

STATE OF GEORGIA DEPARTMENT OF BANKING AND FINANCE



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*NATHAN DEAL
GOVERNOR*

*KEVIN HAGLER
COMMISSIONER*

*SPECIAL EDITION
IMPORTANT AMENDED NOTICE
PROPOSED RULEMAKING*

December 4, 2015

**AMENDED NOTICE OF PROPOSED RULEMAKING
AND
OPPORTUNITY TO COMMENT**

**PROPOSED ENACTMENT OF RULES AND REGULATIONS
BY
DEPARTMENT OF BANKING AND FINANCE
STATE OF GEORGIA**

To all interested persons:

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, and other cited statutes, the Department of Banking and Finance hereby gives notice of its intent to adopt new rules.

A synopsis and purpose precedes the proposed rules.

Comments to the Department of Banking and Finance must be received by the close of business on **Monday, January 4, 2016**. Please send all comments to:

Kevin B. Hagler, Commissioner
Georgia Department of Banking and Finance
2990 Brandywine Road, Suite 200
Atlanta, GA 30341-5565

Fax: (770) 986-1654 or 1655
Email: dbf@dbf.state.ga.us

The Department shall review all comments, may contact commenters to discuss their suggestions, and, after the comment period has closed, intends on promulgating final rules. The Department will consider the proposed new rules for adoption at a meeting **at 1:00 p.m. on Wednesday, January 6, 2016**, at the offices of the Department of Banking and Finance at Suite 200, 2990 Brandywine Road, Atlanta, Georgia 30341. Notice and a copy of the final rules adopted will be e-mailed to persons who have made a special request, and will be made available on the Department's website at <http://dbf.georgia.gov/>. Other interested parties may receive a copy of the final rules by contacting the Department at (770) 986-1633, after **Wednesday, January 6, 2016**.

2015 Rules and Regulations
Proposed Changes: Synopsis, Purpose and Background

80-3-1-.01 Payment Instrument Sellers and Money Transmitters.

The proposed amendment inserts an inadvertently omitted period.

80-3-1-.07 Administrative Fines and Penalties.

The proposed revision expands the factors the Department can consider in evaluating whether a fine should be waived or modified.

80-11-1-.01 Disclosure Requirements.

The proposed amendment clarifies that the provisions of this rule only apply to entities that are licensed, registered, or required to be licensed or registered under the Georgia Residential Mortgage Act as it was never the intent of the Department to expand the scope of the rule beyond those entities. The proposed revision also clarifies that disclosures required by federal law instead of the specific disclosures set forth in 12 CFR §§1026.19, 1026.37, and 1026.38 shall be provided to 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 as it was never the intent of the Department to require any disclosures other than those disclosures required by federal law. Finally, the proposed revision makes a number of other changes to increase the clarity of the rule.

80-11-3-.01 Administrative Fines.

The proposed revision expands the factors the Department can consider in evaluating whether a fine should be waived or modified.

MONEY TRANSMISSION

CHAPTER 80-3-1

MONEY TRANSMISSION AND RELATED FINANCIAL SERVICES

80-3-1-.01 Payment Instrument Sellers and Money Transmitters
80-3-1-.07 Administrative Fines and Penalties.

80-3-1-.01 Payment Instrument Sellers and Money Transmitters.

(1) For purposes of Rules 80-3-1-.01, 80-3-1-.03, 80-3-1-.04, 80-3-1-.06, 80-3-1-.07(4), 80-3-1-.08, 80-3-1-.09, and 80-5-1-.02(1), the terms that are defined in O.C.G.A. § 7-1-680 shall have the identical meaning.

(2) Dual Purpose. A license for the sale of payment instruments shall also permit the licensee to conduct money transmission, but the licensee must clearly inform the Department in writing that it intends to transmit money. A separate license will be issued for persons who intend to conduct only money transmission.

(3) Every applicant for a license shall demonstrate to the Department that such applicant has sufficient financial resources in the form of working capital and tangible net worth to successfully engage in the business of selling payment instruments or money transmission. Sufficiency of financial resources shall be determined through financial analysis by the Department of pro-forma and historical financial information of the applicant. Each licensee shall be required to complete and attest to official questionnaires and statements of assets and liabilities when requested for examination purposes. Licensees shall be prohibited from withholding, deleting, destroying, or altering information requested by an examiner of the Department or making false statements or material misrepresentations to the Department during the course of an examination or on any application or renewal form sent to the Department.

(4) Authorized Agents.

(a) Licensees may designate authorized agents to engage in the sale of payment instruments or money transmission at non-banking outlets and the place of business of such authorized agents will not be construed as a branch office. The authorized agent must be bonded and the licensee made solely liable for the payment of the issued payment instruments or transmitted money upon proper presentation and demand. The responsibility of both the licensee and its authorized agent shall be carefully defined in a written agreement setting forth the duties of both parties and providing for remuneration of the authorized agent. An arrangement for daily conveyance of proceeds from the sale of payment instruments and money transmission by the authorized agent to the licensee is preferable, particularly if the volume of transactions justifies more frequent

conveyance. The licensee's blanket bond coverage shall extend to cover transactions by the authorized agent and the conveyance of the funds to the licensee or the licensee's depository financial institution.

(b) Licensees are required to submit authorized agent information to the Department in such form, timeframe, and manner and with such supporting documentation as required. The initial authorized agent list should include all authorized agents of the licensee as of the date the licensee begins business. Future reports related to authorized agents will be submitted on a quarterly basis. The initial authorized agent list as well as the subsequent quarterly reports shall be deemed to be the licensee's notice of new locations operated by authorized agents as well as the licensee's application for approval of the designated authorized agents. Failure to report changes to authorized agents and/or locations in the reporting period in which the authorized agent began or ceased offering the licensee's services can result in fines, revocation, suspension, or other administrative action by the Department.

(5) Every licensee or authorized agent of a licensee shall display prominently in the premises where money is transmitted or where payment instruments are issued or sold a copy of its license. Advertising material relative to the sale of payment instruments or money transmission available within this State shall bear the legend "LICENSED BY THE GEORGIA DEPARTMENT OF BANKING AND FINANCE" in letters at least one-quarter inch high and contain the licensee's unique identifier. The Department may waive the required legend as to specific material distributed in more than one licensing jurisdiction.

(6) Every licensee giving notices of additional or changes in locations operated by the licensee or by an authorized agent shall do so in a form and manner as provided by the Department. Such notice shall include the name and business locations of any authorized agent whose agency has been revoked, suspended, cancelled, terminated, or voluntarily closed by the licensee since the previous report. The reason for such revocation or suspension, and the amount of any outstanding claim by the licensee against the authorized agent relating to the sale of payment instrument or money transmission shall be provided to the Department upon request.

(7) Audit; quarterly reports.

(a) Every licensee shall have an audit of its books and records performed at least annually by independent public accountants in accordance with generally accepted auditing standards. Such audit will be provided to the Department within ten (10) days of the Department's request for such information. Each licensee is required to furnish the Department activity statement on a quarterly basis in a form and manner prescribed by the Department which, shall include, but not be limited to, the amount of outstanding payment instruments or outstanding orders to transmit that have not yet been paid. The activity statement shall be filed forty-five (45) days after the end of each calendar quarter. Licensees submitting an activity statement to the Department, whether in hard copy or electronically are certifying to the material accuracy and validity of the information as submitted.

(8) Proceeds received from the sale of payment instruments or money transmission net of fees charged and retained by the authorized agent shall be remitted to the licensee or the licensee's depository financial institution by such means as the licensee shall require within five

(5) business days from the date of the sale or issuance of payment instruments unless more frequent remittance is required by the Department or the licensee.

(9) Receipt. Each customer that is a payment instrument holder shall be provided with a written receipt or other evidence of acceptance of the issuance of payment instruments or the transmission of money showing the name of the licensee or trade name of the licensee that is registered with the Department, authorized agent identifier information, the date of issuance of the payment instrument or of the transmission of money, the dollar amount of the issued payment instrument or of the transmitted money, and the fee charged to the customer.

(10) Minimum Books and Records.

(a) Each licensee shall make, keep, and preserve the following books, accounts, and other records:

1. A record of each payment instrument sold;
2. A general ledger which shall be posted at least monthly containing all assets, liabilities, capital, and income and expense accounts;
3. Settlement sheets received from authorized agents;
4. Bank statements and bank reconciliation records;
5. Records of outstanding payment instruments;
6. Records of each payment instrument paid;
7. A list of the names and addresses of all of the licensee's authorized agents;
8. A copy of all currency transaction reports that are required to be filed by the licensee;
9. For money transmitters, records of all money transmissions sent or received as well as all outstanding money transmissions; and
10. Supporting documentation for all reports required to be prepared or filed with the Department or the Nationwide Multistate Licensing System and Registry.

(b) Each licensee shall maintain a principal location at which its books and records are maintained and which is accessible to the Department for examination during normal business hours. If the records are maintained outside of the state, then the licensee must have all required records delivered to the Department's main office within ten (10) days of the Department's request. The Department may examine any person that purports to satisfy the exemption from licensure set forth in O.C.G.A. § 7-1-682 to verify that the person qualifies for the exemption from licensure. A licensee that refuses to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department), that withholds material information, or makes a misrepresentation shall have its license revoked.

(11) A licensee shall make a written request to the Department seeking approval for any proposed change in ownership, change in control, or change in executive officer as required by O.C.G.A. § 7-1-688 at least thirty (30) days prior to the proposed change.

Authority O.C.G.A. § 7-1-61; § 7-1-681; §7-1-690

80-3-1-.07 Administrative Fines and Penalties.

(1) Except as otherwise indicated, these fines and penalties apply to any person, partnership, association, corporation, or any other group of individuals, however organized, that is required to be licensed under Article 4 or Article 4A of Chapter 1 of Title 7. 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 ~~that contributed to the violation~~ deemed appropriate by the department.

(2) All fines levied by the Department are due within thirty (30) days from the date of assessment and must be paid prior to renewal of the annual license, reapplication for a license, or any other activity requiring Departmental approval.

(3) Check Cashers. The Department establishes the following fines and penalties for violation of the law and rules governing check cashers.

(a) Books and Records. If the Department, in the course of an examination or investigation, finds that a licensee has failed to maintain its books and records according to the requirements of O.C.G.A. § 7-1-706(a) and Rules 80-3-1-.02(2) or 80-3-1-.02(5), such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each books and records violation listed in Rules 80-3-1-.02(2) or 80-3-1-.02(5).

(b) Excessive Fees. If the Department, in the course of an examination or investigation, finds that a licensee has charged fees for cashing payment instruments in excess of the amount set forth in O.C.G.A. § 7-1-707(f), such licensee shall be subject to a fine of five thousand dollars (\$5,000) per occurrence and its license will be subject to revocation or suspension.

(c) Posting of Charges. Any licensee who does not display, at all locations, a notice stating the charges/fees for cashing payment instruments in accordance with O.C.G.A. § 7-1-707.1 shall be subject to a fine of five hundred dollars (\$500).

(d) Operating Without Proper License. Any person who acts as a check casher prior to receiving a current license required under Article 4A of Chapter 1 of Title 7, or who acquires a business that cashes payment instruments and operates without its own license, 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 day and its license application will be subject to denial or its license will be subject to revocation or suspension.

(e) Felons. Any licensee that hires or retains a covered employee who is a felon as described in O.C.G.A. § 7-1-703(b), when such covered employee has not complied with the remedies provided for in O.C.G.A. § 7-1-703(b) for each conviction before such employment, shall be subject to a fine of five thousand dollars (\$5,000) for each such covered employee and its license will be subject to revocation or suspension.

(f) GCIC Background Checks on Employees. Any licensee that does not obtain a Georgia Crime Information Center (“GCIC”) criminal background check on each covered employee prior to the initial date of hire or retention shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. Proof of the required GCIC criminal background check must be retained by the licensee until five years after termination of employment by the licensee. Notwithstanding compliance with this requirement to perform a GCIC criminal background check prior to employment, failure to maintain criminal background checks as required will result in a fine of one thousand dollars (\$1,000) for each covered employee for which the licensee is missing this documentation.

(g) Deferred Payment. Any licensee that defers payment on a payment instrument pending collection and has not obtained the surety bond as required by O.C.G.A. § 7-1-707(c) shall be subject to a fine of five thousand dollars (\$5,000) per occurrence and its license will be subject to revocation or suspension.

(h) Other Business Activities. Any licensee found to have violated any law of this state by conducting any other business that is not lawful in conjunction with cashing payment instruments, shall be subject to a fine of five thousand dollars (\$5,000) and its license will be subject to revocation or suspension.

(i) Corporate Checks. Any licensee that cashes a payment instrument made payable to a corporation or other business association or cashes a payment instrument drawn by the corporation or other business association and made payable to cash without the proper written authorization as required by O.C.G.A. § 7-1-707(d) and Rule 80-3-1-.02(3) shall be subject to a fine of one thousand dollars (\$1,000) per occurrence.

(j) Advertising – “No Identification Required.” A licensee that advertises that it will cash payment instruments with no identification required will be subject to a fine of one thousand dollars (\$1,000).

(k) Identification Requirements for Cashing Payment Instruments. No licensee shall cash payment instruments without identification of the bearer of such check. Failure to comply with

the requirements of O.C.G.A. § 7-1-707(e) shall subject the licensee to a fine of one thousand dollars (\$1,000) per occurrence.

(l) Failure to Submit to Exam. The penalty for the refusal of a licensee to permit the Department to conduct an investigation or examination of its books, accounts, and records, shall be the revocation of its license and a five thousand dollars (\$5,000) fine.

(m) Consumer Complaints. Any licensee who fails to respond to a written consumer complaint or fails to respond to the Department regarding a consumer complaint, within the time periods specified in the Department's correspondence to such licensee, shall be subject to a fine of one thousand dollars (\$1,000) for each occurrence. Repeated failure to properly respond, as reasonably determined by the Department, may result in the revocation or suspension of its license.

(n) Failure to Notify the Department of Change in Ownership, Change in Control, or Designation of Executive Officer. Any licensee or other person who fails to notify and obtain the Department's approval of a change in ownership, change in control, or change in executive officer of the licensee in compliance with O.C.G.A. § 7-1-705.1 and Rule 80-3-1-.02 shall be subject to a fine of one thousand dollars (\$1,000) and its license will be subject to revocation or suspension.

(o) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 ("Bank Secrecy Act") or the requirements referred to in Rules 80-3-1-.03, 80-3-1-.04, and 80-3-1-.06, such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each instance of non-compliance.

(p) Failure to Post Required License or Failure to Include Required Legend on Advertising. Any licensee that fails to post a copy of its license in prominent view of each teller window or other customer service station, or distributes advertising in this state related to the cashing of payment instruments that fails to display the phrase "LICENSED BY THE GEORGIA DEPARTMENT OF BANKING AND FINANCE" shall be subject to a fine of five hundred dollars (\$500) for each instance of non-compliance.

(q) Failure to Timely Disclose Change in Affiliation of Natural Person that Executed Lawful Presence Affidavit and Submission of New Affidavit. Any licensed check casher 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 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 check casher 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, shall be subject to a fine of one thousand dollars (\$1,000) per day until the new affidavit is provided.

(r) Failure to Timely Update Information on the Nationwide Multistate Licensing System and Registry. Any licensee that fails to update its information on the Nationwide Multistate Licensing System and Registry ("NMLSR"), including, but not limited to, amendments to any response to disclosure questions, 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 licensee to update the individual's information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions by the control person, within ten (10) business days of the date of the event necessitating the change, shall subject the licensee to a fine of one thousand dollars (\$1,000) per occurrence.

(4) Payment Instrument Sellers and Money Transmitters. The Department establishes the following fines and penalties for violation of the laws and rules governing payment instrument sellers and money transmitters.

(a) Books and Records. If the Department, in the course of an examination or investigation, finds that a licensee has failed to maintain its books and records according to the requirements of O.C.G.A. § 7-1-689 and Rules 80-3-1-.01(4), 80-3-1-.01(6), 80-3-1-.01(7), 80-3-1-.01(9), or 80-3-1-.01(10), such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each books and records violation listed in Rule 80-3-1-.01(4), 80-3-1-.01(6), 80-3-1-.01(7), 80-3-1-.01(9), or 80-3-1-.01(10).

(b) Operating Without Proper License. Any person who acts as a payment instrument seller or money transmitter prior to receiving a current license required under O.C.G.A. Article 4 of Chapter 1 of Title 7, or who acquires a payment instrument seller or money transmission business without its own license, 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 day and its application will be subject to denial or its license will be subject to revocation or suspension.

(c) Felons. Any licensee that hires or retains a covered employee who is a felon as described in O.C.G.A. § 7-1-684(b), when such covered employee has not complied with the remedies provided for in O.C.G.A. § 7-1-684(b) for each conviction before such employment, shall be subject to a fine of five thousand dollars (\$5,000) for each such covered employee and its license will be subject to revocation or suspension.

(d) Locations and Authorized Agents. Any licensee that does not give timely notice to the Department of new locations or agents beyond those previously reported as required in O.C.G.A. § 7-1-686(d) and Rule 80-3-1-.01(4), shall be subject to a fine of five hundred dollars (\$500) for each location or agent not reported.

(e) GCIC Background Checks on Employees. Any licensee that does not obtain a Georgia Crime Information Center ("GCIC") criminal background check on each covered employee prior to the initial date of hire or retention shall be subject to a fine of one thousand dollars (\$1,000) per occurrence. Proof of the required GCIC criminal background check must be retained by the licensee until five years after termination of employment by the licensee. Notwithstanding compliance with this requirement to perform a GCIC criminal background check prior to employment, failure to maintain criminal background checks as required will result in a fine of one thousand dollars (\$1,000) for each covered employee for which the licensee is missing this documentation.

(f) Authorized Agents. Any licensee that does not give notice of an authorized agent whose agency certificate has been revoked, suspended, cancelled, terminated, or voluntarily closed by the licensee as required by Rule 80-3-1.01(6), shall be subject to a fine of five thousand dollars (\$5,000) for each authorized agent revocation, suspension, cancellation, termination, or voluntary closure not reported in writing to the Department.

(g) Failure to Provide Receipt. In the event a licensee or its authorized agent does not provide the customer with a written receipt or other evidence of acceptance as required in Rule 80-3-1-.01(9), it shall be subject to a fine of one thousand dollars (\$1,000) per transaction where the receipt was not provided.

(h) Failure to Notify the Department of Change in Ownership, Change in Control, or Designation of Executive Officer. Any licensee or other person who fails to notify and obtain the Department's approval of a change in ownership, change in control, or change in executive officer of the licensee in compliance with O.C.G.A. § 7-1-688 and Rule 80-3-1-.01 shall be subject to a fine of one thousand dollars (\$1,000) and its license will be subject to revocation or suspension.

(i) Other Business Activities. Any licensee found to have violated any law of this state by conducting any other business that is not lawful in conjunction with the selling of payment instruments or money transmission, shall be subject to a fine of five thousand dollars (\$5,000) and its license will be subject to revocation or suspension.

(j) Failure to Report. Any licensee who fails to provide required reports as established by the Department and file the reports with the Department or the Nationwide Multistate Licensing System and Registry within the designated time periods shall be subject to a fine of one thousand dollars (\$1,000) for each such occurrence. Repeated failure to provide timely reports as required may result in additional administrative action by the Department, including, but not limited to, license revocation.

(k) Failure to Submit to Exam. The penalty for the refusal of a licensee to permit the Department to conduct an investigation or examination of its books, accounts, and records, shall be the revocation of its license and a five thousand dollars (\$5,000) fine.

(l) Consumer Complaints. Any licensee who fails to respond to a written consumer complaint or fails to respond to the Department regarding a consumer complaint, within the time periods specified in the Department's correspondence to such licensee, shall be subject to a fine of one thousand dollars (\$1,000) for each occurrence. Repeated failure to properly respond, as reasonably determined by the Department, may result in the revocation or suspension of its license.

(m) Bank Secrecy Act. If the Department, in the course of an examination or investigation, finds that a licensee has failed to comply with the Currency and Foreign Transactions Reporting Act of 1970 ("Bank Secrecy Act") or the requirements referred to in Ruled 80-3-1-.03, 80-3-1-.04, and 80-3-1-.06, such licensee shall be subject to a fine of one thousand dollars (\$1,000) for each instance of non-compliance.

(n) Failure to Timely Disclose Change in Affiliation of Natural Person that Executed Lawful Presence Affidavit and Submission of New Affidavit. Any licensed payment instrument seller or

money transmitter 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 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 payment instrument seller or money transmitter 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, shall be subject to a fine of one thousand dollars (\$1,000) per day until the new affidavit is provided.

(o) Failure to Timely Update Information on the Nationwide Multistate Licensing System and Registry. Any licensee that fails to update its information on the Nationwide Multistate Licensing System and Registry (“NMLSR”), including, but not limited to, amendments to any response to disclosure questions, 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 licensee to update the individual’s information on the NMLSR, including, but not limited to, amendments to any response to disclosure questions by the control person, within ten (10) business days of the date of the event necessitating the change, shall subject the licensee to a fine of one thousand dollars (\$1,000) per occurrence.

(p) Failure to Post Required License or Failure to Include Required Legend on Advertising. Any licensee that fails to post a copy of its license in the premises where money is transmitted or where payment instruments are issued or sold, or distributes advertising in this state related to the cashing of payment instruments that fails to display the phrase “LICENSED BY THE GEORGIA DEPARTMENT OF BANKING AND FINANCE” shall be subject to a fine of five hundred dollars (\$500) for each instance of non-compliance.

Authority O.C.G.A. § 7-1-61; § 7-1-694; § 7-1-708.2

RESIDENTIAL MORTGAGE BROKERS AND LENDERS

CHAPTER 80-11-1

DISCLOSURE, ADVERTISING, BRANCH MANAGERS

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.

~~___~~(12) 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 ~~consummation~~ 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 ~~consummation~~ settlement or closing of the loan, a Closing Agreement 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 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.~~

~~(23) (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~~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 paragraph (2)(a) and (b).

~~(34) (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 business day~~” has the same definition as set forth in 12 CFR §1026.2.

(c) For purposes of paragraph ~~(12)~~ 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.

~~(45)~~ Some or all of the disclosures required by paragraphs ~~(12)~~, ~~(23)~~, ~~(67)~~, ~~(78)~~, and ~~(89)~~ 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.

~~(56)~~ The disclosures required in paragraphs ~~(12)~~, ~~(23)~~, and ~~(89)~~ 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 ~~(12)~~, ~~(23)~~, and ~~(89)~~ 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 ~~(12)~~, ~~(23)~~, and ~~(89)~~ 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.

~~(67) In a residential mortgage loan for which an escrow account was established in connection with the transaction and will be cancelled, the~~ 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, ~~as required by federal law, which includes but is not limited to 12 CFR §1026.20.~~

~~(78)~~ 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, as required by federal law, which includes but ~~is~~ not limited to, 12 CFR §1026.39.

~~(89)~~ 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.

(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.

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

RESIDENTIAL MORTGAGE BROKERS AND LENDERS

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 ~~as have contributed to the violation~~ 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 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) Maintenance of Loan Files. Any person who is required to be licensed 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.

(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: (i) inaccurate or false identification of applicant's employer; (ii) significant discrepancy between applicant's stated income and actual income; (iii) omission of a loan to applicant, listed on loan application, which was closed through same lender or broker; (iv) false or materially overstated information regarding depository accounts; (v) false or altered credit report; and (vi) 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) Education and Experience Requirements. Any mortgage broker licensee subject to the experience and education requirements who fails to meet such requirements shall be fined one thousand dollars (\$1,000) for operating a mortgage business without meeting licensing standards, and their license or registration will be subject to revocation or suspension.

(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 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.

(22) Repealed. Reserved.

(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 Officers. Any licensee who fails to notify the Department of a change in principals of the company without the proper approval of the Department 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 dollars (\$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.

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