



Can my friend loan money to a buyer to complete a purchase?

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QUESTION: I am sometimes involved in potential real estate transactions as either a listing agent or a buyer agent where it's unlikely that the buyer will be able to obtain bank financing necessary to purchase the property. I have an old friend I call on from time to time who makes small loans to buyers in such situations. He charges a reasonable interest rate, the promissory note and deed of trust are drawn up by an attorney using the standard Bar Association forms, and I don't receive any payment from him for the referral. It's all on the up and up, and it's gratifying to help individuals buy properties who might otherwise be unable to do so.

I recently suggested my friend's services to a buyer agent whose client was interested in one of my listings, and she told me that she thought it was against the law for him to be making loans. Is she right?

ANSWER: Yes, unless your friend has a license from the State Commissioner of Banks. The NC Secure and Fair Enforcement Mortgage Licensing Act, also referred to as the NC SAFE Act, requires that any person engaged in the business of making or brokering residential mortgage loans secured by North Carolina real estate be licensed by the NC Commissioner of Banks, unless exempt. Exemptions include individuals making loans to immediate family members, individuals selling their own homes, and sellers financing no more than five (5) residential mortgage loans per calendar year. See [NC General Statutes Section 53-244.040\(d\)](#) for the complete list of exemptions. Based on your description, your friend's lending activity doesn't come within any of the exemptions. Engaging in the mortgage business in violation of the SAFE Act is a Class 3 misdemeanor, and the State Commissioner of Banks can impose significant civil penalties.

For information on the NC SAFE Act and its applicability to the practice of real estate brokerage, see the ["Alternate Financing" section of the 2011-2012 BIC Annual Review](#).

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