

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1523  
Committee Substitute Favorable 4/30/09  
PROPOSED SENATE COMMITTEE SUBSTITUTE H1523-PCS70450-ROF-53

Short Title: S.A.F.E. Mortgage Licensing Act.

(Public)

Sponsors:

Referred to:

April 20, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO REWRITE THE NORTH CAROLINA MORTGAGE LENDING ACT IN  
3 ORDER TO CONFORM TO THE REQUIREMENTS OF FEDERAL LAW.

4 Whereas, the General Assembly finds that activities of mortgage loan originators  
5 and the origination or offering of financing for residential real property have a direct, valuable,  
6 and immediate impact upon this State's consumers, this State's economy, and the  
7 neighborhoods and communities of this State, and the housing and real estate industry; and

8 Whereas, North Carolina has had licensed mortgage loan originators and companies  
9 that employ them since 2002, and such licensure has been essential for the protection of the  
10 citizens of the State and the stability of the State's economy; and

11 Whereas, this legislation is necessary to bring North Carolina's mortgage lending  
12 laws into compliance with the Housing and Economic Recovery Act of 2008, Public Law  
13 110-289, Title V, enacted by Congress and signed into law on July 30, 2008; Now, therefore,  
14 The General Assembly of North Carolina enacts:

15 **SECTION 1.** Article 19A of Chapter 53 of the General Statutes is repealed.

16 **SECTION 2.** Chapter 53 of the General Statutes is amended by adding a new  
17 Article to read:

18 "Article 19B.

19 "The Secure and Fair Enforcement Mortgage Licensing Act.

20 **"§ 53-244.010. Title.**

21 This act may be cited as the "North Carolina Secure and Fair Enforcement (S.A.F.E.)  
22 Mortgage Licensing Act."

23 **"§ 53-244.020. Purpose and construction.**

24 (a) Purpose. – A primary purpose of this Article is to protect consumers seeking  
25 mortgage loans and to ensure that the mortgage lending industry operates without unfair,  
26 deceptive, and fraudulent practices on the part of mortgage loan originators. Therefore, the  
27 General Assembly establishes within this Article an effective system of supervision and  
28 enforcement of the mortgage lending industry by giving the Commissioner of Banks broad  
29 administrative authority to administer, interpret, and enforce this Article and adopt rules  
30 implementing this Article in order to carry out the intentions of the General Assembly.

31 (b) Construction. – It is the intent of the General Assembly that provisions of this  
32 Article be liberally construed to effect the purposes stated or clearly encompassed by the  
33 Article.



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"§ 53-244.030. Definitions.

For purposes of the Article, the following definitions apply:

- (1) "Affiliate" means 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.
- (2) "Audited Statement of Financial Condition" means a statement of financial condition prepared in accordance with generally accepted accounting principles and certified by a certified public accountant as fairly and accurately reflecting financial condition of the licensee as of the date specified in the statement.
- (2a) "Banking Commission" means the North Carolina Banking Commission. For the purpose of complying with this Article by credit unions, Banking Commission means the North Carolina Credit Union Commission.
- (3) "Branch manager" means the individual who is assigned to, is in charge of, and is responsible for the business operations of a branch office of a mortgage broker or mortgage lender.
- (4) "Branch office" means an office of a mortgage broker or mortgage lender that is separate and distinct from the mortgage broker's or lender's principal office and from which its employees engage in the mortgage business. A branch office shall not be located at an individual's home or residence.
- (5) "Certified Statement of Financial Condition" means a statement of financial condition prepared in accordance with generally accepted accounting principles and certified by the preparer or licensee as fairly and accurately reflecting the financial condition of the licensee as of the date specified in the statement.
- (6) "Commissioner" means the North Carolina Commissioner of Banks and the Commissioner's designees. For the purpose of compliance with this Article by credit unions, Commissioner means the Administrator of the Credit Union Division of the Department of Commerce.
- (7) "Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner, or executive officer; (ii) directly or indirectly has the right to vote ten percent (10%) or more of a class of voting security or has the power to sell or direct the sale of ten percent (10%) or more of a class of voting securities; (iii) in the case of a limited liability company, is a managing member; or (iv) in the case of a partnership, has the right to receive upon dissolution, or has contributed, ten percent (10%) or more of the capital, is presumed to control the company.
- (8) "Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act and includes any credit union whose share and deposit accounts are insured by the National Credit Union Administration under the Federal Credit Union Act.
- (9) "Dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, manufactured home, mobile home, or trailer if it is used as a residence.
- (10) "Engaging in the mortgage business" means:
  - a. For compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, to accept or offer to accept an

- 1                   application for a residential mortgage loan from prospective  
2                   borrowers, solicit or offer to solicit a residential mortgage loan from  
3                   prospective borrowers, negotiate the terms or conditions of a  
4                   residential mortgage loan with prospective borrowers, issue  
5                   residential mortgage loan commitments or interest rate guarantee  
6                   agreements to prospective borrowers, or engage in tablefunding of  
7                   residential mortgage loans, whether any such acts are done through  
8                   contact by telephone, by electronic means, by mail, or in person with  
9                   the borrowers or prospective borrowers.
- 10                  b. To make or fund, or offer to make or fund, or advance funds on  
11                  residential mortgage loans for compensation or gain, or in the  
12                  expectation of compensation or gain.
- 13                  c. To engage, whether for compensation or gain from another or on  
14                  one's own behalf, in the business of receiving any scheduled periodic  
15                  payments from a borrower pursuant to the terms of any residential  
16                  mortgage loan, including amounts for escrow accounts, and making  
17                  the payments of principal and interest and such other payments with  
18                  respect to the amounts received from the borrower as may be  
19                  required pursuant to the terms of the residential mortgage loan, the  
20                  residential mortgage loan servicing documents, or servicing contract,  
21                  or otherwise to meet the definition of the term "servicer" in 12 U.S.C.  
22                  § 2605(i)(2) with respect to residential mortgage loans.
- 23                  (11) "Employee" means an individual who has an employment relationship with a  
24                  mortgage broker, mortgage lender, or mortgage servicer and who is treated  
25                  as a common law employee for purposes of compliance with the federal  
26                  income tax laws and whose income is reported on IRS Form W-2.
- 27                  (11a) "Exclusive mortgage broker" means an individual who acts as a mortgage  
28                  broker exclusively for a single mortgage lender or mortgage broker licensee  
29                  or a single exempt mortgage lender and who is licensed pursuant to  
30                  G.S. 53-244.050(b)(3). Unless otherwise indicated, an exclusive mortgage  
31                  broker shall be subject to the requirements of a mortgage broker under this  
32                  Article.
- 33                  (12) "Federal banking agencies" means the Board of Governors of the Federal  
34                  Reserve System, the Office of the Comptroller of the Currency, the Office of  
35                  Thrift Supervision, the National Credit Union Administration, and the  
36                  Federal Deposit Insurance Corporation.
- 37                  (13) "Immediate family member" means a spouse, child, sibling, parent,  
38                  grandparent, or grandchild, or the spouse of an immediate family member.  
39                  This term includes stepparents, stepchildren, stepsiblings, and adoptive  
40                  relationships.
- 41                  (14) "Individual" means a natural person.
- 42                  (15) "Licensee" means a mortgage loan originator, mortgage broker, mortgage  
43                  lender, or mortgage servicer or other person who is licensed pursuant to this  
44                  Article.
- 45                  (16) "Loan processor or underwriter" means an individual who performs clerical  
46                  or support duties as an employee at the direction of and subject to the  
47                  supervision and instruction of a person licensed or exempt from licensing  
48                  under this Article. Clerical or support duties may include, subsequent to the  
49                  receipt of an application:

- 1           a.     The receipt, collection, distribution, and analysis of information  
2                 common for the processing or underwriting of a residential mortgage  
3                 loan; and  
4           b.     Communicating with a consumer to obtain the information necessary  
5                 for the processing or underwriting of a loan, to the extent that such  
6                 communication does not include offering or negotiating loan rates or  
7                 terms or counseling consumers about residential mortgage loan rates  
8                 or terms.

9           Any person who represents to the public, through advertising or other means  
10           of communication, or provides information, including the use of business  
11           cards, stationery, brochures, signs, rate lists, or other promotional items, that  
12           the individual can or will perform any of the activities of a mortgage loan  
13           originator shall not be deemed to be a loan processor or underwriter under  
14           this definition.

15       (17)   "Loss mitigation specialist" means an employee of a mortgage servicer  
16           authorized to (i) collect or receive payments, including payments of  
17           principal, interest, escrow amounts, and other amounts due on existing  
18           residential mortgage loans due and owing to the licensed lender or servicer  
19           when the borrower is in default or in reasonably foreseeable likelihood of  
20           default, (ii) work with the borrower to collect data, and (iii) make decisions  
21           necessary to modify, either temporarily or permanently, certain terms of  
22           those residential mortgage loans or to otherwise finalize collection through  
23           the foreclosure process. Such decisions shall include any change in the  
24           principal amount of the debt, the rate of annual interest charged, the term of  
25           the loan, the waiver of any fees or charges, including late charges, the  
26           deferral of payments, or any other similar matter.

27       (18)   "Make a residential mortgage loan" means to advance funds, to offer to  
28           advance funds, to make a commitment to advance funds to a borrower under  
29           a mortgage loan, or to fund a residential mortgage loan.

30       (19)   "Mortgage broker" means a person engaged in the mortgage business as  
31           defined in sub-subdivision a. of subdivision (10) of this section.

32       (20)   "Mortgage lender" means a person engaged in the mortgage business as  
33           defined in sub-subdivision a. of subdivision (10) of this section. However,  
34           the definition does not include a person who acts as a mortgage lender only  
35           in a tablefunding transaction.

36       (21)   "Mortgage loan originator" means:

- 37           a.     An individual who for compensation or gain or in the expectation of  
38                 compensation or gain, whether through contact by telephone, by  
39                 electronic means, by mail, or in person with prospective borrowers,  
40                 either:

- 41                 1.     Takes a residential mortgage loan application or offers or  
42                         negotiates terms of a residential mortgage loan,  
43                         2.     Accepts or offers to accept applications for mortgage loans,  
44                         3.     Solicits or offers to solicit a mortgage loan,  
45                         4.     Negotiates the terms or conditions of a mortgage loan, or  
46                         5.     Issues mortgage loan commitments or interest rate guarantee  
47                         agreements to prospective borrowers.

- 48           b.     The term includes an individual acting solely as a loss mitigation  
49                 specialist if the United States Department of Housing and Urban  
50                 Development issues a guideline, rule, regulation, or interpretative  
51                 letter that such individuals are loan originators as the term is defined

- 1 by § 1503 of Title V of the Housing and Economic Recovery Act of  
2 2008, Public Law 110-289, and only to the extent of such an issuance  
3 or determination.
- 4 c. The term does not include:
- 5 1. An individual engaged solely as a loan processor or  
6 underwriter;
- 7 2. A person or entity that only performs real estate brokerage  
8 activities and is licensed or registered as such in accordance  
9 with State law, unless the person or entity is compensated by  
10 a mortgage lender, a mortgage broker, or other mortgage loan  
11 originator or by any agent of a mortgage lender, mortgage  
12 broker, or other mortgage loan originator;
- 13 3. A person or entity solely involved in extensions of credit or  
14 sale of time share instruments relating to time share plans, as  
15 that term is defined in G.S. 93A-41(9a); or
- 16 4. An individual who only informs a prospective borrower of  
17 the availability of persons engaged in the mortgage business,  
18 does not take or assist in the completion of a loan application,  
19 and does not discuss specific terms or conditions of a  
20 mortgage loan. The taking of basic preapplication information  
21 for facilitating a residential mortgage loan transaction, such  
22 as the name and contact information of the prospective  
23 borrower, the prospective borrower's own assessment of  
24 creditworthiness, desired loan types, and resources to make a  
25 down payment, but not including social security number,  
26 credit score, credit or employment history, or specific rates of  
27 a desired mortgage loan, to connect prospective borrowers to  
28 persons engaged in the mortgage business does not prevent an  
29 individual from qualifying for this exclusion.
- 30 (22) "Mortgage servicer" means a person engaged in the mortgage business who  
31 directly or indirectly engages in the mortgage business as defined in  
32 sub-subdivision c. of subdivision (10) of this section.
- 33 (23) "Nationwide Mortgage Licensing System and Registry" means the mortgage  
34 licensing system developed and maintained by the Conference of State Bank  
35 Supervisors and the American Association of Residential Mortgage  
36 Regulators for the licensing and registration of licensed mortgage loan  
37 originators.
- 38 (24) "Nontraditional mortgage product" means any residential mortgage loan  
39 product other than a 30-year fixed rate mortgage.
- 40 (25) "Person" means an individual, partnership, limited liability company, limited  
41 partnership, corporation, association, or other group engaged in joint  
42 business activities however organized.
- 43 (26) "Principal office" means a principal place of business that shall consist of at  
44 least one enclosed room or building of stationary construction in which  
45 negotiations of mortgage loan transactions may be conducted and carried on  
46 in privacy and in which all of the books, records, and files pertaining to  
47 mortgage loan transactions relating to borrowers in this State are maintained.  
48 A principal office shall not be located at an individual's home or residence.
- 49 (27) "Qualifying individual" means a person who meets the experience and other  
50 requirements of G.S. 53-244.050(b) and who agrees to be primarily

1 responsible for the operations of a licensed mortgage broker or mortgage  
2 lender or mortgage servicer.

3 (28) "Real estate brokerage activity" means any activity that involves offering or  
4 providing real estate brokerage services to the public, including:

5 a. Acting as a real estate agent or real estate broker for a buyer, seller,  
6 lessor, or lessee of real property;

7 b. Bringing together parties interested in the sale, purchase, lease,  
8 rental, or exchange of real property;

9 c. Negotiating, on behalf of any party, any portion of a contract relating  
10 to the sale, purchase, lease, rental, or exchange of real property, other  
11 than in connection with providing financing with respect to any such  
12 transaction;

13 d. Engaging in any activity for which a person engaged in the activity is  
14 required to be registered or licensed as a real estate agent or real  
15 estate broker under Chapter 93A of the General Statutes; and

16 e. Offering to engage in any activity, or act in any capacity, described  
17 in sub-subdivision a., b., c., or d. of this subdivision.

18 (29) "Registered mortgage loan originator" means any individual who meets the  
19 definition of mortgage loan originator, is registered with, and maintains a  
20 unique identifier through the Nationwide Mortgage Licensing System and  
21 Registry and is an employee of:

22 a. A depository institution;

23 b. A subsidiary that is owned and controlled by a depository institution  
24 and regulated by a federal banking agency; or

25 c. An institution regulated by the Farm Credit Administration.

26 (30) "Residential mortgage loan or mortgage loan" means any loan made or  
27 represented to be made to a natural person or persons primarily for personal,  
28 family, or household use that is secured by a mortgage, deed of trust, or  
29 other equivalent consensual security interest on a dwelling located within  
30 this State or residential real estate upon which is constructed or intended to  
31 be constructed a dwelling.

32 (31) "Residential real estate" means any real property located in this State upon  
33 which is constructed or intended to be constructed a dwelling.

34 (32) "RESPA" means the Real Estate Settlement Procedures Act, 12 U.S.C. §  
35 2601, et seq., as it may be hereafter amended.

36 (33) "Tablefunding" means a transaction in which a person closes a residential  
37 mortgage loan in its own name but with funds provided by another and in  
38 which the loan is assigned to the mortgage lender actually providing the  
39 funds within one business day of the funding of the loan.

40 (34) "Unique identifier" means a number or other identifier assigned by protocols  
41 established by the Nationwide Mortgage Licensing System and Registry.

42 **"§ 53-244.040. License and registration requirements.**

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

1       **(b)** Four types of licenses are granted to entities under this Article, and it shall be  
2 unlawful for any person, other than an exempt person, to engage in the mortgage business  
3 without one of the following licenses:

4       **(1)** A mortgage broker license authorizes a person to act as a mortgage broker as  
5 defined in G.S. 53-244.030(19)

6       **(2)** A mortgage lender license authorizes a person to act as a mortgage lender as  
7 defined in G.S. 53-244.030(20), a mortgage broker as defined under  
8 G.S. 53-244.030(19), and upon notice to the Commissioner, a mortgage  
9 servicer as defined in G.S. 53-244.030(22).

10       **(3)** A mortgage servicer license authorizes a person to act only as a mortgage  
11 servicer as defined in G.S. 53-244.030(22).

12       **(4)** An exclusive mortgage broker license authorizes a person to act as an  
13 exclusive mortgage broker as defined in G.S. 53-244.030(11a).

14       **(c)** Each mortgage loan originator and person engaged in the mortgage business must  
15 register with and maintain a valid unique identifier issued by the Nationwide Mortgage  
16 Licensing System and Registry.

17       **(d)** The following are exempt from all provisions of this Article except the provisions of  
18 G.S. 53-244.111:

19       **(1)** Registered mortgage loan originators as defined in G.S. 53-244.030(29);

20       **(2)** Any individual who offers or negotiates terms of a residential mortgage loan  
21 with or on behalf of an immediate family member of the individual when  
22 making the family member a residential mortgage loan;

23       **(3)** Any individual seller who offers or negotiates terms and makes a residential  
24 mortgage loan secured by the dwelling that served as the selling individual's  
25 residence;

26       **(4)** An attorney licensed pursuant to Chapter 84 of the General Statutes who  
27 negotiates the terms of a residential mortgage loan on behalf of a client in  
28 the course of and incident to the attorney's representation of the client, so  
29 long as the attorney does not hold himself out as engaged in the mortgage  
30 business and is not compensated by a mortgage lender, a mortgage broker, or  
31 other mortgage loan originator when negotiating the terms of a residential  
32 mortgage loan;

33       **(5)** Any entity described in G.S. 53-244.030(29)a., b., or c., upon acceptance of  
34 the notice of exemption filed with the Commissioner as specified in  
35 G.S. 53-244.050(g);

36       **(6)** Any officer or employee of an entity described in subdivision (5) of this  
37 subsection when acting within the scope of his or her employment; or

38       **(7)** A State or federally chartered credit union, upon filing of a notice of  
39 exemption with the Administrator of the Credit Union Division of the  
40 Department of Commerce as specified in G.S. 53-244.050(g).

41       **(e)** Each mortgage broker, mortgage lender, or mortgage servicer licensed under this  
42 Article shall have a qualifying individual who operates the business under that person's full  
43 charge, control, and supervision. Each mortgage broker, mortgage lender, or mortgage servicer  
44 licensed under this Article shall file through the Nationwide Mortgage Licensing System and  
45 Registry a form acceptable to the Commissioner indicating the licensee's designation of  
46 qualifying individual and each qualifying individual's acceptance of the responsibility. Each  
47 mortgage broker, mortgage lender, or mortgage servicer licensed under this Article shall notify  
48 the Commissioner within 15 days of any change in its designated qualifying individual. Any  
49 individual licensee who operates as a sole proprietorship shall qualify as and be considered the  
50 qualifying individual for the purposes of this subsection.

1        (f) Mortgage lenders and mortgage brokers may not operate branch offices, except as  
2 permitted by this Article. Each principal office and each branch office of a mortgage broker or  
3 mortgage lender licensed under this Article shall have a branch manager who meets the  
4 experience requirements under G.S. 53-244.050(b). The qualifying individual for a licensee's  
5 business also may serve as the branch manager of one of the licensee's branch offices. Each  
6 mortgage broker or mortgage lender licensed under this Article shall file through the  
7 Nationwide Mortgage Licensing System and Registry a form acceptable to the Commissioner  
8 indicating the licensee's designation of branch manager for each branch. Each mortgage broker  
9 or mortgage lender licensed under this Article shall notify the Commissioner within 15 days of  
10 the change of any branch manager.

11 **"§ 53-244.050. License and registration application; claim of exemption.**

12        (a) Applicants for a license shall apply through the Nationwide Mortgage Licensing  
13 System and Registry on a form acceptable to the Commissioner, including the following  
14 information:

- 15            (1) The applicant's name and address, including street address, mailing address,  
16 e-mail, telephone contact information, and social security number or  
17 taxpayer identification number.
- 18            (2) The applicant's form and place of organization, if applicable.
- 19            (3) The applicant's proposed method of and locations for doing business, if  
20 applicable.
- 21            (4) The qualifications and business history of the applicant and, if applicable,  
22 the business history of any partner, officer, or director, any person occupying  
23 a similar status or performing similar functions, or any person directly or  
24 indirectly controlling the applicant, including:
  - 25            a. A description of any injunction or administrative order by any state  
26 or federal authority to which the person is or has been subject;
  - 27            b. Any conviction, within the past 10 years, of a misdemeanor  
28 involving moral turpitude or any fraud, false statement or omission,  
29 any theft or wrongful taking of property, bribery, perjury, forgery,  
30 counterfeiting, extortion, or conspiracy to commit any of these  
31 offenses, or involving any financial service or financial service-  
32 related business; and
  - 33            c. Any felony convictions.
- 34            (5) With respect to an application for licensing as a mortgage lender, mortgage  
35 broker, or mortgage servicer, the applicant's financial condition, credit  
36 history, and business history, and, with respect to an application for licensing  
37 as a mortgage loan originator, the applicant's credit history and business  
38 history.
- 39            (6) The applicant's consent to a federal and State criminal history record check  
40 and a set of the applicant's fingerprints in a form acceptable to the  
41 Commissioner. In the case of an applicant that is a person other than a  
42 natural person, each individual who has control of the applicant or who is the  
43 qualifying individual or a branch manager shall consent to a federal and  
44 State criminal history record check and submit a set of that individual's  
45 fingerprints pursuant to this subdivision.

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

- 48            (1) Each individual applicant for licensure as a mortgage loan originator or  
49 qualifying individual shall:
  - 50            a. Be at least 18 years of age;



- 1           b. Have satisfactorily completed, within the three years immediately  
2           preceding the date of application, the mortgage lending prelicensing  
3           education as required under G.S. 53-244.070; and  
4           c. Have passed, within the three years immediately preceding the date  
5           of application, the test required under G.S. 53-244.080.
- 6           (2) Each applicant for licensure as a mortgage broker or mortgage lender or  
7           mortgage servicer at the time of application shall comply with the following  
8           requirements:
- 9           a. If the applicant is a sole proprietor, the applicant shall have at least  
10           three years of experience in residential mortgage lending or other  
11           experience or meet competency requirements as the Commissioner  
12           may impose.
- 13           b. If the applicant is a corporation, limited liability company, general or  
14           limited partnership, association, or other group engaged in a joint  
15           enterprise, however organized, at least one of its principal officers,  
16           managers, or general partners shall have three years of experience in  
17           residential mortgage lending or other experience or meet competency  
18           requirements as the Commissioner may impose.
- 19           c. If the applicant will be a qualifying individual or branch manager, the  
20           applicant shall have at least three years of experience in residential  
21           mortgage lending or other experience or meet competency  
22           requirements as the Commissioner may impose.
- 23           (3) If an individual applicant to be licensed as a mortgage broker is a licensed  
24           mortgage loan originator and meets the requirements for licensure as a  
25           mortgage broker, but is not an employee as defined in G.S. 53-244.030(11)  
26           and does not meet the experience requirements of G.S. 53-244.050(b)(2)a.,  
27           the individual may be licensed as an exclusive mortgage broker upon  
28           compliance with all of the following:
- 29           a. Successfully completes a 16-hour residential mortgage lending  
30           course approved by the Commissioner supplementing the  
31           prelicensing education required under G.S. 53-244.070.
- 32           b. Acts exclusively as a mortgage broker and shall be an agent for a  
33           single mortgage lender or mortgage broker licensee or a single  
34           exempt mortgage lender, who:
- 35           1. Shall be responsible for supervising the broker as required by  
36           this Article and in accordance with a plan of supervision  
37           approved by the Commissioner in the Commissioner's  
38           discretion;
- 39           2. Shall sign the license application of the applicant; and  
40           3. Shall be jointly and severally liable with the broker for any  
41           claims arising from the broker's mortgage brokering  
42           activities.
- 43           c. Shall be compensated on a basis that is not dependent upon the  
44           interest rate, fees, or other terms of the loan brokered, provided that  
45           this sub-subdivision shall not prohibit compensation based on the  
46           principal balance of the loan.
- 47           d. Shall offer only fixed-term, fixed-rate, fully amortizing mortgage  
48           loans originated by a single mortgage lender with substantially equal  
49           monthly mortgage payments, unless the Commissioner shall approve,  
50           in the Commissioner's discretion, the sale of other mortgage loan  
51           products by that lender.

- 1           e.     Shall not handle borrower or other third-party funds in connection  
2                 with the brokering or closing of mortgage loans.
- 3           f.     Shall meet the surety bond requirement of a mortgage broker or  
4                 otherwise be covered by a surety bond provided by the mortgage  
5                 lender or broker licensee or exempt mortgage lender of the lesser of  
6                 five million dollars (\$5,000,000) or an amount equal to or greater  
7                 than the sum of the surety bond requirements for each exclusive  
8                 mortgage broker supervised by the broker or lender.

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

- 13                 (1)   Fingerprints for submission to the Federal Bureau of Investigation and any  
14                 governmental agency or entity authorized to receive such information for a  
15                 state, national, and international criminal history background check.
- 16                 (2)   Personal history and experience in a form prescribed by the Nationwide  
17                 Mortgage Licensing System and Registry and the Commissioner to obtain:
- 18                         a.   Independent credit reports obtained from a consumer reporting  
19                         agency described in section 603(p) of the Fair Credit Reporting Act;  
20                         and
- 21                         b.   Information related to any administrative, civil, or criminal findings  
22                         by any governmental jurisdiction.
- 23                 (3)   The personal history may be obtained by the Commissioner at any time and  
24                 the fingerprint information shall be furnished upon the Commissioner's  
25                 request.
- 26                 (4)   An authorization for the Commissioner to obtain personal history or  
27                 fingerprint information at any time.

28           (d)   For the purposes of this section and in order to reduce the points of contact that the  
29           Federal Bureau of Investigation may have to maintain for purposes of the criminal information  
30           required by this section, the Commissioner may use the Nationwide Mortgage Licensing  
31           System and Registry as a channeling agent for requesting information from and distributing  
32           information to the Department of Justice or any governmental agency.

33           (e)   For the purposes of this section and in order to reduce the points of contact that the  
34           Commissioner may have to maintain for purposes of the noncriminal information required by  
35           this section, the Commissioner may use the Nationwide Mortgage Licensing System and  
36           Registry as a channeling agent for requesting and distributing information to and from any  
37           source so directed by the Commissioner.

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

1       (g) Except as provided by subsection (h) of this section, persons engaged in the  
2 mortgage business and exempt from licensure pursuant to G.S. 53-244.040(d)(5) shall notify  
3 the Commissioner in order to claim and confirm the exemption and to facilitate the referral of  
4 consumers that contact the Commissioner. The Commissioner shall prescribe a form for such a  
5 claim of exemption that shall contain:

- 6           (1) The name of the exempt person;
- 7           (2) The basis of the exempt status of the exempt person;
- 8           (3) The principal business address and contact information for the exempt  
9 person; and
- 10          (4) The State or federal regulatory authority responsible for the exempt person's  
11 supervision, examination, or regulation.

12       (h) A State or federally chartered credit union may claim and confirm an exemption  
13 from this Article by notifying the Administrator of the Credit Union Division of the  
14 Department of Commerce and providing substantially the same information required by  
15 subsection (g) of this section.

16       (i) The Commissioner shall keep all information pursuant to this section privileged, in  
17 accordance with applicable State law and federal guidelines, and the information shall be  
18 confidential and shall not be a public record under Chapter 132 of the General Statutes.

19 **"§ 53-244.060. Issuance of license.**

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

- 23           (1) The applicant has had a mortgage loan originator or mortgage lender,  
24 mortgage broker, or mortgage servicer license revoked in any governmental  
25 jurisdiction, except that a subsequent formal vacation of the revocation shall  
26 not be deemed a revocation.
- 27           (2) The applicant or its controlling persons have been convicted of or plead  
28 guilty or nolo contendere to a felony in a domestic, foreign, or military  
29 court:
  - 30           a. During the seven-year period preceding the date of the application  
31 for licensing and registration; or
  - 32           b. At any time preceding the date of application, if the felony involved  
33 an act of fraud, dishonesty, a breach of trust, or money laundering.

34       A pardon of a conviction shall not be a conviction for purposes of this  
35 subdivision.

- 36           (3) The applicant or any of its controlling persons have been convicted of or  
37 plead guilty or nolo contendere to any charge in a domestic, foreign, or  
38 military court, within the past five years, of a misdemeanor involving moral  
39 turpitude or any fraud, false statement or omission, any theft or wrongful  
40 taking of property, bribery, perjury, forgery, counterfeiting, extortion, or  
41 conspiracy to commit any of these offenses, or involving any financial  
42 service or financial service-related business.
- 43           (4) The applicant has demonstrated a lack of financial responsibility, character,  
44 or general fitness such as to fail to command the confidence of the  
45 community and to warrant a determination that the mortgage loan originator  
46 or other licensee will operate honestly, fairly, and efficiently within the  
47 purposes of this Article. For purposes of this subdivision, a person shows a  
48 lack of financial responsibility when the person has shown a disregard in the  
49 management of the person's own financial affairs. Evidence that a person has  
50 not shown financial responsibility may include:

- a. Current outstanding judgments, except judgments resulting solely from medical expenses;
  - b. Current outstanding tax liens or other government liens and filings;
  - c. Foreclosures within the past three years; or
  - d. A pattern of serious delinquent accounts within the past three years.
- (5) The mortgage loan originator applicant has failed to complete the prelicensing education requirement described in G.S. 53-244.070.
  - (6) The mortgage loan originator applicant has failed to pass a written test that meets the requirements described in G.S. 53-244.080.
  - (7) The mortgage lender, mortgage broker, or mortgage servicer applicant has failed to meet the surety bond requirement described in G.S. 53-244.103.
  - (8) The mortgage lender, mortgage broker, or mortgage servicer applicant fails to meet the minimum net worth requirement as described in G.S. 53-244.104.
  - (9) The applicant's participation in the mortgage business will not be in the public interest.

**§ 53-244.070. Educational requirements for mortgage loan originators.**

(a) 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 in accordance with subsection (b) of this section, which shall include:

- (1) Three hours of federal law and regulations;
- (2) Three hours of ethics, including instruction on fraud, consumer protection, and fair lending issues;
- (3) Two hours of training related to lending standards for nontraditional mortgage products; and
- (4) Four hours of North Carolina laws and regulations.

(b) Prelicensing education courses and the course providers shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry using reasonable standards consistently applied, subject to the Commissioner's approval of any course of study required by subdivision (a)(4) of this section. Review and approval of a prelicensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any prelicensing education course, approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Except as provided in subsection (e) of this section, prelicensing education may be offered only in a classroom or classroom equivalent setting, as approved by the Nationwide Mortgage Licensing System and Registry.

(e) An individual having successfully completed the prelicensing educational requirements in any other state, if the requirements have been approved by the Nationwide Mortgage Licensing System and Registry, shall be given credit for those hours toward the completion of the prelicensing requirements in this State, other than the hours required under subdivision (a)(4) of this section.

(f) An individual previously licensed under this Article whose license expires and who requests a late renewal of license pursuant to G.S. 53-244.101 must prove that the individual has completed all of the continuing education requirements for the preceding year.

**§ 53-244.080. Testing requirements for mortgage loan originators.**

(a) An individual must pass a qualified written test, as defined by subsection (b) of this section, developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry. In addition, prior to licensure in this State, an individual must take a qualified written

1 test that tests the individual's knowledge and comprehension of North Carolina law and  
2 regulation.

3 (b) A written test shall not be treated as a qualified written test unless the test  
4 adequately measures the applicant's knowledge and comprehension in the following subject  
5 areas:

6 (1) Ethics;

7 (2) Federal law and regulation pertaining to mortgage origination;

8 (3) North Carolina law and regulation pertaining to mortgage origination; and

9 (4) Federal and North Carolina law and regulations relating to fraud, consumer  
10 protection, nontraditional mortgage products, and fair lending issues.

11 (c) Nothing in this section shall prohibit a test provider approved by the Nationwide  
12 Mortgage Licensing System and Registry from providing a test at the location of the employer  
13 of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or  
14 the location of any entity which is licensed by North Carolina to engage in the mortgage  
15 lending business.

16 (d) An applicant shall be considered to have passed a qualified written test provided the  
17 applicant achieves a test score of at least seventy-five percent (75%) correct answers to  
18 questions. In addition, an applicant shall not be considered to have passed a qualified written  
19 test if the individual did not achieve a test score of at least seventy-five percent (75%) correct  
20 answers to questions related to North Carolina law and regulation.

21 (e) An applicant may retake a test three consecutive times with each consecutive test  
22 occurring at least 30 days after the preceding test. After failing three consecutive tests, an  
23 applicant must wait at least six months before retaking the test. A licensed mortgage loan  
24 originator who fails to maintain a valid license for a period of three years or longer must retake  
25 the test.

26 **"§ 53-244.090. License application fees.**

27 (a) Every applicant for initial licensure shall pay a nonrefundable filing fee of one  
28 thousand two hundred fifty dollars (\$1,250) for licensure as a mortgage broker, mortgage  
29 lender, or mortgage servicer, three hundred dollars (\$300.00) for licensure as an exclusive  
30 mortgage broker, or one hundred twenty-five dollars (\$125.00) for licensure as a mortgage loan  
31 originator. In addition, an applicant must pay the actual cost of obtaining a credit report, State  
32 and national criminal history record checks, and the processing fees required by the Nationwide  
33 Mortgage Licensing System and Registry.

34 (b) Each principal and each branch office of a mortgage broker or mortgage lender  
35 licensed under the provisions of this Article shall be issued a separate license for which the  
36 Commissioner shall assess a nonrefundable filing fee of one hundred twenty-five dollars  
37 (\$125.00) in addition to the Nationwide Mortgage Licensing System and Registry processing  
38 fee. A licensed mortgage broker or mortgage lender shall file with the Commissioner a notice  
39 on a form prescribed by the Commissioner that identifies the address of the principal office and  
40 each branch office and its designated branch manager. Payment of the license fee under  
41 subsection (a) of this section shall be deemed to cover the location license fee for the principal  
42 office of each mortgage lender, mortgage broker, or mortgage servicer without payment of an  
43 additional one hundred twenty-five dollars (\$125.00) under this subsection.

44 **"§ 53-244.100. Active license requirements and assignability.**

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

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

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

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

17       **(e)** Licenses issued under this Article are not assignable. Control of a licensee shall not  
18 be acquired through a stock purchase, merger, or other device without the prior written consent  
19 of the Commissioner. The Commissioner shall not give written consent if the Commissioner  
20 finds that any of the grounds for denial, revocation, or suspension of a license are applicable to  
21 the acquiring person.

22 **"§ 53-244.101. License renewal.**

23       **(a)** All licenses issued by the Commissioner under the provisions of this Article shall  
24 expire annually on the 31<sup>st</sup> day of December following issuance or on any other date that the  
25 Commissioner may determine. The license is invalid after that date and shall remain invalid  
26 unless renewed under subsection (b) of this section.

27       **(b)** A license may be renewed on or after November 1 of each year by complying with  
28 the requirements of subsection (c) of this section and by paying to the Commissioner, in  
29 addition to the actual cost of obtaining credit reports and State and national criminal history  
30 record checks and of processing fees of the nationwide system as the Commissioner shall  
31 require, nonrefundable renewal fees as follows:

32           **(1)** Licensed mortgage lenders, licensed mortgage brokers, and licensed  
33 mortgage servicers shall pay an annual renewal fee of six hundred  
34 twenty-five dollars (\$625.00), licensed exclusive mortgage brokers shall pay  
35 an annual renewal fee of three hundred dollars (\$300.00), and licensed  
36 mortgage lenders and mortgage brokers shall pay one hundred twenty-five  
37 dollars (\$125.00) for each licensed branch office.

38           **(2)** Licensed mortgage loan originators shall pay an annual renewal fee of  
39 sixty-seven dollars and fifty cents (\$67.50).

40       **(c)** Licenses may apply to renew a mortgage loan originator, mortgage lender,  
41 mortgage broker, and mortgage servicer license. The application for renewal shall demonstrate  
42 that:

43           **(1)** The licensee continues to meet the initial minimum standards for licensure  
44 under G.S. 53-244.060;

45           **(2)** The mortgage loan originator has satisfied the annual continuing education  
46 requirements described in G.S. 53-244.102; and

47           **(3)** The licensee has paid all required fees for renewal of the license.

48       **(d)** If a mortgage lender, mortgage broker, or mortgage servicer's license is not renewed  
49 prior to the expiration date, then the licensee shall pay two hundred fifty dollars (\$250.00) as a  
50 nonrefundable late fee in addition to the renewal fee set forth in subsection (b) of this section. If  
51 a mortgage loan originator's license is not renewed prior to the expiration date, then the licensee

1 shall pay a nonrefundable late fee of one hundred dollars (\$100.00) in addition to the renewal  
2 fee set forth in subsection (b) of this section. In the event a licensee fails to obtain a  
3 reinstatement of the license prior to March 1, the Commissioner shall require the licensee to  
4 comply with the requirements for the initial issuance of a license under the provisions of this  
5 Article.

6 (e) When required by the Commissioner, each person shall furnish to the Commissioner  
7 the person's consent to a criminal history record check and a set of the person's fingerprints in a  
8 form acceptable to the Commissioner or to the Nationwide Mortgage Licensing System and  
9 Registry. Refusal to consent to a criminal history record check shall constitute grounds for the  
10 Commissioner to deny renewal of the license of the person as well as the license of any other  
11 person by whom the person is employed, over which the person has control, or as to which the  
12 person is the current or proposed qualifying individual or current or proposed branch manager.

13 **"§ 53-244.102. Continuing education for mortgage loan originators.**

14 (a) A licensed mortgage loan originator shall annually complete at least eight hours of  
15 continuing education approved in accordance with subsection (b) of this section, including:

16 (1) Three hours of federal law and regulations;

17 (2) Two hours of ethics, including instruction on fraud, consumer protection,  
18 and fair lending issues;

19 (3) Two hours of training related to lending standards for nontraditional  
20 mortgage products; and

21 (4) One hour of North Carolina law and regulations.

22 (b) Continuing education courses shall be reviewed and approved by the Nationwide  
23 Mortgage Licensing System and Registry based upon reasonable standards. Approval of a  
24 continuing education course shall include approval of the course provider.

25 (c) Nothing in this section shall preclude any continuing education course, approved by  
26 the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of  
27 the mortgage loan originator or an entity affiliated with the mortgage loan originator by an  
28 agency contract, or any subsidiary or affiliate of such employer or entity. Continuing education  
29 may be offered either in a classroom, online, or by any other means approved by the  
30 Nationwide Mortgage Licensing System and Registry.

31 (d) A licensed mortgage loan originator:

32 (1) Except for G.S. 53-244.070(a) and subsection (e) of this section, may only  
33 receive credit for a continuing education course in the year in which the  
34 course is taken; and

35 (2) May not take the same approved course in the same or successive years to  
36 meet the annual requirements for continuing education.

37 (e) A licensed mortgage loan originator who is an approved instructor of an approved  
38 continuing education course may receive credit for the licensed mortgage loan originator's own  
39 annual continuing education requirement at the rate of two hours credit for every one hour  
40 taught.

41 (f) A licensee having successfully completed the education requirements approved by  
42 the Nationwide Mortgage Licensing System and Registry in subdivisions (a)(1), (a)(2), and  
43 (a)(3) of this section for any state shall be accepted as credit toward completion of continuing  
44 education requirements in North Carolina.

45 **"§ 53-244.103. Surety bond requirements.**

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

1       **(b)** Licensees shall be required to post a surety bond with the Commissioner at  
2 application to be subsequently adjusted as follows:

3           **(1)** A mortgage broker shall post a minimum surety bond of seventy-five  
4 thousand dollars (\$75,000). Provided, however, if a mortgage broker has  
5 originated mortgage loans in North Carolina in a 12-month period ending  
6 December 31 in excess of ten million dollars (\$10,000,000) but less than  
7 fifty million dollars (\$50,000,000), then the mortgage broker's minimum  
8 bond amount shall be one hundred twenty-five thousand dollars (\$125,000),  
9 and if a mortgage broker has originated mortgage loans in North Carolina in  
10 a 12-month period ending December 31 of fifty million dollars  
11 (\$50,000,000) or more, the mortgage broker's minimum bond shall be two  
12 hundred fifty thousand dollars (\$250,000).

13           **(2)** A mortgage lender or mortgage servicer shall post a minimum surety bond  
14 of one hundred fifty thousand dollars (\$150,000). Provided, however, if a  
15 mortgage lender has originated mortgage loans in North Carolina in a  
16 12-month period ending December 31 in excess of ten million dollars  
17 (\$10,000,000) but less than fifty million dollars (\$50,000,000), then the  
18 mortgage lender's minimum bond amount shall be two hundred fifty  
19 thousand dollars (\$250,000), and if a mortgage lender has originated  
20 mortgage loans in North Carolina in a 12-month period ending December 31  
21 of fifty million dollars (\$50,000,000) or more, then the mortgage lender's  
22 minimum bond shall be five hundred thousand dollars (\$500,000).

23           **(3)** Any increased surety bond required under subdivision (1) or (2) of this  
24 subsection shall be filed with the Commissioner on or before May 31  
25 immediately following the end of the 12-month December 31 period.

26       **(c)** The surety bond shall be in a form satisfactory to the Commissioner and shall run to  
27 the State for the benefit of any claimants against the licensee to secure the faithful performance  
28 of the obligations of the licensee under this Article. The aggregate liability of the surety shall  
29 not exceed the principal sum of the bond. A party having a claim against the licensee may bring  
30 suit directly on the surety bond, or the Commissioner may bring suit on behalf of any  
31 claimants, either in one action or in successive actions. Consumer claims shall be given priority  
32 in recovering from the bond. When an action is commenced on a licensee's bond, the  
33 Commissioner may require the filing of a new bond. In this case, the licensee shall file a  
34 replacement bond in the required amount within 30 days. Immediately upon recovery upon any  
35 action on the bond the licensee shall file a new bond.

36       **(d)** In the Commissioner's discretion and upon written request of the licensee, the  
37 Commissioner may waive the requirement of the bond for any licensee, if:

38           **(1)** The licensee has been licensed by the Commissioner for at least three years;

39           **(2)** The licensee can demonstrate a net worth, according to the most recent  
40 audited financial statement, at least four times the required bond amount,  
41 and the licensee certifies that its net worth will be maintained at or above  
42 this level at all times and agrees to notify the Commissioner and to secure an  
43 appropriate bond in the event the net worth falls below this level;

44           **(3)** The Commissioner believes the licensee has a satisfactory history of  
45 resolving complaints from consumers and responding to findings of  
46 investigations or examinations by the Commissioner; and

47           **(4)** The Commissioner has no reason to believe the licensee will be unable to  
48 resolve complaints, respond to examination or investigative findings, or  
49 fulfill financial obligations under this Article.

50       **(e)** If the Commissioner has waived the bond requirement of a licensee based on  
51 subsection (d) of this section, the Commissioner may summarily reinstate the bond requirement



1 on any licensee if the Commissioner has reason to believe the licensee no longer meets the  
2 standards in subsection (d) of this section. In this event, the licensee shall submit a bond, as  
3 required in subsection (b) of this section, within 30 days. Failure to submit a bond as directed  
4 by the Commissioner shall be grounds for summary suspension.

5 **"§ 53-244.104. Minimum net worth requirements.**

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

11 (1) If the licensee is a mortgage lender, it shall maintain a net worth of at least  
12 one hundred thousand dollars (\$100,000), including evidence of liquidity of  
13 one million dollars (\$1,000,000), which may include a warehouse line of  
14 credit of one million dollars (\$1,000,000) or other evidence of funding  
15 capacity to conduct mortgage originations as documented by an unqualified  
16 audited statement of financial condition.

17 (2) If the licensee is a mortgage servicer, it shall maintain a net worth of at least  
18 one hundred thousand dollars (\$100,000), not including monies in any  
19 escrow accounts held for others.

20 (3) If the licensee is a mortgage broker, it shall maintain a net worth of at least  
21 twenty-five thousand dollars (\$25,000), including evidence of liquidity of  
22 ten thousand dollars (\$10,000), as certified by the licensee in a certified  
23 statement of financial condition.

24 (b) The Commissioner may adopt rules to require additional minimum net worth or  
25 otherwise amend net worth requirements as are necessary to ensure licensees maintain adequate  
26 financial responsibility and accomplish the purposes of this Article.

27 **"§ 53-244.105. Records, addresses, escrow funds, or trust accounts.**

28 (a) Every licensee shall make and keep the accounts, correspondence, memoranda,  
29 papers, books, and other records as prescribed in rules adopted by the Commissioner. All  
30 records shall be preserved for three years unless the Commissioner, by rule, prescribes  
31 otherwise for particular types of records.

32 (b) No person shall make any false statement or knowingly and willfully make any  
33 omission of a material fact in connection with any information or reports filed with the  
34 Commissioner, a governmental agency, or the Nationwide Mortgage Licensing System and  
35 Registry or in connection with any oral or written communication with the Commissioner or  
36 another governmental agency. If the information contained in any document filed with the  
37 Commissioner or the Nationwide Mortgage Licensing System and Registry is or becomes  
38 inaccurate or incomplete in any material respect, the licensee or exempt entity shall within 30  
39 days file a correcting amendment to the information contained in the document.

40 (c) Each mortgage broker licensee shall maintain and transact business from a principal  
41 place of business in this State. The Commissioner may, by rule, impose terms and conditions  
42 under which the records and files of a mortgage lender or mortgage servicer may be maintained  
43 outside of this State. A principal place of business shall not be located at an individual's home  
44 or residence. A mortgage lender, mortgage broker, or mortgage servicer licensee shall maintain  
45 a record of the principal place of business with the Commissioner and report any change of  
46 address of the principal place of business or any branch office within 15 days after the change.

47 (d) A licensee shall maintain in a segregated escrow fund or trust account any funds  
48 which come into the licensee's possession but which are not the licensee's property and which  
49 the licensee is not entitled to retain under the circumstances. The escrow fund or trust account  
50 shall be held on deposit in a federally insured financial institution. Individual loan applicants' or  
51 borrowers' accounts may be aggregated into a common trust fund so long as (i) interests in the

1 common fund can be individually tracked and accounted for and (ii) the common fund is kept  
2 separate from and is not commingled with the licensee's own funds.

3 **"§ 53-244.106. Display of license.**

4 Each mortgage broker or mortgage lender licensed under this Article shall display, in plain  
5 public view, the certificate of licensure issued by the Commissioner in its principal office and  
6 in each branch office. Each mortgage loan originator licensed under this Article shall display,  
7 in plain public view, in each branch office in which the individual acts as a mortgage loan  
8 originator the certificate of licensure issued by the Commissioner.

9 **"§ 53-244.107. Unique identifier shown.**

10 The unique identifier of any mortgage loan originator or other person engaged in the  
11 mortgage business as defined in G.S. 53-244.030(10) shall be clearly shown on all residential  
12 mortgage loan application forms, solicitations, advertisements, including business cards or Web  
13 sites, and any other documents as established by rule or order of the Commissioner.

14 **"§ 53-244.108. Reports.**

15 Each mortgage lender, mortgage broker, or mortgage servicer licensee shall submit to the  
16 Commissioner and to the Nationwide Mortgage Licensing System and Registry reports of  
17 condition and any other reports requested by the Commissioner pursuant to G.S. 53-244.115(d).  
18 The reports shall be in the form and shall contain any information that the Commissioner or  
19 Nationwide Mortgage Licensing System and Registry may require.

20 **"§ 53-244.109. Mortgage broker duties.**

21 Any mortgage broker engaged in the mortgage business as defined by  
22 G.S. 53-244.030(10)a., in addition to duties imposed by other statutes or at common law, shall  
23 do all of the following:

- 24 (1) Safeguard and account for any money handled for the borrower.
- 25 (2) Follow reasonable and lawful instructions from the borrower.
- 26 (3) Act with reasonable skill, care, and diligence.
- 27 (4) Make reasonable efforts to secure a loan that is reasonably advantageous to  
28 the borrower considering all the circumstances, including the rates, charges,  
29 and repayment terms of the loan.
- 30 (5) Timely and clearly disclose to the borrower material information that may be  
31 expected to influence the borrower's decision and is reasonably accessible to  
32 the mortgage broker, including the total compensation the mortgage broker  
33 expects to receive from any and all sources in connection with each loan  
34 option presented to the borrower.
- 35 (6) Notify before closing each lender of the particulars of each of the other  
36 lender's loans if the mortgage broker knows that more than one mortgage  
37 loan will be made by different lenders contemporaneously to a borrower.
- 38 (7) Ensure that any services offered to any applicant shall be available and  
39 offered to all similarly situated applicants on an equal basis.
- 40 (8) In transactions where the mortgage broker has the ability to make credit  
41 decisions, use reasonable means to provide the borrower with prompt credit  
42 decisions on its loan applications and, where the credit is denied, to comply  
43 fully with the notification requirements of applicable State and federal law.
- 44 (9) Ensure that advertising materials are designed to make customers and  
45 potential customers aware that the mortgage broker does not discriminate on  
46 any prohibited basis.
- 47 (10) Represent the borrower's best interest in the course of brokering a mortgage  
48 loan.
- 49 (11) Have a duty of loyalty to the borrower, which shall include a duty not to  
50 compromise a borrower's right or interest in favor of another's right or  
51 interest, including a right or interest of the mortgage broker.

**"§ 53-244.110. Mortgage servicer duties.**

Any mortgage servicer engaged in the mortgage business as defined by G.S. 53-244.030(10)c., in addition to duties imposed by other statutes or at common law, shall do all of the following:

- (1) Safeguard and account for any money handled for the borrower.
- (2) Follow reasonable and lawful instructions from the borrower.
- (3) Act with reasonable skill, care, and diligence.
- (4) File with the Commissioner a complete, current schedule of the ranges of costs and fees it charges borrowers for its servicing-related activities with its application and renewal and with its supplemental filings made from time to time.
- (5) File with the Commissioner upon request a report in a form and format acceptable to the Commissioner detailing the servicer's activities in this State, including:
  - a. The number of mortgage loans the servicer is servicing.
  - b. The type and characteristics of the loans in this State.
  - c. The number of serviced loans in default, along with a breakdown of 30-, 60-, and 90-day delinquencies.
  - d. Information on loss mitigation activities, including details on workout arrangements undertaken.
  - e. Information on foreclosures commenced in this State.
- (6) At the time a servicer accepts assignment of servicing rights for a mortgage loan, the servicer shall disclose to the borrower all of the following:
  - a. Any notice required by RESPA or by regulations promulgated thereunder.
  - b. A schedule of the ranges and categories of its costs and fees for its servicing-related activities, which shall comply with North Carolina law and which shall not exceed those reported to the Commissioner.
  - c. A notice in a form and content acceptable to the Commissioner that the servicer is licensed by the Commissioner and that complaints about the servicer may be submitted to the Commissioner.
  - d. Any notice required by Article 2A, 4, or 10 of Chapter 45 of the General Statutes.
- (7) In the event of a delinquency or other act of default on the part of the borrower, the mortgage servicer shall act in good faith to inform the borrower of the facts concerning the loan and the nature and extent of the delinquency or default and, if the borrower replies, to negotiate with the borrower, subject to the mortgage servicer's duties and obligations under the mortgage servicing contract, if any, to attempt a resolution or workout to the delinquency.

**"§ 53-244.111. Prohibited acts.**

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

- (1) To misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise.
- (2) To improperly refuse to issue a satisfaction of a mortgage.
- (3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report,

- 1           which the mortgage lender, mortgage broker, mortgage servicer, or mortgage  
2           loan originator is not entitled to retain under the circumstances.
- 3           (4)   To pay, receive, or collect in whole or in part any commission, fee, or other  
4           compensation for brokering or servicing a mortgage loan in violation of this  
5           Article, including a mortgage loan brokered or serviced by any unlicensed  
6           person other than an exempt person.
- 7           (5)   To charge or collect any fee or rate of interest or to make or broker or  
8           service any mortgage loan with terms or conditions or in a manner contrary  
9           to the provisions of Chapter 24, 45, or 54 of the General Statutes.
- 10          (6)   To advertise mortgage loans, including rates, margins, discounts, points,  
11          fees, commissions, or other material information, including material  
12          limitations on the loans, unless the person is able to make the mortgage loans  
13          available to a reasonable number of qualified applicants.
- 14          (7)   To fail to disburse funds in accordance with a written commitment or  
15          agreement to make a mortgage loan.
- 16          (8)   To engage in any transaction, practice, or course of business that is not in  
17          good faith or fair dealing or that constitutes a fraud upon any person in  
18          connection with the brokering or making or servicing of, or purchase or sale  
19          of, any mortgage loan.
- 20          (9)   To fail to pay promptly when due reasonable fees to a licensed appraiser for  
21          appraisal services that are:
- 22            a.   Requested from the appraiser in writing by the mortgage broker or  
23            mortgage lender or an employee of the mortgage broker or mortgage  
24            lender; and
- 25            b.   Performed by the appraiser in connection with the origination or  
26            closing of a mortgage loan for a customer or the mortgage broker or  
27            mortgage lender.
- 28          (10) To broker a mortgage loan that contains a prepayment penalty if the  
29          principal amount of the loan is one hundred fifty thousand dollars  
30          (\$150,000) or less or if the loan is a rate spread home loan as defined in  
31          G.S. 24-1.1F.
- 32          (11) To improperly influence or attempt to improperly influence the  
33          development, reporting, result, or review of a real estate appraisal sought in  
34          connection with a mortgage loan. Nothing in this subdivision shall be  
35          construed to prohibit a mortgage lender, mortgage broker, or mortgage  
36          servicer from asking the appraiser to do one or more of the following:
- 37            a.   Consider additional appropriate property information.
- 38            b.   Provide further detail, substantiation, or explanation for the  
39            appraiser's value conclusion.
- 40            c.   Correct errors in the appraisal report.
- 41          (12) To fail to comply with the mortgage loan servicing transfer, escrow account  
42          administration, or borrower inquiry response requirements imposed by  
43          sections 6 and 10 of RESPA and regulations adopted thereunder.
- 44          (13) To broker a rate spread adjustable rate mortgage loan without disclosing to  
45          the borrower the terms and costs associated with a fixed rate loan from the  
46          same lender at the lowest annual percentage rate for which the borrower  
47          qualifies.
- 48          (14) To fail to comply with applicable State and federal laws and regulations  
49          related to mortgage lending or mortgage servicing.
- 50          (15) To engage in unfair, misleading, or deceptive advertising related to a  
51          solicitation for a mortgage loan.

- 1           (16) In connection with the brokering or making of a rate spread home loan as  
2 defined under G.S. 24-1.1F, no lender shall provide nor shall any broker  
3 receive any compensation that changes based on the terms of the loan. This  
4 subdivision shall not prohibit compensation based on the principal balance  
5 of the loan.
- 6           (17) For a mortgage servicer to fail to comply with the mortgage servicer's  
7 obligations under Article 10 of Chapter 45 of the General Statutes.
- 8           (18) For a mortgage servicer to fail to provide written notice to a borrower upon  
9 taking action to place hazard, homeowner's, or flood insurance on the  
10 mortgaged property or to place such insurance when the mortgage servicer  
11 knows or has reason to know that the insurance is in effect.
- 12           (19) For a mortgage servicer to place hazard, homeowner's, or flood insurance on  
13 a mortgaged property for an amount that exceeds either the value of the  
14 insurable improvements or the last known coverage amount of insurance.
- 15           (20) For a mortgage servicer to fail to provide to the borrower a refund of  
16 unearned premiums paid by a borrower or charged to the borrower for  
17 hazard, homeowner's, or flood insurance placed by a mortgage lender or  
18 mortgage servicer if the borrower provides reasonable proof that the  
19 borrower has obtained coverage such that the forced placement is no longer  
20 necessary and the property is insured. If the borrower provides reasonable  
21 proof within 12 months of the placement that no lapse in coverage occurred  
22 such that the forced placement was not necessary, the mortgage servicer  
23 shall refund the entire premium.
- 24           (21) For a mortgage servicer to refuse to reinstate a delinquent loan upon a tender  
25 of payment made timely under the contract which is sufficient in amount,  
26 based upon the last written statement received by the borrower, to pay all  
27 past due amounts, outstanding or overdue charges, and restore the loan to a  
28 nondelinquent status, but this reinstatement shall be available to a borrower  
29 no more than twice in any 24-month period.
- 30           (22) For a person acting as a mortgage servicer to fail to mail, at least 45 days  
31 before foreclosure is initiated, a notice addressed to the borrower at the  
32 borrower's last known address with the following information:
- 33           a. An itemization of all past due amounts causing the loan to be in  
34 default.
- 35           b. An itemization of any other charges that must be paid in order to  
36 bring the loan current.
- 37           c. A statement that the borrower may have options available other than  
38 foreclosure and that the borrower may discuss the options with the  
39 mortgage lender, the mortgage servicer, or a counselor approved by  
40 the U.S. Department of Housing and Urban Development (HUD).
- 41           d. The address, telephone number, and other contact information for the  
42 mortgage lender, the mortgage servicer, or the agent for either of  
43 them who is authorized to attempt to work with the borrower to avoid  
44 foreclosure.
- 45           e. The name, address, telephone number, and other contact information  
46 for one or more HUD-approved counseling agencies operating to  
47 assist borrowers in North Carolina to avoid foreclosure.
- 48           f. The address, telephone number, and other contact information for the  
49 consumer complaint section of the Office of the Commissioner of  
50 Banks.

1           (23) To fail to make all payments from any escrow account held for the borrower  
2 for insurance, taxes, and other charges with respect to the property in a  
3 timely manner so as to ensure that no late penalties are assessed or other  
4 negative consequences result regardless of whether the loan is delinquent,  
5 unless there are not sufficient funds in the account to cover the payments and  
6 the mortgage servicer has a reasonable basis to believe that recovery of the  
7 funds will not be possible.

8 **"§ 53-244.112. Criminal penalties for unlicensed activity.**

9           Engaging in the mortgage business as defined by G.S. 53-244.030(10) or acting as a  
10 mortgage loan originator without a license as required by the provisions of G.S. 53-244.040 is a  
11 Class 3 misdemeanor. Each transaction involving unlicensed activity is a separate offense.

12 **"§ 53-244.113. Regulatory authority.**

13           (a) Unless otherwise provided, all actions, hearings, and procedures under this Article  
14 shall be governed by Article 3A of Chapter 150B of the General Statutes.

15           (b) For purposes of this Article, the Commissioner shall be deemed to have complied  
16 with the requirements of law concerning service of process upon mailing by certified mail any  
17 notice required or permitted to a licensee under this Article, postage prepaid and addressed to  
18 the last known address of the licensee on file with the Commissioner pursuant to  
19 G.S. 53-244.105(c).

20           (c) Upon the issuance of any summary order permitted under this Article, including  
21 summary suspensions and cease and desist orders, the Commissioner shall promptly notify the  
22 person subject to the order that the order has been entered and the reasons for the order. Within  
23 20 days of receiving notice of the order, the person subject to the order may request in writing a  
24 hearing before the Commissioner. Upon receipt of such a request, the Commissioner shall  
25 calendar a hearing within 15 days. If a licensee does not request a hearing, the order will  
26 remain in effect unless it is modified or vacated by the Commissioner.

27 **"§ 53-244.114. Licensure authority.**

28           (a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or  
29 renew a license of a licensee or applicant under this Article, or may restrict or limit the manner  
30 in which a licensee, applicant, or any person who owns an interest in or participates in the  
31 business of a licensee engages in the mortgage business, if the Commissioner finds both of the  
32 following:

- 33           (1) That the order is in the public interest; and  
34           (2) That any of the following circumstances apply to the applicant, licensee, or  
35 any partner, member, manager, officer, director, loan officer, limited loan  
36 officer, qualifying individual, or any person occupying a similar status or  
37 performing similar functions or any person directly or indirectly controlling  
38 the applicant or licensee. The person:  
39           a. Has filed an application for licensure, report, or other document to  
40 the Commissioner that, as of its effective date or as of any date after  
41 filing, contained any statement that, in light of the circumstances  
42 under which it was made, is false or misleading with respect to any  
43 material fact;  
44           b. Has violated or failed to comply with any provision of this Article,  
45 rule adopted by the Commissioner, or order of the Commissioner;  
46           c. Is permanently or temporarily enjoined by any court of competent  
47 jurisdiction from engaging in or continuing any conduct or practice  
48 involving any aspect of the mortgage business;  
49           d. Is the subject of an order of the Commissioner denying or suspending  
50 that person's license as a mortgage loan originator, mortgage broker,  
51 mortgage lender, or mortgage servicer;

- 1           e.     Is the subject of an order entered within the past five years by the  
2                 authority of any state with jurisdiction over that state's mortgage  
3                 brokerage, mortgage lending, or mortgage servicing industry denying  
4                 that person's license as a mortgage loan originator, mortgage broker,  
5                 mortgage lender, or mortgage servicer;
- 6           f.     Fails at any time to meet the requirements of G.S. 53-244.060,  
7                 53-244.070, 53-244.080, 53-244.090, 53-244.100, 53-244.103, or  
8                 53-244.104;
- 9           g.     Controls or has controlled any mortgage broker, mortgage lender, or  
10                mortgage servicer who has been subject to an order or injunction  
11                described in sub-subdivision c., d., or e. of this subdivision;
- 12           h.     Has been the qualifying individual, branch manager, or mortgage  
13                loan originator of a licensee who had knowledge of or reasonably  
14                should have had knowledge of, or participated in, any activity that  
15                resulted in the entry of an order under this Article suspending or  
16                withdrawing the license of a licensee;
- 17           i.     Has failed to respond to inquiries from the Commissioner or the  
18                Commissioner's designee regarding any complaints filed against the  
19                licensee which allege or appear to involve violation of this Article or  
20                any law or rule affecting the mortgage lending business; or
- 21           j.     Has failed to respond to and cooperate fully with notices from the  
22                Commissioner or the Commissioner's designee relating to the  
23                scheduling and conducting of an examination or investigation under  
24                this Article.

25           (b)    In the event the Commissioner has reason to believe that a licensee, individual, or  
26                person subject to this Article may have violated or failed to comply with any provision of this  
27                Article, the Commissioner may:

- 28                (1)    Summarily order the licensee, individual, or person to cease and desist from  
29                    any harmful activities or violations of this Article; or
- 30                (2)    Summarily suspend the license of the licensee under this Article.

31           These summary powers are in addition to the summary suspension procedures authorized  
32           by G.S. 150B-3(c).

33           "**§ 53-244.115. Investigation and examination authority.**

34           (a)    For purposes of initial licensing, license renewal, suspension, conditioning,  
35                revocation, or termination, or general or specific inquiry, investigation, or examination to  
36                determine compliance with this Article, the Commissioner may, at the expense of the applicant  
37                or licensee, access, receive, and use any books, accounts, records, files, documents,  
38                information, or evidence, including:

- 39                (1)    Criminal, civil, and administrative history information, including  
40                    nonconviction data;
- 41                (2)    Personal history and experience information, including independent credit  
42                    reports obtained from a consumer reporting agency described in section  
43                    603(p) of the Fair Credit Reporting Act; and
- 44                (3)    Any other documents, information, or evidence the Commissioner deems  
45                    relevant to the inquiry, investigation, or examination regardless of the  
46                    location, possession, control, or custody of the documents, information, or  
47                    evidence.

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

1 with control, qualified individual, mortgage loan originators, employees, independent  
2 contractors, agents, and customers of the licensee, individual, or person concerning their  
3 business. The Commissioner may direct, subpoena, or order the attendance of and examine  
4 under oath all persons whose testimony may be required about the loans or the business or  
5 subject matter of any examination or investigation and may direct, subpoena, or order the  
6 person to produce books, accounts, records, files, and any other documents the Commissioner  
7 deems relevant to the inquiry. The reasonable cost of the investigation or examination shall be  
8 charged against the licensee, individual, or person subject to this Article.

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

18 (d) Each licensee, individual, or person subject to this Article shall make or compile  
19 such reports or prepare other information as may be directed or requested by the Commissioner  
20 in order to carry out the purposes of this section, including:

- 21 (1) Accounting compilations;
- 22 (2) Information lists and data concerning loan transactions in a format  
23 prescribed by the Commissioner;
- 24 (3) Periodic reports, including:
  - 25 a. Annual Report Questionnaire,
  - 26 b. Servicer Activity Report,
  - 27 c. Servicer Schedule of the Ranges of Costs and Fees,
  - 28 d. Lender/Servicer Audited Statements of Financial Condition,
  - 29 e. Broker Certified Statements of Financial Condition, and
  - 30 f. Quarterly Loan Origination Reports.
- 31 (4) Any other information deemed necessary to carry out the purposes of this  
32 section.

33 (e) In making any examination or investigation authorized by this Article, the  
34 Commissioner may control access to any documents and records of the licensee or person  
35 under examination or investigation. The Commissioner may take possession of the documents  
36 and records or place a person in exclusive charge of the documents and records in the place  
37 where they are usually kept. During the period of control, no individual or person shall remove  
38 or attempt to remove any of the documents and records except pursuant to a court order or with  
39 the consent of the Commissioner. Unless the Commissioner has reasonable grounds to believe  
40 the documents or records of the licensee have been or are at risk of being altered or destroyed  
41 for purposes of concealing a violation of this Article, the licensee or owner of the documents  
42 and records shall have access to the documents or records as necessary to conduct its ordinary  
43 business.

44 (f) In order to carry out the purposes of this section, the Commissioner may:

- 45 (1) Retain attorneys, accountants, or other professionals and specialists as  
46 examiners, auditors, or investigators to conduct or assist in the conduct of  
47 examinations or investigations;
- 48 (2) Enter into agreements or relationships with other government officials or  
49 regulatory associations in order to improve efficiencies and reduce  
50 regulatory burden by sharing resources, standardized or uniform methods or



1 procedures, documents, records, information, or evidence obtained under  
2 this section;

3 (3) Use, hire, contract, or employ public or privately available analytical  
4 systems, methods, or software to examine or investigate the licensee,  
5 individual, or person subject to this Article;

6 (4) Accept and rely on examination or investigation reports made by other  
7 government officials, within or without this State; or

8 (5) Accept audit reports made by an independent certified public accountant for  
9 the licensee, individual, or person in the course of that part of the  
10 examination covering the same general subject matter as the audit and may  
11 incorporate the audit report in the report of the examination, report of  
12 investigation, or other writing of the Commissioner.

13 (g) In addition to the authority granted by G.S. 53-244.113 and G.S. 53-244.115, the  
14 Commissioner is authorized to take action, including summary suspension of the license, if the  
15 licensee fails, within 20 days or a lesser time if specifically requested for good cause, to:

16 (1) Respond to inquiries from the Commissioner or the Commissioner's  
17 designee regarding any complaints filed against the licensee that allege or  
18 appear to involve violation of this Article or any law or rule affecting the  
19 mortgage lending business;

20 (2) Respond to and cooperate fully with notices from the Commissioner or the  
21 Commissioner's designee relating to the scheduling and conducting of an  
22 examination or investigation under this Article; or

23 (3) Consent to a criminal history record check. The refusal shall constitute  
24 grounds for the Commissioner to deny licensure to the applicant as well as to  
25 any entity:

26 a. By whom or by which the applicant is employed,

27 b. Over which the applicant has control, or

28 c. As to which the applicant is the current or proposed qualifying  
29 individual or a current or proposed branch manager.

30 (h) The authority of this section shall remain in effect, whether a licensee, individual, or  
31 person subject to this Article acts or claims to act under any licensing law of the State, or  
32 claims to act without such authority.

33 **"§ 53-244.116. Disciplinary authority.**

34 (a) The Commissioner may, by order:

35 (1) Take any action authorized under G.S. 53-244.113.

36 (2) Impose a civil penalty upon a licensee, individual, or person subject to this  
37 Article, or upon any partner, officer, director, or other person occupying a  
38 similar status or performing similar functions on behalf of a licensee or other  
39 person subject to this Article for any violation of or failure to comply with  
40 this Article. The civil penalty shall not exceed twenty-five thousand dollars  
41 (\$25,000) for each violation of or failure to comply with this Article. Each  
42 violation of or failure to comply with this Article shall be a separate and  
43 distinct violation.

44 (3) Impose a civil penalty upon a licensee, individual, or person subject to this  
45 Article, or upon any partner, officer, director, or other person occupying a  
46 similar status or performing similar functions on behalf of a licensee or other  
47 person subject to this Article for any violation of or failure to comply with  
48 any directive or order of the Commissioner. The civil penalty shall not  
49 exceed twenty-five thousand dollars (\$25,000) for each violation of or  
50 failure to comply with any directive or order of the Commissioner. Each

1 violation of or failure to comply with any directive or order of the  
2 Commissioner shall be a separate and distinct violation.

3 (4) Require a licensee, individual, or person subject to this Article to disgorge  
4 and pay to a borrower or other individual any amounts received by the  
5 licensee, individual, or person subject to the Article, including any employee  
6 of the person, to the extent that the amounts were collected in violation of  
7 Chapter 24 of the General Statutes or in excess of those allowed by law.

8 (5) Prohibit licensees under this Article from engaging in acts and practices in  
9 connection with residential mortgage loans that the Commissioner finds to  
10 be unfair, deceptive, designed to evade the laws of this State, or that are not  
11 in the best interest of the borrowing public.

12 (b) When a licensee is accused of any act, omission, or misconduct that would subject  
13 the licensee to disciplinary action, the licensee, with the consent and approval of the  
14 Commissioner, may surrender the license and all the rights and privileges pertaining to it. A  
15 person who surrenders a license shall not be eligible for or submit any application for licensure  
16 under this Article.

17 (c) The requirements of this Article apply to any person who seeks to avoid its  
18 application by any device, subterfuge, or pretense whatsoever, including structuring a loan in a  
19 manner to avoid classification of the loan as a residential mortgage loan.

20 **"§ 53-244.117. Foreclosure suspension.**

21 In the event the Commissioner shall have evidence that a material violation of law has  
22 occurred in the origination or servicing of a loan then being foreclosed or then delinquent and  
23 in threat of foreclosure, and that the putative violation would be sufficient in law or equity to  
24 base a claim or affirmative defense that would affect the validity or enforceability of the  
25 underlying contract or the right to foreclose, then the Commissioner may notify the clerk of  
26 superior court, and the clerk shall suspend foreclosure proceedings on the mortgage for 60 days  
27 from the date of the notice. In the event that the Commissioner notifies the clerk, the  
28 Commissioner shall also notify the servicer, if known, and provide an opportunity to cure the  
29 violation or provide information to the Commissioner to rebut the evidence of the suspected  
30 violation. If the violation is cured or the information satisfies the Commissioner that no  
31 material violation has occurred, the Commissioner shall notify the clerk so that the foreclosure  
32 proceeding may be resumed. The authority granted to the Commissioner in this section is in  
33 addition to any powers or authority granted to the Commissioner under Chapter 45 of the  
34 General Statutes.

35 **"§ 53-244.118. Rule-making authority; records.**

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

42 (b) The Commissioner shall keep a list of all applicants for licensure under this Article  
43 or claimants of exempt status under G.S. 53-244.050(g) that includes the date of application,  
44 name, place of residence, and whether the license or claim of exempt status was granted or  
45 denied.

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

49 (1) Be kept on file in the office of the Commissioner;

50 (2) Contain information regarding all orders or other actions taken against the  
51 licensees and other persons; and

1           (3) Be open to public inspection.

2 **"§ 53-244.119. Commissioner's participation in nationwide registry.**

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

8           (1) Background checks for:

9           a. Criminal history through fingerprint or other databases;

10          b. Civil or administrative records;

11          c. Credit history; or

12          d. Any other information as deemed necessary by the Nationwide  
13 Mortgage Licensing System and Registry.

14          (2) The payment of fees to apply for, renew, or amend licenses through the  
15 Nationwide Mortgage Licensing System and Registry;

16          (3) The setting or resetting as necessary of renewal or reporting dates; and

17          (4) Requirements for amending or surrendering a license or any other activities  
18 as the Commissioner deems necessary for participation in the Nationwide  
19 Mortgage Licensing System and Registry.

20          (b) The Commissioner is authorized to establish relationships or contracts with the  
21 Nationwide Mortgage Licensing System and Registry or other entities designated by the  
22 Nationwide Mortgage Licensing System and Registry to collect and maintain records and  
23 process transaction fees or other fees related to licensees or other persons subject to this Article.

24          (c) For the purpose of participating in the Nationwide Mortgage Licensing System and  
25 Registry, the Commissioner is authorized to waive or modify, in whole or in part, any or all of  
26 the requirements of this Article and to establish new requirements as reasonably necessary to  
27 participate in the Nationwide Mortgage Licensing System and Registry.

28          (d) The Commissioner is authorized to enter into agreements to license the use of the  
29 proprietary software owned by the Office of the Commissioner of Banks to banking, mortgage,  
30 or financial services supervisory agencies of other states.

31 **"§ 53-244.120. Confidentiality of information.**

32          (a) Notwithstanding any State law to the contrary, the Commissioner shall report  
33 enforcement actions under this Article and may report other relevant information to the  
34 Nationwide Mortgage Licensing System and Registry.

35          (b) The Commissioner is authorized to enter agreements or sharing arrangements with  
36 other governmental agencies, the Conference of State Bank Supervisors, the American  
37 Association of Residential Mortgage Regulators, or other associations representing  
38 governmental agencies and may share otherwise confidential information pursuant to these  
39 written agreements.

40          (c) The requirements of G.S. 53-99(b) regarding the privacy or confidentiality of any  
41 information or material provided under subsections (a) and (b) of this section, and any privilege  
42 arising under any other federal or State law with respect to such information or material, shall  
43 continue to apply to the information or material after it has been disclosed to an entity  
44 described in subsection (a) or (b) of this section. Information or material held by such an entity  
45 shall not be subject to disclosure under any State law governing the disclosure to the public of  
46 information held by an officer or agency of the State. The entities described in subsections (a)  
47 and (b) of this section may share information and material with all State and federal regulatory  
48 officials with mortgage industry oversight authority without the loss of privilege or the loss of  
49 confidentiality protections provided by State or federal law.

50          (d) Any provision of Chapter 132 of the General Statutes relating to the disclosure of  
51 confidential supervisory information or of any information or material described in subsection

1 (a) of this section that is inconsistent with this section shall be superseded by the requirements  
2 of this section.

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

8 **"§ 53-244.121. Review by Banking Commission.**

9 The Banking Commission may review any rule, regulation, order, or act of the  
10 Commissioner made pursuant to or with respect to the provisions of this Article, and any  
11 person aggrieved by any rule, regulation, order, or act may, pursuant to G.S. 53-92(d), appeal to  
12 the Banking Commission for review upon giving 20 days' written notice after the rule,  
13 regulation, order, or act is adopted or issued. The notice of appeal shall specifically state the  
14 grounds for appeal and, in the case of an appeal from a contested case proceeding before the  
15 Commissioner, shall set forth in numbered order the assignments of error for review by the  
16 Banking Commission. Failure to specify the assignments of error shall constitute grounds to  
17 dismiss the appeal. Failure to comply with the briefing schedule as provided by the Banking  
18 Commission shall also constitute grounds to dismiss the appeal. Notwithstanding any other  
19 provision of law, any party aggrieved by a decision of the Banking Commission shall be  
20 entitled to an appeal pursuant to G.S. 53-92(d)."

21 **SECTION 3.** Severability. – If any provision of this act or its application to any  
22 person or circumstance is held invalid, the remainder of the act or the application of the  
23 provision to other persons or circumstances is not affected. Any provision of this act deemed by  
24 HUD to conflict with its interpretation of the S.A.F.E. Act, Title V, shall be interpreted,  
25 applied, or amended in such a way as to comply with the S.A.F.E. Act as interpreted by HUD.  
26 The Commissioner shall adopt rules or take such other actions as necessary to ensure the  
27 continued jurisdiction over and supervision of the mortgage business in this State to the fullest  
28 extent possible.

29 **SECTION 4.** Rules. – Unless inconsistent with the provisions of Article 19B of  
30 Chapter 53 of the General Statutes, as enacted by Section 2 of this act, the rules adopted  
31 pursuant to former Article 19A of Chapter 53 of the General Statutes governing mortgage  
32 bankers and brokers and loan officers shall remain in effect until superseded by rules adopted  
33 under Article 19B of Chapter 53 of the General Statutes, as enacted by Section 2 of this act.

34 **SECTION 5.** Transition. – All persons licensed and in good standing pursuant to  
35 Article 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this act, as of the  
36 effective date of this act, shall maintain their status as licensees and shall be subject to the  
37 provisions of Article 19B, as enacted by Section 2 of this act, in accordance with the following  
38 transitional rules:

- 39 (1) All persons licensed and in good standing pursuant to Article 19A of  
40 Chapter 53 of the General Statutes as of the effective date of this act shall  
41 have the following licensed status:
- 42 a. Any person licensed as a loan officer pursuant to Article 19A of  
43 Chapter 53 of the General Statutes shall be deemed to be licensed as  
44 a mortgage loan originator as defined in G.S. 53-244.030(21), as  
45 enacted by Section 2 of this act.
  - 46 b. Any person licensed as a mortgage banker pursuant to Article 19A of  
47 Chapter 53 of the General Statutes shall be deemed to be licensed as  
48 a mortgage lender as defined in G.S. 53-244.030(20), as enacted by  
49 Section 2 of this act.

- 1 c. Any person licensed as a mortgage broker pursuant to Article 19A of  
2 Chapter 53 of the General Statutes shall be deemed to be licensed as  
3 a mortgage broker as defined in G.S. 53-244.030(19).
- 4 d. Any person licensed as a mortgage servicer pursuant to Article 19A  
5 of Chapter 53 of the General Statutes shall be deemed to be licensed  
6 as a mortgage servicer as defined in G.S. 53-244.030(22).
- 7 e. Any person licensed as an exclusive mortgage broker pursuant to  
8 Article 19A of Chapter 53 of the General Statutes shall be deemed to  
9 be licensed as an exclusive mortgage broker as defined in  
10 G.S. 53-244.030(11a), as enacted by Section 2 of this act; provided  
11 that the exclusive mortgage broker obtains a separate license as a  
12 mortgage loan originator no later than July 31, 2010, and if such  
13 license has not been obtained by that date, the license of the  
14 exclusive mortgage broker shall be subject to summary suspension.
- 15 f. Any person licensed as a limited loan officer pursuant to Article 19A  
16 of Chapter 53 of the General Statutes shall be permitted to act as a  
17 licensed mortgage loan originator as defined in G.S. 53-244.030(21),  
18 as enacted by Section 2 of this act; provided that the limited loan  
19 officer obtains a mortgage loan originator license no later than  
20 December 31, 2009, and if such license has not been obtained by that  
21 date, the license of the limited loan officer will expire.
- 22 (2) For the renewal period ending December 31, 2009, any person deemed a  
23 mortgage loan originator pursuant to sub-subdivision (1)a. of this section  
24 must have met the requirements of this act for renewal, including the initial  
25 license requirements of G.S. 53-244.060, except G.S. 53-244.060(5) and  
26 G.S. 53-244.060(6), provided that the mortgage loan originator would have  
27 met the requirements for continuing education under G.S. 53-243.07(b), as  
28 repealed by Section 1 of this act. After December 31, 2009, applicants for  
29 renewal must meet all requirements for renewal under G.S. 53-244.101.
- 30 (3) Persons who maintain a bond posted and accepted by the Commissioner as  
31 satisfying G.S. 53-243.05(f), as repealed by Section 1 of this act, shall be  
32 deemed to comply with the requirements of G.S. 53-244.103, as enacted by  
33 Section 2 of this act, through December 31, 2009.
- 34 (4) To the extent that loss mitigation specialists are included in the definition of  
35 a mortgage loan originator through an action by the U.S. Department of  
36 Housing and Urban Development, the Commissioner shall take necessary  
37 steps to license these individuals as mortgage loan originators in a timely  
38 fashion in a manner that ensures this act fulfills the requirements of the  
39 S.A.F.E. Act to maintain jurisdiction and supervision of the mortgage  
40 business to the fullest extent possible.
- 41 (5) Any person who has been enjoined by the Commissioner of Banks or a court  
42 of competent jurisdiction from serving in any capacity defined under Article  
43 19A of Chapter 53 of the General Statutes, as repealed by Section 1 of this  
44 act, shall not be allowed to apply for or act in any similar capacity as defined  
45 by G.S. 53-244.030, as enacted by Section 2 of this act. Any person whose  
46 license under Article 19A of Chapter 53 of the General Statutes, as repealed  
47 by Section 1 of this act, was subject to any terms, conditions, or affirmative  
48 duties imposed by the Commissioner of Banks or a court of competent  
49 jurisdiction shall be subject to the same terms, conditions, or affirmative  
50 duties for any similar license issued under G.S. 53-244.060 or renewed  
51 under G.S. 53-244.101, as enacted by Section 2 of this act.

1           **SECTION 6.** Except as otherwise provided by Section 5 of this act, this act  
2 becomes effective July 31, 2009, and applies to all applications for licensure as a mortgage loan  
3 originator, mortgage lender, mortgage broker, or mortgage servicer filed on or after that date.