



State of North Carolina

Office of the Commissioner of Banks

The Secure and Fair Enforcement Mortgage Licensing Act (the Act), Article 19B of Chapter 53 of the North Carolina General Statutes, prohibits the operation of a mortgage business through a business model known as a “net branch” or a “prohibited branch arrangement.” More specifically, N.C.G.S. § 53-244.040(e) requires licensed firms to “have a qualifying individual who operates the business under that person’s full charge, control, and supervision.” Thus, licensed firms are required to supervise and manage the behavior of all employees who are engaged in the mortgage business, with potential liability of the firm for any breaches of that duty.

For each application submitted to the Office of the Commissioner of Banks (“OCOB”), applicants are required to provide a copy of the signed Form MLA19 (attached).

PROHIBITED BRANCH ARRANGEMENT ATTESTATION

The following factors may indicate operation of a prohibited branch arrangement:

1. The branch manager is required to be obligated for contractual relationships with vendors such as leases, telephones, utilities, and advertising, or for ownership of branch personalty, including bank accounts for operating expenses.
2. The putative branch manager is required to indemnify the licensee for operational liabilities.
3. The putative branch manager is required to personally pay or cover branch operating expenses if funds are not available from an operating account.
4. The common law rights and responsibilities of the master-servant relationship move away from that described as "employee" to that of "independent contractor." This includes provisions that attempt or tend to isolate employment relationships to the branch instead of the licensed entity, or provisions that purport to utilize or permit IRS Form 1099 rather than IRS Form W-2 for federal income tax reporting compliance. See N.C.G.S. § 53-244.030(10).
5. The licensee seeks to shift ownership or equity to the branch manager in an effort to assign or transfer control without complying with applicable statutory provisions. Also see 04 NCAC 03M .0202.
6. The branch or its manager is required to pay to the licensee a fee for each transaction or a periodic, franchise-type fee regardless of activity.
7. The branch or branch manager operates with little or no supervision or control by the licensee—e.g., where internal audits and controls are weak or non-existent, or where no effective compliance review program exists.
8. The branch or branch manager independently markets the licensee's products, offers different products or services, or maintains lines of credit, warehouse agreements, or other investor agreements separate from the licensee.
9. The putative branch operates under a different name.

By signing below, _____ accepts responsibility for
Company Name

supervising the operation of the aforementioned branch as required by N.C.G.S. § 53-244.040(e).

Mortgage Lender/Broker Signature Date

Branch Manager Signature Date

Print Name/Title

Print Name

Location: 316 W. Edenton Street, Raleigh, NC 27603
Mailing Address: 4309 Mail Service Center, Raleigh, NC 27699-4309
(919) 733-3016 Fax (919) 733-6918 Internet: www.nccob.gov
An Equal Opportunity/Affirmative Action Employer

Form: MLA19
07/06/2015