State of North Carolina

Office of the Commissioner of Banks

Pat McCrory
Governor

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Commissioner of Banks

September 13, 2013

To: All Licensed Mortgage Loan Originators, Lenders, Brokers, and Servicers

From: The Office of the North Carolina Commissioner of Banks

Re: North Carolina Law Changes: HB 293, HB 616 and HB 692

The North Carolina Legislature recently enacted statutory changes to the North Carolina Secure and Fair Enforcement (S.A.F.E.) Mortgage licensing Act ("NC SAFE Act") and the NC Anti-Predatory Lending Law. To help clarify these changes, the North Carolina Office of the Commissioner of Banks has summarized the key legislative changes below.

1. House Bill 293: Amend the NC SAFE Act.
Enacted as Session Law 2013-412
Available online at: http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H293v3.pdf

Section 1 amends G.S. § 53-244.050(b)(1)c to extend from three (3) to five (5) years the time within which an applicant must have passed the mortgage loan originator ("MLO") licensure test from the date of application for licensure is made. The new five-year period conforms to federal law. Also, it eliminates the duplicative 16-hour educational requirement for exclusive mortgage brokers at G.S. § 53-244.050(b)(3)a.

Section 2 amends G.S. § 53-244.080(e) to provide that an MLO who fails to maintain a valid license for a period of five (5) years or longer must retake the test. This is an increase from the prior 3-year period.

Section 3 amends G.S. § 53-244.102(d)(1) to allow an MLO to receive credit for continuing education courses taken prior to the end of the reinstatement period.

Section 4 amends G.S. § 53-244.114(a)(2)e to allow the Commissioner to discipline a licensee for violations of federal law as well as any state law.

Section 5 amends G.S. § 53-244.116(b) to authorize the Commissioner of Banks to specify a time within which a person may re-apply for licensure after surrendering a license. Previously, a licensee who surrendered a license could not reapply. The former Mortgage Lending Act

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allowed the Commissioner of Banks to specify the period of time in which a person surrendering a license could re-apply for licensure.

Sections 6, 7, and 8 repeal the foreclosure suspension program. This program authorized the Commissioner of Banks to suspend a foreclosure proceeding for 60 days if the Commissioner finds evidence that a material violation of law has occurred in the origination or servicing of a loan being foreclosed or in threat of foreclosure. The Clerk of Court must suspend foreclosure upon notice from the Commissioner. However, the Commissioner no longer administers the foreclosure prevention program because it was moved to the Housing Finance Agency. Section 6 repealed G.S. § 53-244.117; Section 7 repealed G.S. § 45-21.16(B); and Section 8 revised the remedies provision of G.S. § 45-94.

Section 9 provides an effective date of **August 23, 2013**.

2. House Bill 616: Transitional MLO License.
Enacted as Session Law 2013-327
Available online at: http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H616v5.pdf

Section 1 amends G.S. § 53-244.030(15) and (33a) to add a "transitional mortgage loan originator" as a licensee and define it as "an individual who is authorized to act as a mortgage loan originator subject to a transitional mortgage loan originator license which is limited to a term of no more than 120 days and is not subject to reapplication, renewal, or extension by the Commissioner."

Sections 2 amends G.S. § 53-244.040(a) and (a1) to authorize the licensure of transitional mortgage loan originators. The bill authorizes the Commissioner to grant a transitional mortgage loan originator license to a person who has an active loan originator license in another state provided the person has registered, been fingerprinted, and maintains a unique identifier with the Nationwide Mortgage Licensing System and Registry. The bill also allows a license to be issued to a person who is registered, but not licensed in this or another state, if permitted by federal regulation, but only to the extent permitted by federal regulation. Currently, no federal regulations on this issue have been promulgated.

Sections 2 through 16 change various provisions of the NC SAFE Act to accommodate a transitional MLO license.

Section 17 provides an effective date of **September 1, 2013**.

3. House Bill 692: Amend NC Anti-Predatory Lending Law.
Enacted as Session Law 2013-399
Available online at: http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H692v7.pdf

Section 1 modifies G.S. § 24-1.1E(a)(5) to amend the definition of the term "points and fees" in the anti-predatory lending law to exclude any up-front fees collected and paid to the Federal

Housing Administration, the Veteran's Administration, or the US Department of Agriculture to insure or guarantee a home loan. This provision also eliminates from the points and fees calculation the prior exclusion of up-front payments for private mortgage insurance premiums up to 1.25% of the loan amount. As a result, the points and fees calculation now includes any up-front private mortgage insurance premiums.

Section 2 modifies G.S. § 24-1.1E(a)(6) to amend the definition of the term "threshold" to increase the maximum cap on points and fees from 4% back to 5% of the total loan amount, as it had been from 1999 until 2010.

Section 3 modifies G.S. § 24-1.1F to amend the provisions related to "rate spread home loans." This provision was added to the law in 2007 and was intended to regulate certain subprime home loans. Under current law, rate spread home loans are residential mortgage loans with an annual percentage rate that is at least 3% greater than a US Treasury security with a comparable maturity or at least 1.75% greater than the conventional mortgage rate on a first mortgage, or at least 5% greater than a Treasury note or 3.75% greater than a conventional mortgage on a subordinate loan. This section amends the law to conform the definition of a rate spread home loan to federal law by referencing the definition of a "higher priced" mortgage under federal law. As under the prior version of the law, any loan made in violation of this section would be declared usurious.

Section 4 provides an effective date of **October 1, 2013**.