

SECTION .0100 – GENERAL

04 NCAC 03M .0101 DEFINITIONS

As used in this Subchapter, unless a contrary definition is expressly provided or clearly required by the context:

- (1) Terms used in this Subchapter which are defined in the Act shall have the same meaning as set forth in the Act.
- (2) When any term herein is defined by reference to or incorporation of a regulation or rule of a federal or state agency, board, commission or other regulatory body other than the Commissioner, such reference shall be deemed to be to such regulation or rule as the same is in effect and interpreted on the effective date of this Subchapter.
- (3) "Act" means G.S. 53-243.01 through G.S. 53-243.15, commonly known as the "Mortgage Lending Act", as the same may be codified and as amended from time to time.
- (4) "Advertisement" means material used or intended to be used to induce the public to apply for a mortgage loan. The term shall include any printed or published material, or descriptive literature concerning a mortgage loan to be solicited, processed, negotiated or funded by a licensee or exempt entity whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, electronic mail or other electronic means, billboard or similar display. The term shall not include any disclosures, program descriptions, or other materials prepared or authorized by any state or federal government agency, nor shall such term include any material or communication which has been excluded for purposes of any regulation of the Board of Governors of the Federal Reserve System regulating consumer credit disclosures.
- (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 as fairly and accurately reflecting the financial condition of the licensee as of the date specified therein.
- (6) "Commission" means the North Carolina Banking Commission.
- (7) "Continuing education program" means a classroom education program approved pursuant to Rule .0301 of this Subchapter.
- (8) "Controlling person" means a person who, with regard to a licensee:
 - (a) has the ability to exercise "control", as such term is defined in G.S. 53-243.01(6), or
 - (b) otherwise has the power to direct the management and policy of the licensee.
- (9) "Fundamentals Examination" means the mortgage lending fundamentals examination required by G.S. 243.05(b)(2).
- (10) "Fundamentals program" means a classroom education program approved pursuant to Rule .0301 of this Subchapter.
- (11) "Instructor" means an individual who is employed by a provider and who is responsible for teaching a program.
- (12) "License" means a mortgage lender, mortgage broker or loan officer license issued pursuant to the Act and this Subchapter.
- (13) "Material" facts or "Material" information are facts or information, or changes in such facts or information, that, if known, would be likely to influence a decision to grant or revoke a license or to take other disciplinary action against a licensee or exempt person.
- (14) "Program" means either a fundamentals or continuing education program.
- (15) "Provider" means any person who provides a program.
- (16) "Testing Service" means an organization selected by the Commissioner to develop and administer the examination.

History Note: Authority G.S. 53-243.04;
Temporary Adoption Eff. July 1, 2002;
Eff. April 1, 2003.

04 NCAC 03M .0102 NOTICES

(a) Except as may be provided in G.S. 150B or the rules of the North Carolina Office of Administrative Hearings, any notice, pleading, decision or other communication required or permitted to be given by the Commissioner to a licensee, an applicant for a license or an exempt person shall be considered given when deposited in the United States mail with sufficient first class postage affixed, addressed to the most recent principal office address provided by the addressee.

(b) Any application for licensure, report, annual statement, amendment to application, notice or other document which is required or permitted by law or rule to be filed with the Commissioner shall be in writing, signed by the sender or a principal officer and shall be effective upon actual receipt at the following address: Ordinary mail: North Carolina Commissioner of Banks, 4309 Mail Service Center, Raleigh, NC 27699-4309; Overnight mail service or hand delivery: North Carolina Commissioner of Banks, 316 W. Edenton Street, Raleigh, NC 27603.

History Note: Authority G.S. 53-243.04;
Temporary Adoption Eff. July 1, 2002;
Eff. April 1, 2003.

SECTION .0200 – LICENSING

04 NCAC 03M .0201 APPLICATION

- (a) All fees required by G.S. 53-243.05 shall be submitted with an application for licensure as a mortgage banker, mortgage broker or loan officer. Such fees are nonrefundable.
- (b) Each type of application shall be in writing on a form provided by the Commissioner, shall be accompanied by all information required by these Rules or statute and shall be verified by the oath of the applicant or a principal officer thereof.
- (c) In addition to the documents and information required by these rules the Commissioner or his or her staff may require additional information according to the rules in order to enable the Commissioner to make the determinations required by G.S. 53-243.05(i).
- (d) Applications submitted without the required fees or which are missing material information shall be held in inactive status for a period of 30 calendar days after written notice to the applicant specifying the nature of the deficiency. If any such deficiency remains outstanding for more than 30 days, the application shall automatically be considered denied without further action by the Commissioner, and the applicant shall be required to submit a new application and pay all fees associated therewith.

History Note: Authority G.S. 53-243.04; 53-243.05; 53-243.06;
Temporary Adoption Eff. July 1, 2002;
Eff. April 1, 2003.

04 NCAC 03M .0202 NONTRANSFERABILITY

- (a) Any attempt to transfer or assign a license through a change of control without the prior consent of the Commissioner shall:
- (1) be ineffective;
 - (2) be grounds for immediate revocation of such license; and
 - (3) render the assignor licensee responsible for any and all actions or omissions of its assignee which occur while acting under the apparent authority of such license.
- (b) A change in the identity of a licensee's controlling person or any material change in the licensee's organizational structure shall be considered a transfer or assignment of the license. However, the Commissioner shall permit such change without requiring the licensee to apply for a new license, provided:
- (1) the licensee gives notice to the Commissioner at least 60 days in advance of the effective date of the proposed change; and
 - (2) the Commissioner determines that permitting the licensee to continue to operate under its existing license would not be inconsistent with the purposes of the Act.
- (c) A notice pursuant to Subparagraph (b)(1) of this Rule shall include sufficient detail to enable the Commissioner to make the determination described in that Subparagraph (b)(2) of this Rule.
- (d) The Commissioner may waive or reduce the advance notice requirement of Subparagraph (b)(1) of this Rule if circumstances beyond the licensee's reasonable control would make strict compliance therewith unduly burdensome to the licensee.

History Note: Authority G.S. 53-243.04; 53-243.05; 53-243.12;
Temporary Adoption Eff. July 1, 2002;
Eff. April 1, 2003

04 NCAC 03M .0203 NAME CHANGES

A licensee may, with the prior approval of the Commissioner, change its corporate name or the name under which it operates, provided:

- (1) the licensee and the proposed new name satisfies all applicable laws pertaining to corporate, fictitious and trade names (including, but not limited to, G.S. 53-127);
- (2) the licensee has given the Commissioner at least 30 days prior notice of the proposed new name; and
- (3) the Commissioner determines that the new name is not likely to result in confusion among the general banking public regarding the licensee's identity or powers.

History Note: Authority G.S. 53-243.04; 53-243.05; 53-243.07;
Temporary Adoption Eff. July 1, 2002;
Eff. April 1, 2003.

04 NCAC 03M .0204 EXPERIENCE

(a) As used in G.S. 243.05(c)(1), a person shall be considered to have acquired "experience in residential mortgage lending" during any documented period in which:

- (1) that person's employment income was principally derived from employment in the mortgage banking, banking or mortgage brokerage industry; and
- (2) he or she had actual responsibility for job functions in each area of study included in a fundamentals program approved by the Commissioner pursuant to 4 NCAC 03M .0301(c).

(b) Persons to whom a mortgage lender or mortgage broker license is issued pursuant to Sections 5(a) or 5(c) of the S.L. 2001-393 shall comply with the minimum experience requirements of G.S. 53-243.05(c) by not later than the date the licensee files for renewal of such license for the July 1, 2003 - June 30, 2004 license year.

History Note: Authority G.S. 53-243.05;
Eff. April 1, 2003.

SECTION .0300 - EDUCATION AND EXAMINATIONS

04 NCAC 03M .0301 APPROVAL OF PROVIDERS AND PROGRAMS

(a) A licensee or prospective licensee shall receive credit for participation in a program if it is presented by a provider approved by the Commissioner and the Commissioner has approved the program pursuant to this Rule. The Commissioner shall make available to the public a current listing of approved providers. The list shall indicate whether a provider is approved to present fundamentals programs, continuing education programs, or both.

(b) Any provider desiring to conduct a fundamentals or continuing education program shall, at least 30 days prior to any advertisement, promotion or solicitation of prospective attendees of the program, request that the Commissioner approve the provider's qualifications and approve one or more specific programs. The application shall be upon a form provided by the Commissioner and shall include the following information:

- (1) the name and address of the provider and date(s) on and locations at which the program is to be offered;
- (2) the qualifications and experience of the provider's principal officers, staff, and instructor(s);
- (3) the costs of all programs for which approval is sought; and
- (4) a description of each program for which approval is sought.

A prospective provider will be approved if the Commissioner determines that its general business experience, its knowledge of and experience in the mortgage lending and brokerage industries, its experience in the provision of professional educational presentations and the quality of such presentations warrant belief that its fundamentals or continuing education programs will meet the standards set forth in Paragraphs (c) and (d) of this Rule.

(c) Fundamentals programs must provide prospective loan officer licensees with a basic knowledge of and competency in the following: basics of home purchase and ownership, the mortgage industry generally, loan evaluation and documentation, the operation of a mortgage firm, features of various loan products, state and federally required disclosures, and ethical considerations.

(d) Continuing education programs must enhance the existing professional competence of the target group of licensees by providing updated information or more detailed or narrowly focused information than the fundamentals program.

(e) The Commissioner's approval of any provider or program shall expire one year from the date of issuance and thereafter on each subsequent anniversary of the renewal date. Application for renewal of provider or program approval must be filed by not later than 60 days prior to each such expiration date.

(f) The Commissioner may deny, revoke, suspend, or terminate approval of any provider or any individual program upon a finding that:

- (1) the provider has refused or failed to comply with any applicable provision of this Subchapter or of any contractual agreement with the Commissioner or has refused or failed to submit in a timely manner information or properly completed forms prescribed by the Commissioner; or
- (2) any provider officer or employee has obtained or used, or has attempted to obtain or use, in any manner or form, the examination questions; or
- (3) during any six month period fewer than 50 percent of the provider's fundamentals program students taking the examination for the first time achieve a passing score; or
- (4) the provider has not conducted at least one fundamentals or continuing education program (as applicable) during the preceding 12-month period; or
- (5) the provider has knowingly employed in connection with any program any person who has been convicted of any crime described in G.S. 53-243.05(a)(4)(ii) or (iii).

History Note: Authority G.S. 243.05; 53-243.07; 53-243.13;
Temporary Adoption Eff. July 1, 2002;
Eff. April 1, 2003.

04 NCAC 03M .0302 LOAN OFFICER EXAMINATION

Examinations shall be administered by the testing service no less frequently than quarterly throughout North Carolina. The testing service shall maintain and publish a current schedule of times and locations at which the examination will be administered.

History Note: Authority G.S. 53-243.05; 53-243.13;
Temporary Adoption Eff. July 1, 2002;
Eff. April 1, 2003.

04 NCAC 03M .0303 REQUIREMENTS FOR PROVIDERS

(a) A provider shall designate one person as its contact person who shall be available to the Commissioner during ordinary business hours and shall be knowledgeable and have authority to act with regard to all administrative matters concerning instructors, scheduling, advertising, recordkeeping, and supervising all programs offered by the provider.

(b) Providers shall retain the following material from each program on file at one location for a minimum of three years: class schedules; advertisements; bulletins, catalogues, and other publications distributed to students; a list of student names, with social security numbers, for each program; and the name of the instructor. All files shall be made available to the Commissioner upon request.

(c) A provider shall not use any words, symbols or other means to indicate that either the provider or a program has received the Commissioner's approval unless such approval has been issued and remains in effect.

(d) A provider shall publish and provide to all prospective students prior to or simultaneous with their enrollment a writing which contains the information described in 4 NCAC 03M .0301(b)(1) – (4).

History Note: Authority G.S. 53-243.05; 53-243.07;
Eff. April 1, 2003.

SECTION .0400 - REPORTING AND NOTIFICATION REQUIREMENTS

04 NCAC 03M .0401 ANNUAL REPORTING REQUIREMENTS

(a) No later than 90 days after the end of a mortgage banker licensee or mortgage broker licensee's fiscal year, it shall file an annual report. The report shall be filed on a form provided by the Commissioner and shall be supplemented or accompanied by a certified statement of financial condition.

(b) The annual report required by this Rule shall be verified by the oath of the licensee or a principal officer thereof.

(c) Failure of a licensee to submit an annual report in the manner required by this Rule shall be grounds for discipline pursuant to G.S. 53-243.12.

History Note: Authority G.S. 53-243.04;
Eff. April 1, 2003.

04 NCAC 03M .0402 AMENDMENTS TO INFORMATION ON FILE WITH THE COMMISSIONER

(a) A licensee shall notify the Commissioner within 30 days of any material change in any document or information previously submitted to the Commissioner during the application process, upon filing of the annual statement, or otherwise filed with the Commissioner.

(b) Notification shall be accomplished by letter or by submission of revised pages of the application or annual report filed pursuant to Rule .0201 and .0401, respectively, of this Subchapter.

History Note: Authority G.S. 53-243.04;
Eff. April 1, 2003.

04 NCAC 03M .0403 TERMINATION OF OPERATIONS

A licensee shall notify the Commissioner in writing of its decision to cease operations as a mortgage banker or mortgage broker in this State within seven days of such decision.

History Note: Authority G.S. 53-243.04;
Eff. April 1, 2003.

SECTION 0500 - RECORD AND BOOKKEEPING REQUIREMENTS

04 NCAC 03M .0501 RECORDS TO BE MAINTAINED

(a) A licensee shall maintain or cause to be maintained a record of all cash, checks or other monetary instruments received in connection with each mortgage loan application showing the identity of the payor, date received, amount, and purpose.

(b) A licensee shall maintain a record showing a sequential listing of checks written for each bank account relating to the licensee's business as a mortgage broker or mortgage lender, showing at least the payee, amount, date, and purpose of payment, including identification of the loan to which it relates, if any. The licensee shall reconcile the bank accounts monthly.

(c) The licensee shall create and retain a file for each mortgage loan application which shall contain, as applicable, applicant's name, date, name of person taking the application, HUD-1 Settlement Statement, copies of all agreements or contracts with the applicant, including any commitment and lock-in agreements, and all disclosures required by State and Federal law.

(d) A licensee shall maintain a record of samples of each piece of advertising relating to the licensee's business of mortgage brokerage or mortgage banking in North Carolina for a period of 12 months.

(e) A licensee shall maintain copies of all contracts, agreements and escrow instructions to or with any depository.

History Note: Authority G.S. 53-243.13;
Eff. April 1, 2003.

04 NCAC 03M .0502 FORM AND LOCATION

(a) Except for samples of advertising materials retained pursuant to 4 NCAC 03M .0501(d), all records required by this Section shall be kept for a period of at least three years, and shall be available for inspection and copying upon request by the Commissioner.

(b) Such records may be maintained in the form of magnetic tape, magnetic disk or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display or other medium that is convertible by the Commissioner into legible, tangible documents.

(c) All records required by this Rule shall be prepared in accordance with generally accepted accounting principles, where applicable.

(d) All records required to be maintained shall be secured against unauthorized access and damage in an accessible location within the State of North Carolina. However, a mortgage banking licensee which maintains a centralized out-of-state storage facility for such records from multiple states may request the Commissioner to approve its storage of such records in such out-of-state location. Such requests will be approved provided that:

- (1) The Commissioner determines that the proposed storage will ensure that the records are secured against unauthorized access and damage; and
 - (2) The licensee agrees in writing to make available at its expense for inspection and copying upon request by the Commissioner copies of all requested records in a form which satisfies the requirements of Subsection (b) of this Rule.
- (e) A licensee shall notify the Commissioner of any change in the location of its books and records within 10 days following such change.

*History Note: Authority G.S. 53-243.13;
Eff. April 1, 2003.*