



**State of North Carolina**  
**OFFICE OF THE COMMISSIONER OF BANKS**

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GOVERNOR

**JOSEPH A. SMITH, JR.**  
COMMISSIONER OF BANKS

March 11, 2005

Ms. Mary Reca Todd  
Team Leader Supportive Housing  
North Carolina Housing Finance Agency  
3508 Bush Street  
Raleigh, NC 27609-7509

RE: Declaratory Ruling 2005-01 concerning the Mortgage Lending Act and  
Reverse Mortgage Act

Dear Ms. Todd:

This will respond to your recent inquiry, made in your capacity as an officer of the North Carolina Housing Finance Agency, regarding the interplay of mortgage brokering with the business of making reverse mortgage loans here in North Carolina. You have requested a declaratory ruling on whether and under what circumstances, if any, a licensee under the Mortgage Lending Act may lawfully participate in the business of making reverse mortgage loans in this state.

This declaratory ruling is being issued in response to your inquiry pursuant to N.C. Gen. Stat. § 150B-4 and 4 NCAC 3B .0105. It is an interpretation of the North Carolina Mortgage Lending Act, and the Reverse Mortgage Act, both of which statutes the Office of the Commissioner of Banks ("OCOB") administers and enforces. For the benefit of the public, a copy of this declaratory ruling will be posted on the OCOB website. In addition, a copy of this ruling will be mailed to each holder of a mortgage broker or mortgage lender license and to each holder of a reverse mortgage lender license and to all attorneys who have recently appeared before the Commissioner of Banks ("COB" or "Commissioner") as representatives of licensees or applicants.

We will summarize the applicable laws briefly before turning to the particulars of your inquiry.

For the purposes of this declaratory ruling, reference to “Article 19A” means Article 19A of Chapter 53 of the North Carolina General Statutes, N.C. Gen. Stat. §§ 53-243.01 through 53-243.16. Reference to the “Mortgage Lending Act” or “MLA” means the Mortgage Lending Act which was Senate Bill 904 enacted as Chapter 393 of the 2001 Session Laws, including the amendment to the Act which was effected by Section 3 of Senate Bill 1066, enacted as Chapter 399 of the 2001 Session Laws. These two enactments were codified as Article 19A of Chapter 53. Article 19A replaced former Article 19 of Chapter 53 of the General Statutes which was entitled “Registration Requirements for Makers of Mortgages and Deeds of Trust on Residential Real Estate.” Former Article 19 was a registration statute that was determined by the North Carolina General Assembly to be ineffective in the prevention of practices in the mortgage lending market that were harmful to consumers and contrary to the public interest.

The MLA was amended in 2002, and again in 2004. In 2002, House Bill 1307, enacted as Chapter 169 of the 2002 Session Laws, addressed primarily the issue of non-employee insurance agents in North Carolina who were thereby licensed as “exclusive mortgage brokers” and thereupon authorized to initiate loans for single, affiliated lenders. The measure also addressed continuing education of licensees and criminal records checks of applicants. In 2004, Senate Bill 676, enacted as Chapter 171 of the 2004 Session Laws, clarified the mechanisms and fees for criminal record checks, added escrow and loan servicing offenses as a prohibited act, and made other technical corrections to the MLA, among others.

For the purposes of this declaratory ruling, reference to “Article 21” means Article 21 of Chapter 53 of the North Carolina General Statutes, N.C. Gen. Stat. §§ 53-255 through 53-272. Reference to the “Reverse Mortgage Act” or “RMA” means the Reverse Mortgage Act which was House Bill 22 enacted as Chapter 546 of the 1991 Session Laws, and its subsequent amendments. These amendments would include House Bill 97 of the 1995 Session, which was enacted as Chapter 115 of the 1995 Session Laws, and which removed an October 1, 1995 sunset in the original law and made the law permanent. Relevant amendments also include a very recent and significant rewriting of N.C. Gen. Stat. § 53-258 by section 16 of Senate Bill 676, enacted as Chapter 171 of the 2004 Session Laws.

Under the MLA, mortgage lenders, mortgage brokers, and loan officers are required to be licensed before engaging in the business of mortgage lending or mortgage brokerage, unless exempt. Similarly, under the RMA, participation in the making of reverse mortgage loans is restricted to those who are approved to do so, either by the terms of the statute, or by application made to and accepted by the Commissioner.

The recent amendment to N.C. Gen. Stat. § 53-258 makes the articulation of the MLA and the RMA even more overt than it already was before the 2004 amendment, which in part says: “Mortgage lenders licensed under Article 19A of this Chapter must also be authorized under this Article before making reverse mortgage loans.” N.C. Gen. Stat. § 53-258. (A copy of Section 16 of 2004 S.L. 171 is attached hereto as an Exhibit.)

With these relevant statutes before us, we turn to your question. Your general inquiry may be more particularly stated and answered as follows:

1. May a lender licensed under the MLA also make reverse mortgage loans? Yes; provided the lender meets the additional standards for approval under the RMA and is approved as a reverse mortgage issuer, an MLA-licensed lender may make a reverse mortgage loan that complies with Article 21. The lender's activities in so doing will be governed both by the MLA and the RMA.
2. May any licensee under the MLA engage in the business of making reverse mortgage loans? No, not without first being approved under Article 21, the RMA.
3. May one who is licensed as a mortgage broker under the MLA engage in the business of making reverse mortgage loans? No. The RMA only permits lenders to engage in the business of making reverse mortgage loans; it does not allow for such loans to be brokered or for such loans to be initiated by anyone other than the one who is the actual lender of the loan.
4. May a reverse mortgage loan be brokered? No. The RMA does not allow for the brokering of reverse mortgages, only the making and servicing of such loans by those who are approved. (This is not to say that a borrower seeking a reverse mortgage loan could never be referred by the loan officer who was first contacted to a lender who ultimately makes the loan; however, no fee could be paid in such a case, and the referral would have to be merely incidental because otherwise, the loan officer or his employer would be engaged in the business of brokering reverse mortgage loans.)
5. Must a reverse mortgage lender approved under the RMA have all of its counselors licensed as loan officers under the MLA? No. The RMA provides that certain entities listed in the RMA occupy a position similar to the exempt status set forth in the MLA. In order for banks, thrifts, credit unions, and their wholly owned subsidiaries to claim exempt status under the MLA, they must notify the Commissioner of that status. Similarly under the RMA lenders who do not have to be approved by the Commissioner still must notify him of their intent to make reverse mortgage loans prior to making such mortgages in the state. Under neither situation is individual licensure contemplated. Further, the safeguards of individual accountability and responsibility effected by a rigorous licensure of individuals and firms under the MLA are satisfied under the RMA by more narrowly restricting participation in the marketplace. Under the RMA, approved lenders who participate are directly responsible and accountable for the making of the loans, by statute; no hierarchy of responsibility need be imposed by individual licensure. Finally, the RMA calls for counselors to be trained and approved; counselors need not be employees of approved lenders and most often, are not; this independence is distinct from the hierarchy established in the MLA.

We believe that this interpretation of the MLA squares with its provisions, especially as to its definitional distinctions between lenders and brokers, and between “act as a mortgage broker” and “act as a mortgage lender.” We believe that this interpretation also squares with the RMA, where the clear intent of the legislature is to narrowly circumscribe the business of making and servicing reverse mortgage loans to those participants who are themselves in position to carry through on the safeguards for consumers to which the RMA is largely devoted. A complete reading of the RMA indicates that the Legislature contemplated that the Commissioner could approve an entity to *make* reverse mortgage loans. Nowhere in the statute does it appear to authorize an entity to *broker* reverse mortgage loans. Brokerage is nowhere contemplated or authorized in the RMA.

OCOB has, since the enactment of MLA, maintained that brokers licensed as such under the MLA were not authorized to participate in the business of making reverse mortgage loans pursuant to the RMA. We have endeavored to inform those who have asked about this matter in clear and certain terms. Nonetheless, we recognize that some loan officers employed by some licensed mortgage brokers may have unintentionally participated in the initiation of reverse mortgage loans. Lest the cure become worse than the ill from the consumer’s point of view, we do not anticipate seeking to rescind such loans which may already be in place. However, we strongly recommend with this letter that such MLA licensees immediately cease any and all activities relating to reverse mortgage loans, unless: (1) they are lenders licensed under the MLA and approved under the RMA, and (2) they can so demonstrate. Continued participation in unlawful reverse mortgage loan originations will jeopardize licensure under the MLA. This will be a subject for examination of MLA licensees. When unlawful participation in reverse mortgage lending is found by this agency, we will enforce the MLA and the RMA and this Declaratory Ruling as swiftly and aggressively as our resources allow.

I trust that this is responsive to your inquiry, and we look forward to continuing our work with the industry in a way that benefits North Carolinians.

Very truly yours,



Joseph A. Smith, Jr.  
Commissioner of Banks

Enclosure

**Exhibit to Declaratory Ruling 2005-1**

**SECTION 16.** [of 2004 S.L. 171] G.S. 53-258 reads as rewritten:

**"§ 53-258. Authority and procedures governing reverse mortgage loans.**

~~(a) No~~ Except as provided in subsection (b1) of this section, no person, firm, or corporation shall engage in the business of making reverse mortgage loans without first being approved as an authorized reverse mortgage lender by the Commissioner, unless the lender is the North Carolina Housing Finance Agency, or is a bank, savings institution, or credit union authorized to do business under the laws of this State or authorized to do business under the laws of the United States and chartered to do business in this State. Commissioner. Mortgage lenders licensed under Article 19A of this Chapter must also be authorized under this Article before making reverse mortgage loans.

(b) An application for authorization to make reverse mortgage loans shall be in writing to the Commissioner and in the form prescribed by the Commissioner. The application shall contain the name and complete business address or addresses of the applicant. The application shall also include affirmation of financial solvency and all capitalization requirements that are required by the Commissioner. The application shall be accompanied by a nonrefundable fee, payable to the Commissioner, of five hundred dollars (\$500.00).

(b1) Each of the following lenders shall be considered authorized to engage in the business of making reverse mortgage loans without being required to apply pursuant to subsection (b) of this section and may represent to the public that it is so authorized:

(1) The North Carolina Housing Finance Agency.

(2) A bank, savings institution, or credit union formed under the laws of this or any other state or of the United States.

(3) A wholly owned subsidiary of an entity described in subdivision (2) of this subsection. Each lender listed in this subsection may, upon written request to the Commissioner of Banks, obtain written confirmation of its authority to engage in the business of making reverse mortgage loans. In the case of lenders listed in subdivisions (2) and (3) of this subsection, the request shall be accompanied by the fee set forth in subsection (d) of this section.

~~(c) The North Carolina Housing Finance Agency, and any bank, savings institution, or credit union that is not required to obtain authorization to make reverse mortgage loans under subsection (a) of this section, shall, prior to making any reverse mortgage loan, notify the Commissioner of its intent to make reverse mortgage loans. This notification shall be made on a form prescribed by the Commissioner and shall contain all information required by the Commissioner.~~

(d) The Commissioner shall, upon determination that ~~a lender~~ an applicant should be authorized to make reverse mortgage loans, issue notice of this authority to the lender. The authority to issue reverse mortgage loans is valid for the period of time specified by the Commissioner. A lender to whom a notice of authority is issued shall display the notice prominently in any and all offices of the lender that make reverse mortgage loans. Authorizations issued under this section are ~~nontransferable and subject to nontransferable.~~ Except for lenders described in subsection (b1) of this section, each lender to which an authorization is issued shall pay an annual renewal fee of two hundred fifty dollars (\$250.00)."