

GENERAL ASSEMBLY OF NORTH CAROLINA  
1987 SESSION

CHAPTER 1017  
HOUSE BILL 1111

AN ACT TO REQUIRE THE REGISTRATION OF CERTAIN MAKERS OF  
MORTGAGE LOANS ON RESIDENTIAL REAL PROPERTY.

The General Assembly of North Carolina enacts:

**Section 1.** Article 19 is added to Chapter 53 of the General Statutes to read as follows:

"ARTICLE 19.

"Registration of Mortgage Bankers and Brokers.

"§ 53-233. **Title and scope.**— (a) This Article shall be known and cited as the 'Registration Requirements Act for Certain Makers of Mortgages and Deeds of Trust on Residential Real Property'.

(b) No person, partnership, corporation, banking organization, or other entity, shall make or broker a residential mortgage loan as defined in this Article, unless either (i) the maker or broker of the mortgage loan is an exempt person or organization as defined in G.S. 53-234(6), or (ii) has complied with the provisions of this Article. Nothing in this Article shall be construed to apply to the purchase of loans or participations in loans or the commitment by an entity to fund loans made by registrants or exempt persons or organizations.

"§ 53-234. **Definitions.**—The following definitions apply in this Article:

(1) 'Mortgage loan' means a loan to a natural person or persons made primarily for personal, family or household use, primarily secured by either a mortgage or a deed of trust on residential real property.

(2) 'Residential real property' means real property located in this State upon which there is located or there is to be located one or more single family dwellings or dwelling units.

(3) 'Mortgage banker' means a person or entity who or which for compensation or gain, either directly or indirectly, advances funds, offers to advance funds, or makes a commitment to advance funds to an applicant for a mortgage loan.

(4) 'Mortgage broker' means a person or entity in the business of soliciting, processing, placing or negotiating mortgage loans for others or offering to process, place or negotiate mortgage loans for others.

(5) 'Soliciting, processing, placing or negotiating a mortgage loan' means for compensation or gain, either directly or indirectly, accepting or offering to accept an application for a mortgage loan, assisting or offering to assist in the processing of an application for a mortgage loan, soliciting or offering to solicit a mortgage loan on

behalf of a third party or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a lender on behalf of a third party.

(6) 'Exempt person or organization' means:

- (a) Any lender authorized to engage in business as a bank, a farm credit system, life insurance company, savings institution, or credit union, under the laws of the United States or the State of North Carolina and subsidiaries and affiliates of such lenders, which subsidiaries and affiliates are subject to the general supervision or regulation of the lender or subject to audit or examination by a regulatory body or agency of the United States or the State of North Carolina; the entities listed in this sub-subdivision, and their officers and employees, are not subject to any of the provisions of this Article; or
- (b) Any licensed real estate agent or broker, who is performing those activities subject to the regulation of the North Carolina Real Estate Commission. Notwithstanding the above, an exempt person does not include a real estate agent or broker who receives direct compensation or income in connection with the placement of a mortgage loan; or
- (c) Any person who, as seller, receives in one calendar year no more than ten mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation; or
- (d) The North Carolina Housing Finance Agency as established by Chapter 122A of the General Statutes and the North Carolina Agricultural Finance Authority as established by Chapter 122D of the General Statutes; or
- (e) Any agency of the federal government or any state or municipal government granting first mortgage loans under specific authority of the laws of any state or the United States.

(7) 'Registrant' means any person or entity who or which is registered pursuant to G.S. 53-236:

- (a) Which engages in the business of making mortgage loans in this State; or
- (b) Which engages in the business of soliciting, processing, placing or negotiating mortgage loans for others, or offering to process, place or negotiate mortgage loans for others.

(8) 'Commissioner' means the Commissioner of Banks of this State.

**"§ 53-235. Registration requirements of mortgage bankers and mortgage brokers.**—(a) No mortgage banker, as defined in G.S. 53-234(3), shall engage in the business of making mortgage loans without first being registered with the Commissioner in accordance with the registration procedure provided in this Article and such regulations as may be promulgated by the Commissioner.

(b) No mortgage broker, as defined in G.S. 53-234(4), shall engage in the business of processing, placing or negotiating a mortgage loan or offering to process, place or negotiate a mortgage loan in this State without first being registered with the

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

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

(d) Notwithstanding subsections (a) and (b) of this section, an affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act shall not be required to register under this section.

**"§ 53-236. Registration procedures.**—(a) An application to become registered as a mortgage banker or a mortgage broker shall be in writing, under oath, and in such form as shall be prescribed by the Commissioner. Such application shall contain the name and complete business and residential address or addresses of the applicant, or if the applicant is a partnership, association, corporation or other form of business organization, the names and complete business and residential addresses of each member, director and principal officer thereof.

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

**"§ 53-237. Registration by the Commissioner.**—(a) Upon the filing of an application for registration, if the Commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant is a partnership or association, and of the officers and directors thereof if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly, within the purposes of this Article, he shall thereupon register the applicant as a mortgage banker or a mortgage broker, whichever is applicable, on a roll maintained for that purpose at the Commission of Banks, and shall issue a certificate attesting to such registration. If the Commissioner does not so find, he shall not register such applicant, and shall notify the applicant of the denial. The Commissioner shall transmit the certificate to the applicant.

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

(c) Each certificate issued to a registrant shall state the address or addresses at which the business is to be conducted and shall state fully the name of the registrant, and the date of the registration. A copy of such certificate shall be prominently posted in each place of business of the registrant. Such certificate shall not be transferable or assignable.

**"§ 53-238. Prohibited activities of mortgage bankers and mortgage brokers.**—Mortgage bankers and mortgage brokers are prohibited from the following activities:

(1) Misrepresenting the material facts or making false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or pursuing a course of misrepresentation through agents or otherwise;

(2) Misrepresenting or concealing of material factors, terms or conditions of a transaction to which he is a party, pertinent to an applicant for a mortgage loan or a mortgagor;

(3) Failing to disburse funds in accordance with a written commitment or agreement to make a mortgage loan;

(4) Improperly refusing to issue a satisfaction of a mortgage;

(5) Failing to account for or deliver to any person any personal property obtained in connection with a mortgage loan such as money, funds, deposit, check, draft, mortgage, or other document, or thing of value, which has come into his hands and which is not his property, or which he is not in law or equity entitled to retain;

(6) Engaging in any transaction, practice, or course of business which is not in good faith or fair dealing, or which operates a fraud upon any person, in connection with the making of or purchase or sale of any mortgage loan.

**"§ 53-239. Cease and desist; revocation of registration certificate.**—(a) Upon the finding that any action of a mortgage banker or a mortgage broker may be in violation of this Article, or of any law or regulation of this State or of the federal government or any agency thereof, the Commissioner, after reasonable notice to the mortgage banker or mortgage broker, and an opportunity for the mortgage banker or mortgage broker to be heard, shall order it to cease and desist from such action.

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

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

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

**"§ 53-240. Appeal of Commissioner's decision.**—Notwithstanding any other provision of law, any aggrieved party may, within 30 days after final decision of the Commissioner and by written notice to the Commissioner, appeal directly to the North Carolina Court of Appeals for judicial review on the record. In the event of an appeal, the Commissioner shall certify the record to the Clerk of the Court of Appeals within 30 days thereafter. Such record shall include all memoranda, briefs and any other documents, data, information or evidence submitted by any party to such proceeding

except for material such as trade secrets normally not available through commercial publication for which such party has made a claim of confidentiality and requested exclusion from the record which the Commissioner deems confidential. All factual information contained in any report of examination or investigation submitted to or obtained by the Commissioner's staff shall also be made a part of the record unless deemed confidential by the Commissioner.

"§ 53-241. **Rules and regulations.**—Notwithstanding the provision of G.S. 53-95, the Commissioner may promulgate such reasonable rules and regulations as may be necessary to effectuate the purpose of this Article, to provide for the protection of the borrowing public, and to instruct mortgage lenders in interpreting this Article.

"§ 53-242. **Fees.**—In addition to the initial application for registration fee of five hundred dollars (\$500.00) required by G.S. 53-236, all registrants shall pay an annual fee of two hundred fifty dollars (\$250.00)."

**Sec. 2.** This act shall become effective January 1, 1989.

In the General Assembly read three times and ratified this the the 29th day of June, 1988.