

# STATE OF GEORGIA DEPARTMENT OF BANKING AND FINANCE



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*NATHAN DEAL  
GOVERNOR*

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COMMISSIONER*

*SPECIAL EDITION  
IMPORTANT NOTICE  
FINAL RULEMAKING*

**October 27, 2015**

# **NOTICE OF FINAL RULEMAKING**

## **DEPARTMENT OF BANKING AND FINANCE STATE OF GEORGIA**

**Adopted October 27, 2015**

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, 7-1-1012, 7-9-13, and other cited statutes, the following attached Rules of the Department of Banking were adopted on October 27, 2015. The Rules were filed with the Secretary of State on October 27, 2015 and, pursuant to O.C.G.A. § 50-13-6, will be effective on November 16, 2015, 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 September 24, 2015. The Department received two (2) written comments regarding the proposed Rules. The Department fully considered the comments it received but no revisions were made to the rules. The Department believes that the Rules as adopted encourage safety and soundness, encourage safe and fair mortgage lending, and conform to the law.

## **FINAL RULES**

### **RESIDENTIAL MORTGAGE BROKERS AND LENDERS**

#### **CHAPTER 80-11-1**

##### **DISCLOSURE, ADVERTISING, BRANCH MANAGERS**

80-11-1-.01 Disclosure Requirements.

###### **80-11-1-.01 Disclosure Requirements.**

(1) 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 days before consummation 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 consummation of the loan, a Closing Agreement, 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 any fees, the amounts of all other third-party fees, including but not limited to credit report fees;

(d) prior to the acceptance of any fees, whether all or any part of any fees or charges is refundable prior to settlement of the mortgage loan, and the terms and conditions for obtaining a refund if all or any part of any fees or charges 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. Further, lender or broker may not use the terms “closing” or “settlement” to refer to a transaction unless the transaction meets the definition of settlement in paragraph (3) of this rule.

(2) (a) Notwithstanding the requirements set forth in paragraph (1)(a) and (b), prior to the acceptance of any fees, mortgage lenders shall provide applicants for a home equity line of credit or a residential mortgage loan not secured by real property, such as a mobile home, the Good Faith Estimate, HUD-1 disclosures, and all other disclosures required by federal law.

(b) Notwithstanding the requirements set forth in paragraph (1)(a) and (b), prior to the acceptance of any fees, mortgage brokers and mortgage lenders shall provide applicants for residential mortgage loans related to reverse mortgages the Good Faith Estimate and HUD-1

disclosures, as well as all other disclosures required by federal law, including but not limited to 12 CFR §1026.33.

(3) (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 and the disbursement of funds necessary to effect the transaction. Where a federally required right of rescission applies to a transaction, the settlement or closing date will be the date the binding documents are signed, not the disbursement date.

(b) For purposes of this Rule, the term "consummation" means the point at which the borrower becomes contractually obligated to the creditor on the residential mortgage loan, which may not necessarily be the same as the date of settlement or closing.

(c) For purposes of paragraph (1) 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.

(4) Some or all of the disclosures required by paragraph (1), (2), (6), (7), and (8) 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.

(5) The disclosures required in paragraphs (1), (2), and (8) 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 (1), (2), and (8) 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 (1), (2), and (8) 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.

(6) In a residential mortgage loan for which an escrow account was established in connection with the transaction and will be cancelled, the mortgage lender shall provide the borrower an Escrow Closing Notice no later than three business days before the borrower's escrow account is cancelled, as required by federal law, which includes but is not limited to 12 CFR §1026.20.

(7) 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, as required by federal law, which includes but is not limited to 12 CFR §1026.39.

(8) 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), required to be licensed or registered under Article 13 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.

(c) This disclosure requirement may be satisfied by complying with a substantially similar disclosure as required by federal law.

Authority Ga. L. 1974, p. 733; Ga. L. 1993, p. 543; O.C.G.A. § 7-1-61; § 7-1-261.

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## MERCHANT ACQUIRER LIMITED PURPOSE BANKS

### CHAPTER 80-12-2

#### APPLICATION PROCESS

80-12-2-.09 Special Examiners Assisting in Application Process

#### **80-12-2-.09 Special Examiners Assisting in Application Process.**

(1) To aid it in evaluating an MALPB charter application, the Department, after consulting with the applicant, may determine that it needs to retain a third-party expert, to assist with the review and analysis of the charter application. The third-party expert will analyze the data or information requested by the Department and provide the results to the Department. Any fees or costs associated with a third-party expert retained to aid the Department with the review and analysis of the application will be paid by the MALPB charter applicant. The general provisions that must be contained in the third-party expert agreement are set forth in Rule 80-12-6-.04.

(2) An MALPB charter applicant is required to cooperate with and provide all information and documentation requested by a third-party expert retained to assist the Department with the

review and analysis of the charter application. The failure to cooperate with the third-party expert will result in the denial of an application.

Authority O.C.G.A. §§ 7-1-66, 7-9-3, 7-9-13.

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## MERCHANT ACQUIRER LIMITED PURPOSE BANKS

### CHAPTER 80-12-6

#### MALPB LOCATIONS AND EXAMINATIONS

80-12-6-.03 Examinations and Investigations

80-12-6-.04 Third-Party Expert Agreement

#### **80-12-6-.03 Examinations and Investigations.**

(1) The Department shall examine or investigate all MALPBs at least once each year and may examine or investigate any MALPB more frequently at any time it deems such action necessary or desirable. At least once annually, the examination shall consist of a comprehensive review of the accounts, records, and affairs of the MALPB. To aid in its examination or investigation of an MALPB, the Department may conduct an examination or investigation of the MALPB's holding companies, affiliates, eligible organizations, or support organizations.

(2) Notwithstanding Paragraph 1, the Department may, consistent with the purposes of the Act and the rules enacted pursuant to the Act, alter the examination frequency and scope in order to: assure that appropriate time and attention are devoted to the supervision of troubled entities regulated by the Department; or minimize the examination burden on well-managed MALPBs which have consistently been operated with safe and sound practices.

(3) To aid the Department in examining or investigating an MALPB, its holding companies, affiliates, eligible organizations, or support organizations, the Department may determine that it needs to retain a third-party expert to assist with the examination or investigation. The third-party expert will analyze the accounts, records, affairs, systems, data, or information requested by the Department and provide the results to the Department. Any fees or costs associated with a third-party expert retained to aid the Department with the examination or investigation of the MALPB will be paid by the MALPB. The general provisions that must be contained in the third-party expert agreement are set forth in Rule 80-12-6-.04.

(4) An MALPB is required to cooperate with and provide access to all accounts, records, affairs, systems, data or information requested by a third-party expert retained to assist the Department with the examination or investigation. The failure to cooperate with the third-party expert will result in an enforcement action.

Authority O.C.G.A. §§ 7-1-64, 7-1-66, 7-9-3, 7-9-13.

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#### **80-12-6-.04 Third-Party Expert Agreement.**

(1) In the event the Department enters into an agreement with a third-party expert for the purpose of aiding the Department in evaluating an MALPB charter application or examining or investigating an MALPB, the agreement may provide, among other items, that:

- (a) All fees and costs incurred by the third-party expert will be paid by the MALPB;
- (b) The fees can vary depending on the service provided by the third-party expert but as set forth in a general fee schedule;
- (c) The purpose of the agreement is to aid the Department in determining if the MALPB, its holding companies, and affiliates have complied with the Act, the rules promulgated pursuant to the Act, and are operating in a safe and sound manner;
- (d) The Department will direct the focus and scope of the third-party expert's analysis including, but not limited to, the accounts, records, affairs, data, or information to be reviewed;
- (e) The third-party expert shall produce at least one detailed report to the Department which shall reach conclusions about its review and provide the support for the conclusions in the report;
- (f) The third-party expert shall have access to all of the records of the MALPB, its holding companies and affiliates that the Department can review;
- (g) All information reviewed by the third-party expert shall be confidential and not subject to disclosure other than to the Department or as may otherwise be required by law; and
- (h) All services shall be performed in accordance with applicable professional standards.

Authority O.C.G.A. §§ 7-1-66, 7-9-3, 7-9-13.