

## 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.

#### **04 NCAC 03M .0102 NOTICES**

(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.