

## CHAPTER 03 - BANKING COMMISSION

### SUBCHAPTER 03A - ORGANIZATION

#### SECTION .0100 - GENERAL INFORMATION

##### **04 NCAC 03A .0101 NAME: LOCATION AND ADDRESS**

The Office of the Commissioner of Banks is located at 316 West Edenton Street, Raleigh, North Carolina. The mailing address for the Office of the Commissioner of Banks and all of its officers and employees is 4309 Mail Service Center, Raleigh, North Carolina 27699-4309. The office is open to the public Monday through Friday, 8:00 a.m. to 5:00 p.m.

*History Note:* Authority G.S. 53C-2-1; 53C-2-2;  
Eff. February 1, 1976;  
Amended Eff. September 1, 2006; July 1, 1990; February 9, 1978;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.

- 04 NCAC 03A .0102 GENERAL PURPOSES**
- 04 NCAC 03A .0103 AREAS OF RESPONSIBILITY**
- 04 NCAC 03A .0104 FUNCTIONS**
- 04 NCAC 03A .0105 CONFIDENTIAL RECORDS**
- 04 NCAC 03A .0106 CHARGES FOR SERVICES**
- 04 NCAC 03A .0107 CHECKS FOR FEES: ETC.**

*History Note:* Authority G.S. 53-92; 53-99; 53-104; 53-122(3); 53-125; 150A-10; 150A-11(1);  
Eff. February 1, 1976;  
Amended Eff. September 26, 1979;  
Repealed Eff. January 1, 1985.

#### SECTION .0200 - STRUCTURE OF BANKING COMMISSION

- 04 NCAC 03A .0201 COMPOSITION AND AUTHORITY**
- 04 NCAC 03A .0202 MEETINGS**
- 04 NCAC 03A .0203 AGENDA**
- 04 NCAC 03A .0204 HEARING OFFICER**
- 04 NCAC 03A .0205 OWNERSHIP OF BANK STOCK: DISCLOSURE**
- 04 NCAC 03A .0206 PARTICIPATION OF COMMISSIONERS IN COMMISSION ACTION**

*History Note:* Authority G.S. 53-92; 53-104; 143A-177; 150B-10;  
Eff. February 1, 1976;  
Amended Eff. February 9, 1978;  
Repealed Eff. January 1, 1985.

#### SECTION .0300 - STRUCTURE OF THE OFFICE OF THE COMMISSIONER OF BANKS

- 04 NCAC 03A .0301 COMMISSIONER OF BANKS**
- 04 NCAC 03A .0302 DEPUTY COMMISSIONER OF BANKS**
- 04 NCAC 03A .0303 CONSUMER FINANCE ADMINISTRATOR**
- 04 NCAC 03A .0304 BANK EXAMINERS**
- 04 NCAC 03A .0305 CLERICAL STAFF**

*History Note:* Authority G.S. 53-92; 53-101; 150B-10;  
Eff. February 1, 1976;  
Repealed Eff. January 1, 1985.

## SUBCHAPTER 03B - RULE-MAKING AND CONTESTED CASES

### SECTION .0100 - RULE-MAKING

#### 04 NCAC 03B .0101 PETITIONS

(a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the Banking Commission shall address a petition to:

Office of The Commissioner of Banks  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309  
Attention: Rule-making Coordinator

(b) The Commissioner of Banks will determine, based on a study of the facts stated in the petition, whether the public interest will be served by granting it. He will consider all the contents of the submitted petition, plus any additional information he deems relevant.

*History Note: Authority G.S. 53C-2-1; 53C-2-2; 150B-20;  
Eff. February 1, 1976;  
Amended Eff. August 1, 2004; April 1, 1999;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.*

#### 04 NCAC 03B .0102 NOTICE

(a) Any person or agency desiring to be placed on the mailing list for Banking Commission rule-making notices may file a request in writing, furnishing their name and mailing address to:

Office of The Commissioner of Banks  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309  
Attention: Rule-making Coordinator

The request must state the subject areas within the authority of the Banking Commission for which notice is requested.

(b) Persons desiring information in addition to that provided in a particular rule-making notice may contact:

Office of The Commissioner of Banks  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309  
Attention: Rule-making Coordinator

*History Note: Authority G.S. 53C-2-1; 53C-2-2; 150B-20;  
Eff. February 1, 1976;  
Amended Eff. August 1, 2004; April 1, 1999; August 1, 1988;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.*

#### 04 NCAC 03B .0103 HEARINGS

(a) Unless otherwise stated in a particular rule-making notice, hearings before the Banking Commission shall be held in Raleigh, North Carolina, at regular scheduled or special called meetings of the Banking Commission.

(b) Any person desiring to present oral data, views, or arguments on the proposed rule must, before the hearing, file a notice with:

Office of The Commissioner of Banks  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.  
Attention: Rule-making Coordinator

Any person permitted to make an oral presentation may submit a written copy of the presentation to the above-named person prior to or at the hearing.

(c) A request to make an oral presentation must contain a brief summary of the individual's views with respect thereto, and a statement of the length of time the individual wants to speak. Presentations may not exceed 15

minutes unless, upon request, either before or at the hearing, the Commissioner of Banks or the presiding officer determines that fundamental fairness and procedural due process require an extension of time.

(d) Upon receipt of a request to make an oral presentation the Commissioner of Banks shall acknowledge receipt of the request, and inform the person requesting of the imposition of any limitations deemed necessary to the end of a full and effective public hearing on the proposed rule.

(e) Upon receipt of such written comments prompt acknowledgment shall be made including a statement that the comments therein shall be considered fully by the Banking Commission.

(f) The presiding officer at the hearing shall have complete control of the proceedings, including: extensions of any time requirements, recognition of speakers, time allotments for presentations, direction of the flow of the discussion, and the management of the hearing. The presiding officer, at all times, shall take care that each person participating in the hearing is given a fair opportunity to present views, data, and comments.

*History Note:* Authority G.S. 53C-2-1; 53C-2-2; 150B-21.2;  
Eff. February 1, 1976;  
Amended Eff. September 1, 2004; April 1, 1999; August 1, 1988;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.

#### **04 NCAC 03B .0104 TEMPORARY RULES**

*History Note:* Authority G.S. 53-77.3; 53-92; 150B-13;  
Eff. February 1, 1976;  
Repealed Eff. September 1, 1988.

#### **04 NCAC 03B .0105 DECLARATORY RULINGS**

(a) Any person substantially affected by a statute administered or rule promulgated by the Commissioner of Banks or the Banking Commission may request a declaratory ruling as to:

- (1) whether, and if so how, the statute or rule applies to a given factual situation, or
- (2) whether a particular agency rule is valid.

All decisions of the Commissioner of Banks relative to declaratory rulings shall be subject to review by the Banking Commission upon written application of any aggrieved party.

(b) The Commissioner of Banks shall have the sole power to make such declaratory rulings. All requests for declaratory rulings shall be written and mailed to:

Office of The Commissioner of Banks  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.  
Attention: Legal Division

(c) All requests for a declaratory ruling must include the following information:

- (1) name and address of petitioner;
- (2) statute or rule to which petition relates;
- (3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him;
- (4) a statement of whether an oral hearing is desired, and if so the reasons for such an oral hearing.

(d) Whenever the Commissioner of Banks believes for good cause that the issuance of a declaratory ruling is undesirable, he may refuse to do so. When good cause for refusing to issue a declaratory ruling is deemed to exist, the Commissioner of Banks shall notify the petitioner of his decision in writing, stating reasons for the denial of a declaratory ruling.

(e) Where a declaratory ruling is deemed appropriate, the Commissioner of Banks shall issue the ruling within 60 days of receipt of the petition.

(f) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedures as may be appropriate in a particular case.

*History Note:* Authority G.S. 53C-2-1; 53C-2-2;  
Eff. February 1, 1976;  
Amended Eff. August 1, 2004;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.

## SECTION .0200 - CONTESTED CASES

<b>04 NCAC 03B .0201</b>	<b>BANKING COMMISSION HEARINGS</b>
<b>04 NCAC 03B .0202</b>	<b>HEARINGS BEFORE THE COMMISSIONER OF BANKS</b>
<b>04 NCAC 03B .0203</b>	<b>REQUEST FOR HEARING</b>
<b>04 NCAC 03B .0204</b>	<b>NOTICE</b>
<b>04 NCAC 03B .0205</b>	<b>WRITTEN ANSWERS TO NOTICE</b>
<b>04 NCAC 03B .0206</b>	<b>REPRESENTATION BY AN ATTORNEY</b>

*History Note:* Authority G.S. 53-92; 150B-2(2);  
Eff. February 1, 1976;  
Amended Eff. September 1, 1988;  
Repealed Eff. August 1, 2004.

### **04 NCAC 03B .0207 WAIVER**

*History Note:* Authority G.S. 53-92; 150B-40(a);  
Eff. February 1, 1976;  
Repealed Eff. August 1, 1988.

### **04 NCAC 03B .0208 DEPOSITIONS**

*History Note:* Authority G.S. 53-91; 150B-39(a);  
Eff. February 1, 1976;  
Repealed Eff. August 1, 1988.

<b>04 NCAC 03B .0209</b>	<b>DISCOVERY</b>
<b>04 NCAC 03B .0210</b>	<b>RULES OF EVIDENCE</b>
<b>04 NCAC 03B .0211</b>	<b>PRE-HEARING CONFERENCE</b>
<b>04 NCAC 03B .0212</b>	<b>PLACE AND FORUM FOR CONTESTED CASES</b>
<b>04 NCAC 03B .0213</b>	<b>FAILURE TO APPEAR FOR A CONTESTED CASE</b>
<b>04 NCAC 03B .0214</b>	<b>CONSOLIDATION OF CONTESTED CASES</b>
<b>04 NCAC 03B .0215</b>	<b>INTERVENTION OF A NEW PARTY INTO A CONTESTED CASE</b>
<b>04 NCAC 03B .0216</b>	<b>DISQUALIFICATION OF HEARING OFFICER</b>
<b>04 NCAC 03B .0217</b>	<b>SUBPOENAS</b>
<b>04 NCAC 03B .0218</b>	<b>PUBLIC INSPECTION OF FILES</b>

*History Note:* Authority G.S. 53-92; 53-99; 53-125; 150B-24; 150B-38; 150B-38(f); 150B-39; 150B-40; 150B-41;  
Eff. February 1, 1976;  
Amended Eff. August 1, 1998;  
Repealed Eff. August 1, 2004.

### **04 NCAC 03B .0219 DEFINITIONS**

As used in this Subchapter:

- (1) "Appellate panel" means an appellate review panel appointed pursuant to G.S. 53C-2-6(b).
- (2) "Commission" means the North Carolina State Banking Commission.
- (3) "Commissioner" means the North Carolina Commissioner of Banks.
- (4) "Court" means a North Carolina District or Superior Court.
- (5) "Day" means a calendar day, other than a Saturday, Sunday or North Carolina state holiday.
- (6) "Hearing officer" means the Commissioner or an individual appointed by the Commissioner pursuant to G.S. 53C-2-6(c).

- (7) "Rules of Civil Procedure" means the North Carolina Rules of Civil Procedure, G.S. 1A-1, et seq., as the same may be amended from time to time.
- (8) Terms used herein which are defined by G.S. 150B shall be defined as in G.S. 150B.

*History Note:* Authority G.S. 53C-2-5; 53C-2-6;  
Eff. August 1, 2004;  
Amended Eff. November 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.

#### **04 NCAC 03B .0220 HEARINGS**

Whenever the Commissioner is authorized or required by law to hold a hearing, the hearing officer shall conduct the hearing in accordance with the applicable provisions of law, the Rules of Civil Procedure, the Rules of Evidence and the procedures set forth in this Subchapter.

*History Note:* Authority G.S. 53C-2-1; 53C-2-2; 53C-2-6; 53-186; 53-208.10; 53-208.23; 53-224.25; 53-228; 53-244.113; 53-244.116; 53-251; 53-271(c); 53-284; 53-321; 53-327; 53-369; 53-370; 53-412; 150B-38(h);  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.

#### **04 NCAC 03B .0221 APPLICATION OF THE RULES OF CIVIL PROCEDURE**

Except as otherwise provided in this Subchapter or in G.S. 150B, the Rules of Civil Procedure shall apply in hearings and prehearing proceedings governed by this Subchapter to the same extent as though the hearing or prehearing proceeding was pending in a Court.

*History Note:* Authority G.S. 53C-2-2; 53C-2-6; 150B-38(h);  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.

#### **04 NCAC 03B .0222 FILING OF DOCUMENTS**

(a) All requests for hearing, written answers, motions, responses to motions or other papers required or permitted to be filed in any contested case shall be signed by the party or the party's attorney and the original thereof filed with the Commissioner addressed as follows:

If filed via the United States Postal Service:

Office of the Commissioner of Banks  
4309 Mail Service Center  
Raleigh, NC 27699-4309  
Attn: Legal Division

If filed via a private overnight mail service or via hand delivery:

Office of the Commissioner of Banks  
316 W. Edenton Street  
Raleigh, NC 27603-1716  
Attn: Legal Division

(b) A copy of any papers filed with the Commissioner, together with any attachments, shall be served upon all parties in any manner permitted by the Rules of Civil Procedure.

(c) Any paper required or permitted to be filed pursuant to this Rule shall be considered filed on the date it is actually received at the address above.

*History Note:* Authority G.S. 53C-2-2; 53C-2-6; 150B-38(h);  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.

#### **04 NCAC 03B .0223      REQUEST FOR A HEARING**

(a) A person aggrieved may request a hearing, which shall be conducted by a hearing officer. The request shall be made in writing, state all statutory or other legal bases for the request, describe the events or circumstances giving rise to the request and shall include a copy of any supporting documents or other papers supporting the request. If applicable, the request may (but need not) include a statement of pertinent legal issues or questions.

(b) If the Commissioner determines that it is appropriate to do so, he may direct his staff to schedule a hearing, notwithstanding the fact that no request for a hearing has been received. In such cases, the Commissioner's direction shall be treated as a request for a hearing.

*History Note:*      *Authority G.S. 53C-2-2; 53C-2-6; 53-208.10(c); 53-208.23; 53-244-113(a); 150B-38(h);  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3,  
2017.*

#### **04 NCAC 03B .0224      DATE, TIME AND LOCATION OF HEARING; MOTIONS TO CONTINUE**

(a) The date, time and location of any hearing under this Subchapter shall be set forth in the notice of hearing or other paper which commences the hearing process.

(b) Any party may move to continue the hearing.

(c) The hearing officer shall rule on any motion to continue. Unless oral argument is requested by the hearing officer, motions to continue shall be decided based upon the written submissions of the parties.

*History Note:*      *Authority G.S. 53C-2-2; 53C-2-6; 150B-38(h);  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3,  
2017.*

#### **04 NCAC 03B .0225      MOTIONS**

(a) Any party may file any motion which would be permitted under the Rules of Civil Procedure if the contested case was pending in a Court.

(b) The opposing party may file such response as is permitted by the Rules of Civil Procedure to any such motion within five days of the date that it is filed with the Commissioner.

(c) The hearing officer shall rule on any such motion. The hearing officer may rule on any motion with or without oral argument. If the hearing officer determines that oral argument is appropriate, he shall notify the parties of the date for such argument. The notice shall indicate whether the argument is to be conducted in person or by conference call.

*History Note:*      *Authority G.S. 53C-2-2; 53C-2-6(c); 150B-38(h);  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3,  
2017.*

#### **04 NCAC 03B .0226      PRE-HEARING CONFERENCE**

(a) If the hearing officer determines that to do so would aid in the prompt and efficient resolution of any contested case, the hearing officer may order that the parties attend a pre-hearing conference. The notice of the conference shall either be included in the document referred to in Rule .0224(a) of this Section or in a separate written order. The purpose of a pre-hearing conference is to:

- (1) explore any grounds upon which a contested case may be resolved without the need for a hearing;
- (2) determine the scope of discovery each party wishes to pursue;
- (3) exchange exhibits and other evidence;
- (4) reach stipulations or other agreements; and
- (5) pursue any other matters which will reduce the cost, save time, simplify the issues to be heard, or otherwise aid in the expeditious disposition of the matters to be addressed by the hearing.

(b) The pre-hearing conference may be conducted informally between the parties. At the request of either party, the pre-hearing conference may be conducted by a member of the Commissioner's legal staff.

*History Note:*      *Authority G.S. 53C-2-2; 53C-2-6(c); 150B-41(c);*

*Eff. August 1, 2004;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.*

#### **04 NCAC 03B .0227 HEARINGS**

- (a) Prior to the commencement of a hearing, the hearing officer shall rule on any outstanding motions.
- (b) Once a hearing has begun the hearing officer, may adjourn the hearing and reconvene the same at a later time or date.
- (c) Hearings are open to the public, except as to any testimony or other evidence regarding matters made confidential by law.
- (d) Hearings shall be conducted in a manner which conforms to the Rules of Civil Procedure and the Rules of Evidence. The order of evidence shall be determined by the hearing officer.
- (e) Persons permitted to intervene pursuant to the Rules of Civil Procedure shall be permitted to participate in the hearing only to the extent the hearing officer determines is necessary for a full and fair adjudication of the case.

*History Note: Authority G.S. 53C-2-2; 53C-2-6; 150B-38(h);*  
*Eff. August 1, 2004;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.*

#### **04 NCAC 03B .0228 STIPULATIONS**

Parties may by written stipulation agree upon the facts or any portion thereof and their stipulation may be regarded and used as evidence at the hearing. However, the hearing officer shall not be precluded from requiring or allowing the introduction of additional evidence concerning the issues to which the parties have stipulated.

*History Note: Authority G.S. 53C-2-2; 53C-2-6; 150B-38(h);*  
*Eff. August 1, 2004;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.*

### **SECTION .0300 - APPEALS TO THE STATE BANKING COMMISSION**

#### **04 NCAC 03B .0301 APPOINTMENT OF APPELLATE PANEL**

In the event the Chairman of the Commission, pursuant to G.S. 53C-2-6(b) appoints an appellant panel to consider an appeal and make a recommended decision to the State Banking Commission, the Commissioner's staff shall send all parties written notice of that appointment.

*History Note: Authority G.S. 53C-2-1(e); 53C-2-6(b); 53-215; 53-224.30; 53-231; 53-232.17; 53-244.121; 53-252; 53-272; 53-289; 53-350; 53-410; 53-412(d);*  
*Eff. August 1, 2004;*  
*Amended Eff. November 1, 2013;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.*

#### **04 NCAC 03B .0302 RECORD ON APPEAL; HEARING DATE; MEMORANDA OF LAW**

- (a) The record on appeal shall consist of the official agency record as set forth in G.S. 150B-42.
- (b) The Commissioner's counsel, after consulting with the chair of the Commission or Appellate Panel, shall provide each party with written instructions setting forth the deadlines by which memoranda of law shall be filed by the parties, when the appeal will be considered by the Commission or Appellate Panel, and whether oral argument will be heard.

*History Note: Authority G.S. 53C-2-1(e); 53C-2-6(b); 150B-38(h);*  
*Eff. August 1, 2004;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.*

**04 NCAC 03B .0303 ORAL ARGUMENT**

(a) The decision to hear oral argument in an appeal to the Commission shall be in the discretion of the Commission or Appellate Panel. If oral argument is permitted, the chair of the Commission or Appellate Panel shall notify the Commissioner, who shall notify all parties and set a date and time for same.

(b) If oral argument is permitted, each party shall be allowed a maximum of 30 minutes for oral argument, including rebuttal arguments.

*History Note: Authority G.S. 53C-2-1; 53C-2-6(b); 150B-38(h);  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.*

**04 NCAC 03B .0304 COMMISSION REVIEW OF APPELLATE PANEL'S RECOMMENDED DECISION**

(a) If an appeal is heard by an Appellate Panel, that Appellate Panel, after reviewing the record on appeal, memoranda of law and hearing oral arguments, if any, shall make a recommended decision to the Commission. The Commission shall, by a vote of the majority of its members present and voting at any regular or special meeting, either affirm, affirm with modifications or reject the recommended decision of the Appellate Panel.

(b) If the Commission rejects the Appellate Panel's recommended decision, it shall specify the actions the Appellate Panel or the Commissioner shall take with regard to the appeal.

(c) A decision to affirm or to affirm with modifications shall be considered a "final agency decision" for purposes of G.S.150B-42.

*History Note: Authority G.S. 53C-2-1; 53C-2-6; 150B-38(h);  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.*

**SUBCHAPTER 03C - BANKS**

**SECTION .0100 - ORGANIZATION AND CHARTERING**

- 04 NCAC 03C .0101 APPLICATION**
- 04 NCAC 03C .0102 EXAMINATION BY COMMISSIONER**
- 04 NCAC 03C .0103 REPORT TO BANKING COMMISSION**
- 04 NCAC 03C .0104 REVIEW BY BANKING COMMISSION**

*History Note: Authority G.S. 53C-2-5; 53C-3-1(a); 53C-3-1(b); 53C-3-4; 53C-3-5; 53C-3-6; 53-137; 53-333;  
Eff. February 1, 1976;  
Amended Eff. January 1, 2013; September 1, 2006; September 1, 1990; November 1, 1982; July 24, 1979; August 1, 1978;  
Repealed Eff. October 1, 2014.*

- 04 NCAC 03C .0105 STATEMENT FILED BEFORE BEGINNING BUSINESS**
- 04 NCAC 03C .0106 CERTIFICATION TO THE SECRETARY OF STATE**

*History Note: Authority G.S. 53-4; 53-5; 53-7; 53-92; 150A-11(1);  
Eff. February 1, 1976;  
Repealed Eff. January 1, 1985.*

- 04 NCAC 03C .0107 BANK CERTIFICATE**

*History Note: Authority G.S. 53C-2-5; 53C-3-7;  
Eff. February 1, 1976;*



*Amended Eff. January 1, 2013;  
Repealed Eff. October 1, 2014.*

**04 NCAC 03C .0108 JUDICIAL REVIEW**

*History Note: Authority G.S. 53-92; 150A-11(1); 150A-43;  
Eff. February 1, 1976;  
Repealed Eff. January 1, 1985.*

**04 NCAC 03C .0109 APPLICATION TO ESTABLISH BANK: CONDITIONAL APPROVAL**

*History Note: Authority G.S. 53-5; 53-92; 53-104; 150A-11(1);  
Eff. February 1, 1976;  
Repealed Eff. November 1, 1982.*

**04 NCAC 03C .0110 ORGANIZATIONAL EXPENSES**

*History Note: Authority G.S. 53-2; 53-92; 53-104;  
Eff. February 1, 1976;  
Amended Eff. July 1, 1991; September 1, 1990;  
Repealed Eff. January 1, 2013.*

**04 NCAC 03C .0111 NATIONAL BANK CONVERSION**

*History Note: Authority G.S. 53C-2-5; 53C-7-301;  
Eff. September 26, 1979;  
Amended Eff. January 1, 2013; September 1, 2006; September 1, 1990; August 1, 1988;  
Repealed Eff. October 1, 2014.*

**04 NCAC 03C .0112 ELIMINATION OF DIRECTOR LIABILITY**

*History Note: Authority G.S. 53C-2-5; 53C-4-6; 55-2-02(b)(3); 55-8-30;  
Eff. June 1, 1995;  
Amended Eff. January 1, 2013;  
Repealed Eff. October 1, 2014.*

**SECTION .0200 - BRANCHES**

**04 NCAC 03C .0201 ESTABLISHMENT OF BRANCHES**

*History Note: Authority G.S. 53C-2-5; 53C-6-15;  
Eff. February 1, 1976;  
Amended Eff. January 1, 2013; September 1, 2006; June 1, 1995; July 1, 1991; October 1, 1990;  
November 1, 1982;  
Repealed Eff. October 1, 2014.*

**04 NCAC 03C .0202 DISCONTINUANCE**

*History Note: Authority G.S. 53-4; 53-62; 53-92; 53-104;  
Eff. February 1, 1976;  
Amended Eff. September 1, 2006; June 1, 1995; October 1, 1990; November 1, 1982;  
Repealed Eff. January 1, 2013.*

**04 NCAC 03C .0203 DISCONTINUANCE OF A LIMITED SERVICE FACILITY**

**04 NCAC 03C .0204 CONVERSION OF BRANCH TO LIMITED SERVICE FACILITY**

*History Note:* Authority G.S. 53-62; 53-92; 53-104; 53-122(3);  
Eff. September 1, 1990;  
Amended Eff. September 1, 2006; June 1, 1995;  
Repealed Eff. January 1, 2013.

## **SUBCHAPTER 03C - BANKS**

### **SECTION .0300 - CHANGE OF LOCATION**

#### **04 NCAC 03C .0301 CHANGE OF LOCATION OF MAIN OFFICE, BRANCH OR LTD SVC FACILITY**

*History Note:* Authority G.S. 53-62; 53-92; 53-104; 53-122(3);  
Eff. February 1, 1976;  
Amended Eff. September 1, 2006; June 1, 1995; September 1, 1990; November 1, 1982; August 1, 1978;  
Repealed Eff. February 1, 2013.

#### **04 NCAC 03C .0302 EXAMINATION BY COMMISSIONER 04 NCAC 03C .0303 REPORT 04 NCAC 03C .0304 REVIEW BY BANKING COMMISSION 04 NCAC 03C .0305 FINAL ORDER BY COMMISSIONER 04 NCAC 03C .0306 CERTIFICATE**

*History Note:* Authority G.S. 53-62; 53-92; 150A-11(1);  
Eff. February 1, 1976;  
Amended Eff. March 15, 1978;  
Repealed Eff. November 1, 1982.

### **SECTION .0400 - CONSOLIDATION OF BANKS**

#### **04 NCAC 03C .0401 APPLICATION**

*History Note:* Authority G.S. 53-12; 53-92;  
Eff. February 1, 1976;  
Amended Eff. September 1, 2006; September 1, 1990; July 24, 1979;  
Repealed Eff. February 1, 2013.

#### **04 NCAC 03C .0402 PUBLICATION**

*History Note:* Authority G.S. 53-12; 53-92; 150B-11(1);  
Eff. February 1, 1976;  
Repealed Eff. August 1, 1988.

#### **04 NCAC 03C .0403 INVESTIGATION 04 NCAC 03C .0404 ORDER 04 NCAC 03C .0405 REVIEW BY THE BANKING COMMISSION**

*History Note:* Authority G.S. 53C-2-5; 53C-7-202; 53C-7-203; 53C-7-209;  
Eff. February 1, 1976;  
Amended Eff. January 1, 2013; September 1, 1990;  
Repealed Eff. October 1, 2014.

#### **04 NCAC 03C .0406 FILING WITH SECRETARY OF STATE**

*History Note:* Authority G.S. 53-13; 53-92;

*Eff. February 1, 1976;*  
*Amended Eff. September 1, 1990;*  
*Repealed Eff. February 1, 2013.*

**04 NCAC 03C .0407 WAIVER BY COMMISSIONER**

*History Note: Authority G.S. 53C-2-5; 53C-2-1; 53C-9-101;*  
*Eff. November 1, 1982;*  
*Amended Eff. January 1, 2013;*  
*Repealed Eff. October 1, 2014.*

**SECTION .0500 - WORK WEEK**

**04 NCAC 03C .0501 OPERATION OF BANKS ON A FIVE-DAY WEEK BASIS**  
**04 NCAC 03C .0502 BANKS REVERTING TO A SIX-DAY WEEK BASIS**

*History Note: Authority G.S. 53-77.1; 53-92; 150B-11(1);*  
*Eff. February 1, 1976;*  
*Repealed Eff. July 1, 1990.*

**04 NCAC 03C .0503 DAYS AND HOURS OF REGULAR OPERATION**

*History Note: Authority G.S. 53-77.1A(d); 53-92;*  
*Eff. July 1, 1990;*  
*Repealed Eff. January 1, 2013.*

**SECTION .0600 - EXAMINATION OF BANKS**

**04 NCAC 03C .0601 EXAMINATION**  
**04 NCAC 03C .0602 REPORT**

*History Note: Authority G.S. 53-92; 53-99; 53-109; 53-117; 53-123; 53-125; 150A-11(1);*  
*Eff. February 1, 1976;*  
*Repealed Eff. January 1, 1985.*

**SECTION .0700 - REPORTS REQUIRED BY COMMISSIONER OF BANKS**

**04 NCAC 03C .0701 EXAMINING COMMITTEE REPORT**  
**04 NCAC 03C .0702 REPORTS OF CONDITION AND INCOME**  
**04 NCAC 03C .0703 PUBLISHER'S COPY, REPORT OF CONDITION AND INCOME**

*History Note: Authority G.S. 53-83; 53-92; 53-99; 53-105;*  
*Eff. February 1, 1976;*  
*Amended Eff. September 1, 2006; July 1, 1990; September 26, 1979;*  
*Repealed Eff. April 1, 2007.*

**04 NCAC 03C .0704 CONSOLIDATED REPORT OF INCOME**  
**04 NCAC 03C .0705 REPORT OF MANAGEMENT AND PERSONNEL**

*History Note: Authority G.S. 53-92; 53-106; 53-107; 150B-11(1);*  
*Eff. February 1, 1976;*  
*Amended Eff. September 26, 1979;*  
*Repealed Eff. July 1, 1990.*

**SECTION .0800 - MISCELLANEOUS REPORTS AND APPROVALS**

<b>04 NCAC 03C .0801</b>	<b>OATH OF DIRECTORS</b>
<b>04 NCAC 03C .0802</b>	<b>DEPOSITORY BANKS</b>
<b>04 NCAC 03C .0803</b>	<b>OTHER REAL ESTATE</b>
<b>04 NCAC 03C .0804</b>	<b>SUSPENSION OF INVESTMENT AND LOAN LIMITATION</b>

*History Note:* Authority G.S. 53-43(3)c; 53-49; 53-80; 53-81; 53-84; 53-92; 53-99;  
 Eff. February 1, 1976;  
 Amended Eff. September 1, 2006; May 1, 1992; September 26, 1979;  
 Repealed Eff. January 1, 2013.

<b>04 NCAC 03C .0805</b>	<b>STOCKHOLDERS LIST</b>
<b>04 NCAC 03C .0806</b>	<b>CHANGES IN OWNERSHIP AND MANAGEMENT</b>

*History Note:* Authority G.S. 53-42.1; 53-85; 53-92; 53-108; 150A-11(1);  
 Eff. February 1, 1976;  
 Amended Eff. September 26, 1979;  
 Repealed Eff. January 1, 1985.

<b>04 NCAC 03C .0807</b>	<b>SUBSIDIARY INVESTMENT APPROVAL</b>
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*History Note:* Authority G.S. 53-47; 53-93; 53-95; 53-104;  
 Eff. May 1, 1992;  
 Amended Eff. December 1, 2011; June 1, 1995;  
 Repealed Eff. January 1, 2013.

#### **SECTION .0900 – OPERATIONS**

<b>04 NCAC 03C .0901</b>	<b>BOOKS AND RECORDS</b>
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(a) Each bank, each affiliate of the bank, and the bank's parent holding company, shall keep, and make available for examination by the representatives of the Commissioner of Banks, books and records that reflect all the transactions of the bank in its true financial condition. Such records shall be kept so as to permit and facilitate a speedy examination, by the representatives of the Commissioner of Banks. Without implying that these are the only books and records to be kept, the following books and records shall be kept at the bank, or at its parent holding company, unless another storage site is approved by the Commissioner of Banks in writing by letter or other written agreement:

- (1) Alphabetical direct and indirect liability ledgers. Each bank shall keep an alphabetical direct and indirect liability ledger. The alphabetical direct liability ledger shall show a customer's direct obligations owed to the bank by loan name or account number and the balance outstanding under each account. The alphabetical indirect liability ledger shall show a customer's indirect obligations owed to the bank by loan name or account number and the balance outstanding under each account. The alphabetical direct liability ledger shall be kept in balance with the general ledger control. The alphabetical indirect liability ledger shall be updated at least monthly. Where the aggregate total of a customer's direct and indirect obligations to the bank do not exceed twenty thousand dollars (\$20,000), the indirect obligations of that customer may be omitted from the alphabetical indirect liability ledger. In a bank whose automated record system is not able to produce an alphabetical liability ledger, the bank shall produce an alphabetical listing of borrowers showing all of a customer's loan or account numbers and the amount outstanding under each number when called upon by representatives of the Commissioner of Banks. Each bank shall have the ability to produce both the direct and indirect liability ledgers in hard copy form upon request by representatives of the Commissioner of Banks.
- (2) Monthly reconciliation of accounts with correspondent banks. A record shall be kept, showing the monthly reconciliation of each account with correspondent banks. A signed review of such reconciliations shall be made by an officer or employee of the bank other than the person responsible for preparing the reconciliation.
- (3) Purchases and sales of securities. A record shall be kept of purchases and sales of securities. The record shall include the following:

- (A) dates of purchases and sales;
- (B) interest rates;
- (C) maturities;
- (D) par value;
- (E) cost value;
- (F) all write-ups or write-downs;
- (G) a full description of the security;
- (H) from whom purchased;
- (I) to whom sold;
- (J) purchase price;
- (K) selling price; and
- (L) when, where, and why pledged or deposited.

This record shall be maintained in balance with the general ledger control.

- (4) Charge-offs. A record shall be kept of all items charged off and of all recoveries. All charge-offs shall be authorized or approved by the executive committee or by the board of directors and such action recorded in their minutes. The charge-off record shall show the date of the charge-off, a description of the asset, and the amount of the charge-off. The record shall be supported by the actual charged-off items, or the final disposition of any charged-off item. The record of recoveries shall show the date and amount of each recovery.
  - (5) Records of real estate. A record shall be kept on all parcels owned, including the banking house. The record shall show when the property was acquired, how the property was acquired, the cost of the property, the book value of the property, and detailed income and expense reports relating to the property. This record shall be supported by appraisals, title certificates showing assessed value, tax receipts, and hazard insurance policies relating to the property.
  - (6) Meeting minutes and consent to action. Minutes of all board of directors meetings, board committee meetings, and stockholders meetings (including each consent to action without a meeting), shall be kept showing any action resulting from the meeting. All minutes shall be signed by the chairman and the secretary of such meeting.
  - (7) Cash items held over. A daily record shall be kept of all cash items held over from the day's business, including all checks that would cause an overdraft if handled in the regular way. This record shall be kept in balance with the general ledger control and shall identify the account on which the item is drawn or is obligated for payment, the reason the item is being held, the date the item was placed in the cash items account, and the amount of the item.
  - (8) Record of income and expenses. A detailed record of income and expenses shall be kept and balanced monthly. A report of this record shall be made to the executive committee or board of directors, and the receipt of same noted in their minutes.
  - (9) Industrial bank reports of condition. Each industrial bank, when preparing a report of condition and income, shall include and make a part of its report a list of those whose aggregate direct and indirect obligations to the bank, including paper purchased by the bank, are in excess of ten percent of the industrial bank's capital, surplus, and undivided profits. In lieu of this list, the industrial bank may maintain a direct and indirect liability ledger in accordance with Subparagraph (a)(1) of this Rule.
- (b) Unless another storage site is approved by the Commissioner of Banks in writing by letter or other written agreement, a bank's books and records and the books and records of the bank's parent holding company shall be kept at the bank or at the bank's parent holding company; and the books and records of an affiliate of the bank shall be kept at the affiliate, the bank, or the bank's parent holding company.
- (c) Based upon the condition of a bank as determined by examination or otherwise, the Commissioner of Banks may require a bank to prepare or maintain different or additional books, records, and reports.

*History Note: Authority G.S. 53C-8-6;  
 Eff. February 1, 1976;  
 Amended Eff. October 1, 2014; June 1, 1995; May 1, 1992; October 1, 1990; September 1, 1983;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.*

To ensure that the books and records of the bank properly reflect all of its liabilities, the following reserve accounts shall be set up and maintained by all banks:

- (1) Reserve for Interest Due Depositors. This reserve shall be set up and proper entries made at least once each month. As interest is paid to depositors, payments shall be charged to this account. Each month, as credits are made to this reserve, the amount shall be charged to interest paid to depositors' accounts.
- (2) Reserve for Unearned Interest on Loans. All interest collected on notes shall be credited to this account on the day it is collected. At least once each month, earned interest shall be computed, charged to this account, and credited to earned interest account. This Subparagraph shall not apply to loans where interest is accounted for through an income-earned-not-collected account.
- (3) Bond Income Earned; Not Collected. At least once each month, the income on bonds earned during the month shall be charged to this account and credited to the bond income account. As coupons are collected, they shall be credited to this account.

*History Note: Authority G.S. 53C-8-1; 53C-8-6;  
Eff. February 1, 1976;  
Amended Eff. October 1, 2014; September 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.*

**04 NCAC 03C .0903 RETENTION: REPRODUCTION AND DISPOSITION OF BANK RECORDS**

(a) Each bank, at a location with secured access, shall keep and retain books, ledgers, records, and documents set forth for the periods specified.

<u>Bank Records to be Retained</u>	<u>Minimum Retention Period</u>
<u>ACCOUNTING</u>	
1. Daily Reserve Calculation and Averages	3 years
2. Difference Records (Over/Short)	2 years
3. Paid Bills and Invoices	3 years
4. Quarterly Report of Condition and Income and Supporting Work Papers	5 years
<u>ADMINISTRATIVE</u>	
1. Documentation of Charged-off Assets	10 years
2. Escheat Reports and Records	10 years
3. Minutes of Meetings of Stockholders, Directors, and Board Committees	Permanent
<u>AUDIT</u>	
1. Audit Reports (Internal and External)	3 years
2. Audit Work Papers (Internal)	3 years
<u>BANK PROPERTIES</u>	
1. Fixed Assets-Evidence of Ownership (After Acquisition)	5 years
2. Fixed Assets-Leases (After Termination)	5 years
3. Real Estate-Construction Records	5 years
4. Real Estate-Deeds	Until conveyed
5. Real Estate-Leases (After Termination)	5 years
<u>CAPITAL</u>	
1. Capital Stock Certificate Books, Stubs, or Interleaves	Permanent
2. Capital Stock Ledger	Permanent

- |    |                                 |           |
|----|---------------------------------|-----------|
| 3. | Capital Stock Transfer Register | Permanent |
| 4. | Proxies                         | 3 years   |

### COLLECTIONS

- |    |  |                                     |
|----|--|-------------------------------------|
| 1. | Collection Registers (Incoming and Outgoing) | 3 years after item paid or returned |
| 2. | Receipts and Advices (After Closed)          | 1 year                              |

### CREDIT CARDS

- |    |  |           |
|----|--|-----------|
| 1. | Borrowing Authority Resolutions (After Closed) | 3 years   |
| 2. | Customer Application (After Closed)            | 1 year    |
| 3. | Disclosure and Compliance Documents            | 25 months |
| 4. | Merchants' Agreement (After Closed)            | 2 years   |
| 5. | Posting or Transaction Journal                 | 2 years   |
| 6. | Sales Tickets or Drafts                        | 3 years   |
| 7. | Statement of Account                           | 5 years   |

### DEMAND DEPOSIT AND TRANSACTION ACCOUNTS

- |     |   |                       |
|-----|---|-----------------------|
| 1.  | Checks and Debits                         | 5 years               |
| 2.  | Daily Report on Overdrafts                | 2 years               |
| 3.  | Deposit Resolutions (After Closed)        | 3 years               |
| 4.  | Deposit Tickets and Credits               | 5 years               |
| 5.  | Ledgers, Statements, or Stubs             | 5 years               |
| 6.  | Letters of Administration                 | 5 years               |
| 7.  | Posting or Transaction Journals           | 5 years               |
| 8.  | Powers of Attorney                        | 5 years after closing |
| 9.  | Return Item Records                       | 1 year                |
| 10. | Signature Cards (After Closed)            | 5 years               |
| 11. | Stop Payment Orders                       | 1 year                |
| 12. | Undelivered Statements                    | 1 year                |
| 13. | Unidentified or Unclaimed Deposit Records | Until escheated       |

### DUE FROM BANKS

- |    |                                 |            |
|----|---------------------------------|------------|
| 1. | Advice of Entry (After Cleared) | 3 months   |
| 2. | Drafts (After Paid)             | 5 years    |
| 3. | Draft Register                  | Until paid |
| 4. | Reconcilements                  | 5 years    |
| 5. | Statements                      | 3 years    |

### GENERAL LEDGER

- |    |  |          |
|----|--|----------|
| 1. | Daily Statement of Condition                                     | 5 years  |
| 2. | General Journal (If Book of Original Entries, with Descriptions) | 15 years |
| 3. | General Ledgers  | 15 years |
| 4. | General Ledger Tickets   | 5 years  |

### INSURANCE

- |    |   |         |
|----|---|---------|
| 1. | Bankers Blanket Bond and Excess             | 5 years |
| 2. | General Casualty Liability Policies Expired | 5 years |

### INTERNATIONAL

1.	Bankers Acceptances	3 years
2.	Collection Records	3 years after item paid or returned
3.	Letters of Credit and Documents	3 years after expiration
4.	Transfer Orders (Wire or Written)	1 year

#### INVESTMENTS

1.	Accrual and Bond Amortization or Accretion Records (After Period Ends)	3 years
2.	Brokers' Confirmations, Invoices, Statements	3 years
3.	Ledgers	3 years
4.	Records of Purchases and Sales of Securities	5 years

#### LEASE RECEIVABLES (OTHER THAN REAL ESTATE)

1.	Lease Agreements and Documents (After Termination)	5 years
2.	Rental Payment Records	5 years
3.	Record of Disposition of Property	5 years

#### LEGAL JUDICIAL AUTHORIZATION

1.	Attachments or Garnishments	10 years
2.	Court Case Records (After Final Disposition)	10 years
3.	Probate Court Appointment (After Closed)	10 years

#### LOANS (COMMERCIAL, CONSUMER, MORTGAGE)

1.	Appraisals, Financing Statements, and Title Opinions Pertaining to Collateral	Until paid
2.	Borrowing Resolutions	3 years after payment of debt
3.	Credit Files (Financial Statements, Applications, Correspondence) (After Paid)	2 years
4.	Collateral Records (After Released)	5 years
5.	Interest Rebate Records	1 year
6.	Liability Cards or Ledgers (After Closed)	3 years
7.	Loan Ledger Cards or History Sheets (After Paid)	3 years
8.	Loan Proceeds Disbursement Records	Until paid
9.	Loans Paid Record	3 years
10.	Mortgage Files and Supporting Documents (After Paid)	2 years
11.	Note or Loan Register (After Paid)	3 years
12.	Posting or Transaction Journal	2 years

#### MAIL

1.	Insurance Records of Registered and Certified	1 year
2.	Registered and Certified Records (In and Out)	1 year
3.	Return Receipt Record	1 year

#### MISCELLANEOUS

1.	Cash and Security Vault Records-Opening, Closing	6 months
2.	Taxes>Returns and Supporting Papers IRS and Dept. of Revenue	3 years or until cleared by
3.	Travelers Checks-Applications	1 year

#### MONEY TRANSFER



1.	Copy of Incoming and Outgoing Transfers	1 year
2.	General Correspondence	1 year
3.	Receipts and Advices (After Closed)	1 year
4.	Transfer Request Records	1 year

#### NIGHT DEPOSITORY

1.	Customer Agreement (After Closed)	1 year
2.	Customer Receipt	1 year
3.	Daily Inventory	1 year

#### OFFICIAL CHECKS

1.	Official Checks (Dividend, Cashiers, Expense, Loan) and Money Orders (After Paid)	5 years
2.	Official Check Register or Carbon Copy	Until paid or escheated
3.	Certified Checks or Receipts (After Paid)	5 years
4.	Certified Check Register or File Copy	Until paid or escheated
5.	Affidavits and Indemnity pertaining to Issuance of Duplicate Checks	Permanent

#### PROOF AND TRANSIT

1.	Advice of Correction	6 months
2.	Cash Tickets	6 months
3.	Outgoing Cash Letters and Accompanying Items (Microfilm)	2 years
4.	Proof Sheets, Tapes, and Listings	2 years

#### SAFE DEPOSIT

1.	Access Records (After Closed)	3 years
2.	Box History Card	Permanent
3.	Contracts and Agreements (After Closed)	3 years
4.	Forced Entry Records	10 years

#### SAFEKEEPING AND CUSTOMER SECURITIES

1.	Broker Confirmations, Invoices, Statements	3 years
2.	Buy and Sell Orders	3 years
3.	Customer Contracts and Agreements (After Closed)	3 years
4.	In and Out Records (Movement of Securities)	3 years
5.	Safekeeping Receipts (After Closed)	3 years

#### SAVINGS AND TIME DEPOSITS

1.	Certificates of Deposit Paid	5 years
2.	Certificates of Deposit Records (Register, Ledger, Copy)	Until paid or escheated
3.	Daily Report of Overdrafts	2 years
4.	Debits and Withdrawals	5 years
5.	Deposit and Credit Tickets	5 years
6.	Deposit Resolution (After Closed)	3 years
7.	Ledgers or Statements	5 years
8.	Posting or Transaction Journal	1 year
9.	Signature Cards, Contracts, and Agreements (After Closed)	5 years
10.	Undelivered Statements	1 year
11.	Unidentified or Unclaimed Deposit Records	Until escheated

## TELLERS

- |    |  |          |
|----|--|----------|
| 1. | Balance Sheets, Recaps, or Records                                 | 1 year   |
| 2. | Cash Item Report   | 1 year   |
| 3. | Machine Tapes, Cash Ticket Copies, Posting or Transaction Journals | 6 months |
| 4. | Daily Record of Cash Items Held Over                               | 1 year   |

## TRUST (Corporate)

- |    |  |  |
|----|--|--|
| 1. | Account Ledger or Record                                   | 7 years after account closed                           |
| 2. | Posting or Transaction Journal                             | 7 years  |
| 3. | Bonds of Indemnity   | Permanent  |
| 4. | Stock Certificates (Cancelled)                             | until returned to corporation                          |
| 5. | Dividend Checks – Paid                                     | 5 years  |
| 6. | Dividend Check Register or Carbon Copy                     | Until paid   |
| 7. | Bonds and Coupons –<br>Cancelled or Cremation Certificates | 7 years after<br>paid or until returned to corporation |
| 8. | Resolutions and Authorizations                             | 7 years after account closed                           |

## TRUST (Employee Benefit)

- |    |   |                              |
|----|---|------------------------------|
| 1. | Accountings                                 | 6 years after account closed |
| 2. | Agreements, Authorizations, and Resolutions | 6 years after account closed |
| 3. | Account Ledger or Record                    | 6 years after account closed |
| 4. | Disbursement Checks                         | 6 years                      |
| 5. | Check Register or Carbon Copy               | Until Paid                   |
| 6. | Bonds of Indemnity                          | Permanent                    |

## TRUST (Personal)

- |    |                               |                              |
|----|-------------------------------|------------------------------|
| 1. | Accountings                   | 3 years after account closed |
| 2. | Agreements and Authorizations | 5 years after account closed |
| 3. | Account Ledger or Record      | 7 years after account closed |
| 4. | Minutes of Committee Meetings | Permanent                    |
| 5. | Receipts for Assets Delivered | 3 years after account closed |
| 6. | Tax Return                    | 10 years or until IRS clears |
| 7. | Disbursement Checks           | 5 years                      |
| 8. | Check Register or Carbon Copy | Until paid                   |
| 9. | Bonds of Indemnity            | Permanent                    |

(b) Nothing in these Rules shall prohibit any bank or branch thereof from keeping and maintaining any and all of its records for a longer period of time than set forth by the minimum retention period.

(c) Paragraph (a) of this Rule sets forth state minimum records retention requirements and does not include nor cover records required to be kept by federal agencies such as federal bank supervisory agencies, and other federal agencies. Banks shall also observe the requirements of such federal agencies in retention of records required by such agencies.

(d) Nothing in these Rules shall prohibit any bank or branch from causing any or all of its records, whether permanent records or records designated to be retained for a minimum period of time, to be maintained pursuant to G.S. 53C-6-14.

*History Note: Authority G.S. 53C-2-5; 53C-6-14; 53C-8-1;  
Eff. February 1, 1976;  
Amended Eff. October 1, 2014; January 1, 2013; May 1, 1992; September 1, 1990; January 1,  
1985;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3,  
2017.*

#### **04 NCAC 03C .0904      LETTERS OF CREDIT**

The bank shall maintain supporting records on all letters of credit issued and outstanding, except for letters of credit sold for cash, and shall show the following information:

- (1) the name of the account party for whom the letter of credit is established;
- (2) the name of the beneficiary;
- (3) the amount;
- (4) the expiration date; and
- (5) the terms under which payment is authorized.

*History Note:*      *Authority 53C-8-1;*  
*Eff. April 21, 1979;*  
*Amended Eff. October 1, 2014;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.*

#### **04 NCAC 03C .0905      INVESTMENT AUTHORITY**

A bank may invest in mutual funds to the same extent and within the same limitation as permitted for national banks by statute, regulation, or interpretation of the applicable federal regulator, as reflected in the U.S. Office of the Comptroller of Currency "Investment Securities: Comptroller's Handbook" (Section 203) or their written interpretations that is hereby incorporated by reference and shall include any later amendments and editions of the referenced material. This information may be obtained from the Office of the Comptroller of Currency website at <http://www.occ.gov/publications/publications-by-type/comptrollers-handbook/investsecurities1.pdf> at no cost at the time of adoption of this Rule.

*History Note:*      *Authority G.S. 53C-5-2;*  
*Eff. October 1, 2014;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.*

### **SECTION .1000 - LOAN ADMINISTRATION AND LEASING**

#### **04 NCAC 03C .1001      LOAN DOCUMENTATION**

(a) Each bank shall establish and maintain loan documentation practices that include the following:

- (1) enable the institution to make an informed lending decision and to assess risk, as necessary on an ongoing basis;
- (2) identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner;
- (3) ensure that any claim against a borrower is legally enforceable;
- (4) demonstrate appropriate administration and monitoring of a loan; and
- (5) take account of the size and complexity of a loan.

Loan documentation practices shall comply with the requirements of the Interagency Guidelines Establishing Standards for Safety and Soundness, 12 C.F.R. Part 364 Appendix A, as applied by the Federal Deposit Insurance Corporation or the Federal Reserve System, which are hereby incorporated by reference including subsequent amendments or additions. This information is available at <https://www.ecfr.gov/> at no cost.

(b) Each bank shall maintain on file the following loan documentation:

- (1) Certificate of Title. A title opinion furnished by an attorney at law, a title report, a title insurance policy issued by a company licensed by the Commissioner of Insurance, or other insurance coverage that provides the bank similar protection against loss from title defects, errors, or omissions at closing, or related risks, shall be obtained in connection with each deed of trust or mortgage given as security on each real estate-secured loan when:
  - (A) the loan is primarily secured by real property and only secondarily by the borrower's general credit-worthiness; and
  - (B) the amount of the loan secured by the real property is one hundred thousand dollars (\$100,000) or more.

- (2) Corporate Resolutions. A loan made to a corporation shall be supported by a certified copy of a resolution of the board of directors of the corporation, authorizing the loan transaction.
- (3) Partnership Declaration. A loan made to a partnership shall be supported by a declaration of the general partners showing the composition of the partnership and unless all partners sign the note, the authority of the partner(s) executing the note to bind the partnership.
- (4) Limited Liability Company Certification. A loan made to a limited liability company shall be supported by a certification of a manager thereof that the loan has been duly authorized by the limited liability company.
- (5) Unlisted Securities Held as Collateral. Full credit information on all unlisted securities shall be kept on file in the bank.

*History Note: Authority G.S. 53C-6-1; 53C-8-1; Eff. February 1, 1976; Amended Eff. October 1, 2014; December 1, 2011; April 1, 2007; June 1, 1995; May 1, 1992; September 1, 1990; September 1, 1983; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017; Amended April 1, 2018.*

#### **04 NCAC 03C .1002 LEASING OF PERSONAL PROPERTY**

Each bank acquiring and leasing personal property or, acquiring personal property that is subject to an existing lease together with the lessor's interest therein and incurring such additional obligations as may be incident to becoming an owner and lessor of such property, may do so only when subject to the following restrictions:

- (1) Before the acquisition, upon the specific request and for the use of the customer, the prospective lessee shall execute an agreement to lease such property;
- (2) During the minimum period of the lease, the terms of the lease shall require payment to the bank by the lessee of rentals that, in the aggregate shall exceed the total expenditures by the bank for or in connection with the ownership, maintenance, and protection of the property. In determining the total expenditures under this Rule, a bank may deduct a realistic residual value in determining the rentals to be charged during the term of a lease agreement. Any unguaranteed portion of the estimated residual value relied upon by the bank to calculate total expenditures under this Rule may not exceed 25 percent of the original cost of the property to the lessor. The amount of any estimated residual value guaranteed by a manufacturer, the lessee, or a third party that is not an affiliate of the bank may exceed 25 percent of the original cost of the property where the bank determines and provides supporting documentation that the guarantor has the resources to meet the guarantee;
- (3) The total leasing obligations or rentals to any bank of any person, partnership, association, corporation, or limited liability company shall at no time exceed the legal limit permitted by G.S. 53C-6-1;
- (4) The overall investment of the bank in such property leased to all lessees shall at no time exceed 200 percent of its capital;
- (5) The bank shall at all times maintain protection by way of insurance or indemnity provided by the lessee;
- (6) No lease or other agreement shall obligate the bank to maintain, repair, or service personal property in connection with any lease held by it;
- (7) No personal property acquired pursuant to the ownership or lease of personal property shall be included in the computable investment in fixed assets under G.S. 53C-5-2;
- (8) Rental payments collected by the bank under lease arrangements shall be rent and shall not be deemed to be interest or compensation for the use of money loaned;
- (9) Upon expiration of any lease, whether by virtue of the lease agreement or by virtue of the retaking of possession by the bank, such personal property shall be re-let, sold, otherwise disposed of, or charged off within one year from the time of expiration of such lease; and
- (10) Upon written request, the Commissioner of Banks may waive or modify any of the foregoing restrictions. In evaluating such a request, the Commissioner of Banks shall consider the following factors:

- (a) the bank's size, profitability, capital sufficiency, risk profile, market, and operational capabilities, especially with a view towards the bank's involvement in lease financing;
- (b) current best practices of financial institutions engaged in lease financing;
- (c) the nature, size, duration, aggregate amount, and other risks attendant to the bank's lease financing transactions; and
- (d) the risk of significant loss to the bank if the Commissioner of Banks does not grant the request.

*History Note:* Authority G.S. 53C-2-5; 53C-5-2; 53C-8-1;  
 Eff. February 1, 1976;  
 Amended Eff. October 1, 2014; January 1, 2013; April 1, 2007; September 1, 1990; September 1, 1983; May 1, 1982;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.

### **SECTION .1100 - CAPITAL**

**04 NCAC 03C .1101      DEFINITIONS: ISSUANCE OF CAPITAL NOTES AND DEBENTURES**  
**04 NCAC 03C .1102      CAPITAL DEBENTURES AND NOTES**

*History Note:* Authority G.S. 53-1; 53-43.4; 53-92; 53-104;  
 Eff. February 1, 1976;  
 Amended Eff. June 1, 1995; September 26, 1979;  
 Repealed Eff. April 1, 2007.

**04 NCAC 03C .1103      CAPITAL STOCK**  
**04 NCAC 03C .1104      MAINTENANCE OF CAPITAL SURPLUS**  
**04 NCAC 03C .1105      NOTICE OF IMPAIRMENT**

*History Note:* Authority G.S. 53-1(3)d; 53-2(4); 53-42; 53-104;  
 Eff. May 1, 1992;  
 Repealed Eff. January 1, 2013.

### **SECTION .1200 - DEPOSITS**

**04 NCAC 03C .1201      SCHOOL THRIFT OR SAVINGS PLAN**  
**04 NCAC 03C .1202      RESUME OF THE PLAN**

*History Note:* Authority G.S. 53-43.6; 53-92; 53-104;  
 Eff. February 1, 1976;  
 Repealed Eff. January 1, 2013.

### **SECTION .1300 - BANK PERSONNEL**

**04 NCAC 03C .1301      ANNUAL VACATION**

*History Note:* Authority G.S. 53-92; 53-104;  
 Eff. February 1, 1976;  
 Amended Eff. June 1, 1995; October 1, 1990;  
 Repealed Eff. April 1, 2007.

**04 NCAC 03C .1302      SHARE PURCHASE AND OPTION PLANS**

*History Note:* Authority G.S. 53-10; 53-43; 53-43.3; 53-104;  
 Eff. February 1, 1976;  
 Amended Eff. October 1, 2011; June 1, 1995; July 1, 1990;

*Repealed Eff. January 1, 2013.*

**04 NCAC 03C .1303 INSIDER TRANSACTIONS**

*History Note: Authority G.S. 53-92; 53-95; 53-104; 53-106; 53-110;  
Eff. April 21, 1979;  
Repealed Eff. January 1, 1984.*

**SECTION .1400 - LEGAL RESERVE**

**04 NCAC 03C .1401 REQUIREMENT OF RESERVE FUND**

(a) The amount of the reserve fund which shall be established and maintained shall at all times equal the reserves required by the Federal Reserve System for non-member banks.

(b) In the event the reservable liabilities of any bank are such that no reserve is required of that bank by the Federal Reserve System, such bank shall maintain a reserve fund equal to three percent of its total deposits of every kind which are not secured by a deposit of bonds, notes, bills, and certificates of indebtedness of the United States, or agency thereof, or other obligations guaranteed by the United States Government, or the bond obligations of the State of North Carolina, its counties, municipalities, and other political subdivisions thereof.

*History Note: Authority G.S. 53C-4-11;  
Eff. February 1, 1976;  
Amended Eff. July 1, 1990; August 6, 1981;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.*

**04 NCAC 03C .1402 BASIS FOR COMPUTATION AND MAINTENANCE**

Required reserves shall be computed on the basis of the daily average deposit balance during a 14-day period ending every second Monday (the "computation period"). The method for determining the amount of reserve required is set forth in Rule .1401 of this Section. The reserves that are required to be maintained shall be maintained during a corresponding 14-day period (the "maintenance period") that begins on the second Thursday following the end of a given computation period and ends on the second Wednesday thereafter. For non-business days, deposit figures of the prior banking day shall be used.

*History Note: Authority 53C-4-11;  
Eff. February 1, 1976;  
Amended Eff. October 1, 2014; July 1, 1990; August 6, 1981;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.*

**04 NCAC 03C .1403 RESERVE FUND DEFINED**

*History Note: Authority G.S. 53-51; 53-92; 53-104;  
Eff. September 26, 1979;  
Amended Eff. August 6, 1981;  
Repealed Eff. January 1, 2013.*

**SECTION .1500 - AUTOMATION AND DATA PROCESSING**

**04 NCAC 03C .1501 CUSTOMER-BANK COMMUNICATION TERMINALS**

**04 NCAC 03C .1502 LIMITATIONS**

*History Note: Authority G.S. 53-62; 53-92; 53-104;  
Eff. February 1, 1976;  
Amended Eff. May 1, 1992; September 1, 1990;  
Repealed Eff. April 1, 2001.*

## SECTION .1600 – FEES

### 04 NCAC 03C .1601 FEES, COPIES AND PUBLICATION COSTS

(a) For applications, petitions, and other proceedings to be filed with the Commissioner of Banks, the following fees shall be paid to the Commissioner of Banks at the time of filing:

- |     |   |            |
|-----|---|------------|
| (1) | Application for the Formation of a New Bank or State Trust Institution  | \$8,000.00 |
| (2) | Application to Merge or Consolidate Banks, State Trust Institutions, or Bank Holding Companies (fee is per institution) | \$5,000.00 |
| (3) | Application for Reorganization Into a Bank Holding Company Through an Interim Bank (fee is per bank)                    | \$3,000.00 |
| (4) | Application for Bank or Bank Holding Company Change in Control  | \$5,000.00 |
| (5) | Application for Conversion of a National Bank to State Charter  | \$2,500.00 |
| (6) | Application for Voluntary Liquidation   | \$3,000.00 |
| (7) | Application for Conversion of a Savings and Loan Association or a Savings Bank to a State Bank                          | \$2,500.00 |

Bank to a State Bank

(b) The fees set forth in Paragraph (a) of this Rule are for standard applications, petitions, and other proceedings filed and considered in the ordinary course of business. Any application, petition, or other proceeding that in the opinion of the Commissioner of Banks requires extraordinary review, investigation, or special examination shall be subject to the actual costs of additional expenses and the hourly rate for the staff's time to be determined annually by the Banking Commission. The Commissioner of Banks shall advise an applicant or petitioner in advance of any additional work required and the hourly rate for the same. The hourly rate shall be:

- |     |                                 |         |
|-----|---------------------------------|---------|
| (1) | For Senior Administrative staff | \$75.00 |
| (2) | For Senior Examination Staff    | \$50.00 |
| (3) | For Financial Program Manager   | \$35.00 |
| (4) | For Financial Examiner          | \$25.00 |

(c) Unless otherwise stated, publications externally printed may be obtained at a cost equal to the actual cost of printing plus shipping and handling. All other publications or public record copies are available at the "actual cost" as defined in G.S. 132-6.2(b) for making the copy and mailing cost if applicable. The Office of the Commissioner of Banks shall provide its "actual cost" on the agency's website.

*History Note: Authority G.S. 53C-3-1; 53C-5-2; 53C-7-101; 53C-7-201; 53C-7-207; 53C-7-301; 53C-10-102; 53C-10-103; 53C-10-201; 54B-34.2; 54C-47; Eff. July 1, 1990; Amended Eff. October 1, 2014; June 1, 2004; June 1, 1995; May 1, 1992; July 1, 1991; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.*

## SECTION .1700 – NON-BRANCH BANK BUSINESS OFFICE

### 04 NCAC 03C .1701 DEFINITIONS

*History Note: Authority G.S. 53-104; 53-115; 53-127; Eff. June 1, 1995; Repealed Eff. January 1, 2013.*

### 04 NCAC 03C .1702 ESTABLISHMENT OF A NON-BRANCH BANK BUSINESS OFFICE (NBBO)

(a) A bank may establish or relocate a NBBO as defined in G.S. 53C-1-4(46) upon giving written notice to the Commissioner of Banks. The notice shall acknowledge:

- (1) The NBBO may be used to solicit loans, assemble credit information, make property inspections and appraisals, complete loan applications, perform preliminary paper work in preparation for the making of loans, and provide banking related services and products, other than the taking of deposits;
- (2) Loans may not be approved and loan proceeds may not be disbursed through the NBBO;
- (3) The NBBO may not be used to accept deposits; and
- (4) The NBBO may be inspected by the Commissioner of Banks for compliance with the written notice, and the cost of the inspection shall be borne by the bank.

- (b) The bank shall provide written notice to the Commissioner of Banks when relocating or closing any NBBO.
- (c) If required by the Secretary of State, the NBBO shall obtain a certificate of authority to do business in North Carolina.

*History Note:* Authority G.S. 53C-1-4(46); 53C-6-18; 53C-8-2(3);  
Eff. June 1, 1995;  
Amended Eff. October 1, 2014;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.

**04 NCAC 03C .1703 ESTABLISHMENT OF LOCKBOX SERVICES**  
**04 NCAC 03C .1704 ESTABLISHMENT OF A TRUST REPRESENTATIVE OFFICE (TRO)**

*History Note:* Authority G.S. 53-104; 53-115; 53-127;  
Eff. June 1, 1995;  
Repealed Eff. January 1, 2013.

**SECTION .1800 - COURIER SERVICE**

**04 NCAC 03C .1801 ESTABLISHMENT OF COURIER SERVICES**

A bank may provide a courier or messenger service to its customers only if:

- (1) the bank complies with the requirements imposed by the Private Protective Services Act G.S. 74C-1. Et. Seq.; and
- (2) a written agreement between the bank and the customers contains the following:
  - (a) a statement that the courier is the agent of the customer and not the agent of the bank;
  - (b) a statement that deposits collected by the courier or messenger are received by the bank when the deposits have been delivered to a teller at the bank's premises or a location that is eligible and designated by the bank to receive deposits;
  - (c) a statement that negotiable instruments collected by the courier or messenger are paid at the bank when delivered to the courier or messenger; and
  - (d) an acknowledgment by the customer that transactions conducted by a courier service are not insured by the FDIC.

*History Note:* Authority G.S. 53C-5-1; 53C-8-1;  
Eff. June 1, 1995;  
Amended Eff. October 1, 2014;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.

**04 NCAC 03C .1802 COMPLIANCE AND DISCLOSURE REQUIREMENTS**

*History Note:* Authority G.S. 53C-5-1; 53C-8-1;  
Eff. June 1, 1995;  
Repealed Eff. October 1, 2014.

**SUBCHAPTER 03D - SUPERVISION OF STATE TRUST ENTITIES**

**SECTION .0100 - LICENSING**

**04 NCAC 03D .0101 APPLICATION**

*History Note:* Authority G.S. 53-92; 53-160;  
Eff. February 1, 1976.  
Amended Eff. September 1, 2006;



*Repealed Eff. October 1, 2012 pursuant to G.S. 150B-21.7.*

**04 NCAC 03D .0102      ISSUANCE**  
**04 NCAC 03D .0103      CERTIFICATE OF SOLVENCY**  
**04 NCAC 03D .0104      REVOCATION**

*History Note:      Authority G.S. 53-92; 53-160; 53-161; 53-162; 53-163; 150A-11(1);  
Eff. February 1, 1976;  
Repealed Eff. January 1, 1985.*

**04 NCAC 03D .0105      DEFINITIONS**

As used in this Subchapter:

- (1) "Board of Directors" shall have the same meaning as defined in G.S. 53-301(a)(6a).
- (2) "Collective investment fund" shall mean any fund established pursuant to 12 C.F.R. 9.18, which is incorporated by reference in Rule .0304 of this Subchapter.
- (3) "State trust entity" shall mean a "state bank" or "state trust company" as defined in G.S. 53-301(a)(43) and (45).
- (4) "Trust business" shall have the same meaning as defined in G.S. 53-301(a)(50).

*History Note:      Authority G.S. 53-366; 53C-2-5;  
Eff. April 1, 2015;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3,  
2017.*

**SECTION .0200 - REPORTS REQUIRED BY COMMISSIONER OF BANKS**

**04 NCAC 03D .0201      REPORTS OF CONDITION OF STATE TRUST ENTITIES**

Each state trust entity, on a form or forms provided by the Office of the Commissioner of Banks, shall submit reports of condition that shall include information on operations, statutory and regulatory requirements, supervisory standards, and assets under management. The form or forms shall be obtained from and filed with:

Office of the Commissioner of Banks  
316 West Edenton Street  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309.

Forms 29TC, 29A, and TARS<sup>®</sup> may be submitted electronically at:  
<http://www.nccob.gov/Public/financialinstitutions/banks/banksff.aspx>.

*History Note:      Authority G.S. 53-366; 53-367; 53C-2-5; 53C-8-3;  
Eff. February 1, 1976;  
Amended Eff. April 1, 2015; September 1, 2006; September 26, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3,  
2017.*

**04 NCAC 03D .0202      REPORT OF TRUST DEPARTMENT**

*History Note:      Authority G.S. 53-92; 53-106;  
Eff. February 1, 1976;  
Amended Eff. September 1, 2006; September 26, 1979;  
Repealed Eff. October 1, 2012 pursuant to G.S. 150B-21.7.*

**SECTION .0300 - TRUST DEPARTMENT**

**04 NCAC 03D .0301      DEFINITIONS**

*History Note:      Authority G.S. 53-92; 53-104;  
Eff. February 1, 1976;*

*Amended Eff. September 1, 1990;*  
*Repealed Eff. October 1, 2012 pursuant to G.S. 150B-21.7.*

#### **04 NCAC 03D .0302 ADMINISTRATION OF TRUST BUSINESS**

(a) A state trust entity shall conduct its trust business separate and apart from any other business it conducts. A state trust entity may, however, utilize personnel and facilities of other departments of the state trust entity and other departments of the state trust entity may utilize its trust personnel and facilities to the extent not prohibited by law.

##### **(b) Board of Directors**

- (1) The trust business of a state trust entity shall be managed by or under the direction of its board of directors. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of the state trust entity's trust business as it may consider proper to assign to such director(s), officer(s), or employee(s), who are qualified and competent to administer trust business, and it may designate and appoint such committees of director(s) or officer(s) as it deems advisable to supervise the trust business.
- (2) No trust business shall be accepted without the prior approval of the board of directors, or of the director(s), officer(s), or committee(s) to whom the board of directors may have designated the performance of that responsibility. A written record shall be made of such acceptances and of the relinquishment or closing out of each account. Upon the acceptance of an account for which the state trust entity has investment responsibility, a review of the assets shall be made. The board of directors shall also ensure that at least once during every calendar year thereafter, and within 15 months of the last review, all the assets held in each account that the state trust entity has investment responsibilities for are reviewed to determine the advisability of retaining or disposing of such assets.

(c) All officers and employees taking part in the administration of trust business shall be adequately bonded.

(d) Every state trust entity shall designate, employ, or retain competent legal counsel who shall be readily available to advise on the trust business it conducts.

(e) Negotiable and tangible assets held by the state trust entity in its own vaults shall be placed in the joint custody of at least two or more bonded officers or employees designated by the board of directors.

(f) Funds held by a state trust entity in a fiduciary capacity awaiting investment or distribution shall be invested, pursuant to the provisions of G.S. 53-163.1.

(g) Trust business investments by a state trust entity in its own depository accounts shall be secured in the manner and to the extent required by G.S. 53-163.1 and G.S. 53-163.3.

*History Note: Authority G.S. 53-163.1; 53-163.3; 53-356; 53-366; 53C-2-5; 53C-4-6;*  
*Eff. February 1, 1976;*  
*Amended Eff. April 1, 2015; May 1, 1992; September 26, 1979;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.*

#### **04 NCAC 03D .0303 BOOKS AND RECORDS**

Books and Records. Each state trust entity shall keep the following:

- (1) a separate and distinct set of books and records showing all receipts and disbursements of funds, receipts, purchases and sales of assets, and other transactions engaged in, in connection with trust business; and showing at all times the ownership of all moneys, funds, investments and property in that connection held by the state trust entity;
- (2) files containing the original instruments creating each trust or authenticated copies; and
- (3) a permanent record of minutes for each committee, showing its actions. All minutes shall be signed by the committee's chairman and its secretary.

*History Note: Authority G.S. 53-366; 53-367; 53C-2-5; 53-320(a);*  
*Eff. February 1, 1976;*  
*Amended Eff. April 1, 2015; May 1, 1992; September 26, 1979;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.*

#### **04 NCAC 03D .0304 COLLECTIVE INVESTMENT**

(a) Funds held for trust business accounts by a state trust entity may be invested collectively in one or more collective investment funds to the extent permissible for the accounts. Such funds shall be organized and administered in accordance with the provisions of 12 C.F.R. 9.18.

(b) 12 C.F.R. 9.18 is herein incorporated by reference, including all subsequent amendments and editions, and may be accessed at the U.S. Printing Office website at [http://www.ecfr.gov/cgi-bin/text-idx?SID=10db9d6d7ecd62689d768e1b0c9a2199&node=se12.1.9\\_118&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=10db9d6d7ecd62689d768e1b0c9a2199&node=se12.1.9_118&rgn=div8) at no cost at the time of adoption of this Rule. However, any reference in the regulation to "Comptroller of Currency" shall, for the purpose of state trust entities, be deemed to refer to the "Commissioner of Banks."

*History Note:* Authority G.S. 53-163.7; 53-366; 53C-2-5;  
Eff. February 1, 1976;  
Amended Eff. April 1, 2015; May 1, 1992; November 1, 1982; September 26, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.

#### **04 NCAC 03D .0305 USE OF SECURITIES CLEARING CORPORATIONS**

*History Note:* Authority G.S. 53-92; 53-104; 53-110; 53-159.1;  
Eff. February 1, 1976;  
Repealed Eff. October 1, 2012 pursuant to G.S. 150B-21.7.

### **SUBCHAPTER 03E - LICENSEES UNDER NORTH CAROLINA CONSUMER FINANCE ACT**

#### **SECTION .0100 – LICENSING**

##### **04 NCAC 03E .0101 APPLICATION**

(a) The application for a consumer finance license shall include information necessary to determine whether an applicant is qualified to hold a consumer finance license pursuant to G.S. 53-168(a) and G.S. 53-169. A copy of the application may be obtained from the agency's website located at <https://www.nccob.gov>.

(b) Upon receipt of an application for a consumer finance license, the Commissioner of Banks shall give written notice of the application to all licensees by electronic mail.

(c) Following an investigation of the application pursuant to G.S. 53-168, the Commissioner of Banks shall either approve or deny the application.

*History Note:* Authority G.S. 53-168; 53-169; 53-170; 53-185;  
Eff. February 1, 1976;  
Amended Eff. September 1, 2006; January 1, 1993; August 1, 1978;  
Readopted Eff. August 1, 2018;  
Amended Eff. March 1, 2021.

##### **04 NCAC 03E .0102 APPROVAL**

*History Note:* Authority G.S. 53-92; 53-95; 53-104; 53-168; 58-169; 53-185; 53-188;  
Eff. February 1, 1976;  
Amended Eff. June 1, 1995; August 1, 1978;  
Repealed Eff. August 1, 2018.

##### **04 NCAC 03E .0103 DENIAL**

##### **04 NCAC 03E .0104 REVOCATION OR SUSPENSION**

##### **04 NCAC 03E .0105 SURRENDER**

*History Note:* Authority G.S. 53-92; 53-168(b); 53-171; 53-185; 150A-11;  
Eff. February 1, 1976;  
Repealed Eff. January 1, 1985.

**04 NCAC 03E .0106      MOTOR VEHICLE LENDERS**

*History Note:*    Authority G.S. 53-92; 53-176.1; 53-185;  
                          Eff. February 1, 1976;  
                          Repealed Eff. January 1, 1993.

**SECTION .0200 - ACTIONS REQUIRING APPROVAL OF COMMISSIONER OF BANKS**

**04 NCAC 03E .0201      OPERATION OF OTHER BUSINESS IN SAME OFFICE**

*History Note:*    Authority G.S. 53-92; 53-122(3); 53-168; 53-172; 53-185; 150B-21.2;  
                          Eff. February 1, 1976;  
                          Amended Eff. September 1, 2006; January 1, 1993;  
                          Repealed Eff. August 1, 2018.

**04 NCAC 03E .0202      CHANGE OF LOCATION**

**04 NCAC 03E .0203      ALTERNATE METHOD OF OPERATION**

*History Note:*    Authority G.S. 53-92; 53-170; 53-176; 53-185; 150A-11;  
                          Eff. February 1, 1976;  
                          Repealed Eff. January 1, 1985.

**04 NCAC 03E .0204      TRANSFER OF LICENSE AND CHANGE OF LOCATION**

(a) Requests to transfer or assign a license shall contain the name, address, and telephone number of the proposed transferee or assignee, the reasons for the transfer or assignment, and the date that the licensee proposes to make the transfer or assignment. In reviewing an application for transfer or assignment, the Commissioner of Banks shall consider whether a proposed transfer or assignment meets the requirements of G.S. 53-168(a). Transfer or assignments of a license to anyone other than existing licensees shall not be approved. If the request is approved, the licensee shall surrender to the Commissioner of Banks its consumer finance license for reissuance to the transferee or assignee.

(b) Prior to any change in the business location of a licensee, the licensee shall apply to the Commissioner of Banks. In reviewing an application for a change of location, the Commissioner of Banks shall consider whether a proposed change of location meets the requirements of G.S. 53-168(a). If the request is approved, the licensee shall submit to the Commissioner of Banks its license for amendment.

*History Note:*    Authority G.S. 53-168(e); 53-170(a);  
                          Eff. January 1, 1993;  
                          Readopted Eff. August 1, 2018.

**SECTION .0300 - REPORTS REQUIRED BY COMMISSIONER OF BANKS**

**04 NCAC 03E .0301      CHANGE OF OWNERSHIP OR MANAGEMENT**

*History Note:*    Authority G.S. 53-92; 53-170; 53-185; 150A-11;  
                          Eff. February 1, 1976;  
                          Repealed Eff. January 1, 1985.

**04 NCAC 03E .0302      ANNUAL REPORT**

The annual report form shall contain various schedules that reflect the financial condition of the licensee, as well as the results of its operations. The form and instructions shall be obtained and filed online through the agency's internal website for licensees, <https://www.nccob.gov/online.aspx>.

*History Note:*    Authority G.S. 53-184(b); 53-185;  
                          Eff. February 1, 1976;  
                          Amended Eff. September 1, 2006; January 1, 1993; September 26, 1979;

*Readopted Eff. August 1, 2018;*  
*Amended Eff. March 1, 2021.*

#### **SECTION .0400 - EXAMINATION**

**04 NCAC 03E .0401 EXAMINATION**  
**04 NCAC 03E .0402 REPORTS OF EXAMINATION**

*History Note: Authority G.S. 53-92; 53-99; 53-184; 53-185;*  
*Eff. February 1, 1976.*  
*Repealed Eff. August 1, 2018.*

#### **SECTION .0500 - ENFORCEMENT**

**04 NCAC 03E .0501 HEARINGS BY COMMISSIONER OF BANKS**  
**04 NCAC 03E .0502 CEASE AND DESIST ORDERS**

*History Note: Authority G.S. 53-92; 53-185; 53-186; 53-187; 150A-11;*  
*Eff. February 1, 1976;*  
*Repealed Eff. January 1, 1985.*

#### **SECTION .0600 - CONSUMER FINANCE OFFICES**

**04 NCAC 03E .0601 BOOKS, RECORDS, AND APPLICATION OF FEES**

Each consumer finance office licensed by the Commissioner of Banks shall keep the following books and accounting records. Except as permitted by G.S. 53-184(a), these records shall be maintained in each office and be available to the Commissioner of Banks or his or her authorized agent. Licensees shall maintain separate loan ledgers and accounts related to the making and collecting of loans within the provisions of the Consumer Finance Act, including where a licensee is also an installment paper dealer. Allocation of expenses shall be made monthly according to generally accepted accounting principles. All books, records, and fees covered by this Rule shall be retained for a period of three years after the last transaction:

- (1) Cash Transaction Journal. All transactions of receipts and disbursements of any nature or amount shall be recorded in a cash transaction journal, which shall be the book of original entry. Each transaction made in connection with a loan shall be identified with the loan by the name or account number of the borrower and shall define the nature of each charge, collection, or refund made in connection with the loan. All entries shall state the exact date the transactions occur.
- (2) General Ledger. The general ledger shall be double entry, showing in detail the total of assets, liabilities, capital, income, and expenses. Each account shall be individually designated. No net or "wash" entries shall be made to any account. The general ledger shall be posted once each month and the posting shall include all transactions through the last business day of the month. The actual posting shall be completed by the 30th day of each ensuing month for the previous month's business. A licensee shall maintain a description of each general ledger entry, including adjusting and closing entries. If any account on the general ledger does not agree with the corresponding account on the annual report to the Commissioner of Banks, a supplement to the annual report shall be furnished that reconciles or explains any differences.
- (3) Individual Account Record. A separate account record shall be maintained for each loan made. Each account record shall provide the following information:
  - (a) the name and address of borrower(s) and the name of any other person obligated directly or indirectly on the loan;
  - (b) the cross reference to other loans of the borrower, endorser, guarantor, surety, or to any joint obligation of the borrower;
  - (c) the account number;
  - (d) the date of loan and maturity;
  - (e) the length of contract;
  - (f) the cash advance, finance charge, number of payments, and amount of each;

- (g) the date and amount of each payment, an allocation between principal, interest, and any fees authorized by statute for each payment, and the remaining loan balance after each payment;
  - (h) a brief description of security;
  - (i) the type of insurance, insurance origination fees, and amount of insurance premium for each coverage written;
  - (j) the amount of recording fee or non-filing charges;
  - (k) the amount of any other charge made in connection with the loan;
  - (l) the amount of unearned insurance premium refunded for each coverage written;
  - (m) if refunds are paid by cash or check, a receipt of refund; and
  - (n) the contract interest rate and the annual percentage rate computed under 12 C.F.R. Part 226 (Regulation Z), if the rates are different. Regulation Z is incorporated by reference and includes subsequent amendments. A copy of the regulation may be obtained from the website free of charge at U. S. Government Publications Office website at <https://www.gpo.gov/fdsys/granule/CFR-2012-title12-vol3/CFR-2012-title12-vol3-part226>.
- (4) Index of Borrowers. Each office shall keep a single report showing a cumulative index record of all loans to each individual, which shall be entered in order by date made, showing the account number, amount of loan, and date of cancellation.
- (5) Loan Documents. Loans made by a licensee shall on the loan contract contain the following statement printed in a conspicuous manner: "This loan is regulated by the provisions of the North Carolina Consumer Finance Act, located at Chapter 53, Articles 15 of the North Carolina General Statutes." For the purpose of this Rule, "conspicuous" means the term as defined in G.S. 25-1-201(b).
- (6) Judgments. When a loan has been reduced to final judgment, all of the following provisions shall be complied with:
- (a) the individual account record maintained pursuant to Item (3) of this Rule shall be designated a judgment account;
  - (b) payments received shall be identified and applied on the judgment account record;
  - (c) the licensee shall maintain a copy of the final judgment and any other court documents that are necessary to disclose the following information:
    - (i) the final judgment date;
    - (ii) the name of the licensee;
    - (iii) the final judgment debtor's name;
    - (iv) the date the suit was filed;
    - (v) the nature of the suit;
    - (vi) the name and location of the court;
    - (vii) the amount of the final judgment, specifying principal, interest charges, any fees authorized by statute, and court costs; and
    - (viii) the disposition of the case;
  - (d) a licensee that charges a borrower for court costs it incurred on a final judgment account shall itemize these costs on the individual account record and retain a receipt or other document showing the costs; and
  - (e) a licensee shall retain a copy of the sheriff's return of execution issued when property is sold pursuant to a final judgment.
- (7) Repossessions. When property is taken in accordance with the terms of a security agreement, by judicial process, or abandonment, the individual account record shall be designated as a repossession account and shall state when and how possession of the security was obtained and shall identify the proceeds of the sale of the property. The licensee shall also retain the following:
- (a) a copy of any agreement entered into with the borrower with respect to the terms of surrender;
  - (b) a copy of the notice of sale, together with proof of mailing or personal delivery;
  - (c) an inventory of the property taken, unless it appears on the notice of sale;
  - (d) a signed bill of sale or a statement from the purchasers, or from the auctioneer if the sale was public, describing the collateral purchased and showing the amounts paid;

- (e) evidence that the sale took place on the date set forth in the notice of sale, including a notice of any bids received;
  - (f) a copy of a final accounting sent to the borrower, setting forth the disposition of the proceeds of sale and the principal balance due, if any, on the account; and
  - (g) paid receipts showing the costs incurred in the repossession and sale of the security that have been charged to the borrower.
- (8) Late Fees.
- (a) Lenders may apply a borrower's most recent payment to the oldest installment due;
  - (b) A lender may not collect more than one late fee from any full or partial payment made toward a particular scheduled installment payment. However, a lender may collect more than one late fee from any payment made toward more than one installment payment, provided the number of late fees collected does not exceed the number of different installment payments that were past due for 10 days or more and to which such payment was applied.
  - (c) If a lender declares a borrower in default and accelerates a loan, the lender may collect a late fee for each installment payment that was, as of the date of acceleration, past due for 10 days or more. A lender may not collect a late fee for any installment that becomes due solely because the lender has declared a borrower in default and accelerated a loan.
  - (d) If a lender refinances a loan, a lender may include in the amount financed late fees for each installment payment that was, as of the date of refinancing, past due for 10 days or more.
  - (e) If a loan reaches maturity, a lender may include in the final balance owed a late fee for each installment payment that remains past due for 10 days or more.
- (9) Deferral Charges. For any loan made on or after July 1, 2013, licensees may assess a deferral charge for each month of the remaining loan term on each installment owed after the date of deferral. Licensees may charge a late fee on deferred payments that remain past due for 10 days or more after the agreed upon due date. Deferrals shall not alter the maturity date of the loan contract, even where a payment is deferred beyond maturity.
- (10) ELT Fees. Licensees who are required by the North Carolina Division of Motor Vehicles (NCDMV) to use its electronic lien title (ELT) system to file or record the licensee's security interest in a vehicle may collect from borrowers the fees charged by NCDMV, ELT vendors, and service provider vendors to use the ELT system at a rate prescribed by 20-58.4A(b)(3). When a borrower takes out a junior lien on a vehicle pledged as security, licensees who are senior lienholders with an already perfected lien may collect from borrowers the fees charged to the licensee by NCDMV, ELT vendors, and service provider vendors, provided the licensee has disclosed the potential for the fee at origination of the loan. Licensees shall account for ELT fees as they account for other recording fees as described in Sub-Item (3)(j) of this Rule.

*History Note:* Authority G.S. 20-58.4A; 53-177; 53-184; 53-185;  
 Eff. February 1, 1976;  
 Amended Eff. January 1, 1993;  
 Readopted Eff. August 1, 2018.

#### **04 NCAC 03E .0602 COLLECTION PRACTICES**

*History Note:* Authority G.S. 53C-2-1; 53C-2-2; 53-180; 53-185;  
 Eff. February 1, 1976;  
 Repealed Eff. August 1, 2018.

#### **04 NCAC 03E .0603 DEFERMENT CHARGES**

*History Note:* Authority G.S. 53-92; 53-104; 53-173(6); 53-185;  
 Eff. February 1, 1976;  
 Repealed Eff. January 1, 1993.

## SUBCHAPTER 3F - LICENSEES UNDER MONEY TRANSMITTERS ACT

**04 NCAC 03F .0101      APPLICATION FOR LICENSE**

**04 NCAC 03F .0102      ISSUANCE OF LICENSE**

**04 NCAC 03F .0103      REQUIRED REPORTS**

*History Note:*      Authority G.S. 53-92; 53-194; 53-196; 53-197; 53-198; 53-200; 53-204;  
Eff. February 1, 1976;  
Repealed Eff. February 1, 1993.

**04 NCAC 03F .0104      REVOCATION OF LICENSE**

**04 NCAC 03F .0105      DENIAL OR REVOCATION OF LICENSE: HEARING: APPEAL**

*History Note:*      Authority G.S. 53-92; 53-206; 53-207; 150A-11(1);  
Eff. February 1, 1976;  
Repealed Eff. January 1, 1985.

### SECTION .0200 - ADMINISTRATIVE

**04 NCAC 03F .0201      DEFINITIONS**

*History Note:*      Authority G.S. 53-208.27;  
Eff. February 1, 1993;  
Amended Eff. November 1, 2013; September 1, 2006; June 1, 1995;  
Repealed Eff. August 1, 2018.

**04 NCAC 03F .0202      PERMISSIBLE INVESTMENTS**

*History Note:*      Authority G.S. 53-193; 53-206.1;  
Eff. March 1, 1994;  
Repealed Eff. October 1, 2011.

### SECTION .0300 - LICENSING

**04 NCAC 03F .0301      INCOMPLETE APPLICATIONS**

Incomplete application files shall be closed and withdrawn without prejudice when the applicant has not submitted information requested by the Commissioner within 30 days of the request.

*History Note:*      Authority G.S. 53-208.45; 53-208.60;  
Eff. February 1, 1993;  
Amended Eff. November 1, 2013;  
Readopted August 1, 2018.

**04 NCAC 03F .0302      ISSUANCE OF A LICENSE**

**04 NCAC 03F .0303      LICENSE FEES**

**04 NCAC 03F .0304      AGENT LOCATION FEE**

*History Note:*      Authority G.S. 53-197; 53-200; 53-202; 53-206.1; 150B-21.2;  
Eff. February 1, 1993;  
Amended June 1, 1995;  
Repealed Eff. October 1, 2011.

### SECTION .0400 - OPERATIONS

**04 NCAC 03F .0401      CERTIFICATE OF AUTHORITY**



*History Note:* Authority G.S. 53-203; 53-206.1; 150B-21.2;  
Eff. February 1, 1993;  
Repealed Eff. October 1, 2011.

**04 NCAC 03F .0402 SURRENDER OF LICENSE**

*History Note:* Authority G.S. 53-208.27;  
Eff. February 1, 1993;  
Repealed Eff. August 1, 2018.

**SECTION .0500 - REPORTING AND NOTIFICATIONS**

**04 NCAC 03F .0501 GENERALLY ACCEPTED ACCOUNTING PRINCIPLES**

*History Note:* Authority G.S. 53-208.27;  
Eff. February 1, 1993;  
Repealed Eff. August 1, 2018.

**04 NCAC 03F .0502 STATEMENT OF NET WORTH**  
**04 NCAC 03F .0503 ANNUAL STATEMENT**

*History Note:* Authority G.S. 53-198; 53-199(b); 53-204(a); 53-206.1; 150B-21.2;  
Eff. February 1, 1993;  
Amended Eff. June 1, 1995;  
Repealed Eff. October 1, 2011.

**04 NCAC 03F .0504 AGENT ACTIVITY REPORTS**  
**04 NCAC 03F .0505 AMENDMENTS TO APPLICATION**  
**04 NCAC 03F .0506 REVOCATION OR CANCELLATION OF SURETY BOND**  
**04 NCAC 03F .0507 CEASING OPERATIONS**  
**04 NCAC 03F .0508 IMPAIRMENT OF MINIMUM NET WORTH**  
**04 NCAC 03F .0509 DISHONOR OR DEFAULT IN PAYMENT INSTRUMENT**

*History Note:* Authority G.S. 53-208.5; 53-208.8; 53-208.27;  
Eff. February 1, 1993;  
Amended Eff. November 1, 2013; June 1, 1995;  
Repealed Eff. August 1, 2018.

**SECTION .0600 - EXAMINATION; BOOKS AND RECORDS**

**04 NCAC 03F .0601 RECORD AND BOOKKEEPING REQUIREMENTS**  
**04 NCAC 03F .0602 EXAMINATION FEE**

*History Note:* Authority 53-208.15; 53-208.16; 53-208.20; 53-208.27; 53-282(c);  
Eff. February 1, 1993;  
Amended Eff. November 1, 2013;  
Repealed Eff. August 1, 2018.

**SECTION .0700 - LICENSE REVOCATION**

**04 NCAC 03F .0701 HEARINGS**

*History Note:* Authority G.S. 53-206; 53-206.1; 53-207; 150B-21.2;  
Eff. February 1, 1993;  
Repealed Eff. October 1, 2011.

## SUBCHAPTER 3G - FUNERAL AND BURIAL TRUST FUNDS

### SECTION .0100 - ADMINISTRATIVE

- 04 NCAC 03G .0101      APPLICATION FOR LICENSE**
- 04 NCAC 03G .0102      ISSUANCE OF LICENSE**
- 04 NCAC 03G .0103      PRENEED BURIAL CONTRACTS**

*History Note:*      Authority G.S. 53-92; 90-210.31(e); 90-210.34; 90-210.34(b); 90-210.36;  
Eff. February 1, 1976;  
Amended Eff. August 1, 1988; March 15, 1978;  
Repealed Eff. May 1, 1991.

- 04 NCAC 03G .0104      DEFINITIONS; FILINGS**

*History Note:*      Authority G.S. 90-210.30; 90-210.34; 90-210.36;  
Eff. May 1, 1991;  
Repealed Eff. February 1, 1995.

### SECTION .0200 - LICENSING

- 04 NCAC 03G .0201      APPLICATION FOR LICENSE**
- 04 NCAC 03G .0202      ISSUANCE OF A LICENSE**

*History Note:*      Authority G.S. 90-210.34(a); 90-210.34(b); 90-210.36;  
Eff. May 1, 1991;  
Repealed Eff. February 1, 1995.

- 04 NCAC 03G .0203      EXPIRATION AND RENEWAL**

*History Note:*      Authority G.S. 90-210.34; 90-210.36;  
Eff. June 1, 1991;  
Repealed Eff. February 1, 1995.

### SECTION .0300 - PRENEED BURIAL CONTRACTS

- 04 NCAC 03G .0301      TYPES AND REVOCABILITY OF CONTRACTS**
- 04 NCAC 03G .0302      RETAINAGE**
- 04 NCAC 03G .0303      APPROVED CONTRACTS AND OTHER FORMS**

*History Note:*      Authority G.S. 90-210.31; 90-210.31(a1); 90-210.31(e); 90-210.32(d); 90-210.36;  
Eff. May 1, 1991;  
Repealed Eff. February 1, 1995.

### SECTION .0400 - DEATH OF THE PRENEED BURIAL TRUST CONTRACT BENEFICIARY

- 04 NCAC 03G .0401      PERFORMANCE BY A CONTRACTING LICENSEE**
- 04 NCAC 03G .0402      PERFORMANCE BY NON-CONTRACTING FUNERAL HOME**
- 04 NCAC 03G .0403      EXCESS FUNDS**

*History Note:*      Authority G.S. 90-210.31(c); 90-210.31(c1); 90-210.36;  
Eff. May 1, 1991;  
Repealed Eff. February 1, 1995.

## **SECTION .0500 - OPERATIONS**

### **04 NCAC 03G .0501      RECORD AND BOOKKEEPING REQUIREMENTS**

*History Note:*      Authority G.S. 90-210.31; 90-210.35(a); 90-210.36;  
                                 Eff. May 1, 1991;  
                                 Repealed Eff. February 1, 1995.

### **04 NCAC 03G .0502      ANNUAL REPORT**

*History Note:*      Authority G.S. 90-210.36;  
                                 Eff. June 1, 1991;  
                                 Repealed Eff. February 1, 1995.

### **04 NCAC 03G .0503      NOTICE OF TRANSFER**

### **04 NCAC 03G .0504      ASSIGNMENT AND TERMINATION**

*History Note:*      Authority G.S. 90-210.35(b); 90-210.35(c); 90-210.36;  
                                 Eff. May 1, 1991;  
                                 Repealed Eff. February 1, 1995.

## **SECTION .0600 - LICENSE REVOCATION OR SUSPENSION**

### **04 NCAC 03G .0601      REVOCATION OR SUSPENSION; HEARINGS**

*History Note:*      Authority G.S. 90-210.31; 90-210.32; 90-210.33; 90-210.36;  
                                 Eff. June 1, 1991;  
                                 Repealed Eff. February 1, 1995.

## **SUBCHAPTER 3H - APPLICATIONS BY REGIONAL BANK HOLDING COMPANIES**

### **SECTION .0100 - REGIONAL BANK HOLDING COMPANIES**

#### **04 NCAC 03H .0101      APPLICATION FEES**

*History Note:*      Authority G.S. 53-214(b);  
                                 Eff. September 1, 1985;  
                                 Repealed Eff. May 1, 1992.

#### **04 NCAC 03H .0102      REGIONAL BANK HOLDING COMPANY ACQUISITIONS**

#### **04 NCAC 03H .0103      BANK HOLDING COMPANY REGISTRATION**

*History Note:*      Authority G.S. 53-211; 53-214(b); 53-227; 53-230;  
                                 Eff. May 1, 1992;  
                                 Amended Eff. September 1, 2006; April 1, 1999;  
                                 Repealed Eff. August 1, 2018.

## **SUBCHAPTER 03I - MORTGAGE BANKER/BROKER**

### **SECTION .0100 – ADMINISTRATIVE**

**04 NCAC 03I .0101      DEFINITIONS; FILINGS**

*History Note:*    Authority G.S. 53-233; 53-234; 53-241;  
                          Eff. November 1, 1993;  
                          Amended Eff. May 1, 1995;  
                          Repealed Eff. April 1, 2003.

**SECTION .0200 - FINANCIAL REQUIREMENTS**

**04 NCAC 03I .0201      FINANCIAL REQUIREMENTS FOR MORTGAGE BANKERS AND MORTGAGE BROKERS**

*History Note:*    Authority G.S. 53-236(b); 53-241;  
                          Eff. November 1, 1993;  
                          Amended Eff. May 1, 1995;  
                          Repealed Eff. April 1, 2003.

**04 NCAC 03I .0202      MINIMUM NET WORTH REQUIREMENT FOR MORTGAGE BROKERS**  
**04 NCAC 03I .0203      LIQUIDITY OF MORTGAGE BANKERS AND BROKERS**

*History Note:*    Authority G.S. 53-236(b); 53-241;  
                          Eff. November 1, 1993;  
                          Repealed Eff. May 1, 1995.

**04 NCAC 03I .0204      SURETY BOND**

*History Note:*    Authority G.S. 53-236(b); 53-241;  
                          Eff. November 1, 1993;  
                          Amended Eff. May 1, 1995;  
                          Repealed Eff. April 1, 2003.

**04 NCAC 03I .0205      IRREVOCABLE LETTER OF CREDIT; PLEDGE OF SECURITIES**  
**04 NCAC 03I .0206      NETWORTH**

*History Note:*    Authority G.S. 53-236(b); 53-241;  
                          Eff. May 1, 1995;  
                          Repealed Eff. April 1, 2003.

**SECTION .0300 - REGISTRATION OF MORTGAGE BANKERS AND MORTGAGE BROKERS**

**04 NCAC 03I .0301      APPLICATION FOR REGISTRATION AS A MORTGAGE BANKER OR BROKER**  
**04 NCAC 03I .0302      EXEMPT PERSONS OR ORGANIZATIONS**  
**04 NCAC 03I .0303      EXPERIENCE REQUIREMENTS FOR MORTGAGE BANKERS**  
**04 NCAC 03I .0304      EXPERIENCE REQUIREMENTS FOR MORTGAGE BROKERS**  
**04 NCAC 03I .0305      ISSUANCE OF CERTIFICATE OF REGISTRATION**  
**04 NCAC 03I .0306      NONTRANSFERABILITY OF CERTIFICATE OF REGISTRATION**

*History Note:*    Authority G.S. 53-234(6)(a); 53-235; 53-236; 53-236(b); 53-237(a); 53-237(c); 53-241; 53-242;  
                          Eff. November 1, 1993;  
                          Amended Eff. May 1, 1995;  
                          Repealed Eff. April 1, 2003.

**SECTION .0400 - OPERATIONS**

**04 NCAC 03I .0401      ANNUAL REGISTRATION FEE**

<b>04 NCAC 03I .0402</b>	<b>ANNUAL REPORT</b>
<b>04 NCAC 03I .0403</b>	<b>SEGREGATION OF FEES</b>
<b>04 NCAC 03I .0404</b>	<b>REFUNDS</b>
<b>04 NCAC 03I .0405</b>	<b>RECORD AND BOOKKEEPING REQUIREMENTS</b>
<b>04 NCAC 03I .0406</b>	<b>DISPLAY OF CERTIFICATE OF REGISTRATION</b>

*History Note:* Authority G.S. 53-122(3); 53-234(1); 53-234(2); 53-237(c); 53-238; 53-238(5); 53-238(6); 53-239; 53-239(c); 53-241; 53-242;  
 Eff. November 1, 1993;  
 Amended Eff. May 1, 1995;  
 Repealed Eff. April 1, 2003.

**SECTION .0500 - REPORTING AND NOTIFICATION REQUIREMENTS**

<b>04 NCAC 03I .0501</b>	<b>AMENDMENTS TO INFORMATION ON FILE WITH THE COMMISSIONER</b>
<b>04 NCAC 03I .0502</b>	<b>WITHDRAWAL/TERMINATION/REGISTRATION/MTGE BANKER/MTGE BROKER</b>
<b>04 NCAC 03I .0503</b>	<b>IMPAIRMENT OF FINANCIAL REQUIREMENTS</b>

*History Note:* Authority G.S. 53-236(b); 53-241;  
 Eff. November 1, 1993;  
 Amended Eff. May 1, 1995;  
 Repealed Eff. April 1, 2003.

**SECTION .0600 - PROHIBITED ACTS AND PRACTICES; INVESTIGATIONS**

<b>04 NCAC 03I .0601</b>	<b>PROHIBITED CONDUCT AND PRACTICES</b>
<b>04 NCAC 03I .0602</b>	<b>SOLICITATION AND ADVERTISING</b>
<b>04 NCAC 03I .0603</b>	<b>EXAMINATIONS, INVESTIGATION</b>
<b>04 NCAC 03I .0604</b>	<b>ENFORCEMENT ACTIONS</b>
<b>04 NCAC 03I .0605</b>	<b>HEARINGS</b>

*History Note:* Authority G.S. 53-238; 53-239; 53-240; 53-241;  
 Eff. November 1, 1993;  
 Amended Eff. May 1, 1995;  
 Repealed Eff. April 1, 2003.

**SECTION .0700 - DISCLOSURE REQUIREMENTS**

<b>04 NCAC 03I .0701</b>	<b>CONFLICTS OF INTEREST</b>
<b>04 NCAC 03I .0702</b>	<b>MORTGAGE BROKER APPLICATION DISCLOSURES</b>
<b>04 NCAC 03I .0703</b>	<b>MORTGAGE BANKER APPLICATION DISCLOSURES</b>
<b>04 NCAC 03I .0704</b>	<b>DISCLOSURE ARRGMTS BETWEEN MORTGAGE BANKERS/MORTGAGE BROKERS</b>
<b>04 NCAC 03I .0705</b>	<b>COMMITMENT DISCLOSURES</b>
<b>04 NCAC 03I .0706</b>	<b>MORTGAGE LOCK-IN AGREEMENT</b>

*History Note:* Authority G.S. 53-238; 53-241;  
 Eff. November 1, 1993;  
 Amended Eff. May 1, 1995;  
 Repealed Eff. April 1, 2003.

**SUBCHAPTER 03J - REFUND ANTICIPATION LOAN**

## SECTION .0100 - ADMINISTRATIVE

### 04 NCAC 03J .0101 DEFINITIONS; FILINGS

(a) In addition to the definitions in G.S. 53, Article 20, for the purposes of this Subchapter the following definitions apply:

- (1) "Controlling person" means any person as defined in G.S. 53-246(7) who owns or holds with the power to vote 10% or more of the equity securities of the registrant, or who has the power to direct the management and policy of the registrant.
- (2) "Creditor loan fee" means the charges, fees, or other consideration charged or imposed by the creditor for the making of a refund anticipation loan.
- (3) "Electronic filing fee" means the fee imposed by the facilitator in consideration for the electronic filing of a tax return.
- (4) "Facilitator loan fee" means the charges, fees, or other consideration charged or imposed by the facilitator for the making of a refund anticipation loan.
- (5) "Transmitter" means any person who sends electronic returns directly to the Internal Revenue Service. This term shall include persons who receive information to be reformatted and transmitted to the Internal Revenue Service, i.e., third-party transmitters.

(b) An application for registration or any report, notice, or other document that is required by law or rule to be filed with the Commissioner shall be obtained from and filed online through <https://www.nccob.gov>.

*History Note:* Authority G.S. 53-245; 53-246; 53-248; 53-253;  
Eff. September 1, 1993;  
Amended Eff. September 1, 2006;  
Readopted Eff. August 1, 2018.

## SECTION .0200 - APPLICATION AND RENEWAL

### 04 NCAC 03J .0201 APPLICATION FOR REGISTRATION AS A FACILITATOR

(a) The application for registration as a facilitator shall include the following:

- (1) a description of the applicant's organizational structure, including the name, business address, and business telephone number of the applicant, and the name of its controlling persons;
- (2) copies of the following documents, where applicable:
  - (A) the applicant's Articles of Incorporation, Articles of Organization, or partnership agreement;
  - (B) a Certificate of Existence or Certificate of Good Standing not more than 90 days old from the applicant's state of incorporation;
  - (C) a Certificate of Authority to do business in this State; and
  - (D) a copy of the applicant's Certificate of Assumed Name.
- (3) a description of the applicant's operations, including the names and addresses of the lenders that will fund refund anticipation loans to its customers, the names and addresses of transmitters, and any other intermediary parties involved in the process of facilitating refund anticipation loans;
- (4) a description of the business(es) in which the applicant is primarily engaged;
- (5) the applicant's Electronic Filer Identification Number (EFIN) and Preparer Tax Identification Number (PTIN) as provided by the Internal Revenue Service;
- (6) proof that the applicant has been accepted by the Internal Revenue Service to participate in its electronic filing program for the present tax year;
- (7) disclosure of any civil judgments entered against the applicant or its controlling persons during the past 10 years that are partially or wholly unpaid;
- (8) disclosure of any civil proceedings pending against or civil judgments entered against the applicant or its controlling persons that involve fraud or dishonesty;
- (9) disclosure of any felony convictions entered against the applicant or its controlling persons;
- (10) disclosure of any misdemeanor convictions entered against the applicant or its controlling persons that involve theft, fraud, or dishonesty;
- (11) disclosure of any enforcement proceeding brought against the applicant or its controlling persons by any agency or department of this State, the Federal government or any other state that involves the revocation or suspension of any business license;

- (12) disclosure of whether the applicant, or its controlling persons have been denied acceptance in or suspended from the Electronic Filing Program of the Internal Revenue Service;
- (13) disclosure of whether the applicant is, or has ever been, the subject of the following proceedings: bankruptcy, assignment for the benefit of creditors, receivership, conservatorship, or similar proceeding; and
- (14) the address of each office in this State where the applicant intends to facilitate refund anticipation loans.

(b) Incomplete applications shall be closed and the application withdrawn when the applicant has not submitted information requested by the Commissioner within 30 days of request. If an application is withdrawn, in order to become registered, the applicant shall submit a new application and pay all fees associated with the application.

*History Note:* Authority G.S. 53-245(b); 53-247(a); 53-248(a); 53-253;  
Eff. September 1, 1993;  
Readopted Eff. August 1, 2018.

**04 NCAC 03J .0202 ISSUANCE OF A CERTIFICATE OF REGISTRATION**  
**04 NCAC 03J .0203 EXPIRATION AND RENEWAL**

*History Note:* Authority G.S. 53-248(a); 53-248(b); 53-253; 150B-21.2;  
Eff. September 1, 1993;  
Repealed Eff. August 1, 2018.

**04 NCAC 03J .0204 APPLICATION FOR RENEWAL OF CERTIFICATE OF REGISTRATION**

(a) The application for renewal of the Certificate of Registration shall include the following:

- (1) where applicable, any amendments to the application for registration filed pursuant to Rule .0201 of this Subchapter; and
- (2) a written verification of the accuracy of the application for Certificate of Registration filed pursuant to Rule .0201 of this Subchapter and any amendments filed pursuant to Subparagraph(a)(1) of this Rule and Rule .0305 of this Subchapter.

(b) Incomplete applications for renewal of the Certificate of Registration shall be closed and the application for renewal withdrawn when the registrant has not submitted information requested by the Commissioner within 30 days of the request. If an application is withdrawn, in order to be registered, the applicant shall submit a new application and pay all fees associated with the application.

*History Note:* Authority G.S. 53-248(b); 53-253;  
Eff. September 1, 1993;  
Readopted Eff. August 1, 2018.

**04 NCAC 03J .0205 NONTRANSFERABILITY OF CERTIFICATE OF REGISTRATION**

(a) A Certificate of Registration shall be neither transferable nor assignable.

(b) The Certificate of Registration shall become void if the registrant changes organizational structure, such as to or from a sole proprietorship, partnership, limited partnership, general partnership, limited liability company, or corporation. The new entity may apply for a Certificate of Registration pursuant to Rule .0201 of this Section. If the entity that results from the change in the registrant's organization would like to engage in business as a facilitator in this State, it shall apply for a Certificate of Registration pursuant to Rule .0201 of this Section.

*History Note:* Authority G.S. 53-253;  
Eff. September 1, 1993;  
Readopted Eff. August 1, 2018.

**SECTION .0300 - OPERATIONS, REPORTING REQUIREMENTS, NOTIFICATIONS**

**04 NCAC 03J .0301 CHECK CASHING SERVICES**

*History Note:* Authority G.S. 53-250(5); 53-253; 150B-21.2;  
Eff. September 1, 1993;

*Repealed Eff. August 1, 2018.*

**04 NCAC 03J .0302 RECORD AND BOOKKEEPING REQUIREMENTS**

(a) A registrant shall maintain the following records with respect to each application for a refund anticipation loan in this State:

- (1) the name of applicant;
- (2) the social security number of applicant;
- (3) the date of application;
- (4) disposition of application, e.g., whether loan was funded, denied, etc.;
- (5) the gross amount of the refund anticipation loan;
- (6) the amount of the creditor fee;
- (7) the amount of the facilitator loan fee, if any;
- (8) the amount of the electronic filing fee;
- (9) the amount of refund anticipation loan proceeds disbursed by the registrant to the debtor;
- (10) the date on which refund anticipation loan proceeds were disbursed by the registrant to the debtor; and
- (11) the identity of the individual originating the application for the refund anticipation loan.

These records shall be kept in an office or offices of the registrant in this State. This Rule shall not be interpreted to require a registrant to maintain one central office where all records required are located.

(b) Evidence of all disbursements delivered by the registrant to each debtor in payment of the proceeds of the refund anticipation loan shall be available upon request by the Commissioner.

(c) All records required to be kept pursuant to Paragraph (a) of this Rule shall be kept for a period of three years.

*History Note: Authority G.S. 53-253;  
Eff. September 1, 1993;  
Readopted Eff. August 1, 2018.*

**04 NCAC 03J .0303 FILING AND POSTING OF FEE SCHEDULE**

(a) The fee schedule of refund anticipation loan fees required by G.S. 53-249(a) shall be filed pursuant to Rule .0101(b) of this Subchapter.

(b) The fee schedule referenced in Paragraph (a) of this Rule shall include the following fees:

- (1) the creditor fee; and
- (2) the facilitator loan fee.

(c) Pursuant to G.S. 53-249(c), the registrant shall display the following fees:

- (1) the creditor fee;
- (2) the facilitator loan fee; and
- (3) the electronic filing fee.

*History Note: Authority G.S. 53-249; 53-253;  
Eff. September 1, 1993;  
Readopted Eff. August 1, 2018.*

**04 NCAC 03J .0304 DISCLOSURES**

(a) For the purposes of G.S. 53-249(d)(1) and (2), the registrant shall disclose and provide a copy to the debtor the following fees:

- (1) The creditor loan fee;
- (2) The facilitator loan fee; and
- (3) The electronic filing fee.

(b) For the purposes of G.S. 53-249(d)(5), the term "appropriate taxing authority" shall mean the Internal Revenue Service.

*History Note: Authority G.S. 53-249(d); 53-253;  
Eff. September 1, 1993;  
Readopted Eff. August 1, 2018.*

**04 NCAC 03J .0305 AMENDMENTS TO APPLICATION**



(a) A registrant shall maintain a current application with the Commissioner. If there is a change in the information contained in the application, the registrant shall notify the Commissioner within 30 days of the effective date of the change. Notification shall be made by either letter or by a revision of the applicable section of the application filed pursuant to Rule .0201 of this Subchapter.

(b) If a registrant decides to open a new office in this State where it intends to facilitate refund anticipation loans, it shall notify the Commissioner of the opening of the new office at least 30 days before it begins business as a facilitator in the new office. The notification shall comply with Paragraph (a) of this Rule and shall be accompanied by a fee made payable to the Commissioner in the amount set forth in G.S. 53-248(a) for each new office in this State at which the registrant facilitates refund anticipation loans.

*History Note:* Authority G.S. 53-253;  
Eff. September 1, 1993;  
Readopted Eff. August 1, 2018.

#### **04 NCAC 03J .0306 CESSATION OF OPERATIONS**

*History Note:* Authority G.S. 53-253; 150B-21.2;  
Eff. September 1, 1993;  
Repealed Eff. August 1, 2018.

### **SECTION .0400 - ENFORCEMENT**

#### **04 NCAC 03J .0401 HEARINGS**

*History Note:* Authority G.S. 53-251; 53-253; 150B-21.2;  
Eff. September 1, 1993;  
Repealed Eff. August 1, 2018.

#### **04 NCAC 03J .0402 EXAMINATIONS, AUDITS**

The Commissioner may conduct or cause to be conducted an examination or audit of the books and records of any registrant.

*History Note:* Authority G.S. 53-253;  
Eff. September 1, 1993;  
Readopted Eff. August 1, 2018.

### **SUBCHAPTER 03K - REVERSE MORTGAGES**

#### **SECTION .0100 - ADMINISTRATIVE**

#### **04 NCAC 03K .0101 DEFINITIONS; FILINGS**

- (a) In addition to the definitions in G.S. 53-257, for the purpose of this Subchapter, the following definitions apply:
- (1) "Accounting period" means either a period of 12 months (or less in the first year of operation) ending December 31 or a fiscal year of not more than 12 months ending on the last day of any month except December.
  - (2) "Application fee" means any fee accepted by an authorized lender or lenders in connection with an application for a reverse mortgage loan including any charge for soliciting, processing, placing, or negotiating a reverse mortgage loan.
  - (3) "Branch office" has the same meaning as defined in G.S. 53-244.030.
  - (4) "Engaging in the mortgage business" has the same meaning at G.S. 53-244.030.
  - (5) "Mortgage lender" has the same meaning as G.S. 53-244.030.
  - (6) "NC SAFE Act authorized lender" means a mortgage lender licensed in this State that has obtained a Notice of Authorization.

- (7) "Notice of Authorization" means the document granted by the Commissioner that authorizes a mortgage lender to engage in the business of making reverse mortgage loans.
- (8) "Person" has the same meaning as G.S. 53-244.030.

(b) Any application for authorization to make reverse mortgage loans, any report, annual statement, amendment to application, notice, or other document that is required by law or rule shall be obtained and filed with the Commissioner of Banks. Any application shall be obtained and filed with the Commissioner of Banks at <http://www.nccob.gov>.

*History Note:* Authority G.S. 53-257; 53-259; 53-271(a);  
Eff. January 1, 1995;  
Amended Eff. September 1, 2006;  
Readopted Eff. August 1, 2018.

## **SECTION .0200 - AUTHORIZATION OF REVERSE MORTGAGE LENDERS**

### **04 NCAC 03K .0201 APPLICATION FOR AUTHORIZATION AS A REVERSE MORTGAGE LENDER**

(a) The application shall be in writing, attested by the applicant, and filed pursuant to Rule .0101(b) of this Subchapter, and shall include the following:

- (1) a business plan that includes a description of the applicant's reverse mortgage business operations;
- (2) the addresses where the applicant intends to engage in business as a reverse mortgage lender, including branch offices and the name of each branch manager;
- (3) a description of the business experience and current business activities of the applicant, its partners, directors, principal officers and controlling persons; and
- (4) three business references, including one bank reference.

(b) In addition to the documents and information described in Paragraph (a) of this Rule, the Commissioner may require additional information as necessary to make the findings required by G.S 53-258.

(c) Incomplete application files may be closed and deemed withdrawn when the applicant has not submitted information requested by the Commissioner within 30 days of the request.

*History Note:* Authority G.S. 53-258; 53-259;  
Eff. January 1, 1995;  
Readopted Eff. August 1, 2018.

### **04 NCAC 03K .0202 NOTIFICATION OF INTENT TO ENGAGE IN REVERSE MORTGAGE LENDING**

*History Note:* Authority G.S. 53-258(a)(c); 53-259; 53-271(a);  
Eff. January 1, 1995;  
Repealed Eff. August 1, 2018.

### **04 NCAC 03K .0203 CURRENT AUTHORIZED LENDER INFORMATION**

(a) A NC SAFE Act authorized lender shall notify the Commissioner within 30 days of the effective date of any material changes to the information on file with the Commissioner. Notification shall be made on the lender's letterhead.

(b) For the purposes of this Rule, the term "material" means any information that would influence the granting of authorization to engage in reverse mortgage lending. The term "material" shall include information concerning a change in the address of the authorized lender's reverse mortgage branch office locations or the cessation of reverse mortgage lending activities in this State.

*History Note:* Authority G.S. 53-258; 53-259; 53-271;  
Eff. January 1, 1995;  
Readopted Eff. August 1, 2018.

### **04 NCAC 03K .0204 ANNUAL RENEWAL FEE**

(a) On or before December 31 of each year, each NC SAFE Act authorized lender shall pay the annual fee set forth in G.S. 53-258(d).

(b) Failure of an NC SAFE Act authorized lender to pay the annual fee as of the date specified in Paragraph (a) of this Rule shall be grounds for revocation of its authorization to make reverse mortgage loans.

*History Note:* Authority G.S. 53-258(d); 53-259; 53-271;  
Eff. January 1, 1995;  
Readopted Eff. August 1, 2018.

#### **04 NCAC 03K .0205 CERTIFICATE OF AUTHORIZATION**

*History Note:* Authority G.S. 53-122(3); 53-258(b)(d); 53-259; 53-271(a);  
Eff. January 1, 1995;  
Repealed Eff. August 1, 2018.

#### **04 NCAC 03K .0206 NONTRANSFERABILITY OF CERTIFICATE OF AUTHORIZATION**

A Certificate of Authorization shall be neither transferrable nor assignable.

*History Note:* Authority G.S. 53-258(d); 53-259; 53-271(a);  
Eff. January 1, 1995;  
Readopted Eff. August 1, 2018.

### **SECTION .0300 - REQUIREMENTS FOR AUTHORIZATION**

#### **04 NCAC 03K .0301 MINIMUM NET WORTH REQUIREMENT FOR AUTHORIZED LENDER OR LENDERS**

*History Note:* Authority G.S. 53-258(b); 53-259; 53-271(a);  
Eff. January 1, 1995;  
Repealed Eff. August 1, 2018.

#### **04 NCAC 03K .0302 SURETY BONDS**

All NC SAFE Act authorized lenders shall post a surety bond in the amount of one hundred thousand dollars (\$100,000) with the Commissioner that shall run to the benefit of the State. The bond shall be executed by an insurance company authorized to do business in North Carolina and not affiliated with the lender. The bond shall be conditioned upon the authorized lender's compliance with the provisions of Articles 19B and 21 of Chapter 53 of the General Statutes and all rules adopted thereunder.

*History Note:* Authority G.S. 53-244.103; 53-244.118; 53-258(b); 53-259; 53-271(a);  
Eff. January 1, 1995;  
Readopted Eff. August 1, 2018.

### **SECTION .0400 - OPERATIONS, NOTIFICATIONS, AND REPORTING**

#### **04 NCAC 03K .0401 CERTIFIED FINANCIAL STATEMENTS**

*History Note:* Authority G.S. 53-259; 53-271(a);  
Eff. January 1, 1995;  
Repealed Eff. August 1, 2018.

#### **04 NCAC 03K .0402 RECORD AND BOOKKEEPING REQUIREMENTS**

(a) All NC SAFE Act authorized lenders shall maintain their books and records relating to the making of reverse mortgage loans for a period of three years after payment of the debt and make them available for inspection by the Commissioner.

(b) An NC SAFE Act authorized lender shall notify the Commissioner of any change in the location of its books and records.

*History Note:* Authority G.S. 53-244.105; 53-259; 53-271(a);  
Eff. January 1, 1995;  
Readopted Eff. August 1, 2018.

**04 NCAC 03K .0403 EXAMINATIONS**

The Commissioner may make such examination of the books, records and affairs of NC SAFE Act authorized lenders pursuant to G.S. 53-244.115.

*History Note:* Authority G.S. 53-244.115; 53-259; 53-270; 53-271(a);  
Eff. January 1, 1995;  
Readopted Eff. August 1, 2018.

**04 NCAC 03K .0404 WITHDRAWAL/TERMINATION OF AUTHORIZATION AS REVERSE MORTGAGE LENDER**

*History Note:* Authority G.S. 53-259; 53-271;  
Eff. January 1, 1995;  
Repealed Eff. September 1, 2018.

**04 NCAC 03K .0405 IMPAIRMENT OF SURETY BOND**

(a) A NC SAFE authorized lender shall notify the Commissioner in writing within three business days of any cancellation or suspension of the surety bond required by Rule .0302 of this Subchapter.

(b) If an applicant fails to meet the minimum surety bond requirements, the Commissioner may revoke or suspend authorization of NC SAFE Act authorized lender to engage in reverse mortgages.

*History Note:* Authority G.S. 53-244.114; 53-258(b); 53-259; 53-271;  
Eff. January 1, 1995;  
Readopted Eff. August 1, 2018.

**SECTION .0500 - DISCLOSURE REQUIREMENTS**

**04 NCAC 03K .0501 REVERSE MORTGAGE LENDER APPLICATION DISCLOSURE**

**04 NCAC 03K .0502 PERMITTED FEES**

*History Note:* Authority G.S. 53-259; 53-264; 53-265(a); 53-270; 53-271(a);  
Eff. January 1, 1995;  
Repealed Eff. August 1, 2018.

**SECTION - .0600 COUNSELING**

**04 NCAC 03K .0601 COUNSELING**

*History Note:* Authority G.S. 53-259; 53-260; 53-264; 53-271(a);  
Eff. January 1, 1995;  
Repealed Eff. August 1, 2018.

**SECTION .0700 - PROHIBITED ACTS AND PRACTICES; ENFORCEMENT ACTIONS**

**04 NCAC 03K .0701 PROHIBITED ACTS**

*History Note:* Authority G.S. 53-259; 53-270; 53-271(a);  
Eff. January 1, 1995;  
Repealed Eff. August 1, 2018.

**04 NCAC 03K .0702 ENFORCEMENT ACTIONS**

The grounds upon which the Commissioner may revoke the authorization of a lender to engage in reverse mortgage loans includes the following:

- (1) The making of any false statement in an application for authorization;
- (2) The making of any false statement on any form or document requested by the Commissioner;
- (3) One or more violations of G.S. 53, Article 21 or rules of this Subchapter;
- (4) The conviction of any crime that would have a bearing upon the fitness or ability of the authorized lender to conduct its business; or
- (5) The commission of any action that involves dishonesty, fraud, or misrepresentation.

*History Note:* Authority G.S. 53-259; 53-270; 53-271;  
Eff. January 1, 1995;  
Readopted Eff. August 1, 2018.

#### **04 NCAC 03K .0703 HEARINGS**

*History Note:* Authority G.S. 53-259; 53-270; 53-271; 53-272;  
Eff. January 1, 1995;  
Repealed Eff. August 1, 2018.

### **SUBCHAPTER 03L - CHECK-CASHING BUSINESSES**

#### **SECTION .0100 – ADMINISTRATIVE**

#### **04 NCAC 03L .0101 DEFINITIONS**

(a) In addition to the definitions in G.S. 53, Article 22, the following definitions apply:

- (1) "Any one maker" means any single signatory on a personal checking account.
- (2) "Branch location" means a location, including a mobile unit, but not the principal place of business, where the licensee holds itself out to the public as engaging in a check-cashing business.
- (3) "Business day" means a calendar day, other than Saturday, Sunday, or State recognized holiday under 25 NCAC 01E .0901, which is incorporated by reference and includes subsequent amendments.
- (4) "Check" means a draft (other than a draft payable upon presentation of documentation, such as securities) payable on demand and drawn on a bank. The term "check" may also include any cashier's check or teller's check, but shall not include travelers checks or foreign denomination payment instruments.
- (5) "Conspicuously posted" means placed in public view in a location, manner, and size of typeface that a person seeking the services of a licensee could see and read the contents of the posted notice.
- (6) "Controlling person" means a person who owns or holds with the power to vote 10% or more of the equity securities of an applicant or licensee, or who has the power to direct the management and policy of the licensee.
- (7) "Draft" means a written order to pay money signed by the drawer, to another person, who is the drawee.
- (8) "Liquid assets" means cash, bank deposit accounts, money market accounts, and US Treasury bonds owned by the applicant or licensee, plus undeposited checks cashed by a licensee, less any returned checks doubtful of collection and cash remittances due others.
- (9) "Location" means a place of business where check-cashing activity is conducted.
- (10) "Mobile unit" means a vehicle, or other movable means, or a computer terminal from which the business of check cashing is conducted.
- (11) "Principal" means:
  - (A) any person who controls directly, or indirectly through one or more intermediaries, alone or in concert with others, a 10 percent or greater interest in a partnership, company, association, or corporation;
  - (B) the owner of a sole proprietorship;

- (C) any natural person acting with apparent authority for or on behalf of an owner, officer, member, or director of a licensee; or
  - (D) any natural person who directs the performance of other employees as manager of a branch of any licensee.
- (12) "Principal place of business" means the location where the licensee holds itself out to the public as engaging in a check cashing business and that the licensee has declared to the Commissioner to be the main site of its business operations.
- (13) "Receipt" means a written record of a check-cashing transaction.
- (b) A term not defined in this Rule or in G.S. 53, Article 22 shall have the meaning given it, if any, by G.S. 25, Article 3.

*History Note:* Authority G.S. 53-288;  
 Eff. July 1, 2000;  
 Amended Eff. November 1, 2013;  
 Readopted Eff. August 1, 2018.

**04 NCAC 03L .0102 FILINGS**

Licensees may obtain from the agency's website, located at <https://www.nccob.gov>, information concerning applications for a license, reports, applications for annual renewal, amendments to applications, renewal notices, or other documents that are required by law or rule to be filed with the Commissioner.

*History Note:* Authority G.S. 53-288;  
 Eff. July 1, 2000;  
 Amended Eff. September 1, 2006;  
 Readopted Eff. August 1, 2018.

**SECTION .0200 - APPLICATION**

**04 NCAC 03L .0201 APPLICATION FOR LICENSE**

- (a) An application for a license as a check-cashing business shall include a financial statement that shows liquid assets of fifty thousand dollars (\$50,000) as required by G.S. 53-279(a) and shall include the following:
- (1) the business address in North Carolina, mailing address, business telephone number, facsimile number, and name of the supervisor or manager for the principal place of business and for each branch location;
  - (2) the address where books and records for the business will be kept;
  - (3) name, title, and business telephone number and facsimile number for the application contact person;
  - (4) the applicant's federal employer identification number; and
  - (5) a declaration as to whether the applicant's business will be conducted as a sole proprietorship, a partnership, a limited liability company, or a corporation.
- (b) Each applicant shall provide a signed statement authorizing the Commissioner to run a credit report on the applicant and on each owner, partner, director, principal, or controlling person.
- (c) Each applicant shall provide a signed statement making disclosure to the Commissioner concerning information that pertains to either the applicant, its partners, directors, principal officers, or controlling persons for the following:
- (1) all criminal proceedings or criminal convictions;
  - (2) all civil proceedings or civil judgments entered that involve fraud or dishonesty;
  - (3) all civil judgments during the past 10 years that have remained partially or wholly unpaid;
  - (4) all of the following proceedings: bankruptcy, assignment for the benefit of creditors, receivership, conservatorship, or similar proceeding;
  - (5) all proceedings brought by a state or federal administrative agency;
  - (6) all judgments entered by state or federal administrative agency that involve fraud, dishonesty, or that reflect on the applicants' character and fitness to command the confidence of the public; and
  - (7) a description of the current business activities of the applicant and the business experience, business activities, and education of the applicant's partners, directors, principal officers, and controlling persons.
- (d) The application shall be verified by the oath of the applicant.

(e) In addition to the documents and information described in this Rule, the Commissioner may require additional information necessary or helpful in order to perform the investigation required by G.S. 53-278 and to make the findings required by G.S. 53-279.

(f) Incomplete application files may be closed and may be denied without prejudice when the applicant has not submitted information requested by the Commissioner within 30 days of the request.

*History Note:* Authority G.S. 53-276; 53-278; 53-279; 53-288;  
Eff. July 1, 2000;  
Readopted Eff. August 1, 2018.

#### **04 NCAC 03L .0202 FEES**

*History Note:* Authority G.S. 53-278; 53-288; 53C-2-1; 53C-2-2;  
Eff. July 1, 2000;  
Repealed Eff. August 1, 2018.

### **SECTION .0300 - LICENSING**

#### **04 NCAC 03L .0301 ISSUANCE**

*History Note:* Authority G.S. 53-278; 53-279; 53-288; 53C-2-1; 53C-2-2;  
Eff. July 1, 2000;  
Repealed Eff. August 1, 2018.

#### **04 NCAC 03L .0302 NONTRANSFERABILITY OF LICENSE**

(a) A check-cashing license shall be neither transferable nor assignable.

(b) A change in the licensee's organizational structure that constitutes a transfer or assignment of the license shall include the following:

- (1) if the licensee is a corporation or limited liability company:
  - (A) a change in ownership of 50% or more of the licensee's stock; or
  - (B) the conversion of the corporation or company into a general or limited partnership or sole proprietorship;
- (2) if the licensee is a general or limited partnership:
  - (A) a change in one of the licensee's general partners;
  - (B) the conversion of the general partnership into a limited partnership, corporation, or sole proprietorship; or
  - (C) the conversion of the limited partnership into a general partnership, corporation, or sole proprietorship; and
- (3) if the licensee is a sole proprietor:
  - (A) the conversion of the sole proprietorship into a general or limited partnership or corporation; or
  - (B) the sale or assignment of all of the assets of the licensee's business to another person.

(c) Upon a change in organization as set forth in Paragraph (b) of this Rule, the licensee's license shall become void and the licensee shall surrender its license to the Commissioner within 10 days of the change. The entity that results from the change in the licensee's organizational structure shall not engage in a check-cashing business in this State, unless it first obtains a license pursuant to Section .0200 of this Subchapter. An application for a license may be made prior to the effective date of the change in structure.

*History Note:* Authority G.S. 53-276; 53-278; 53-288;  
Eff. July 1, 2000;  
Readopted Eff. August 1, 2018.

#### **04 NCAC 03L .0303 ANNUAL RENEWAL OF LICENSE**

A check-cashing license shall be valid from the date of issuance and, unless renewed, shall expire on September 30 of each year without further action by the Commissioner. The renewal period shall begin on July 1 of each year. Licensees may file renewal applications and pay applicable renewal fees on the agency website located at

www.nccob.gov. Any new license issued on or after July 1 of each year shall not be required to be renewed until the subsequent renewal period.

*History Note:* Authority G.S. 53-276; 53-278; 53-288;  
Eff. July 1, 2000;  
Readopted Eff. August 1, 2018.

## **SECTION .0400 - OPERATIONS**

### **04 NCAC 03L .0401 POSTING OF LICENSE OR BRANCH CERTIFICATE**

A licensee shall obtain a branch location certificate for each location other than its principal place of business where its business of cashing checks is conducted. The license or certificate shall be conspicuously posted.

*History Note:* Authority G.S. 53-276; 53-278; 53-288;  
Eff. July 1, 2000;  
Readopted Eff. August 1, 2018.

### **04 NCAC 03L .0402 SURRENDER OF LICENSE**

A licensee shall notify the Commissioner in writing of its decision to cease operations as a check-cashing business in this State within seven days of the decision. A licensee shall surrender its license and branch certificates, if any, to the Commissioner no later than 30 days after it has voluntarily ceased operations in this State or within a shorter time as the Commissioner may order if operations end involuntarily pursuant to G.S. 53-284 or G.S. 53-285.

*History Note:* Authority G.S. 53-285; 53-276; 53-288;  
Eff. July 1, 2000;  
Readopted Eff. August 1, 2018.

### **04 NCAC 03L .0403 POSTING OF FEES**

- (a) The notice of fees required by G.S. 53-280(c) shall be conspicuously posted.
- (b) A licensee shall file with the Commissioner a scaled duplicate of the notice of fees on 8 1/2 x 11 inch paper.

*History Note:* Authority G.S. 53-280; 53-288;  
Eff. July 1, 2000;  
Amended Eff. November 1, 2013;  
Readopted Eff. August 1, 2018.

### **04 NCAC 03L .0404 CASH-OUT TRANSACTIONS**

### **04 NCAC 03L .0405 LIMITATION ON DELAYED DEPOSIT CHECK CASHING**

*History Note:* Authority G.S. 53-92; 53-93; 53-281; 53-282; 53-288;  
Eff. July 1, 2000;  
Repealed Eff. January 1, 2013.

## **SECTION .0500 - BOOKS AND RECORDS: EXAMINATIONS**

### **04 NCAC 03L .0501 BOOKS AND RECORDS**

(a) Each check-cashing business licensed by the Commissioner of Banks shall record all transactions of receipts and disbursements pertaining to checks cashed. All entries shall document the date the transactions occur. A licensee shall maintain books and accounting records that include the following:

- (1) a daily transaction journal or equivalent record that shows the customer's name for each transaction;
- (2) the written receipt required by G.S. 53-282(b); and
- (3) the bank statements of the licensee. If the statements are not maintained on the premises of the licensee, they shall be made available upon request by the Office of the Commissioner of Banks.



(b) These records shall be maintained for a period of three years from the date of entry and shall be made available by the close of business on the next business day upon request to the Commissioner of Banks or his or her designee for inspection or examination.

*History Note:* Authority G.S. 53-282; 53-288;  
Eff. July 1, 2000;  
Amended Eff. November 1, 2013;  
Readopted Eff. August 1, 2018.

#### **04 NCAC 03L .0502 EXAMINATIONS**

- (a) Examinations may be done with or without advance notice to the licensee.
- (b) In addition to examinations authorized by G.S. 53-278(b) or G.S. 53-282(c), the Commissioner may request reports from the licensee for the purpose of determining the general results of operations pursuant to Article 22 of Chapter 53.
- (c) If a licensee fails to pay the costs of examination as authorized by G.S. 53-282(c) and at a rate pursuant to 04 NCAC 03C .1601 to the Commissioner within 60 days of billing, the Commissioner may proceed to remedies set forth in G.S. 53-284.

*History Note:* Authority G.S. 53-278; 53-282; 53-284; 53-288;  
Eff. July 1, 2000;  
Readopted Eff. August 1, 2018.

### **SECTION .0600 - REPORTING AND NOTIFICATION REQUIREMENTS**

#### **04 NCAC 03L .0601 AMENDMENTS TO INFORMATION ON FILE WITH THE COMMISSIONER**

- (a) A licensee shall notify the Commissioner within 30 days of any material change to information that it submitted to the Commissioner, whether provided in the initial application, request for annual renewal, or in any other report or information.
- (b) Notification shall be by letter or by revision or modification of the appropriate portions of the application (whether initial or renewal).
- (c) For the purposes of this Rule, the term "material" shall mean any information that would influence the granting, revocation, or expiration of a license. The term "material" includes the following:
- (1) changes in the licensee's corporate officers, partners, or business structure;
  - (2) changes in the address of the licensee's main or branch locations and any names under which the licensee operates; or
  - (3) changes that would render untrue, inaccurate, or misleading any of the disclosures made by the licensee in its application pursuant to Rule .0201 of this Subchapter.

*History Note:* Authority G.S. 53-278; 53-283; 53-284; 53-288;  
Eff. July 1, 2000;  
Readopted Eff. August 1, 2018.

#### **04 NCAC 03L .0602 EXPANSION OR RELOCATION**

- (a) A licensee shall notify the Commissioner of the opening of any new branch locations or the relocation of its principal place of business or of any branch locations at least 20 days prior to the effective date of the change. The notification shall be on a form obtained from the Commissioner. The notification shall provide an explanation of the reasons for the change and shall be accompanied by a certificate fee for the new branch certificate in the amount of fifty dollars (\$50.00). Licensees may surrender their inaccurate certificate by mailing the certificate to the Commissioner at: Office of the Commissioner of Banks, 4309 Mail Service Center, Raleigh, North Carolina 27699-4309 or may be delivered to the physical address: 316 West Edenton Street, Raleigh, North Carolina 27603.
- (b) The Commissioner shall issue a revised branch certificate upon his or her receipt of the required notification, the explanation, and the filing fee and upon surrender of the licensee's inaccurate certificate.

*History Note:* Authority G.S. 53-276; 53-278; 53-279; 53-283; 53-288;  
Eff. July 1, 2000;  
Readopted Eff. August 1, 2018.

**04 NCAC 03L .0603      IMPAIRMENT OF FINANCIAL REQUIREMENTS**

A licensee shall notify the Commissioner in writing within 30 days if it fails to meet the minimum liquid asset requirement of G.S. 53-279(a).

*History Note:      Authority G.S. 53-279; 53-288;  
                          Eff. July 1, 2000;  
                          Readopted Eff. August 1, 2018.*

**04 NCAC 03L .0604      REPORT OF INFORMATION TO COMMISSIONER FOR THE GENERAL ASSEMBLY**

*History Note:      Authority G.S. 53-92; 53-93;  
                          Eff. July 1, 2000;  
                          Repealed Eff. November 1, 2013.*

**SUBCHAPTER 03M – MORTGAGE LENDING**

**SECTION .0100 – GENERAL**

**04 NCAC 03M .0101      DEFINITIONS**

In addition to the definitions in G.S. 53, Article 19B for the purposes of this Subchapter the following definitions apply:

- (1) "Act" means Article 19B of Chapter 53 of the North Carolina General Statutes, the "North Carolina Secure and Fair Enforcement (S.A.F.E.) Mortgage Licensing Act," or "NC SAFE Act."
- (2) "Advertisement" means material used or intended to be used to induce the public to apply for a mortgage loan. The term includes 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, or billboard or similar display. The term does not include any disclosures, program descriptions, or other materials prepared or authorized by any state or federal government agency, nor does the term include any material or communication that has been excluded for purposes of any regulation of the Board of Governors of the Federal Reserve System regulating consumer credit disclosures.
- (3) "Call Report" means a report of condition on a company and its operations that includes financial and loan activity information.
- (4) "License" means a mortgage lender, mortgage servicer, mortgage broker, exclusive mortgage broker, or mortgage loan originator license issued pursuant to the Act and this Subchapter.
- (5) "Material borrower information" means facts or information that a reasonable person knows, or should know, would reasonably be expected to influence a borrower's decision with regard to one or more loans, including:
  - (a) the total compensation the mortgage broker expects to receive from all sources in connection with each loan option presented to the borrower;
  - (b) the terms of each loan option presented to the borrower;
  - (c) the anticipated monthly payment (including property tax and insurance payments) for each loan option presented to the borrower;
  - (d) if the loan contains a variable rate feature or other terms that may result in a change to the borrower's monthly payments over the life of the loan, the circumstances upon which the terms or payments will change and the impact of the changes upon the borrower's required monthly payments; and
  - (e) any affiliate relationships that may exist between the licensee and any party or parties to the sale or financing of the subject property, or any provider of settlement services.
- (6) "Material change" means a change to any material facts.

- (7) "Material facts" means information provided to the Commissioner by a licensee or applicant, regarding the person's identity, contact information, or business operations that a reasonable person knows, or should know, would influence a decision to grant, suspend, condition, limit, renew, or revoke a license or to take other disciplinary action against a licensee or exempt person, including:
- (a) notice of a pending administrative action involving the licensee or applicant for licensure by any state or federal authority to which the licensee is subject;
  - (b) the issuance of an administrative order against the licensee or applicant for licensure by any state or federal authority to which the licensee is subject;
  - (c) notice of a pending criminal charge against the licensee or applicant for actions related to financial services or moral turpitude;
  - (d) the entry of a conviction or one of the following on a criminal charge against the licensee or applicant for licensure for a felony or other criminal charge for actions related to financial services or moral turpitude:
    - (i) a plea of guilty;
    - (ii) a plea of no contest or nolo contendere;
    - (iii) a prayer for judgment continued;
    - (iv) a deferred prosecution agreement;
    - (v) an adjudication or verdict of guilty by a domestic, foreign, military, or other court of competent jurisdiction;
    - (vi) the equivalent of any of the foregoing in a domestic, foreign, military, or other court of competent jurisdiction; or
    - (vii) any other classification that is a conviction pursuant to the applicable law in the jurisdiction where the criminal charge was brought.
  - (e) a change in status to the licensee's bond, including the reduction or cancellation of such bond;
  - (f) the licensee's primary phone number, mailing address, and principal office address;
  - (g) any assumed name, trade name, or d/b/a (doing business as) under which the licensee may be operating;
  - (h) the address at which files and documents retained pursuant to the Act or the rules in this Subchapter are stored;
  - (i) the identity of the licensee's bonding company or carrier, and the bond number;
  - (j) for corporate licensees, the identity of any affiliated mortgage lender, mortgage broker, mortgage servicer, or provider of settlement services; and
  - (k) for a corporate license, the identity of the licensee's owners, officers, directors, qualifying individual, branch manager(s), or control persons.
- (8) "Nationwide Mortgage Licensing System and Registry" or "NMLS&R" has the same meaning as defined in the NC SAFE Act.
- (9) "Registration" means the approval granted to a mortgage origination support registrant to engage exclusively in the processing or underwriting of residential mortgage loans but not the mortgage business.
- (10) "Settlement Services" has the same meaning as defined in federal Real Estate Procedures Act (RESPA) 12 U.S.C. Sec. 2601 et. seq. Regulation X, 24 C.F.R. Part 3500 et. seq, which is incorporated by reference and includes subsequent amendments. A copy of the regulation may be obtained from the website free of charge U. S. Government Publications Office website at <https://www.gpo.gov/fdsys/granule/CFR-2000-title24-vol5/CFR-2000-title24-vol5-part3500/content-detail.html>.

*History Note:* Authority G.S. 53-244.118;  
 Temporary Adoption Eff. July 1, 2002;  
 Eff. April 1, 2003;  
 Amended Eff. July 1, 2010; July 18, 2008;  
 Readopted Eff. August 1, 2018.

(a) Except as otherwise required by G.S. 53-244.113(b), Article 3A, Chapter 150B of the General Statutes, or by the rules of the Office of Administrative Hearings, 26 NCAC 03, which are incorporated by reference, including subsequent amendments and editions, any document, decision, or other communication required or permitted to be given by the Commissioner to a person is considered given when either:

- (1) deposited in the United States mail with sufficient first class postage affixed, addressed to the most recent principal office address provided by the addressee to the Office of the Commissioner of Banks; or
- (2) transmitted through electronic mail to the address provided by the addressee to the Office of the Commissioner of Banks.

(b) Any application for licensure, report, annual statement, amendment to application, notice, or other document that is required or permitted by law or rule to be filed with the Commissioner shall be through the NMLS&R.

(c) Where the NMLS&R does not make available submission of any document required or permitted by law to be filed with the Commissioner, the document may be filed by electronic submission through the Office of the Commissioner of Bank's website <https://www.nccob.gov> if the Commissioner makes electronic submission available.

*History Note:* Authority G.S. 53-244.118; 53-244.119;  
Temporary Adoption Eff. July 1, 2002;  
Eff. April 1, 2003;  
Amended Eff. May 1, 2010;  
Readopted Eff. August 1, 2018.

## **SECTION .0200 - LICENSING**

### **04 NCAC 03M .0201 APPLICATION**

(a) Each type of application required by the rules in this Subchapter or the Act shall be filed through the NMLS&R and shall be verified by the affirmation of the applicant or a principal officer.

(b) In addition to the documents and information required by the rules in this Subchapter, the Commissioner may require additional information to determine that the applicant meets or continues to meet the requirements of the Act.

(c) Applications submitted without the required fees, missing material facts, or any information requested under Paragraph (b) of this Rule shall be held in pending status for a period of 30 calendar days after notification through the NMLS&R to the applicant specifying the nature of the deficiency. If the deficiency remains outstanding for more than 30 days, the application shall automatically be considered withdrawn without further action by the Commissioner, and in order to become licensed, the applicant shall submit a new application and pay all fees.

*History Note:* Authority G.S. 53-244.040; 53-244.050; 53-244.060; 53-244.070; 53-244.080; 53-244.100; 53-244.101; 53-244.102; 53-244.103; 53-244.104; 53-244.115; 53-244.118;  
Temporary Adoption Eff. July 1, 2002;  
Eff. April 1, 2003;  
Amended Eff. May 1, 2010;  
Readopted Eff. August 1, 2018.

### **04 NCAC 03M .0202 NONTRANSFERABILITY**

(a) Any attempt to transfer or assign a license or registration through a change of control without the prior consent of the Commissioner shall:

- (1) be ineffective; and
- (2) be grounds for summary suspension, revocation of the license or registration, or other remedies available to the Commissioner.

(b) A change in the identity of a control person or any material change in organizational structure shall be considered a transfer or assignment of the license or registration. A licensee or registrant may transfer a license or registration without submission of an application by providing the following to the Commissioner:

- (1) the licensee or registrant 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 or registrant to continue to operate under its existing license or registration would not be inconsistent with the purposes of the Act.

(c) A notice pursuant to Subparagraph (b)(1) of this Rule shall include information to enable the Commissioner to make the determination described in that Subparagraph (b)(2) of this Rule.

(d) The Commissioner shall waive or reduce the advance notice requirement of Subparagraph (b)(1) of this Rule if the Commissioner determines that:

- (1) circumstances beyond the licensee or registrant's control would make compliance unduly burdensome to the licensee or registrant;
- (2) consumers would not be harmed by such a waiver or reduction of the advance notice requirement;
- (3) the licensee or registrant has otherwise satisfied the requirements of this Rule; and
- (4) waiver of the requirement of Subparagraph (b)(1) is in the public interest.

*History Note:* Authority G.S. 53-244.050; 53-244.060; 53-244.100; 53-244.118;  
Temporary Adoption Eff. July 1, 2002;  
Eff. April 1, 2003;  
Amended Eff. May 1, 2010;  
Readopted Eff. August 1, 2018.

#### **04 NCAC 03M .0203 NAME CHANGES**

A licensee or registrant may change its corporate name or the name under which it operates, provided:

- (1) the licensee or registrant and the proposed new name satisfies all applicable laws pertaining to assumed business names;
- (2) the licensee or registrant has given the Commissioner at least 30 days prior notice of the proposed new name; and
- (3) the Commissioner determines that the new name will not result in confusion among the general public regarding the licensee or registrant's identity or powers in accordance with G.S. 53C-1-3.

*History Note:* Authority G.S. 53-244.118; 53C-1-3;  
Temporary Adoption Eff. July 1, 2002;  
Eff. April 1, 2003;  
Readopted Eff. August 1, 2018.

#### **04 NCAC 03M .0204 EXPERIENCE**

As used in G.S. 53-244.050(b)(2), an individual is considered to have acquired "experience in residential mortgage lending" during any documented period in which:

- (1) more than half of the individual's employment income was derived from employment in the mortgage lending, mortgage servicing, or mortgage brokerage industry; and
- (2) that individual had actual responsibility for job functions in each area of study included in a prelicensing education program.

*History Note:* Authority G.S. 244-118;  
Eff. April 1, 2003;  
Amended Eff. May 1, 2010; April 1, 2008;  
Readopted Eff. August 1, 2018.

#### **04 NCAC 03M .0205 FINANCIAL RESPONSIBILITY**

Financial Responsibility is an ongoing requirement and upon issuance of a license, a licensee must continue to meet the requirements of G.S. 53-244.060(4).

*History Note:* Authority G.S. 53-244.060(4); 53-244.104; 53-244.118;  
Eff. July 18, 2008;  
Amended Eff. July 1, 2010;  
Readopted Eff. August 1, 2018.

#### **04 NCAC 03M .0206 SURETY BOND**

(a) All licensees with surety bonds under G.S. 53-244.103 shall ensure that full amount of the surety bond is in effect at all times. Failure to maintain the surety bond at the level required in G.S. 53-244.103 is grounds for immediate suspension of licensure.

(b) All licensees with surety bonds under G.S. 53-244.103 shall report any claims made against the surety bond to the Commissioner within 10 business days upon receipt of notice of any claim.

(c) All surety bonds under G.S. 53-244.103 shall:

- (1) require the bonding company to report all claims and any claims paid on the bond to the Commissioner within 10 days of such claim or payment;
- (2) require the bonding company to pay within 30 days any amount that the Commissioner orders the bonding company to pay upon a determination by the Commissioner that the licensee has failed to faithfully perform the licensee's obligations; and
- (3) remain in effect for a minimum of five years after lapse or termination of the bond in order to satisfy possible claims for failure to faithfully fulfill obligations during the term of the bond.

*History Note:* Authority G.S. 53-103; 53-244.118;  
Eff. April 1, 2008;  
Amended Eff. May 1, 2010;  
Readopted Eff. August 1, 2018.

### **SECTION .0300 - EDUCATION AND EXAMINATIONS**

#### **04 NCAC 03M .0301 APPROVAL OF PROVIDERS AND COURSES OF STUDY; PROVIDER REQUIREMENTS; QUALIFIED WRITTEN TEST**

*History Note:* Authority G.S. 53-244.060; 53-244.070; 53-244.080; 53-244.118;  
Temporary Adoption Eff. July 1, 2002;  
Eff. April 1, 2003;  
Amended Eff. July 1, 2010; July 18, 2008.  
Expired Eff. November 1, 2017 pursuant to G.S. 150B-21.3A.

#### **04 NCAC 03M .0302 LOAN OFFICER EXAMINATION 04 NCAC 03M .0303 REQUIREMENTS FOR PROVIDERS**

*History Note:* Authority G.S. 53-243.05; 53-243.07; 53-243.13;  
Temporary Adoption Eff. July 1, 2002;  
Eff. April 1, 2003;  
Repealed Eff. May 1, 2010.

### **SECTION .0400 - REPORTING AND NOTIFICATION REQUIREMENTS**

#### **04 NCAC 03M .0401 REPORTING REQUIREMENTS**

(a) No later than 90 days after the end of the calendar year, mortgage lenders, mortgage servicers, and mortgage brokers shall file an annual report in the NMLS&R. The annual report shall be supplemented with additional information about operations, characteristics of loans made, or other similar composite data if the Commissioner determines that this additional information is necessary to safeguard the interests of the borrowing public. Mortgage brokers shall as a part of the annual report provide certification from an insured depository institution that the broker has for the year of the current annual report owned and held on a continual basis cash or other liquid assets of at least ten thousand dollars (\$10,000) in a deposit account under the firm's name. Failure to submit an annual report within 90 days after the end of the calendar year is grounds for summary suspension pursuant to G.S. 53-244.114.

(b) Mortgage lenders, mortgage servicers, and mortgage brokers shall provide an audited statement of financial condition or a certified statement of financial condition as required by G.S. 53-244.104 within 90 days of the end of the licensee's fiscal year. If not shown in the audited statement of financial condition, mortgage lenders shall provide evidence of available warehouse lines of credit or other funding facilities.

(c) Mortgage lenders and mortgage brokers shall provide information on the characteristics of loan originations in an electronic format prescribed by the Commissioner on a quarterly basis within 45 days after the close of the calendar quarter. Mortgage lenders shall provide:

- (1) information sufficient to identify the mortgage loan and the unique identifier of the mortgage loan originator, mortgage broker (if applicable), and mortgage lender for the loan;

- (2) information sufficient to enable a computation of applicable loan terms in the Federal Truth in Lending disclosures, including the annual percentage rate, finance charge, and a schedule of payments, and any deviations between the final disclosures and the most recent disclosures issued prior to the final disclosures;
- (3) information included in the "Loan Estimate" (LE) or "Good Faith Estimate" (GFE) disclosure required under the Federal Real Estate Settlement Procedures Act including the rate, the date of any interest rate lock, itemization of settlement charges, and all broker compensation;
- (4) information included in the final Closing Disclosure or HUD-1 Settlement Statement, if maintained by the mortgage lender in an electronic format;
- (5) information related to the terms of the loans, including adjustable rate loan features (including timing of adjustments, indices used in setting rates, maximum and minimum adjustments, and floors and ceilings of adjustments), the undiscounted interest rate (if maintained by the mortgage lender in an electronic format), penalties for late payments, and penalties for prepayment (including computation of the penalty amount, duration of prepayment penalty, and the maximum amount of penalty);
- (6) information used in underwriting, including the appraised value of the property, sales price of the property (if a purchase loan), borrowers' income, monthly payment amount, housing debt-to-income ratio, total debt-to-income ratio, and credit score(s) of borrower(s); and
- (7) information included in a Loan Application Register for mortgage lenders required to submit information pursuant to the Federal Home Mortgage Disclosure Act.

Mortgage brokers shall provide information identified in this Paragraph unless such information is not prepared or known by the mortgage broker and the mortgage broker does not have access to the information in an electronic format.

(d) On a quarterly basis, mortgage lenders and mortgage brokers shall provide call reports containing financial and loan activity information in an electronic format through the NMLS&R.

(e) A licensee or registrant shall report within 30 days the name of any person suspected of making a misstatement of a material facts or material borrower information in connection with the mortgage lending or servicing process to the Commissioner. Mortgage lenders and mortgage brokers shall report within 30 days any loan repurchased due to a misstatement of material borrower information made in connection with the mortgage lending process.

(f) A licensee or registrant shall report within 30 days the name of any person suspected of making a misstatement of material facts or material borrower information in connection with an inquiry, investigation, or examination to the Commissioner.

*History Note:* Authority G.S. 53-244.104; 53-244.108; 53-244.115; 53-244.118;  
 Eff. April 1, 2003;  
 Amended Eff. July 1, 2010; July 3, 2008;  
 Readopted Eff. August 1, 2018.

#### **04 NCAC 03M .0402 SECURITY BREACHES**

(a) Upon discovery of a security breach as defined in G.S. 75-61(14), the licensee or registrant shall within one business day provide to the Commissioner a copy of any notification that is required pursuant to G.S. 75-65.

(b) Notification by the licensee or registrant shall be in accordance with Rule .0102 of this Subchapter.

*History Note:* Authority G.S. 53-244.105(b); 53-244.118;  
 Eff. April 1, 2003;  
 Amended Eff. May 1, 2010; April 1, 2008;  
 Readopted Eff. August 1, 2018.

#### **04 NCAC 03M .0403 TERMINATION OF OPERATIONS OR EMPLOYMENT**

(a) A licensee or registrant shall notify the Commissioner in writing of its decision to cease operations in this State, and the anticipated effective date of the cessation of operations, at least 15 days before the cessation.

(b) A mortgage lender, mortgage servicer, or mortgage broker that has not originated or serviced a mortgage loan within a 12-month period is considered to have ceased operations. A mortgage origination support registrant that has not processed or underwritten a mortgage loan within a 12-month period is considered to have ceased operations. Cessation of operations is grounds for summary suspension pursuant to G.S. 53-244.114(b). However, that suspension for cessation of operations shall not extend or revive any license that would otherwise terminate on

December 31st based on the person's failure to renew its license or registration or the Commissioner's refusal to renew the license or registration.

(c) A mortgage broker, mortgage lender, mortgage servicer, or mortgage origination support registrant shall not sponsor a mortgage loan originator who is not an employee of the person and shall notify the Commissioner within 30 days of the termination of the individual mortgage loan originator's employment and sponsorship.

*History Note: Authority G.S. 53-244.100; 53-244.114(b); 53-244.118;  
Eff. April 1, 2003;  
Amended Eff. May 1, 2010; April 1, 2008;  
Readopted Eff. August 1, 2018.*

## **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 the payee, amount, date, and purpose of payment, including identification of the loan to which it relates. The licensee shall reconcile the bank accounts monthly. Financial records shall be kept in a manner to permit review by examiners.

(c) A licensed mortgage lender or mortgage broker shall maintain a current listing of all mortgage loan applications in an electronic, searchable, and sortable format that permits a review of information by the Commissioner.

(d) A licensed mortgage lender or mortgage broker shall create and retain a file for each mortgage loan application that contains the following, as applicable:

- (1) the applicant's name;
- (2) date the application was taken;
- (3) name of the person taking the application;
- (4) the executed application itself; and
- (5) if the loan was closed;
  - (A) the Closing Disclosure or HUD-1 Settlement Statement;
  - (B) the loan note;
  - (C) the deed of trust;
  - (D) all agreements or contracts with the applicant, including any commitment and lock-in agreements, and other information utilized in the origination of the mortgage loan; and
  - (E) all disclosures required by State or Federal law.

(e) A licensed mortgage servicer shall create and retain a file for each mortgage loan that it services that contains the following:

- (1) the borrower or borrowers names;
- (2) a copy of the original note and deed of trust;
- (3) a copy of any disclosures or notifications provided to the borrower required by State or Federal law;
- (4) a copy of all written requests for information received from the borrower and the servicer's response to the requests as required by State or Federal law;
- (5) a record of all payments received from the borrower that contains all information required to be provided to a borrower upon request under G.S. 45-93(2)b;
- (6) a copy of any bankruptcy plan approved in a proceeding filed by the borrower or a co-owner of the property subject to the mortgage;
- (7) a communications log, if maintained by the servicer, that documents all verbal communication with the borrower or the borrower's representative;
- (8) a record of all efforts by the servicer to comply with the duties required under G.S. 53-244.110(7) including all information utilized in the servicer's determination regarding loss mitigation proposals offered to the borrower;
- (9) a copy of all notices sent to the borrower related to any foreclosure proceeding filed against the encumbered property; and



- (10) records regarding the final disposition of the loan including a copy of any collateral release document, records of servicing transfers, charge-off information, or real estate owned disposition.
- (f) A licensee shall maintain a record of samples of each piece of advertising relating to the licensee's business of mortgage lending or mortgage brokerage in North Carolina for a period of 12 months.
- (g) A licensee shall maintain copies of all contracts, agreements, and escrow instructions to or with any depository institution, mortgage lender, mortgage servicer, mortgage broker, warehouse lender or other funding facility, servicer of mortgage loans, and investor, for a period of three years after expiration of the contract or agreement.

*History Note:* Authority G.S. 53-244.105; 53-244.115; 53-244.118;  
Eff. April 1, 2003;  
Amended Eff. May 1, 2010; April 1, 2008;  
Readopted Eff. August 1, 2018.

#### **04 NCAC 03M .0502 FORM AND LOCATION OF RECORDS**

- (a) The records may be maintained in any form that is convertible into legible, tangible documents by the licensee.
- (b) All records required by this Section shall be prepared in accordance with generally accepted accounting principles, where applicable.
- (c) All records required to be maintained shall be secured against unauthorized access and damage in a location within the State accessible to the Commissioner. However, a licensee or registrant that maintains a centralized out-of-state storage facility for the records from multiple states may request the Commissioner to approve its storage of such records in such out-of-state location. The requests shall 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 or registrant 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 that satisfies the requirements of Paragraph (a) of this Rule.
- (d) If the Commissioner has reason to believe that records are not or will not be secured against unauthorized access or damage, the Commissioner shall summarily revoke any approval granted under Paragraph (c) of this Rule.
- (e) A licensee or registrant shall notify the Commissioner of any change in the location of its books and records within 15 days following such change.

*History Note:* Authority G.S. 53-244.105; 53-244.115; 53-244.118;  
Eff. April 1, 2003;  
Amended Eff. May 1, 2010;  
Readopted Eff. August 1, 2018.

#### **SECTION .0600 – ORIGINATION PRACTICES**

##### **04 NCAC 03M .0601 RESERVED FOR FUTURE CODIFICATION**

##### **04 NCAC 03M .0602 SELLER DISCOUNTS FOR USE OF AFFILIATED MORTGAGE LENDER OR BROKER**

- (a) A mortgage lender or mortgage broker shall not originate a mortgage loan if the use of that mortgage lender or mortgage broker is a condition for the borrower to receive a discount or thing of value from a seller affiliated with the mortgage lender or mortgage broker, unless:
- (1) the discount conditioned on the use of the mortgage lender or mortgage broker is disclosed on a separate document from any other discount provided by the seller in a written document that informs the borrower that the choice of a lender not affiliated with the seller will not affect any other concessions or discounts offered to the borrower for the purchase of the home, other than the incentive offered for the use of the affiliated lender;
  - (2) the discount conditioned on the use of the mortgage lender or mortgage broker may be used to pay only the following:
    - (A) bona fide and reasonable closing costs associated with the loan as permitted under G.S. 24-8(d); and

- (B) bona fide discount points, that are paid by the borrower for the purpose of reducing the interest rate below the market rate for that loan product and which in fact reduces the interest rate below the market rate for that loan product; and
  - (3) the discount does not exceed three percent of the final sales price.
- (b) For any discount used as described in Part (a)(2)(B) of this Rule, the following documents shall be maintained in the individual loan file:
- (1) the disclosure required under Subparagraph (a)(1) of this Rule;
  - (2) the rate sheet used by the mortgage lender or mortgage broker to inform the borrower of the available interest rate of the loan; and
  - (3) the signed lock-in agreement that demonstrates the below-market rate chosen by the borrower.
- (c) For any discount used as described in Part (a)(2)(B) of this Rule, the mortgage lender shall maintain written policies and procedures related to the charging of discount points, which include the method of informing borrowers of the benefits and costs of discount points and a commercially reasonable method for determining the amount by which the interest rate will be reduced for the payment of a discount point.
- (d) The discount provided in Paragraph (a) of this Rule shall not be applied in a manner that would exceed amounts that may be imposed under North Carolina or Federal law related to mortgage lending or mortgage servicing regardless of whether a party affiliated with the lender directly or indirectly pays for any portion of such charges.

*History Note:* Authority G.S. 53-244.111(1); 53-244.111(8); 53-244.118(a);  
 Eff. April 1, 2011;  
 Readopted Eff. August 1, 2018.

## **SECTION .0700 - SERVICING**

### **04 NCAC 03M .0701 TRANSFER OF SERVICING RIGHTS**

A person shall not transfer servicing rights or obligations to a person unless that person holds a mortgage servicing license or is a person exempt from the Act pursuant to G.S. 53-244.040.

*History Note:* Authority 53-244.100(a); 53-244.110(1); 53-244.110(3);  
 Eff. May 1, 2010;  
 Readopted Eff. August 1, 2018.

### **04 NCAC 03M .0702 REQUIREMENTS FOR MORTGAGE SERVICERS TO COMMUNICATE EFFECTIVELY WITH BORROWERS REGARDING LOSS MITIGATION**

- (a) A mortgage servicer shall acknowledge in writing a borrower's loss mitigation request no later than 10 business days after the request. The acknowledgement shall identify information needed from the borrower in order for the mortgage servicer to consider the borrower's loss mitigation request. For purposes of this Rule and Rule .0703 of this Subchapter, a loss mitigation request is considered received by a servicer upon the borrower or the borrower's agent by contacting the servicer at the address, phone, or other contact information required to be provided to borrowers in a notice complying with G.S. 53-244.111(22).
- (b) A mortgage servicer shall respond to a loss mitigation request from a borrower no later than 30 business days after the receipt of all information necessary from the borrower to assess whether or not a borrower qualifies for any loss mitigation programs offered by the mortgage servicer.
- (c) A mortgage servicer shall include in a final response denying a loss mitigation request the reason for the denial and contact information for a person at the mortgage servicer with authority to reconsider the denial. In addition, the denial shall also include the following statement, in a boldface type and in a print no smaller than the largest print used elsewhere in the main body of the denial: "If you believe the loss mitigation request has been wrongly denied, you may file a complaint with the North Carolina Office of the Commissioner of Banks website, [www.nccob.gov](http://www.nccob.gov)."

*History Note:* Authority G.S. 53-244.110(7); 53-244.118(a);  
 Eff. June 1, 2010;  
 Readopted Eff. August 1, 2018.

### **04 NCAC 03M .0703 CESSATION OF FORECLOSURE ACTIVITY DURING PENDENCY OF LOSS MITIGATION REQUEST**

- (a) A mortgage servicer shall not initiate or further a foreclosure proceeding or impose a charge incident to a foreclosure proceeding during the pendency of a loss mitigation request. This requirement does not apply if:
- (1) the borrower has failed to comply with the terms of a loss mitigation plan within the previous 12 months, if the loss mitigation plan:
    - (A) was implemented pursuant to a Federal or State foreclosure prevention program, including the Home Affordable Modification Program; or
    - (B) reduced the monthly payment of loan by six percent from the scheduled monthly payment and resulted in a monthly payment of principal, interest, taxes, and insurance of less than 31 percent of the borrower's household income;
  - (2) the mortgage servicer has provided a final response regarding a loss mitigation request within the last 12 months and believes that the current loss mitigation request was not made in good faith;
  - (3) the borrower has failed to comply with a Chapter 13 bankruptcy repayment plan or has had any bankruptcy proceedings dismissed for abuse of process within the last 12 months;
  - (4) the loss mitigation request is received by the servicer after the time for appealing an order granting foreclosure of the secured residential real estate has passed in accordance with Article 2A of Chapter 45; or
  - (5) the servicing contract or the terms of the mortgage loan, entered into prior to October 1, 2009, prohibits such a delay.
- (b) Nothing in this Rule shall prevent a mortgage servicer, in order to avoid dismissal or any other adverse order in a foreclosure proceeding that was initiated prior to the loss mitigation request being received, from filing or causing to be filed any pleading or notice that is required under Article 2A of Chapter 45, the Rules of Civil Procedure, or the Local Rules of Court to continue or delay further proceedings.

*History Note:* Authority G.S. 53-244.110(7); 53-244.118(a);  
Eff. June 1, 2010;  
Readopted Eff. August 1, 2018.