

STATE OF GEORGIA DEPARTMENT OF BANKING AND FINANCE



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BRIAN P. KEMP
GOVERNOR

KEVIN HAGLER
COMMISSIONER

***SPECIAL EDITION
IMPORTANT NOTICE
FINAL RULEMAKING***

December 20, 2019

NOTICE OF FINAL RULEMAKING
DEPARTMENT OF BANKING AND FINANCE
STATE OF GEORGIA

Adopted December 20, 2019

To all interested persons:

Notice is hereby given that pursuant to the provisions of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., and by the authority of O.C.G.A. §§ 7-1-61, 7-1-1001.1, 7-1-1012, and other cited statutes, the following attached Rules of the Department of Banking were adopted on December 20, 2019. The Rules were filed with the Secretary of State on December 20, 2019 and, pursuant to O.C.G.A. § 50-13-6, will be effective on January 9, 2020, which is twenty days following the filing of the Rules with the Secretary of State.

Prior to adopting the Rules, the proposed Rules along with a synopsis were distributed on November 18, 2019. The Department received three written comments regarding the proposed Rules. The Department fully considered the comments and made substantive revisions to Rules 80-11-1-.01 and 80-11-5-.09. The Department believes that the Rules as adopted encourage safe and fair mortgage lending and conform to the law.

RESIDENTIAL MORTGAGE BROKERS AND LENDERS

CHAPTER 80-11-1

DISCLOSURE, ADVERTISING AND OTHER REQUIREMENTS

80-11-1-.01 Disclosure Requirements.

80-11-1-.02 Advertisement Requirements.

80-11-1-.01 Disclosure Requirements.

- (1) The disclosures and all other provisions of this Rule only apply to persons licensed, registered, or required to be licensed or registered under Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated.
- (2) Every mortgage lender or mortgage broker shall make the following disclosures in writing to applicants for residential mortgage loans:
 - (a) within three business days of receipt of the application but no later than seven business days before settlement or closing of the loan, a Loan Estimate, as required by federal law, including but not limited to 12 CFR § 1026.19 and 12 CFR § 1026.37;
 - (b) no later than three business days before settlement or closing of the loan, a Closing Disclosure, as required by federal law, including but not limited to 12 CFR § 1026.19 and 12 CFR § 1026.38;
 - (c) prior to the acceptance of a fee, including, but not limited to, an application fee, credit report fee, property appraisal fee, and all other third-party fees, the amount of the fee;
 - (d) prior to the acceptance of a fee, whether all or any part of the fee or charge is refundable prior to settlement of the mortgage loan, and the terms and conditions for obtaining a refund if all or any part of the fee or charge is refundable;
 - (e) prior to the acceptance of any fees, the specific services which will be provided or performed for the application fee; and
 - (f) in cases where the fees are being accepted by a mortgage lender or mortgage broker that such lender or broker cannot guarantee approval of the loan application or acceptance into a particular loan program.
- (3) Mortgage lenders or mortgage brokers shall provide applicants for a home equity line of credit, a residential mortgage loan not secured by real property, such as a mobile home, or a residential mortgage loan related to a reverse mortgage, all disclosures required by federal law instead of the specific disclosures set forth in paragraph (2)(a) and (b).
- (4)
 - (a) For purposes of this Rule, the term "settlement" or "closing" means the process of executing legally binding documents regarding a lien on residential property.
 - (b) For purposes of this Rule, the term "business day" has the same definition as set forth in 12 CFR §1026.2.
 - (c) For purposes of paragraph (2) of this Rule, "application fee" means any fee advanced prior to settlement by the applicant to the mortgage broker or mortgage

lender in connection with an application for a mortgage loan, including any charge for soliciting, processing, placing or negotiating a mortgage loan. The term does not include payments to be remitted to third party service providers, such as appraisal fees or fees for credit reports.

- (5) Some or all of the disclosures required by paragraphs (2), (3), (7), (8), and (9) of this Rule may appear on forms used to comply with otherwise applicable state or federal laws, including but not limited to 12 CFR § 1026.37 and 12 CFR § 1026.38.
- (6) The disclosures required in paragraphs (2), (3), (9), and (11) of this Rule shall be acknowledged in writing by the applicant and a copy of the acknowledgment maintained by the mortgage lender or mortgage broker required to make the disclosure, and a copy of the acknowledgment shall be given to the applicant. In instances of mail applications, the disclosures required by paragraphs (2), (3), (9), and (11) must be included in the mail application package with a request that a signed acknowledgment form be returned to the mortgage broker or lender required to make the disclosure. A copy of this request shall be kept by the mortgage broker or mortgage lender. In instances of applications taken by telephone, the disclosures required by paragraphs (2), (3), and (9) must be mailed or delivered to the applicant with a request that a signed acknowledgment form be returned to the mortgage broker or lender required to make the disclosure. A copy of this request shall be kept by the mortgage broker or mortgage lender.
- (7) To the extent required by federal law including, but not limited to 12 CFR § 1026.20, a mortgage lender shall provide the borrower an Escrow Closing Notice no later than three business days before the borrower's escrow account is cancelled.
- (8) In the event that the residential mortgage loan is transferred, the transferee mortgage lender shall provide the borrower with a Mortgage Transfer Disclosure on or before the thirtieth calendar day following the date of the transfer, to the extent required by federal law including, but not limited to, 12 CFR § 1026.39.
- (9) Foreclosure Disclosure.
 - (a) Every mortgage lender, and every mortgage broker who closes mortgage loans in the broker's own name with funds provided by others and which loans are assigned within 24 hours of the funding of the loan to the mortgage lender providing the funding of such loans (i.e. table funding), shall disclose in writing to each applicant for a mortgage loan that failure to meet every condition of the mortgage loan may result in the loss of the applicant's property through foreclosure. The disclosure shall be made at or before the time of settlement. The disclosure shall include the following language in at least ten-point bold-faced type:

"O.C.G.A. § 7-1-1014(3) requires that we inform you that if you fail to meet any condition or term of the documents that you sign in connection with obtaining a mortgage loan you may lose the property that serves as collateral for the mortgage loan through foreclosure."
 - (b) The applicant shall be required to sign the disclosure and the lender or broker, as applicable, shall keep a copy of the signed disclosure.

(10) A mortgage lender or mortgage broker may not use the terms "closing" or "settlement" to refer to a transaction unless the transaction meets the definition of settlement in paragraph (4) of this Rule.

(11) Temporary Authority to Operate:

- (a) A mortgage lender or mortgage broker sponsoring a mortgage loan originator who is unlicensed but operating as a mortgage loan originator pursuant to 12 U.S.C. § 5117 shall disclose in writing to each applicant that such mortgage loan originator has temporary authority to operate. The disclosure shall be made no later than the date the consumer signs an application or any disclosure, whichever event occurs first, and shall include the following language in at least ten-point bold-faced type:

“The Georgia Department of Banking and Finance requires that we inform you that our company is licensed but the mortgage loan originator responsible for your loan is not currently licensed by the Georgia Department of Banking and Finance. The mortgage loan originator has applied for a mortgage loan originator license with the Georgia Department of Banking and Finance. Federal law (12 U.S.C. § 5117) authorizes certain mortgage loan originators to operate on a temporary basis in the state of Georgia while their application is pending. The Georgia Department of Banking and Finance may grant or deny the license. Further, the Georgia Department of Banking and Finance may take administrative action against the mortgage loan originator that may prevent such individual from acting as a mortgage loan originator before your loan closes. In such case, our company could still act as your broker or lender.”

- (b) The applicant shall be required to sign the disclosure and the lender or broker, as applicable, shall keep a copy of the signed disclosure.
- (c) This disclosure provision shall be effective April 1, 2020.

Authority: O.C.G.A. §§ 7-1-61; 7-1-261; 7-1-1001.1; 7-1-1012.

80-11-1-.02 Advertising Requirements.

Any advertisement of a mortgage loan that is subject to regulation under O.C.G.A. Title 7, Chapter 1, Article 13 and that is made, published, disseminated or circulated in this state shall comply with the requirements set forth below.

- (a) Advertisements for mortgage loans shall not be false, misleading, or deceptive.
- (b) Advertisements for mortgage loans shall not indicate in any manner that the interest rates or charges for loans are in any way recommended, approved, set or established by the state or by any law of the state.
- (c) All solicitations or advertisements, including business cards and websites, for mortgage loans disseminated in this state by persons required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 shall contain the name, license number, valid unique Nationwide Mortgage Licensing System and Registry (NMLSR) identifier, and

an office address of the licensee or registrant advertising the mortgage loan, which name, address, and license number shall conform with the name, license number, valid unique NMLSR identifier and office address on record with the Department of Banking and Finance.

- (d) All advertisements disseminated in this state by persons required to be licensed under O.C.G.A. Title 7, Chapter 1, Article 13 in any media, whether print or electronic, shall contain the words "Georgia Residential Mortgage Licensee" or, if an entity is licensed in more than one state, the licensee's advertisement may list Georgia as a state in which the licensee is licensed.
- (e) All advertisements for mortgage loans shall comply with all applicable federal and state laws.
- (f) For purposes of this Rule, "advertisement" means material used or intended to be used to induce the public to apply for a mortgage loan. Such term shall include any printed or published material, audio or visual material, website, or descriptive literature concerning a mortgage loan subject to regulation under O.C.G.A. Title 7, Chapter 1, Article 13 whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, electronic, billboard or similar display. The term advertisement shall not include promotional materials containing fifteen words or fewer relating to the mortgage business of the entity which material does not contain references to a specific rate or product, such as balloons, hats, pencils or pens, and calendars.
- (g) Every mortgage broker or mortgage lender required to be licensed or registered shall maintain a record of samples of its advertisements (including commercial scripts of all radio and television broadcasts) for examination by the Department of Banking and Finance.
- (h) An advertisement shall not include an individual's loan number, loan amount, or other publicly available information unless it is clearly and conspicuously stated in bold-faced type at the beginning of the advertisement that the person disseminating it is not authorized by, acting on behalf of, or otherwise affiliated with the individual's lender, which shall be identified by name. Such an advertisement shall also state that the loan information contained therein was not provided by the recipient's lender.
- (i) In the event that a mortgage broker or lender sponsors a mortgage loan originator purporting to operate under the temporary authority requirements set forth in 12 U.S.C. § 5117, any advertisement by the mortgage broker or lender that mentions such mortgage loan originator's ability to act as mortgage loan originator in Georgia shall clearly and conspicuously indicate that the individual has temporary authority to operate in Georgia. Any such advertisement must also clearly and conspicuously indicate that the individual is unlicensed, has submitted a license application to the Department, and the Department may grant or deny the license application.

Authority: O.C.G.A. §§ 7-1-61; 7-1-1001.1; 7-1-1004.3; 7-1-1012; 7-1-1016.

BOOKS AND RECORDS REQUIREMENTS; AUDITS

80-11-2-.03 Mortgage Loan Transaction Journal.

80-11-2-.03 Mortgage Loan Transaction Journal.

- (1) Any person who is acting as a mortgage broker and who is required to be licensed under Article 13 of Title 7, whether as a broker or a lender ("licensee"), shall maintain a journal of mortgage loan transactions which shall include, at a minimum, the following information:
 - (a) Full name of proposed borrower and all co-borrowers, and the last four digits of their social security number(s);
 - (b) Date customer applied for the mortgage loan;
 - (c) Name and Nationwide Mortgage Licensing System and Registry (NMLSR) unique identifier of the loan officer responsible for the loan application whose name also appears on the application; and
 - (d) Disposition of the mortgage loan application and date of disposition. The journal shall indicate the result of the loan transaction. The disposition of the application shall be categorized as one of the following: loan closed, loan denied, application withdrawn, application in process or other (explanation).
 - (e) The journal shall clearly identify if the mortgage loan originator utilized temporary authority to operate at any point in the application or loan process. For such mortgage loan originators that utilize temporary authority, the journal should also identify the final status of the mortgage loan originator's Georgia license application as one of the following: approved, withdrawn, or denied.
- (2) A complete mortgage loan transaction journal shall be maintained in the principal place of business. The journal shall be kept current. Records may be kept at a branch but the principal place of business must have a current journal updated no less frequently than every seven (7) days. The failure to initiate an entry to the journal within seven (7) business days from the date of the occurrence of the event required to be recorded in the journal shall be deemed a failure to keep the journal current.
- (3) Failure to maintain the mortgage loan journal or to keep the journal current (incidental and isolated clerical errors or omissions shall not be considered a violation) may be grounds for suspension or revocation of the license or other appropriate administrative action and will subject the licensee to fines in accordance with regulations prescribed by the department.
- (4) Loan processors who are required to be licensed shall be required to keep a mortgage loan transaction journal to the extent they receive information that is required by law or rule to be in the journal. Such journal shall at a minimum include for each loan the full name of the borrower(s), the name and NMLSR unique identifier of the mortgage broker or lender for whom the processing was performed; the name and the NMLSR unique identifier of the mortgage loan originator for whom the processing was performed, and the dates the loan application was received and returned to such lender or broker. If a processor performs other duties of a broker aside from processing the loan, the processor/broker shall be

responsible for keeping the same information as a broker, as provided in subsection (1) of this rule.

Authority: O.C.G.A. §§ 7-1-1001.1; 7-1-1012.

CHAPTER 80-11-3

ADMINISTRATIVE FINES AND PENALTIES

80-11-3-.01 Administrative Fines.

80-11-3-.01 Administrative Fines.

- (1) The Department establishes the following fines and penalties for violation of the Georgia Residential Mortgage Act ("GRMA") or its rules. Except as otherwise indicated, these fines and penalties apply to any person who is acting as a mortgage lender or broker and who is required to be licensed or registered under Article 13 of Chapter 1 of Title 7 ("licensee" or "registrant"). The Department, at its sole discretion, may waive or modify a fine based upon the financial resources of the person, gravity of the violation, history of previous violations, and such other facts and circumstances deemed appropriate by the department.
- (2) All fines levied by the Department are due within thirty (30) days from date of assessment and must be paid prior to renewal of the annual license or registration, reinstatement of a license or registration, or reapplication for a license or registration, or any other activity requiring Departmental approval.
- (3) Dealing with Unlicensed Persons. Any licensee or registrant or any employee of either who purchases, sells, places for processing or transfers (or performs activities which are the equivalent thereof) a mortgage loan or loan application to or from a person who is required to be but is not duly licensed under the GRMA shall be subject to a fine of one thousand dollars (\$1,000) per transaction and the licensee or registrant shall be subject to suspension or revocation. Licensees are responsible for the actions of their employees.
- (4) Permitting unlicensed persons to engage in mortgage loan originator activities. Any licensee or registrant who employs a person who does not hold a mortgage loan originator's license or does not satisfy the temporary authority to operate requirements set forth in 12 U.S.C. § 5117 but engages in licensed mortgage loan originator activities as set forth in O.C.G.A. § 7-1-1000(22) shall be subject to a fine of one thousand dollars (\$1,000) per occurrence and the licensee or registrant shall be subject to suspension or revocation. Licensees are responsible for the actions of their employees.
- (5) Relocation of Office. Any mortgage broker or mortgage lender licensee who relocates their main office or any additional office and does not notify the Department within thirty (30) days of the relocation in accordance with O.C.G.A. § 7-1-1006(e) shall be subject to a fine of five hundred dollars (\$500).
- (6) Unapproved Offices. In addition to the application, fee and approval requirements of O.C.G.A. § 7-1-1006(f), any licensee who operates an unapproved branch office shall be

subject to a fine of five hundred dollars (\$500) per unapproved branch office operated and their license will be subject to revocation or suspension.

- (7) **Change in Ownership.** Any person who acquires ten percent (10%) or more of the capital stock or a ten percent (10%) or more ownership of a mortgage broker or mortgage lender licensee without the prior approval of the Department in violation of O.C.G.A. § 7-1-1008 shall be subject to a fine of one thousand dollars (\$1,000) and their license or registration will be subject to revocation or suspension.
- (8) **Doing Business Without a License or in Violation of Administrative Order.** Any person who acts as a mortgage broker or mortgage lender prior to receiving a current license or registration required under O.C.G.A. Title 7, Chapter 1, Article 13, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars (\$1,000) per transaction and their mortgage lender or broker application will be subject to denial or their license or registration will be subject to revocation or suspension.
- (9) **Hiring a Felon.** Any mortgage broker or mortgage lender licensee or registrant who hires or retains an employee who is a felon as described in O.C.G.A. § 7-1-1004(h), which employee has not complied with the remedies provided for in O.C.G.A. § 7-1-1004(h), may be fined five thousand dollars (\$5,000) per employee found to be in violation of such provision and their license or registration will be subject to revocation or suspension.
- (10) **Hiring Persons Otherwise Disqualified from Conducting a Mortgage Business.** Any mortgage broker or mortgage lender licensee or registrant who employs any person against whom a final cease and desist order has been issued for a violation that occurred within the preceding five (5) years, if such order was based on a violation of O.C.G.A. § 7-1-1013 or based on the conducting of a mortgage business without a required license or exemption, or whose license was revoked within five (5) years of the date such person was hired pursuant to O.C.G.A. § 7-1-1004(o) shall be subject to a fine of five thousand dollars (\$5,000) per such employee and its license or registration will be subject to revocation or suspension.
- (11) **Books and Records Violations.** If the Department, in the course of an examination or investigation, finds that a licensee or registrant has failed to maintain their books and records according to the requirements of O.C.G.A. § 7-1-1009 and Rule Chapter 80-11-2, such licensee or registrant may be subject to a fine of one thousand dollars (\$1,000) for each violation of a books and records requirement listed in Rule Chapter 80-11-2.
- (12) (a) **Maintenance of Loan Files.** Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage broker or any lender acting as a broker who fails to maintain a loan file for each mortgage loan transaction as required by Rule 80-11-2-.04 or who fails to have all required documents in such file shall be subject to a fine of one thousand dollars (\$1,000) per file not maintained or not accessible, or per file not containing required documentation.

(b) **Maintenance of Service Files.** Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage lender who fails to maintain a servicer file for each mortgage loans it services, as required by Rule 80-11-6-.04(1)(b), or who fails to have all required documents in such file shall be subject to a fine of one

thousand dollars (\$1,000) per file not maintained or not accessible, or per file not containing required documentation.

- (13) Payment of \$10.00 fees and filing of fee statement. Pursuant to Rule 80-5-1-.04 and O.C.G.A. § 7-1-1011, any person who is the collecting agent at a closing of a mortgage loan transaction, is liable for payment of the \$10.00 fee to the Department. The remittance of any \$10.00 fees required to be collected after the date on which they are due shall subject the collecting agent to a late payment fee of one hundred dollars (\$100) for each due date missed. If the Department finds that the collecting agent has not, through negligence or otherwise, submitted \$10.00 fees within six months of the due date, the collecting agent will be subject to an additional fine of twenty (20) percent of the total amount of \$10.00 fees required to be collected for the applicable period. Repeated failures to submit \$10.00 fees may be grounds for revocation of license.
- (14) Repealed. Reserved.
- (15) Failure to Timely Report Certain Events. Any person required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage lender or broker, who fails to report any of the events enumerated in O.C.G.A. § 7-1-1007(d), shall be subject to a fine of one thousand dollars (\$1,000) per act not reported in writing to the Department within 10 days of knowledge of such act.
- (16) Prohibited Acts. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage broker or mortgage lender who violates the provisions of O.C.G.A. § 7-1-1013 shall be subject to a fine of one thousand dollars (\$1,000) per violation or transaction that is in violation and his or her license shall be subject to suspension or revocation. Misrepresentations also subject the person making them to a fine. Misrepresentations include but are not limited to the following:
 - (a) inaccurate or false identification of applicant's employer;
 - (b) significant discrepancy between applicant's stated income and actual income;
 - (c) omission of a loan to applicant, listed on loan application, which was closed through same lender or broker;
 - (d) false or materially overstated information regarding depository accounts;
 - (e) false or altered credit report; and
 - (f) any fraudulent or unauthorized document used in the loan process.

A fine of one thousand dollars (\$1,000) shall be assessed for any other violation of O.C.G.A. § 7-1-1013. The Department shall upon written request provide evidence of the violation.

- (17) Branch Manager Approval. Any person who is required to be licensed or registered as a mortgage broker or mortgage lender shall be subject to a fine of five hundred dollars (\$500) for operation of a branch with an unapproved branch manager and the license will be subject to revocation or suspension. No such fine shall be levied while Department

approval is pending if timely application for approval is made pursuant to Rule 80-11-1-.04.

- (18) Repealed. Reserved.
- (19) Failure to Fund. O.C.G.A. § 7-1-1013(3) prohibits failure "to disburse funds in accordance with a written commitment or agreement to make a mortgage loan." If the Department finds, either through a consumer complaint or otherwise, that a lender or a broker acting as a lender has failed to disburse funds in accordance with closing documents, which include legally binding executed agreements indicating a promise to pay and a creation of a security interest, a fine of five thousand dollars (\$5,000) per transaction may be imposed and its license or registration may be subject to revocation or suspension.
- (20) Advertising. Any person who is required to be licensed or registered as a mortgage broker or mortgage lender who violates the regulations relative to advertising contained in O.C.G.A. § 7-1-1004.3 and § 7-1-1016 or the advertising requirements of department Rule 80-11-1-.02 shall be subject to a fine of five hundred dollars (\$500) for each violation of law or rule.
- (21) Failure to Submit to Examination or Investigation. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department) shall be revocation of the license or registration and a five thousand dollar (\$5,000) fine. Refusal shall require at least two attempts by the Department to schedule an examination or investigation.
- (22) Failure to Review Public Records Prior to Hiring. Any licensee who fails to examine the Department's public records on the Department's website and NMLS Consumer Access to determine if a job applicant is subject to an order set forth in O.C.G.A. § 7-1-1004(o) prior to hiring such individual shall be subject to a fine of one thousand dollars (\$1,000) for each employee on whom the public records were not timely examined.
- (23) Background Checks. Any licensee who fails to perform proper background checks on covered employees in accordance with the provisions of O.C.G.A. § 7-1-1004(h), (i), and (k) shall be subject to a fine of one thousand dollars (\$1,000) for each employee on whom the required background check was not conducted.
- (24) Change in Executive Officers. Any licensee who fails to notify the Department of a change in executive officers of the company in violation of O.C.G.A. § 7-1-1006(e) shall be subject to a fine of five hundred dollars (\$500).
- (25) Georgia Fair Lending Act. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 as a mortgage broker or mortgage lender who violates any provision of Chapter 6A of Article 13, the Georgia Fair Lending Act, shall be subject to a fine of one thousand dollars (\$1,000) per violation or transaction that is in violation and their license will be subject to revocation or suspension.
- (26) Consumer Complaints. Any licensee or registrant who fails to respond to a consumer complaint or fails to respond to the Department within the time periods specified in the Department's correspondence to such person shall be subject to a fine of one thousand

dollars (\$1,000) for each occurrence. Repeated failure to properly respond to consumer complaints may result in revocation of license.

- (27) Failure to Perform Timely Background Checks. If the ten (10) day requirement for submission of background information to the proper law enforcement authorities is not met, the employer shall be subject to a one thousand dollar (\$1,000) fine.
- (28) Failure to File Timely or Accurate Call Reports. Any licensee or registrant who fails to file a timely Call Report as required through the Nationwide Multi-State Licensing System and Registry or fails to file an accurate Call Report shall be subject to a fine of one hundred dollars (\$100) per occurrence. Repeated failure to file timely or accurate Call Reports may subject the license or registration to revocation or suspension.
- (29) Failure to Timely Disclose Change in Affiliation of Natural Person that Executed Lawful Presence Affidavit and Submission of New Affidavit. Any licensed mortgage lender, mortgage broker, or registrant that fails to disclose that the owner or executive officer that executed the lawful presence affidavit is no longer in that position with the licensee or registrant within ten (10) business days of the date of the event necessitating the disclosure, shall be subject to a fine of one thousand dollars (\$1,000). Any licensed mortgage broker, mortgage lender, or registrant that fails to submit a new lawful presence affidavit from a current owner or executive officer within ten (10) business days of the owner or executive officer that executed the previous lawful presence affidavit no longer being in that position with the licensee or registrant, shall be subject to a fine of one thousand dollars (\$1,000) per day until the new affidavit is provided.
- (30) Failure to Timely Update Information on the Nationwide Multi-State Licensing System and Registry. Any licensed mortgage broker, mortgage lender, or registrant that fails to update its information on the Nationwide Multi-State Licensing System and Registry ("NMLSR"), including, but not limited to, amendments to any response to disclosure questions on an application or a licensee's or registrant's NMSLR MU-1, within ten (10) business days of the date of the event necessitating the change, shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. In addition, the failure of a control person of a licensed mortgage broker, mortgage lender, or registrant to update the individual's information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions on the control person's NMSLR MU-2, within ten (10) business days of the date of the event necessitating the change, shall subject the licensed mortgage broker, mortgage lender, or registrant to a fine of one thousand dollars (\$1,000) per occurrence.
- (31) Bank Secrecy Act. If the Department in the course of an examination or investigation, finds that a licensee that satisfies the definition of loan or finance company has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 and its related regulations, including those set forth at 31 CFR Chapter X (together, the "Bank Secrecy Act") or the requirements referred to in Rule 80-11-1-.06, such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each instance of non-compliance.

Authority: O.C.G.A. §§ 7-1-61; 7-1-1001.1; 7-1-1004.1; 7-1-1012.

CHAPTER 80-11-5

MORTGAGE LOAN ORIGINATOR

LICENSURE AND OTHER REQUIREMENTS

80-11-5-.02 Books and Records Requirements; Examination.
80-11-5-.05 Administrative Fines.
80-11-5-.09 Temporary Authority to Operate.

80-11-5-.02 Books and Records Requirements; Examination.

- (1) The Department may examine the mortgage related books and records of any licensed mortgage loan originator as specified in O.C.G.A. § 7-1-1009.
- (2) Any person who is acting as a mortgage loan originator and is required to be licensed shall maintain a journal of mortgage loan transactions, which shall include, at a minimum, the following information:
 - (a) Full name of proposed borrower and all co-borrowers;
 - (b) Date the mortgage loan originator took application for the mortgage loan;
 - (c) Name and the unique identifier or Federal Regulatory Number of the mortgage licensee or registrant sponsoring the loan originator;
 - (d) Disposition of the mortgage loan application and date of disposition. The journal shall indicate the result of the loan transaction. The disposition of the application shall be categorized as one of the following: loan closed, loan denied, application withdrawn, application in process or other (explanation to be provided);
 - (e) The journal shall be kept current, updated no less frequently than every seven (7) days. The failure to initiate an entry to the journal within seven (7) business days from the date of the occurrence of the event required to be recorded in the journal shall be deemed a failure to keep the journal current.
 - (f) The journal shall clearly identify if the mortgage loan originator utilized temporary authority to operate at any point in the application or loan process.
 - (g) Failure to maintain the mortgage loan journal or to keep the journal current (incidental and isolated clerical errors or omissions shall not be considered a violation) may be grounds for suspension or revocation of the license or other appropriate administrative action and will subject the licensee to fines in accordance with regulations prescribed by the department.
- (3) All books and records and accounts required by this rule shall be maintained by a mortgage loan originator for a period of five (5) years.

Authority: O.C.G.A. §§ 7-1-1001.1; 7-1-1009; 7-1-1012.

80-11-5-.05 Administrative Fines.

- (1) The Department establishes the following fines and penalties for violation by mortgage loan originators of the Georgia Residential Mortgage Act ("GRMA") or its rules. The Department, in its sole discretion, may waive or modify any fine based upon the gravity of the violation, history of previous violations, and such other facts and circumstances as have contributed to the violation.
- (2) All fines levied by the Department are due within thirty (30) days from date of assessment and must be paid prior to renewal of the annual license or registration, reinstatement of a license or registration, or reapplication for a license or registration, or any other activity requiring Departmental approval.
- (3) All fines collected by the Department shall be paid into the state treasury to the credit of the general fund.
- (4) The following fines shall be assessed for violations of GRMA and Department rules:
 - (a) Dealing with Unlicensed Persons. A mortgage loan originator that purchases, sells, places for processing or transfers (or performs activities which are the equivalent thereof) a mortgage loan or loan application to or from a person who is required to be but is not duly licensed under GRMA shall be subject to a fine of one thousand dollars (\$ 1,000) per transaction and his or her license shall be subject to suspension or revocation.
 - (b) Unapproved Location. A mortgage loan originator that operates from a location in Georgia other than a required approved location on record with the Department shall be subject to a fine of five hundred dollars (\$ 500) per unapproved location operated and his or her license may be subject to revocation or suspension.
 - (c) Doing Business Without a License or in Violation of Administrative Order. Any person who acts as a mortgage loan originator prior to receiving a current license or registration required under GRMA, unless such person satisfies the temporary authority to operate requirements in 12 U.S.C. § 5117, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars (\$ 1,000) per transaction and the mortgage loan originator's application will be subject to denial or his or her license or registration will be subject to revocation or suspension.
 - (d) Books and Records Violations. If the Department, in the course of an examination or investigation, finds that a mortgage loan originator licensee or registrant has failed to maintain his or her books and records according to the requirements of Rule 80-11-5-.02, such licensee or registrant may be subject to a fine of one thousand dollars (\$ 1,000) for each violation of a books and records found to occur.
 - (e) Prohibited Acts. Any person who is required to be licensed under O.C.G.A. Title 7, Article 13 as a mortgage loan originator who violates the provisions of O.C.G.A. § 7-1-1013 shall be subject to a fine of one thousand dollars (\$ 1,000) per violation or transaction that is in violation and his or her license shall be subject to suspension or revocation.

- (f) Education Requirements. A mortgage loan originator who fails to meet the requirement that he or she timely obtain the type and number of continuing education hours each year as required shall be fined one hundred dollars (\$ 100).
- (g) Advertising. A mortgage loan originator that is required to be licensed who violates the regulations relative to advertising contained in O.C.G.A. §§ 7-1-1004.3 and 7-1-1016 or the advertising requirements of the Department shall be subject to a fine of five hundred dollars (\$ 500) for each violation of law or rule.
- (h) Failure to Submit to Examination or Investigation. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department) shall be revocation of the license or registration and a five thousand dollars (\$ 5,000) fine. Refusal shall be determined according to Department examination policies and procedures, but shall require at least two attempts to schedule an examination or investigation.
- (i) Permitting an unlicensed person to use a licensed mortgage loan originator's license and identity. Any licensed mortgage loan originator who permits an unlicensed person to use that licensee's name, Nationwide Mortgage Licensing System and Registry Number or other identifying information for the purpose of submitting loan documents to lenders shall be subject to a fine of one thousand dollars (\$ 1,000) per occurrence, and the license of the mortgage loan originator shall be subject to revocation.
- (j) Failure to Timely Update Information on the Nationwide Mortgage Licensing System and Registry. Any licensed mortgage loan originator that fails to update his or her information on the Nationwide Mortgage Licensing System Registry ("NMLSR") including, but not limited to, amendments to any responses to disclosure questions on an application or a licensee's NMLSR MU-4, within ten (10) business days of the date of the event necessitating the change, shall be subject to a fine of one thousand dollars (\$1,000) per occurrence.
- (k) Failure to Timely Report Certain Events. Any licensed mortgage loan originator that fails to report any of the events enumerated in O.C.G.A. § 7-1-1007(d) within ten (10) days of obtaining knowledge about the underlying events, shall be subject to a fine of one thousand dollars (\$1,000) per occurrence.

Authority: O.C.G.A. §§ 7-1-1001.1; 7-1-1012; 7-1-1018.

80-11-5-.09 Temporary Authority to Operate

- (1) A mortgage loan originator purporting to operate under the temporary authority requirements set forth in 12 U.S.C. § 5117 is jointly responsible with the mortgage loan originator's sponsor for ensuring that the required disclosure under Rule 80-11-1-.01(11) is provided. Nothing herein shall be construed as requiring a mortgage loan originator and the mortgage loan originator's sponsor to provide a duplicate of the required disclosure under Rule 80-11-1-.01(11).

- (2) A mortgage loan originator purporting to operate under the temporary authority requirements set forth in 12 U.S.C. § 5117 must indicate “TAO,” “temporary authority to operate,” or a substantially similar designation next to the signature line on any document, application, or disclosure signed by the mortgage loan originator in connection with any residential mortgage loan application, including but not limited to the negotiation of terms or the offering of a loan.
- (3) Unless the following requirements have been satisfied, any mortgage loan originator who qualifies to operate under the temporary authority provisions of 12 U.S.C. § 5117 must submit proof to the Department of enrollment in a class to satisfy the education requirements set forth in O.C.G.A. § 7-1-1004(e) as well as registering to take the test as required by O.C.G.A. § 7-1-1004(f). Such proof shall be submitted to the Department within thirty (30) days of receipt of the mortgage loan originator’s application.

Authority: O.C.G.A. §§ 7-1-1001.1; 7-1-1012.