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North Carolina's Mortgage Lending Act: Licensing and Regulation of Mortgage Bankers and Brokers

In 1999, the North Carolina General Assembly passed the Predatory Lending Act (PLA) to address mortgage lending practices in North Carolina.[1] The goal of this new law was to curb abusive home loans by prohibiting specific lending practices and restricting the terms of high-cost loans.[2] Although the PLA was effective,[3] some mortgage professionals continued to charge fees and conduct lending practices in violation of this law.[4] The regulation of mortgage professionals in North Carolina was minimal, and those responsible for enforcing the PLA had difficulty monitoring those unscrupulous lenders and their practices.[5] The General Assembly responded in 2001 by passing the Mortgage Lending Act (MLA),[6] a measure designed to improve enforcement of the predatory lending laws.[7] Specifically, the MLA mandates licensure for mortgage professionals and gives

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1. *See* Predatory Lending Act, 1999 N.C. Sess. Laws 332. *See generally* Richard R. Daugherty, Note, *Will North Carolina's Predatory Home Lending Act Protect Borrowers From the Vulnerability Caused by the Inadequacy of Federal Law?*, 4 N.C. BANKING INST. 569 (2000) (discussing the passage of the Predatory Lending Act).

2. Wade Rawlins, *House Approves Predatory-Lending Curbs*, NEWS & OBSERVER, July 14, 1999, at A3. *See generally* Predatory Lending Act, 1999 N.C. Sess. Laws 332 (enacting prohibitions and restrictions on home loans).

3. Press Release, Coalition for Responsible Lending, Study: N.C. Predatory Lending Law Saves Borrowers $100 Million, Does Not Hurt Low-Income Credit Availability (Aug. 13, 2002) (on file with N.C. Banking Institute), *available at* http://www.responsiblelending.org/nc_law/howits_working.cfm (last visited Feb. 15, 2003) [hereinafter Coalition Study]. The Coalition for Responsible Lending is a group of over eighty organizations committed to helping borrowers receive reasonable loans. Coalition for Responsible Lending, The Coalition for Responsible Lending, *at* http://www.responsiblelending.org/about/crl_members.cfm (last visited Feb. 15, 2003).

4. *See* Chris Serres, *Banking Leader Favors Consumers*, NEWS & OBSERVER, July 14, 2002, at B1.

5. *See id.* "Previously, the state's 1,500 mortgage lenders and brokers could operate without licenses in North Carolina, which made them nearly impossible to track." *Id.*

6. *See* Mortgage Lending Act, N.C. GEN. STAT. § 53-243 (2002); *see also* Serres, *supra* note 4.

7. Lynn Bonner, *Lending Relief in Sight: State Senate Approves Tougher Mortgage Rules*, NEWS & OBSERVER, July 27, 2001, at A1.

the North Carolina Commissioner of Banks (NCCOB) authority to issue the licenses and to otherwise regulate these lenders, as well as to enforce the provisions of the PLA and the MLA.[8]

This Note discusses the development and implementation of the MLA and whether it successfully regulates mortgage professionals. Part I of this Note reviews predatory lending and the PLA.[9] Part II describes the mortgage lending industry and the events leading to the passage of the MLA, and it analyzes the major provisions of the legislation.[10] Finally, this Note discusses whether the MLA complements the predatory lending law by providing the necessary regulation of the industry and enforcement of the statute.[11]

I. NORTH CAROLINA'S PREDATORY LENDING ACT

Predatory lending, defined as "the use of one or more unfair practices by lenders to gain an unfair advantage over borrowers,"[12] is a serious national issue.[13] It is estimated that predatory lending costs borrowers $9.1 billion each year.[14] Although predatory lending occurs in all types of lending situations, this practice primarily affects subprime borrowers, those who find it difficult to obtain credit except at high rates of interest because of poor credit histories or excessive debt.[15] Additionally, these unscrupulous lenders target groups that are more susceptible to unfair practices, such as elderly and low-

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8. *See* N.C. GEN. STAT. § 53-243.05; *see also* Serres, *supra* note 4.

9. *See infra* notes 12-43 and accompanying text.

10. *See infra* notes 44-104 and accompanying text.

11. *See infra* notes 105-115 and accompanying text.

12. Daugherty, *supra* note 1, at 570.

13. Coalition for Responsible Lending, The Case for Predatory Lending Reform, Why is this issue important now?, *at* http://www.responsiblelending.org/lending_basics/reform.cfm (last visited Feb. 15, 2003) ("[A] director at the Federal Trade Commission recently called these abuses a 'serious national problem.'").

14. Press Release, Coalition for Responsible Lending, Report to be Released to U.S. Senate: Predatory Lending Annual Toll is $9.1 Billion (July 25, 2001) (on file with N.C. Banking Institute), *available at* http://www.responsiblelending.org/other/annualtoll_010725.cfm.

15. *See* Daugherty, *supra* note 1, at 572; *see also* Coalition for Responsible Lending, Case for Predatory Lending Reform, What are "home equity" and "subprime" loans?, *at* http://www.responsiblelending.org/lending_basics/reform.cfm (last visited Feb. 15, 2003).

income borrowers.[16] This practice is also common in minority communities, where individuals traditionally have found it difficult to obtain banking services.[17]

Consumer advocates became concerned about predatory lending in North Carolina in the 1990s.[18] Borrowers were losing equity, and sometimes their homes, to predatory lenders.[19] According to one study, predatory lending cost North Carolina consumers $232 million in 1999 alone.[20]

Predatory lenders use a variety of practices when making home loans to take advantage of borrowers.[21] These practices generally consist of charging borrowers excessive rates or unnecessary fees.[22] The lenders then include these fees in the loan, adding to the debt of the borrower.[23] Frequently, predatory lenders also include high prepayment penalties.[24] Often, borrowers cannot afford these prepayments and refinance, increasing their debt further by adding onto the loan balance the fees associated with the refinancing.[25] Another common practice, "flipping," involves the unnecessarily frequent refinancing of a loan.[26] Under this practice, predatory lenders encourage borrowers to refinance their loans, charging new origination fees

16. *See* Coalition for Responsible Lending, Case for Predatory Lending Reform, Who is most at risk from predatory lending practices?, *at* http://www.responsible lending.org/lending_basics/reform.cfm (last visited Feb. 15, 2003).

17. *See* Coalition for Responsible Lending, Case for Predatory Lending Reform, What specific lending practices are abusive or predatory?, *at* http://www.responsible lending.org/lending_basics/reform.cfm (last visited Feb. 15, 2003) (explaining that consumers in neighborhoods where traditional banking services are not always available often turn to subprime lenders).

18. Telephone Interview with Malcolm White, Media Contact, Coalition for Responsible Lending (October 7, 2002) [hereinafter White Interview].

19. *See id.*

20. *See* Coalition Study, *supra* note 3.

21. *See* Coalition for Reponsible Lending, Case for Predatory Lending Reform, What specific lending practices are abusive or predatory?, *at* http://www.responsible lending.org/lending_basics/reform.cfm (last visited Feb. 15, 2003).

22. Coalition for Reponsible Lending, Case for Predatory Lending Reform, Excessive Fees and Insurance, *at* http://www.responsiblelending.org/lending_basics/ reform.cfm (last visited Feb. 15, 2003).

23. *See id.* "Fees are not paid by the borrower at the time of loan closing, but are instead financed as part of the loan." *Id.*

24. *See id.*

25. *See id.*

26. *See id.*

and increasing the amount of debt.[27] Unfortunately, the borrowers cannot pay off the new loan, so they refinance again.[28]

Federal laws do not effectively address predatory lending,[29] and North Carolina usury laws were ineffective as well.[30] As consumer complaints about this issue increased in North Carolina,[31] a coalition of the mortgage industry, financial institutions, consumer protection advocates, and lawmakers worked to develop a solution to these abusive practices.[32] In 1999, the North Carolina General Assembly passed the comprehensive Predatory Lending Act.[33] This legislation prohibits prepayment penalties for home loans under $150,000 and limits the amount of a prepayment fee for larger home loans.[34] The new Act also forbids flipping by prohibiting lenders from refinancing a loan when the new loan would not benefit the borrower.[35] Additionally, the PLA defines high cost home loans and restricts their terms to protect borrowers from excessive debt.[36]

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27. *See id.* "The frequency of flips is not just the result of borrowers wanting to borrow more money- it has been designed and encouraged by finance companies as well as brokers who try to earn more fees by 'churning' their portfolio of customers." *Id.*

28. *See id.* In Durham, North Carolina, a couple that refinanced a loan five times in three years turned a $68,000 home purchase into a $158,000 debt. *Id.* "As the initial loan is extended over a longer period of time and the loan balance increases, a borrower is exposed to greater risk of losing his home through foreclosure." *Id.*

29. *See* Daugherty, *supra* note 1, at 584 (suggesting that federal legislation does not comprehensively address the predatory lending issue).

30. *See id.* at 584-85. "Most instances of usury in home loans are not likely to be covered by the North Carolina state usury statute.... The North Carolina unfair and deceptive practices statute also has a limited effect on predatory lending." *Id.* Usury laws are state laws that prohibit loans at excessively high interest rates. Amanda Katherine Sadie Hill, Note, *State Usury Laws: Are They Effective in a Post-GLBA World?*, Note, 6 N.C. BANKING INST. 411, 411 (2002).

31. White Interview, *supra* note 18.

32. *See* Predatory Lending Act, 1999 N.C. Sess. Laws 332 (1999); Coalition for Responsible Lending, FAQs, *at* http://www.responsiblelending.org/lending_basics/faqs.cfm (last visited Feb. 15, 2003). This coalition included the N.C. Bankers Association, the N.C. Mortgage Bankers Association, the N.C. Credit Union Network, the N.C. Association of Financial Institutions, the N.C. Association of Mortgage Professionals, the N.C. Attorney General's Office, and the Coalition for Responsible Lending. *Id.*

33. Predatory Lending Act, 1999 N.C. Sess. Laws 332 (1999).

34. Predatory Lending Act, N.C. GEN. STAT. §24-1.1A (2002).

35. *See id.* §24-10.2(c).

36. *See id.* §24-1.1E (identifying high cost home loans by the amount of the loan and the corresponding interest rates).

Several concerns were raised about the PLA, questioning whether the Act would effectively curb predatory lending.[37] Some mortgage professionals expressed concern that the protections for the high-cost, subprime loans would drive the industry out of the subprime market, hurting borrowers in need of these loans.[38] However, a recent study by the Coalition for Responsible Lending shows that the PLA saved consumers in North Carolina over $100 million since its enactment without limiting the number of loans to subprime borrowers.[39]

Although the PLA governs the practices of lenders, some groups questioned whether North Carolina law provided for effective enforcement of this measure.[40] North Carolina did not have strong regulations governing mortgage professionals.[41] Additionally, the statute provided limited and uncertain authority to enforce the predatory lending provisions.[42] Even before the predatory lending legislation passed, stakeholders worked on a measure to fill the gaps left by the PLA.[43]

II. NORTH CAROLINA'S MORTGAGE LENDING ACT

Traditionally, financial institutions like banks handled mortgage loans.[44] As the mortgage lending industry grew, the

37. *See* Daugherty, *supra* note 1, at 603 (stating that "[s]ome members of the banking community do not expect much effect, if any, on the conventional lending market from the enforcement of the North Carolina Act, while others fear anticipated consequences.") (citing Telephone Interview with Ed Aycock, Senior Vice President and Regulatory Counsel, North Carolina Bankers Association (Nov. 5, 1999) and electronic mail letter from William Finley, Vice-President and Assistant General Counsel for First Union Corporation (Jan. 3, 2000)).

38. *See, e.g.,* Coalition Study, *supra* note 3.

39. *See id.*

40. *See* Serres, *supra* note 4. "When complaints arose about mortgage professionals, the banking commissioner's office was often reluctant to act because it didn't have jurisdiction under state law. [With the passage of the Mortgage Lending Act] there is no question that the banking commissioner regulates the mortgage industry." *Id.*

41. *See id.* ("Previously, the state's 1,500 mortgage lenders and brokers could operate without licenses in North Carolina, which made them nearly impossible to track.").

42. *See id.*; *see also supra* note 40.

43. White Interview, *supra* note 18.

44. *See* GRANT S. NELSON & DALE A. WHITMAN, REAL ESTATE TRANSFER, FINANCE & DEVELOPMENT 933 (5th ed. 1998) [hereinafter NELSON & WHITMAN,

need arose for an entity to bring lenders and borrowers together.[45] The modern mortgage lending industry developed when mortgage professionals began to operate by originating mortgages, which they sold or assigned to lenders who invest in these long-term loans.[46] Over the years, the industry expanded its business in conventional home mortgages[47] and today originates a majority of these loans.[48] As a result of the growth of this industry, states began to regulate mortgage professionals more stringently.[49]

The Mortgage Lending Act was a collaboration of the industry leaders, consumer protection advocates, and lawmakers who developed the predatory lending law.[50] This legislation, which was enacted on August 29, 2001,[51] repealed an old statute requiring the registration of mortgage professionals and enacted a new, more comprehensive statute.[52] The main components of this legislation are licensing and education requirements, exemptions, a standard of duty to consumers, prohibited activities, and accountability provisions.[53]

TRANSFER, FINANCE & DEVELOPMENT].

45. *See id.*

46. *See* GRANT S. NELSON & DALE A. WHITMAN, REAL ESTATE FINANCE LAW 765 (3rd ed. 1994) (explaining that these mortgage professionals did not retain loans but originated them almost exclusively for other institutions to hold for the long term) [hereinafter NELSON & WHITMAN, REAL ESTATE FINANCE LAW]; *see also* North Carolina Association of Mortgage Professionals, What is a Mortgage Professional?, *at* http://www.ncamb.com/broker.html (last modified Oct. 7, 2002). Since World War II, the mortgage lending industry has grown significantly, primarily due to its role in originating mortgage loans through the Federal Housing Authority and the Department of Veterans Affairs. NELSON & WHITMAN, TRANSFER, FINANCE & DEVELOPMENT, *supra* note 44, at 933-934.

47. NELSON & WHITMAN, TRANSFER, FINANCE & DEVELOPMENT, *supra* note 44, at 933-934.

48. National Association of Mortgage Brokers, Industry Facts, *at* http://www.namb.org/media_center/ industry_facts.htm (last visited Nov. 6, 2002).

49. NELSON & WHITMAN, REAL ESTATE FINANCE LAW, *supra* note 46, at 765.

50. *See* Coalition for Responsible Lending, FAQs, *at* http://www.responsible lending.org/nc_law/mlb_faqs.cfm (last visited Feb. 15, 2003) [hereinafter Mortgage Lending Act FAQs].

51. *See* Mortgage Lending Act, 2001 N.C. Sess. Law 393; *see also* North Carolina General Assembly *at* http://www.ncleg.net (last visited Feb. 15, 2003). The Mortgage Lending Act was amended in October of 2002. Amends Mortgage Lending Act, 2002 N.C. Sess. Law 169.

52. *See* Mortgage Lending Act, 2001 N.C. Sess. Law 393.

53. *See* Mortgage Lending Act, N.C. GEN. STAT. § 53-243 (2002).

A. Licensing and Education Requirements

The licensing and education measure requires licenses for three primary entities: mortgage bankers, mortgage brokers, and loan officers.[54]

Mortgage Bankers and Mortgage Brokers: The MLA defines a mortgage banker as a person that "engage[s] in the business of making loans for compensation and gain."[55] A mortgage broker has various responsibilities designed to bring lenders and borrowers together to create a mortgage loan.[56] Although mortgage bankers and mortgage brokers have different roles, the regulation of mortgage bankers and mortgage brokers under the MLA is primarily the same.[57] The main provision regulating mortgage bankers and brokers is licensing standards.[58]

Under the MLA, mortgage professionals must apply for a license with the NCCOB.[59] The MLA establishes several requirements for a mortgage banker or mortgage broker to be

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54. Mortgage Lending Act, N.C. GEN. STAT. §§ 53-243.01, 243.02, 243.05, 243.06, 243.08 (2002).

55. *See id.* § 53-243.01(2) (defining a mortgage lender). A mortgage banker is defined as "[a] person who acts as a mortgage lender . . . [but] does not include a person who acts as a mortgage lender only in tablefunding transactions." *Id.* § 53-243.01(13). Tablefunding is a practice of mortgage brokers and is defined as "[a] transaction where a licensee closes a loan in its own name with funds provided by others, and the loan is assigned simultaneously to the mortgage lender . . . ." *Id.* § 53-243.01(20).

56. *See id.* § 53-243.01(1) (A mortgage broker is responsible for "accepting or offering to accept an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage loan commitments or interest rate guarantee agreements to borrowers, or engaging in tablefunding of mortgage loans . . . ."); *see also* BLACK'S LAW DICTIONARY 188 (7th ed. 1999) (defining a mortgage broker as "[a]n individual or organization that markets mortgage loans and brings lenders and borrowers together. A mortgage broker does not originate or service mortgage loans.").

57. Mortgage Lending Act, N.C. GEN. STAT. § 53-243.04 (2002). *But see id.* § 53-243.04(f) (requiring mortgage bankers to post a surety bond of $150,000 but allowing mortgage brokers to post a surety bond of only $50,000.).

58. *Id.* § 53-243.05; *see* Mortgage Lending Act FAQs.

59. *Id.* § 53-243.05(a); Mortgage Lending Act FAQs, *supra* note 50. *See generally* North Carolina Commission of Banks, North Carolina Mortgage Lending, *at* http://www.banking.state.nc.us/forms/ml/mortgagelenderbrokerapp.pdf (last visited Feb. 15, 2003) (application for mortgage lender or broker).

licensed.[60] This application must include information about the applicant's qualifications, business history, and finances.[61] Additionally, the applicant, or the person controlling the applicant if the applicant is a business entity, must provide any relevant legal or criminal history.[62] The licensing provisions further require the applicant, or a specified member of the business applicant, to have either three years of experience in the mortgage industry or meet other requirements specified by the NCCOB.[63]

The initial filing fee for mortgage bankers and mortgage brokers is $1,000.[64] Additional licenses must be obtained for each principal office and branch office for an additional $100 filing fee per office.[65] Licenses are good for up to one year expiring on June 30 and may be renewed for an annual fee of $500.[66]

A qualification for licensing is the posting of a surety bond.[67] Mortgage bankers must post surety bonds of $150,000 and mortgage brokers must post surety bonds of $50,000.[68] These bonds are intended to cover damages of borrowers who obtain abusive loans.[69] Qualified lenders with a net worth of $250,000 or more are exempt from the surety bond requirement.[70]

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60. Mortgage Lending Act, N.C. GEN. STAT. § 53-243.05 (2002).

61. *Id.* § 53-243.05(a).

62. *Id.* The relevant information is described as "(i) a description of any injunction or administrative order by any state or federal authority... ; (ii) a conviction of a misdemeanor involving fraudulent dealings or moral turpitude or relating to any aspect of the residential mortgage lending business; [or] (iii) any felony convictions." *Id.* § 53-243.05(a)(4).

63. *Id.* § 53-243.05(c); *see* North Carolina Commission of Banks, Grandfathering Provisions of NC's Mortgage Lending Act, *at* http://www.banking.state.nc.us/ml/grandmlb.htm (last visited Feb. 15, 2003) (describing certain grandfathering provisions for mortgage bankers and brokers).

64. Mortgage Lending Act, N.C. GEN. STAT. § 53-243.05(e) (2002)..

65. *Id.* § 53-243.05(h).

66. *Id.* § 53-243.06(a).

67. *Id.* § 53-243.05(f); *see* Mortgage Lending Act FAQs, *supra* note 50 (listing the surety bond as a main licensing requirement).

68. Mortgage Lending Act, N.C. GEN. STAT. § 53-243.05(f) (2002); Mortgage Lending Act FAQs, *supra* note 50.

69. Mortgage Lending Act, N.C. GEN. STAT. § 53-243.05(f) (2002).

70. *Id.* § 53-243.01(i) (defining a qualified lender as "[a] person who is engaged as a mortgage lender in North Carolina and is either a supervised or a non-supervised institution... approved by the United States Department of Housing and Urban Development."); *see also id.* § 53-243.05(f) (exempting qualified lenders).

Loan Officers: The MLA also regulates loan officers,[71] the employees of mortgage professionals who accept mortgage loan applications.[72] The qualifications for licensure of a loan officer are similar to those of mortgage bankers and mortgage brokers.[73] Loan officers must file an application[74] with the NCCOB describing qualifications, business history, and criminal background.[75] The initial filing fee and annual renewal fee for a loan officer is $50.[76]

To further qualify for a license, a loan officer must complete a course on mortgage lending[77] and pass the North Carolina Mortgage Officer Licensing Test approved by the NCCOB.[78] Additionally, the NCCOB requires licensees to complete eight hours of approved continuing education courses each year in an effort to increase the professionalism of loan officers.[79]

71. *Id.* § 53-243.05(a).

72. *Id.* § 53-243.01(10). "An individual who, in exchange for compensation as an employee of another person, accepts or offers to accept applications for mortgage loans." *Id.*

73. *Id.* § 53-243.05.

74. *See generally* North Carolina Commission of Banks, North Carolina Mortgage Lending, *at* http://www.banking.state.nc.us/forms/ml/loanofficerapp.pdf (last visited Jan. 17, 2003) (application for loan officer).

75. Mortgage Lending Act, N.C. GEN. STAT. § 53-243.05(a) (2002).

76. *Id.* § 53-243.05(e), 243.06(a)(3).

77. *Id.* § 53-243.05(b)(2). The MLA authorized a maximum of eight hours of continuing education. *See id.*; *see also* North Carolina Commission of Banks, NC Mortgage Officer Education, *at* http://www.banking.state.nc.us/ml/mled.htm (last updated June 7, 2002) (describing loan officer education). *See generally* North Carolina Commission of Banks, Approved NC Mortgage Fundamentals Courses for Loan Officer Licensee Applicants, *at* http://www.banking.state.nc.us/ml/mledfund.htm (last updated December 20, 2002) (listing approved Mortgage Fundamentals Courses).

78. Mortgage Lending Act, N.C. GEN. STAT. § 53-243.05(b)(2) (2002).

79. *Id.* § 53-243.07(a); North Carolina Commission of Banks, NC Mortgage Loan Officer Education, *at* http://www.banking.state.nc.us/ml/mled.htm (last updated June 7, 2002); Mortgage Lending Act FAQs, *supra* note 50. "This new licensing statute will make it possible to track individuals, penalize their misconduct, and hold them to a higher standard of practice." *Id.*

B. Exemptions

The MLA exempts several groups from the licensing requirements.[80] The list of exemptions includes government agencies, employees of mortgage brokers and bankers who do not accept loan applications, and highly regulated financial industries, such as banks and credit unions.[81]

C. Standard of Duty

This new measure establishes an affirmative standard of duty for mortgage brokers.[82] These duties, which are in addition to any other statutory or common law duties, include caring for the borrower's money, following appropriate borrower instructions, "act[ing] with reasonable skill, care, and diligence,"[83] and making efforts to develop a loan that is advantageous to the borrower.[84]

D. Prohibited Activities

The MLA enumerates specific activities that are prohibited in a mortgage loan transaction.[85] These prohibited activities include making or brokering a loan in violation of the predatory lending laws and acting as a mortgage banker or mortgage broker without a license.[86] This statute also clarifies that a broker cannot charge prepayment penalties for loans of $150,000 or less.[87] Furthermore, a mortgage professional may not retain funds or documents to which she is not entitled.[88]

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80. Mortgage Lending Act, N.C. GEN. STAT. § 53-243.01(8) (2002).

81. *See id.* Although exempted, these persons are still required to file a form of exemption with the NCCOB if they perform mortgage banking or mortgage brokerage operations. *Id.* § 53-243.15(a).

82. *Id.* § 53-243.10.

83. *Id.* § 53-243.10(3).

84. *Id.* § 53-243.10(1-4).

85. *Id.* §§ 53-243.11, 243.02.

86. *Id.* § 53-243.02.

87. *Id.* § 53-243.11(10). The Predatory Lending Act prohibits these fees in contracts between borrowers and lenders, not brokers. Predatory Lending Act, N.C. GEN. STAT. §24-1.1A (2002) .

88. Mortgage Lending Act, N.C. GEN. STAT. § 53-243.11(10) (2002).

Other provisions of this section protect borrowers from predatory practices including misrepresentation or concealment of material facts, making promises that cannot be met, and advertising rates that are unavailable to a reasonable number of borrowers.[89]

E. Accountability provisions

The MLA clarifies the role of the NCCOB in regulating the mortgage lending industry.[90] Specifically, this measure provides that the NCCOB has authority to make rules to fulfill the requirements of the statute, assist lenders in interpreting the statute and protect borrowers under the statute.[91] Under this authority, the NCCOB is responsible for the administration of the licensing and education requirements for mortgage professionals.[92] The licensing administration consists primarily of application procedures,[93] issuance,[94] renewal,[95] and termination.[96]

The statute also provides the NCCOB with disciplinary authority.[97] One major change permits the NCCOB to enforce the laws against individual mortgage professionals as well as mortgage lending firms.[98] This authority consists of the ability to deny,

89. *Id.* § 53-243.11 (2002); Coalition for Responsible Lending, Summary of NC Mortgage Lending Law, *at* http://www.responsiblelending.org/nc_law/mbl_summ.pdf (last visited Feb. 15, 2003).

90. Mortgage Lending Act, N.C. GEN. STAT. § 53-243 (2002); Serres, *supra* note 4; *see also supra* note 40 (explaining that the NCCOB regulates the mortgage industry).

91. Mortgage Lending Act, N.C. GEN. STAT. § 53-243.04 (2002).

92. *See* § 53-243.01 – .15 (delegating responsibility to the NCCOB); Serres, *supra* note 4 (stating that the legislation provides the Banking Commission "broad authority to license and regulate mortgage brokers and lenders.").

93. Mortgage Lending Act, N.C. GEN. STAT. § 53-243.05 (2002).

94. *Id.*

95. *Id.* § 53-243.06.

96. *Id.* § 53-243.06. *See generally* North Carolina Commission of Banks, North Carolina Mortgage Lending, *at* http://www.banking.state.nc.us/ml/mlmain.htm (last visited Feb. 15, 2002) (explaining the new licensing regulations and providing access to application forms and other documents).

97. Mortgage Lending Act, N.C. GEN. STAT. § 53-243.12 (2002); *see also* Joseph Smith, Address at the National Conference of State Legislatures Annual Meeting (July 26, 2002), *at* http://www.banking.state.nc.us/reports/ncslpaperx.pdf [hereinafter Joseph Smith Address] (specifying that the NCCOB is responsible for enforcement).

98. Mortgage Lending Act, N.C. GEN. STAT. § 53-243.12 (2002); Joseph Smith

revoke, or otherwise prevent an individual from having a license.[99] The NCCOB must find that the applicant or licensee engaged in certain behavior, such as filing a license application with false statements, committing felonies, or committing specific misdemeanors.[100] The NCCOB is responsible for holding hearings requested under this section of the statute.[101] Additionally, the NCCOB can issue fines as high as $10,000 for any violation of the statute.[102] Licensing fees provide the funds necessary for this enforcement.[103] The NCCOB has further authority to examine books and records of a licensee whether or not the NCCOB suspects that a licensee has violated the statute.[104]

III. EFFECT OF THE MLA

Industry groups, consumer advocates, and officials expect positive results from the MLA.[105] The primary purpose of this new law is to regulate the mortgage industry by licensing mortgage professionals and monitoring their business practices.[106] However, it remains to be seen whether the MLA, in combination with the PLA, will be effective at curbing abusive home loans.[107]

The licensing provisions of the MLA serve as the first level of screening of mortgage professionals.[108] These provisions allow

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Address, *supra* note 97, at 5. "[W]e now can discipline individuals as well as firms in cases of prohibited conduct . . . ." *Id.*

99. Mortgage Lending Act, N.C. GEN. STAT. § 53-243.12 (2002).

100. *Id.* § 53-243.12(a).

101. *Id.* § 53-243.12(b).

102. *Id.* § 53-243.12(c). In addition to the $10,000 fine, the NCCOB can issue a cease-and-desist order and a $25,000 fine for failure to comply with the cease-and-desist order. *Id.* § 53-243.12(d).

103. Joseph Smith Address, *supra* note 97, at 5. "[F]ee revenues from licensing have significantly enhanced [the NCCOB's] resources available for enforcement activities." *Id.*

104. Mortgage Lending Act, N.C. GEN. STAT. §§ 53-243.12(g), (i) (2002).

105. *See* Bonner, *supra* note 7 (expressing views of Attorney General Roy Cooper and the North Carolina Association of Mortgage Professionals); White Interview, *supra* note 18.

106. *See* Bonner, *supra* note 7; Serres, *supra* note 4.

107. Joseph Smith Address, *supra* note 97, at 6 ("The effectiveness of this approach to . . . predatory lending remains to be determined.").

108. Interview with Joseph Smith, Commissioner of Banks, Office of the Commissioner of Banks, in Raleigh, NC (Jan. 7, 2003) [hereinafter Smith Interview].

the NCCOB to review applicants to ensure that they meet minimum standards one would expect of individuals involved in these major financial transactions. As implemented, the licensing provisions are succeeding in this endeavor. Since the licensing requirement went into effect, the NCCOB has successfully issued thousands of licenses.[109] Through this process, the NCCOB has denied licenses to dozens of applicants with questionable backgrounds.[110] By requiring all mortgage professionals who make or broker home loans to be licensed, the law holds each individual involved in a home loan responsible for her lending activities.[111]

With the licensing provisions in effect, the next step is to monitor mortgage professionals to ensure that they are conforming to the regulations of the PLA and the MLA. The MLA clarifies that the NCCOB has the authority to regulate the mortgage industry and enforce predatory lending laws.[112] As the NCCOB completes the initial licensing, the office will begin monitoring licensees to ensure that they are in compliance with the predatory lending laws.[113] The fees from the licensing provisions will provide ample funds to hire examiners for this purpose.[114] With the cooperation of the mortgage industry, consumer advocates, and borrowers, the NCCOB hopes to discover abusive home loans and discipline the offending lender appropriately.[115]

IV. CONCLUSION

The passage of the Predatory Lending Act prohibited abusive lending practices in an attempt to protect borrowers.[116] Without a comprehensive scheme to track mortgage professionals and their loans, authorities could not find those lenders in

109. *See* Smith Interview, *supra* note 108.

110. *Id.* (describing applicants with criminal backgrounds who were denied licenses).

111. Joseph Smith Address, *supra* note 97 ("[W]e can now discipline individuals as well as firms in cases of prohibited conduct.").

112. *See* Serres, *supra* note 4; *see also supra* note 40.

113. *See* Smith Interview, *supra* note 108. The office is currently hearing appeals of applicants who were denied licenses. *Id.*

114. *See id.*

115. *See id.*

116. *See supra* notes 12-36 and accompanying text.

violation of the PLA.[117] Thus, North Carolina enacted the Mortgage Lending Act to monitor mortgage professionals to ensure their compliance with the predatory lending law.[118]

In summary, the Mortgage Lending Act effectively supports the Predatory Lending Act, providing a competent framework for regulating the mortgage industry. The license requirements are serving to exclude questionable individuals from the mortgage business.[119] Through monitoring and enforcement, the NCCOB will be able to track licensees and ensure that they are complying with predatory lending laws.[120]

CAROLINE V. BARBEE

117. *See supra* notes 37-43 and accompanying text.
118. *See supra* notes 44-104 and accompanying text.
119. *See supra* notes 108-111 and accompanying text.
120. *See supra* notes 112-115 and accompanying text.