

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 55

Short Title: Mortgage Banker/Broker Provisions.

(Public)

Sponsors: Representatives Brubaker; Dickson, Hasty, Holmes, and Rogers.

Referred to: Commerce.

February 11, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND REGULATIONS PERTAINING TO MORTGAGE BANKERS
3 AND BROKERS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 53-233 reads as rewritten:

6 "ARTICLE 19.

7 "**REGISTRATION OF MORTGAGE BANKERS, AND BROKERS, AND**
8 **SERVICERS.**

9 "**§ 53-233. Title and scope.**

10 (a) This Article shall be known and cited as the "~~Registration Requirements Act~~
11 ~~for Certain Makers of Mortgages and Deeds of Trust on Residential Real Property~~".
12 'Residential Mortgage Loan Registration Act'.

13 (b) No person, partnership, corporation, banking organization, or other entity,
14 shall make, ~~or broker, or service~~ a residential mortgage loan as defined in this Article,
15 unless either (i) the maker, ~~or broker, or servicer~~ of the mortgage loan is an exempt
16 person or organization as defined in G.S. 53-234(6), or (ii) has complied with the
17 provisions of this Article. Nothing in this Article shall be construed to apply to the
18 purchase of loans or participations in loans or the commitment by an entity to fund
19 loans made by registrants or exempt persons or organizations. Provided, however, no
20 person or entity may service a purchased loan without first being registered with the
21 Commissioner, unless such servicer shall be exempt as defined in G.S. 53-234(6)."

22 Sec. 2. G.S. 53-234 reads as rewritten:

23 "**§ 53-234. (Effective until July 1, 1990) Definitions.**

24 The following definitions apply in this Article:

- 1 (1) ~~" Mortgage loan" means a loan to a natural person or persons made~~
2 ~~primarily for personal, family or household use, primarily secured by~~
3 ~~either a mortgage or a deed of trust on residential real property.~~
4 (2) ~~" Residential real property" means real property located in this State~~
5 ~~upon which there is located or there is to be located one or more single~~
6 ~~family dwellings or dwelling units.~~
7 (3) ~~" Mortgage banker" means a person or entity who or which for~~
8 ~~compensation or gain, either directly or indirectly, advances funds,~~
9 ~~offers to advance funds, or makes a commitment to advance funds to~~
10 ~~an applicant for a mortgage loan.~~
11 (4) ~~" Mortgage broker" means a person or entity in the business of~~
12 ~~soliciting, processing, placing or negotiating mortgage loans for others~~
13 ~~or offering to process, place or negotiate mortgage loans for others.~~
14 (5) ~~" Soliciting, processing, placing or negotiating a mortgage loan" means~~
15 ~~for compensation or gain, either directly or indirectly, accepting or~~
16 ~~offering to accept an application for a mortgage loan, assisting or~~
17 ~~offering to assist in the processing of an application for a mortgage~~
18 ~~loan, soliciting or offering to solicit a mortgage loan on behalf of a~~
19 ~~third party or negotiating or offering to negotiate the terms or~~
20 ~~conditions of a mortgage loan with a lender on behalf of a third party.~~
21 (6) ~~" Exempt person or organization" means:~~
22 (a) ~~Any lender authorized to engage in business as a bank, a farm~~
23 ~~credit system, life insurance company, savings institution, or~~
24 ~~credit union, under the laws of the United States or the State of~~
25 ~~North Carolina and subsidiaries and affiliates of such lenders,~~
26 ~~which subsidiaries and affiliates are subject to the general~~
27 ~~supervision or regulation of the lender or subject to audit or~~
28 ~~examination by a regulatory body or agency of the United~~
29 ~~States or the State of North Carolina; the entities listed in this~~
30 ~~sub-subdivision, and their officers and employees, are not~~
31 ~~subject to any of the provisions of this Article; or~~
32 (b) ~~Any licensed real estate agent or broker, who is performing~~
33 ~~those activities subject to the regulation of the North Carolina~~
34 ~~Real Estate Commission. Notwithstanding the above, an~~
35 ~~exempt person does not include a real estate agent or broker~~
36 ~~who receives direct compensation or income in connection with~~
37 ~~the placement of a mortgage loan; or~~
38 (c) ~~Any person who, as seller, receives in one calendar year no~~
39 ~~more than ten mortgages, deeds of trust, or other security~~
40 ~~instruments on real estate as security for a purchase money~~
41 ~~obligation; or~~
42 (d) ~~The North Carolina Housing Finance Agency as established by~~
43 ~~Chapter 122A of the General Statutes and the North Carolina~~

- 1 Agricultural Finance Authority as established by Chapter 122D
 2 of the General Statutes; or
 3 (e) Any agency of the federal government or any state or municipal
 4 government granting first mortgage loans under specific
 5 authority of the laws of any state or the United States.
 6 (7) " Registrant" means any person or entity who or which is registered
 7 pursuant to G.S. 53-236:
 8 (a) Which engages in the business of making mortgage loans in this
 9 State; or
 10 (b) Which engages in the business of soliciting, processing, placing
 11 or negotiating mortgage loans for others, or offering to process,
 12 place or negotiate mortgage loans for others.
 13 (8) " Commissioner" means the Commissioner of Banks of this State.

14 **"§ 53-234. (V2) (Effective July 1, 1990) – Definitions.**

15 The following definitions apply in this Article:

- 16 (1) 'Mortgage loan' means a loan to a natural person or persons
 17 made primarily for personal, family or household use, primarily
 18 secured by either a mortgage or a deed of trust on residential real
 19 property.
 20 (2) 'Residential real property' means real property located in this State
 21 upon which there is located or there is to be located one or more single
 22 family dwellings or dwelling units.
 23 (3) 'Mortgage banker' means a person or entity who or which for
 24 compensation or gain, either directly or indirectly, advances funds,
 25 offers to advance funds, or makes a commitment to advance funds to
 26 an applicant for a mortgage loan.
 27 (4) 'Mortgage broker' means a person or entity in the business of
 28 soliciting, processing, placing or negotiating mortgage loans for others
 29 or offering to process, place or negotiate mortgage loans for others.
 30 (4a) 'Mortgage servicer' means any person who or which for compensation
 31 or gain, directly or as an agent for another, engages in servicing
 32 mortgage loans.
 33 (4b) 'Servicing' means collecting for any lender, note owner, note holder, or
 34 for a registrant's own account, payments of principal and/or interest,
 35 payment of trust items including, but not limited to, hazard insurance
 36 and taxes on a residential mortgage loan in accordance with the terms
 37 of any mortgage, deed of trust or other such loan agreement. Servicing
 38 shall also include loan payment follow up, delinquency loan follow up,
 39 loan analysis, and any notifications to the borrower which are
 40 necessary to enable the borrower to keep the loan current and in good
 41 standing.
 42 (5) 'Soliciting, processing, placing or negotiating a mortgage loan' means
 43 for compensation or gain, either directly or indirectly, accepting or
 44 offering to accept an application for a mortgage loan, assisting or

1 offering to assist in the processing of an application for a mortgage
2 loan, soliciting or offering to solicit a mortgage loan on behalf of a
3 third party or negotiating or offering to negotiate the terms or
4 conditions of a mortgage loan with a lender on behalf of a third party.

5 (6) 'Exempt person or organization' means:

6 (a) Any lender authorized to engage in business as a bank, a farm
7 credit system, life insurance company, savings institution, or
8 credit union, under the laws of the United States or ~~the State of~~
9 ~~North Carolina~~ any state and subsidiaries and affiliates of such
10 lenders, which subsidiaries and affiliates are subject to the
11 general supervision or regulation of the lender or subject to
12 audit or examination by ~~a regulatory body or agency of the United~~
13 ~~States or the State of North Carolina;~~ the Federal Deposit
14 Insurance Corporation, the Federal Reserve Board, the Office of
15 the Comptroller of the Currency, the Office of Thrift
16 Supervision, National Credit Union Administration, or any
17 successor to any of those financial institution regulatory
18 agencies, or a financial institution regulatory agency created
19 under state law; the entities listed in this sub-subdivision, and
20 their officers and employees, are not subject to any of the
21 provisions of this Article; or

22 (b) Any licensed real estate agent or broker, who is performing
23 those activities subject to the regulation of the North Carolina
24 Real Estate Commission. Notwithstanding the above, an
25 exempt person does not include a real estate agent or broker
26 who receives direct compensation or income in connection with
27 the placement of a mortgage loan; or

28 (c) Any person who, as seller, receives in one calendar year no
29 more than ten mortgages, deeds of trust, or other security
30 instruments on real estate as security for a purchase money
31 obligation; or

32 (c1) Any person making two or less mortgage loans in any period of
33 12 consecutive months; or

34 (d) The North Carolina Housing Finance Agency as established by
35 Chapter 122A of the General Statutes; or

36 (e) Any agency of the federal government or any state or municipal
37 government granting first mortgage loans under specific
38 authority of the laws of any state or the United States-; or

39 (f) Bona fide officers and employees of registrants.

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

42 (a) Which engages in the business of making mortgage loans in this
43 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-; or

(c) Which services mortgage loans in this State.

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

Sec. 3. G.S. 53-235 reads as rewritten:

"§ 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) No mortgage loan servicer, as defined in G.S. 53-243(4a), shall engage in servicing any mortgage loan without first being registered with the Commissioner in accordance with the registration procedure provided by this Article and such other regulations as may be promulgated by the Commissioner.

(~~d~~) (d) Notwithstanding subsections (a) and (b), and (c) 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). Exempt persons or entities as defined by G.S. 53-234(6) are not required to register with the Commissioner, so long as they shall have received written confirmation of exemption from registration.

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

Sec. 4. G.S. 53-236 reads as rewritten:

"§ 53-236. Registration procedures.

(a) An application to become registered as a mortgage banker-~~or~~ a mortgage broker, or a mortgage loan servicer 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 may prescribe by regulation, and such descriptions of the business activities, financial responsibility, educational background and general character and fitness of the applicant as may be

1 required by the Commissioner. The Commissioner may accept a verifiable line of credit
2 in lieu of a minimum capital requirement. Such application shall be accompanied by a
3 fee, payable to the Commissioner, of five hundred dollars (\$500.00)."

4 Sec. 5. G.S. 53-237 reads as rewritten:

5 "**§ 53-237. Registration by the Commissioner.**

6 (a) Upon the filing of an application for registration, if the Commissioner finds
7 that the financial responsibility, experience, character, and general fitness of the
8 applicant, and of the members thereof if the applicant is a partnership or association,
9 and of the officers and directors thereof if the applicant is a corporation, are such as to
10 command the confidence of the community and to warrant belief that the business will
11 be operated honestly and fairly, within the purposes of this Article, he shall thereupon
12 register the applicant as a mortgage banker, ~~or~~ a mortgage broker, or a mortgage
13 servicer, whichever is applicable, on a roll maintained for that purpose at the
14 Commission of Banks, and shall issue a certificate attesting to such registration. If the
15 Commissioner does not so find, he shall not register such applicant, and shall notify the
16 applicant of the denial. The Commissioner shall transmit the certificate to the applicant.

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

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

25 Sec. 6. G.S. 53-238 reads as rewritten:

26 "**§ 53-238. Prohibited activities of mortgage bankers and mortgage brokers, and**
27 **mortgage servicers.**

28 Mortgage bankers ~~and~~ mortgage brokers, and mortgage servicers are prohibited
29 from the following activities:

- 30 (1) Misrepresenting the material facts or making false promises likely to
31 influence, persuade, or induce an applicant for a mortgage loan or a
32 mortgagor to take a mortgage loan, or pursuing a course of
33 misrepresentation through agents or otherwise;
- 34 (2) Misrepresenting or concealing of material factors, terms or conditions
35 of a transaction to which he is a party, pertinent to an applicant for a
36 mortgage loan or a mortgagor;
- 37 (3) Failing to disburse funds in accordance with a written commitment or
38 agreement to make a mortgage loan;
- 39 (4) Improperly refusing to issue a satisfaction of a mortgage;
- 40 (5) Failing to account for or deliver to any person any personal property
41 obtained in connection with a mortgage loan such as money, funds,
42 deposit, check, draft, mortgage, or other document, or thing of value,
43 which has come into his hands and which is not his property, or which
44 he is not in law or equity entitled to retain;

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

5 Sec. 7. Article 19 of Chapter 53 is amended by adding a new section to read:

6 **"§ 53-238.1 Limitation on mortgage broker fees.**

7 No mortgage loan broker required to be registered under this Article shall:

- 8 (1) Receive compensation from a borrower until a written commitment to
9 make a mortgage loan is given to the borrower by a mortgage lender,
10 except documented costs for credit reports and appraisals;
11 (2) Receive compensation from a mortgage lender of which he is a
12 principal stockholder, partner, trustee, director, officer, or employee;
13 (3) Receive compensation from a borrower in connection with any
14 mortgage loan transaction in which he is the lender or principal
15 stockholder, partner, trustee, director, or officer of the lender;
16 (4) Receive compensation from the borrower other than that specified in a
17 written agreement signed by the borrower; or
18 (5) Receive compensation for negotiating, placing, or finding a mortgage
19 loan where such mortgage broker, or any person affiliated with such
20 mortgage broker, has otherwise acted as a real estate broker, agent or
21 salesman in connection with the sale of the real estate which secures
22 the mortgage loan and such mortgage broker or affiliated person has
23 received or will receive any other compensation or thing of value from
24 the lender, borrower, seller, or any other person.

25 As used in this section, the term 'affiliated person of a mortgage broker'
26 means any person who is a subsidiary, stockholder, partner, trustee, director, officer, or
27 employee of a mortgage broker, and any corporation ten percent (10%) or more of the
28 capital stock of which is owned by a mortgage broker or by any person who is a
29 subsidiary, stockholder, partner, trustee, director, officer, or employee of a mortgage
30 broker."

31 Sec. 8. Article 19 of Chapter 53 is amended by adding a new section to read:

32 **"§ 53-238.2 Transfer of servicing; notices.**

33 Whenever the servicing of a residential mortgage is transferred or sold by a
34 mortgage banker, mortgage broker, or mortgage servicer, notice shall be given to the
35 mortgagor in accordance with the Mortgage Servicing Transfer Disclosure Provisions of
36 the Real Estate Settlement Procedures Act of 1974 (12 U.S.C.2601 et seq.) as
37 amended."

38 Sec. 9. Article 19 of Chapter 53 is amended by adding a new section to read:

39 **"§ 53-239.2. Escrow funds.**

40 Mortgage bankers, mortgage brokers, or mortgage servicers under this Article shall
41 comply with the Mortgage Escrow Accounts provision of the Real Estate Settlement
42 Procedures Act of 1974 (12 U.S.C. 2609) as amended."

43 Sec. 10. G.S. 53-239 reads as rewritten:

44 **"§ 53-239. Cease and desist; revocation of registration certificate.**

1 (a) Upon the finding that any action of a mortgage banker ~~or~~, a mortgage broker,
2 or a mortgage servicer may be in violation of this Article, or of any law or regulation of
3 this State or of the federal government or any agency thereof, the Commissioner, after
4 reasonable notice to the mortgage banker ~~or~~, mortgage broker, or mortgage servicer,
5 and an opportunity for the mortgage banker ~~or~~, mortgage broker, or mortgage servicer
6 to be heard, shall order it to cease and desist from such action.

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

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

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

24 Sec. 11. G.S. 66-106 reads as rewritten:

25 **"§ 66-106. Definitions.**

26 For purposes of this Article the following definitions apply:

- 27 (1) A 'loan broker' is any person, firm, or corporation who, in return for
28 any consideration from any person, promises to (i) procure for such
29 person, or assist such person in procuring, a loan from any third party;
30 or (ii) consider whether or not it will make a loan to such person.
31 (2) A 'loan' is an agreement to advance money or property in return for the
32 promise to make payments therefor, whether such agreement is styled
33 as a loan, a lease or otherwise.

34 Provided, that this Article shall not apply to any person, firm, corporation, or other
35 entity engaged exclusively in brokering residential mortgage loans and registered with
36 and subject to the jurisdiction of the Commissioner of Banks under the provisions of
37 Article 19 of Chapter 53 of the North Carolina General Statutes, any party approved as a
38 mortgagee by the Secretary of Housing and Urban Development, the Federal Housing
39 Administration, the Veterans Administration, a National Mortgage Association or any
40 federal agency; nor to any party currently designated and compensated by a North
41 Carolina licensed insurance company as its agent to service loans it makes in this State;
42 nor to any insurance company registered with and licensed by the North Carolina
43 Insurance Commissioner; nor to any attorney-at-law, public accountant, or dealer
44 registered under the North Carolina Securities Act, acting in the professional capacity

1 for which such attorney-at-law, public accountant, or dealer is registered or licensed
2 under the laws of the State of North Carolina. Provided further that subdivision (1)(ii)
3 above shall not apply to any lender whose loans or advances to any person, firm or
4 corporation in North Carolina aggregate more than one million dollars (\$1,000,000) in
5 the preceding calendar year."

6 Sec.12. This act becomes effective October 1, 1991.