issues a guideline, rule, regulation, or interpretative letter that such individuals are loan originators as the term is defined by § 1503 of Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, and only to the extent of such an issuance or determination. Specifies that the term does not include: (1) an individual engaged solely as a loan processor or underwriter; (2) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with state law, unless the person or entity is compensated by a mortgage lender, a mortgage broker, or other mortgage loan originator or by any agent of a mortgage lender, mortgage broker, or other mortgage loan originator; (3) a person or entity solely involved in extensions of credit or sale of time share instruments relating to time share plans, as that term is defined in GS 93A-41(9a); or (4) an individual who only informs a prospective borrower of the availability of persons engaged in the mortgage business, does not take or assist in the completion of a loan application, does not discuss specific terms or conditions of a mortgage loan, and does not receive direct or indirect compensation based on the approval or closing of the mortgage loan. Provides that the taking of basic preapplication information for facilitating a residential mortgage loan transaction does not prevent an individual from qualifying for this exclusion.

Prohibits any person from engaging in the mortgage business or acting as a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining a license under this Article. Provides that any person engaging in the mortgage business, other than an exempt person, must obtain one of three types of licenses if applicable. Also requires each mortgage loan originator and person engaged in the mortgage business to register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry (Registry). Provides for exemptions for certain individuals and entities from the requirements of the Article, except for the provisions of GS 53-244.111 (Prohibited acts). Requires each licensed mortgage broker, mortgage lender, or mortgage servicer to (1) have a qualifying individual, or branch manager if applicable, who operates the business under that person's full charge, control, and supervision and (2) file information with the Registry regarding that qualifying individual's identity. Sets forth provisions related to license application, eligibility requirements, criminal record checks, claims of exemption, and issuance or denial of the license. Provides that in order to be eligible to apply for a mortgage loan originator license, an individual must complete at least 24 hours of prelicensing education approved by the Registry using reasonable standards consistently applied, subject to the approval of the Commissioner of Banks' (Commissioner) for instructional hours on state laws and regulations. Specifies the number of hours required in certain subject matters. Also provides for testing requirements.

Requires that every applicant for initial licensure pay a \$1,250 nonrefundable filing fee for licensure as a mortgage broker, mortgage lender or mortgage servicer or a \$125 nonrefundable fee for licensure as a mortgage loan originator, and requires payment of costs associated with obtaining a credit report, state and national criminal history record checks, and the processing fees required by the Registry. Requires each principal and each branch office of a licensed mortgage broker or mortgage lender to be issued a separate license for which the Commissioner

must assess an additional \$125 nonrefundable filing fee, in addition to requiring payment of the Registry's processing fee. Provides for active license requirements and assignability. Requires annual license renewal by December 31 of each year with renewal fees as follows: (1) \$625 for mortgage lenders, mortgage brokers, and mortgage services and \$125 for each branch office of a lender or broker and (2) \$67.50 for mortgage loan originators. Provides for late renewal fees, and, in the event a licensee fails to have the license reinstated by March 1, the licensee must comply with the initial license provisions. Requires 8 hours of continuing education for mortgage loan originators each year and specifies the amount of hours required in certain subject matters.

Requires that (1) each mortgage originator be covered by a surety bond through employment with a licensee and (2) each licensee posts a surety bond with the Commissioner in specified amounts depending on the activities of the individual. Allows for waiver by the Commissioner. Requires that a specified minimum net worth be continuously maintained as follows: (1) if the licensee is a mortgage lender, \$100,000, including evidence of liquidity of \$1 million, which may include a warehouse line of credit of \$1 million or other evidence of funding capacity to conduct mortgage originations as documented by an unqualified audited statement of financial condition; (2) if the licensee is a mortgage servicer, \$100,000, not including monies in any escrow accounts held for others; and (3) if the licensee is a mortgage broker, \$25,000, including evidence of liquidity of \$10,000, as certified by the licensee in a certified statement of financial condition. In the event that a mortgage loan originator is an employee or exclusive agent of a person subject to this Article, the net worth of that person can be used in lieu of the mortgage loan originator's minimum net worth requirement. Requires each licensee to make and keep the accounts, correspondence, memoranda, papers, books, and other records as prescribed by rule adopted by the Commissioner and preserve those records for at least three years, unless the Commissioner prescribes otherwise for particular types of records. Requires a licensee to maintain in a segregated escrow fund or trust account any funds which come into the licensee's possession but are not the licensee's property nor entitled to be retained under any circumstances. Provides for clear display of the license and the placement of the unique identifier on relevant documents. Requires each mortgage lender, mortgage broker, or mortgage servicer to submit to the Commissioner and the Registry reports of condition and other reports as directed by the Commissioner.

Transfers substantively identical provisions from GS 53-243.10 (mortgage broker duties) into GS 53-244.109 and GS 53-244.110 and from GS 53-243.11 (prohibited activities) into GS 53-244.111. Makes it a Class 3 misdemeanor for a person to engage in the mortgage business or act as a mortgage loan originator without a license. Provides each transaction involving unlicensed activity is a separate offense.

Establishes the Commissioner's regulatory, licensure, rule-making, disciplinary, investigation, and examination authority. The Commissioner's disciplinary authority includes assessing a maximum \$25,000 civil penalty for each violation of this Article or for failure to comply with a directive or order of the Commissioner. Each violation is a separate and distinct violation. Provides that in the event the Commissioner has evidence that a material violation of law has occurred in the origination or service of a loan being foreclosed or is delinquent and in threat of being foreclosed, and that the putative violation would be insufficient in law or equity to base a claim or affirmative defense that would affect the validity or enforceability of the underlying contract or the right to foreclose, the Commissioner may notify the clerk of superior court and the clerk must suspend the foreclosure proceedings for 60 days from the date of notice. Provides for notice to the servicer and the opportunity for the servicer to cure the violation or provide contradictory evidence. Authorizes the Commissioner to participate in the Registry and establish necessary related rules, relationships, or contracts. Allows the Commissioner to waive or modify any or all requirements of this Article and establish new requirements as reasonably necessary for the purpose of participating in the Registry. Provides for confidentiality of information. Allows the Banking Commission (Commission) to review any rule, regulation, order, or act of the Commissioner and allows aggrieved persons to appeal to the Commission upon giving 20 days written notice after the rule, regulation, order, or act is adopted or issued. Specifies content of the appeal.

Establishes severability of any provisions of the act that may be found to be invalid and, if the US Department of Housing and Urban Development (HUD) finds any provision of the act in

conflict with the federal Secure and Fair Enforcement Mortgage Licensing Act (S.A.F.E. Act), this act is to be interpreted, applied, or amended to comply with the S.A.F.E. Act as interpreted by HUD. Provides that rules adopted pursuant to former Article 19A remain in effect, unless inconsistent with new Article 19B, until superseded by rules adopted under Article 19B. Provides for transitional rules for currently licensed individuals in good standing. Prohibits a person who has been enjoined by the Commissioner or by a court from serving in any capacity under Article 19A from applying for or acting in any capacity under Article 19B. Any person whose license, under Article 19A, is subject to terms, conditions, or affirmative duties imposed by the Commissioner or a court is subject to the same terms, conditions, or affirmative duties for any similar license issued under GS 53-244.060 or renewed under GS 53-244.101.

Except as provided in the transitional rules established in Section 5 of the act, the act is effective for all applications for licensure as a mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer filed on or after July 1, 2009.

**Intro. by Blue.**

GS 53

April 30, 2009

**H 1523. S.A.F.E. MORTGAGE LICENSING ACT.** Filed 4/16/09. House committee substitute makes the following changes to 1st edition.

Provides that *Banking Commission* means the North Carolina Banking Commission. Additionally provides that for the purpose of credit unions complying with proposed Article 19B of GS Chapter 53, the term *Banking Commission* means the North Carolina Credit Union Commission. Expands the definition of Commissioner to mean, for the purpose of compliance with Article 19B by credit unions, the Administrator of the Credit Union Division of the Department of Commerce. Deletes from the definition for *mortgage loan originator* the provision that specifies that the term does not include an individual who informs a prospective borrower about the availability of persons in the mortgage business and does not receive direct or indirect compensation based on the approval or closing of the mortgage loan.

Clarifies that an individual who offers or negotiates a residential mortgage loan with or on behalf of that individual's immediate family member is exempt from the provisions of Article 19B, except for the provisions of GS 53-244.111 (regarding prohibited acts), when the individual is making the family member a residential mortgage loan.

Requires, except for recognition of approved pre-licensing credit hours from another state, that pre-licensing education for mortgage loan originators is to be offered only in a classroom or classroom equivalent setting as approved by the Nationwide Mortgage Licensing System and Registry (was, offered either in a classroom, online, or by any other means approved by the Nationwide Registry).

Amends the surety bond requirements for a mortgage broker (was, identical surety bond for mortgage broker, lender, and servicer) to require that the broker post a minimum surety bond of \$75,000 (was, \$150,000). Provides that if a broker has originated mortgage loans in North Carolina in a 12-month period ending December 31 in excess of \$10 million but less than \$50 million, then the broker's minimum bond amount is \$125,000 (was, \$250,000) and provides that if a broker has originated mortgage loans in North Carolina in a 12-month period ending December 31 in excess of \$50 million or more, then the broker's minimum bond amount is \$250,000 (was, \$500,000).

Expands the duties of the mortgage broker to include representing the borrower's best interest in the course of brokering a mortgage loan, and specifies that the broker has a duty of loyalty to the borrower.

Makes technical corrections and organizational changes.

June 3, 2009

**H 1523. S.A.F.E. MORTGAGE LICENSING ACT.** Filed 4/16/09. Senate committee substitute makes the following changes to 2nd edition.

Provides for four types of licenses (was, three) to be granted to entities under proposed Article 19B, GS Chapter 53, the NC Secure and Fair Enforcement (S.A.F.E.) Mortgage Licensing Act, adding provisions relating to the licensing of *exclusive mortgage brokers*. Defines an

*exclusive mortgage broker* as an individual who acts as a mortgage broker exclusively for a single mortgage lender or mortgage broker licensee or a single exempt mortgage lender and who is licensed under proposed GS 53-244.050(b)(3). Enacts new GS 53-244.050(b)(3) to provide requirements for licensure as an exclusive mortgage broker, permitting an applicant who is a licensed mortgage loan originator and who meets the requirements for licensure as a mortgage broker, but who is not an employee as defined in proposed GS 53-244.030(11), and who does not meet the experience requirements of proposed GS 53-244.050(b)(2)a., to be licensed as an exclusive mortgage broker, providing that the applicant complies with the specified criteria. Requires every applicant for initial licensure as an exclusive mortgage broker to pay a nonrefundable filing fee of \$300. Requires a licensed exclusive mortgage broker to pay an annual renewal fee of \$300.

Provides that any person licensed as an *exclusive mortgage broker* under GS Chapter 53, Article 19A, as repealed by Section 1 of this act, is to be deemed to be licensed as an exclusive mortgage broker as defined in new GS 53-244.030(11a), providing that the exclusive mortgage broker obtains a separate license as a mortgage loan originator no later than July 31, 2010. Provides that failure to obtain the license by that date will result in the suspension of the license of the exclusive mortgage broker.

Also provides that any person licensed as a *limited loan officer* under GS Chapter 53, Article 19A, as repealed by Section 1 of this act, is allowed to act as a licensed mortgage loan originator as defined in new GS 53-244.030(21), providing that the limited loan officer obtains a mortgage loan originator license no later than December 31, 2009. Provides that if the license has not been obtained by that date, the license of the limited loan officer will expire.

Amends the definition for *residential mortgage loan* to apply to a *residential mortgage loan or mortgage loan*.

Makes technical changes.

Except as otherwise noted in Section 5 of the act regarding transitional rules for persons licensed under GS Chapter 53, Article 19A, as repealed by Section 1 of this act, changes the effective date of the act to July 31, 2009 (was, July 1, 2009).

June 10, 2009

**H 1523. S.A.F.E. MORTGAGE LICENSING ACT.** Filed 4/16/09. Senate amendment makes the following changes to 3rd edition. Adds new GS 53-244.030(21) c.5. to exclude individuals who are salespersons for a licensed manufactured housing retailer and perform purely administrative and clerical tasks from the definition of "mortgage loan originator." Amends proposed GS 53-244.050(b)(3)d. to provide that an applicant meeting specified qualifications but who is not an employee as defined in GS 53-244.030(11) and lacks the experience requirements of GS 53-244.050(b)(2)a., is restricted from offering only fixed-term, fixed-rate mortgage loan products *without a prepayment penalty*, unless the Commissioner of Banks approves the sale of other mortgage loan products for that lender.

July 16, 2009

**H 1523. S.A.F.E. MORTGAGE LICENSING ACT.** Filed 4/16/09. Conference report recommends the following changes to 4th edition to reconcile matters in controversy. Adds in proposed GS 53-244.040(d) that any person who as a seller receives in one calendar year no more than five residential mortgage loans as security for purchase money obligations is exempt from all provisions of Article 19B of GS Chapter 53, unless the US Department of Housing and Urban Development has expressly and definitively determined that such persons are loan originators as the term is defined by §1503 of Title V of the Housing and Economic Recovery Act of 2008 and such determination is in effect on July 31, 2010.

August 3, 2009

**SL 2009-374 (H 1523). S.A.F.E. MORTGAGE LICENSING ACT. AN ACT TO REWRITE THE NORTH CAROLINA MORTGAGE LENDING ACT IN ORDER TO CONFORM TO THE REQUIREMENTS OF FEDERAL LAW.** Summarized in *Daily Bulletin* 4/16/09, 4/30/09, 6/3/09,

6/10/09, and 7/16/09. Enacted July 31, 2009. Except as otherwise provided by Section 5, effective July 31, 2009.