

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Repealed Eff.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Repealed Eff.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Repealed Eff.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Repealed Eff.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Repealed Eff.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.