

# STATE OF GEORGIA DEPARTMENT OF BANKING AND FINANCE



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*NATHAN DEAL  
GOVERNOR*

*KEVIN B. HAGLER  
COMMISSIONER*

*SPECIAL EDITION  
IMPORTANT NOTICE  
FINAL RULEMAKING*

**December 8, 2014**

# **NOTICE OF FINAL RULEMAKING**

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

**Adopted December 5, 2014**

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 December 5, 2014. The Rules were filed with the Secretary of State on December 5, 2014 and, pursuant to O.C.G.A. § 50-13-6, will be effective on December 26, 2014, 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 3, 2014. The Department received one written comment regarding the proposed 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

### CHAPTER 80-5-1

#### **SUPERVISION, EXAMINATION, REGISTRATION AND INVESTIGATION FEES. ADMINISTRATIVE LATE FEES**

80-5-1-.02 License and Supervision Fees for Check Cashers, Payment Instrument Sellers, Money Transmitters, Representative Offices and Mortgage Lenders and Brokers; Due Dates.

80-5-1-.03 Examination, Supervision, Registration, Application and Other Fees for Financial Institutions and Nonbank Subsidiaries of Banks or Holding Companies.

80-5-1-.04 Levy, Collection, and Remittance of Georgia Residential Mortgage Act Per Loan Fee.

#### **80-5-1-.02 License and Supervision Fees for Check Cashers, Payment Instrument Sellers, Money Transmitters, Representative Offices and Mortgage Lenders and Brokers; Due Dates.**

(1) Payment instrument sellers and money transmitters.

(a) The annual license fee is one thousand nine hundred dollars (\$1,900) for payment instrument sellers and nine hundred dollars (\$900) for money transmitters.

(b) The annual renewal license fee is one thousand nine hundred dollars (\$1,900) for payment instrument sellers and nine hundred dollars (\$900) for money transmitters and shall be due and must be received by the Department on or before the first day of December of each year. Where the person or corporation engages in both the sale of payment instruments and money transmission, the higher of the two fees shall be due and payable. A licensee whose renewal application and annual license renewal fee is not received by the Department on or before December 1 will be assessed a late fee of three hundred dollars (\$300) and cannot be assured of renewal of its license prior to January 1.

(c) An additional non-refundable application investigation fee of two hundred fifty dollars (\$250) will be assessed.

(d) Applicants for Department approval of a change in ownership, change in control, or change in executive officer as set forth in O.C.G.A. § 7-1-688 shall pay a nonrefundable investigation, application, and processing fee of five hundred dollars (\$500).

(2) Check Cashers.

(a) The annual license fee is three hundred dollars (\$300).

(b) The annual renewal license fee is three hundred dollars (\$300).

(c) An initial investigation and supervision fee shall be five hundred fifty dollars (\$550) for the first year. It is not refundable, but if the license is granted it shall satisfy the annual fee for the first license period.

(d) Initial and renewal license fees shall also include an additional thirty dollars (\$30) for the second and each additional location, plus a fee in an amount as directed by the Department to cover the cost of the required number of fingerprints for each individual background check.

(e) Annual renewal license fees shall be due and must be received by the Department on or before the first day of December of each year. A licensee whose renewal application and annual renewal license fee is not received by the Department on or before the first day of December of each year will be assessed a late fee of three hundred dollars (\$300) and cannot be assured of renewal of its license prior to January 1.

(f) Applicants for Department approval of a change in ownership, change in control, or change in executive officer as set forth in O.C.G.A. § 7-1-705.1 shall pay a nonrefundable investigation, application, and processing fee of five hundred dollars (\$500).

(g) Any person that was registered with the Department as a cashier of checks prior to June 30, 2014 shall be deemed to be a licensee and not a registrant effective July 1, 2014. Effective July 1, 2014, all former registrants shall comply with all laws and regulations governing licensees. Pursuant to O.C.G.A. § 7-1-704, such license shall expire on December 31, 2014.

(h) Any person that, as of the effective date of this rule, was licensed by the Department or registered with the Department as a cashier of checks for all or part of the period from October 1, 2013 through September 30, 2014 shall have its license extended through December 31, 2014. Pursuant to O.C.G.A. § 7-1-704, such license shall expire on December 31, 2014.

(3) Registrants of representative offices, trust production offices, business production offices, and loan production offices shall file a registration statement, as prescribed by the Department, and shall pay a registration fee of one hundred fifty dollars (\$150) on or before January 31 of each year. Such fee is intended to cover the costs of responding to questions or complaints from consumers with regard to these entities doing business in Georgia and is in lieu of registration under O.C.G.A. § 16-14-15, as provided in O.C.G.A. § 7-1-11. Registrants of international bank representative offices shall pay a registration fee of one thousand dollars (\$1,000).

(4) Mortgage licensees and registrants.

(a) Lenders. The initial and renewal application and license fee for mortgage lenders shall be one thousand dollars (\$1,000). The initial one thousand dollars (\$1,000) fee covers the main office. Any branch offices included in the initial application shall be assessed a fee of three hundred fifty dollars (\$350) each. A fee of three hundred fifty dollars (\$350) will be assessed for each additional office not initially registered, if such office is located in Georgia, and if mortgage lending activity is conducted at the office. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and license fees plus a twenty dollar (\$20) fee for each approved branch office located in Georgia, must be received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and license fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.

(b) Brokers. The initial and renewal application and license fee for mortgage brokers shall be five hundred dollars (\$500). The initial five hundred dollar (\$500) fee covers the main office. Any branch offices located in Georgia shall be assessed a fee of three hundred fifty (\$350) each. Brokers include loan processors. Processors are defined in Rule 80-11-4-.07. Such a processor may have a separate main office and other branch offices where mortgage loan processing is done. The offices will be treated the same as brokers' offices. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and license fees must be received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and license fee, plus a twenty dollar (\$20) fee for each approved branch office located in Georgia, that is not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.

(c) Mortgage Loan Originators. The initial and renewal application and license fee for mortgage loan originators shall be one hundred dollars (\$100). Subsequent renewal application fees must be received by the Department on or before December 1 of each year or the applicant will be assessed a late fee of one hundred dollars (\$100). A renewal application is not deemed received until all required information, including a renewal fee in the appropriate amount and documentation showing that the requisite continuing education hours have been obtained, has been provided by the licensee. A renewal application, containing all of the required information along with the correct fees and proof of required continuing education that is not received by the Department on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Effective August 1, 2010, applicants may not conduct mortgage loan origination activity without a current license.

(d) Lender Registrants. The initial and renewal application and registration fee for mortgage lenders required to register but not be licensed with the Department shall be one thousand dollars (\$1,000), due on or before December 1 of each year. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and registration fees must be received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and registration fee not received on or before the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.

(e) Broker Registrants. The initial and renewal application and registration fee for mortgage brokers required to register but not be licensed with the Department shall be five hundred dollars (\$500), due on or before December 1 of each year. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and registration fees must be received on or before December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and registration fee not received on or before the December 1 renewal application deadline of each year cannot be

assured of issuance or renewal prior to January 1, at which time the license or registration will expire. Applicants may not conduct a mortgage business without a current license or registration.

(f) All license, investigation, registration, and supervision fees, late fees and assessed civil penalties must be paid prior to renewal of the annual license or registration, reinstatement of a license or registration, reapplication for a license or registration or any other approval from the Department.

(g) All late fees collected by the Department, net of the cost of recovery, which cost shall include any cost of hearing and discovery in preparation for hearing, shall be paid into the state treasury to the credit of the general fund or may be paid as provided in O.C.G.A. § 7-1-1018(e).

(h) Applicants for approval to acquire directly or indirectly ten percent (10%) or more of the voting shares of a corporation or ten percent (10%) or more of the ownership of any other entity licensed to conduct business as a mortgage lender and/or a mortgage broker under O.C.G.A. Article 13 (otherwise called change of control) shall pay a nonrefundable investigation, application and processing fee of five hundred dollars (\$500).

(i) Application for an additional office of a licensee shall be accompanied by a nonrefundable fee of three hundred fifty dollar (\$350), as provided in O.C.G.A. §7-1-1006.

(j) The fee for initial application for approval by the Department for a school or education provider shall be five hundred dollars (\$500). An application for approval will be on a form provided by the Department at its website. The fee is nonrefundable. The fee for annual renewal of such approval is two hundred fifty dollars (\$250).

(5) The Department may discount or surcharge all supervision or license fees herein provided to assure funding of annual appropriations by the General Assembly.

Authority Ga. L. 1974, pp. 705, 732, 733, 921; Ga. L. 1976, Act 762, p. 168; 1990, p. 739; 1993, p. 543; O.C.G.A. § 7-1-41; § 7-1-61; § 7-1-683; § 7-1-685; O.C.G.A. § 7-1-702; O.C.G.A. § 7-1-704; O.C.G.A. § 7-1-716; O.C.G.A. § 7-1-721; § 7-1-1001.1; and § 7-1-1005.

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**80-5-1-.03 Examination, Supervision, Registration, Application and Other Fees for Financial Institutions and Nonbank Subsidiaries of Banks or Holding Companies.**

(1) Examinations. That portion of annual appropriations allocable to regular examination and supervision activities shall be assessed in accordance with the following scale for depository financial institutions:

(a)

If the amount of Total Assets is:		Assessment will be:		
Over	But Not Over	This Amount	Plus	Of Excess Over
0	1,700,000	0	0.001800	* 0
1,700,000	15,000,000	3,060	0.000230	1,700,000
15,000,000	85,000,000	6,119	0.000190	15,000,000
85,000,000	185,000,000	19,419	0.000100	85,000,000
185,000,000	915,000,000	29,419	0.000095	185,000,000
915,000,000	1,825,000,000	98,769	0.000085	915,000,000
1,825,000,000	5,470,000,000	176,119	0.000072	1,825,000,000
5,470,000,000	18,240,000,000	438,559	0.000056	5,470,000,000
18,240,000,000	36,485,000,000	1,153,679	0.000050	18,240,000,000
36,485,000,000	45,000,000,000	2,065,929	0.000040	36,485,000,000
45,000,000,000	57,000,000,000	2,406,529	0.000035	45,000,000,000
57,000,000,000	92,000,000,000	2,826,529	0.000030	57,000,000,000
92,000,000,000	130,000,000,000	3,876,529	0.000025	92,000,000,000
130,000,000,000	180,000,000,000	4,826,529	0.000023	130,000,000,000
180,000,000,000		5,976,529	0.000020	180,000,000,000

\* Minimum assessment is \$350.

Note: Total Assets and resultant assessment may be rounded to the nearest dollar.

(b) All other financial institutions, including credit card banks, bankers banks, central credit unions, and related corporations not covered elsewhere in this Section, licensees under Article 4 (Payment Instrument Sellers and Money Transmitters) and 4A (Check Cashers) of Chapter 1 of Title 7, licensees and registrants under Article 13 of Chapter 1 of Title 7(Georgia Residential Mortgage Act), and trust departments shall pay an examination fee at the rate of \$65 per examiner-hour but not less than \$500 unless such examination is conducted in conjunction with another ongoing examination in which case there shall be no minimum charge. The above per hour charge shall be compensation for the work of Department examiners as well as any necessary, qualified outside assistance. The examination fee shall be due and payable immediately upon receipt of documentation from the Department setting forth the total amount of the fee. The \$500 minimum charge may be waived by the Commissioner or his/her designee

when such charge clearly exceeds the hours spent on an examination.

(c) Notwithstanding the provisions of subsection (b) above, licensees under Article 13 of Chapter 1 of Title 7 shall pay the actual cost incurred by the Department in the conduct of an out of state examination, including personnel costs, transportation costs, meals, lodging and other incidental expenses, in addition to \$65 per examiner hour spent on the examination.

(d) The Department may discount or surcharge all examination and supervision fees herein provided to assure that anticipated revenues of the Department will fund the annual appropriation by the General Assembly.

(e) The Department may also require reimbursement for direct expenses, such as transportation costs, meals, lodging, etc. associated with out-of-state examinations or supervisory visits for any regulated entity, including money services businesses.

(2) Banking applications:

(a) Applicants for new branch offices or relocations of financial institutions shall pay an investigation fee of \$1,250 for each application. Simple re-designations of existing bank locations require only prior notification in writing. Branch Offices established under the notice procedure shall pay a fee of \$500.

(b) Applicants for approval of new bank, trust company, state savings or mutual savings bank or savings and loan, or building and loan charters shall pay an investigation fee of \$20,000 for each application. Bank charter applications qualifying for expedited processing will be assessed an investigation fee of \$10,000. Applicants for approval of a new credit card bank or a special purpose bank shall pay an investigation fee of \$25,000. Prior to commencing business, successful applicants shall pay a supervisory and examination fee covering the preopening organizational supervision and initial operating supervision of the new institution in the amount of \$5,000.

(c) Applicants for approval for a company to become a bank holding company, other than for a de novo bank, may receive regular or expedited processing. Regular processing is \$3,500; expedited processing is \$2,500. Formation of a holding company simultaneously with formation of a de novo bank requires a regular processing fee of \$3,500, which, if applicable, is reduced by the fee for a new state charter.

(d) Applicants for a bank holding company to acquire five (5) percent or more but less than twenty-five (25) percent of the outstanding voting stock of a financial institution, or for review of a change of control shall pay an investigation fee of \$3,500 for each such application, provided, however, the Commissioner may waive or reduce such investigation fee in the case of a merger under emergency conditions as determined by the Department or in the case of interstate transactions where a comparable fee has already been paid for an earlier, related transaction among the same entities.



(e) Applicants for a bank holding company to acquire twenty-five (25) percent or more of the outstanding voting stock of a financial institution, shall pay an investigation fee of \$6,000. Expedited processing for these acquisitions is \$4,500. The fee for an intrastate and a covered interstate merger of banks or bank holding companies is \$4,500, reduced by a Department fee for a simultaneous acquisition if it has been paid. The Commissioner, however, may waive or reduce such investigation fee in the case of a merger under emergency conditions as determined by the Department or, in the case of interstate transactions where a comparable fee has already been paid for an earlier, related transaction among the same entities.

(f) Applicants for license to operate an international agency shall pay an investigation fee of \$5,000. In the event the application is denied, \$2,000 representing the applicant's initial license fee shall be refunded. International bank agencies and domestic international banking facilities shall pay an annual license or registration fee of \$2,000, on the first day of April of each year. Renewal licenses shall be issued for a twelve month period.

(g) Depository financial institutions, except credit card banks, bankers banks, and central credit unions shall pay an annual supervision fee as part of the examination fee prescribed in Rule 80-5-1-.03.

(h) All other financial institutions supervised by the Department who are not already covered by this chapter, except international agencies, shall pay an annual supervision fee of \$500, due on or before January 31 of each year.

(i) The investigation fee for conversion to a state bank is \$20,000.

(j) If a bank satisfies the banking factors set out in the Department's Statement of Policies, the fee to exercise a single trust power is \$250 and the processing is expedited to 7 days. A completed letter form application to exercise limited trust powers will be reviewed in 15 days; the fee is \$750. A bank that desires to exercise full trust powers files a regular application including a copy of the FDIC application. A complete application will be reviewed in 30 days; the fee is \$1,250. A new trust company, which must be affiliated with a Georgia bank, requires an investigation fee of \$20,000.

(k) Regular applications to establish or acquire a subsidiary of a bank shall require a fee of \$500. Banks qualified to file expedited applications according to the criteria in DBF Rule 80-1-1-.10 are not subject to a fee.

(3) General rules for fees; holding companies with subsidiaries in Georgia.

(a) Each bank holding company supervised by the Department shall pay on or before December 31, 2014 an annual supervision fee of \$1,000. Starting with the 2015 calendar year, the annual bank holding company supervision fee of \$1,000 is due and payable on September 15. Each Georgia bank holding company or a holding company that owns a Georgia bank shall pay each year on or before the date the holding company supervision fee is due an additional \$500 for

each Georgia non-bank subsidiary corporation of the bank holding company, excluding subsidiaries assessed pursuant to Rule 80-5-1-.03(1)(a) and subsidiaries paying an annual license or registration fee pursuant to Rule 80-5-1-.02(4), as of June 30 preceding the supervision fee due date.

(b) Applications covering more than one transaction (branch, acquisition, merger, etc.), which require the Department to separately analyze each application shall pay the applicable fee for each transaction.

(c) The annual assessment rates included in subparagraph (1)(a) above will normally be used in connection with any annual assessment of depository financial institutions having banking offices in more than one state including Georgia. The Commissioner, however, will have the discretion to deviate from the rates included in the assessment schedule and other rates and charges including application fees in order to facilitate or implement interstate efforts to regulate and supervise multi-state banks or for parity reasons.

Authority O.C.G.A. Secs. 7-1-41, 7-1-61.

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**80-5-1-.04 Levy, Collection, and Remittance of Georgia Residential Mortgage Act Per Loan Fee.**

(a) Each borrower who obtains a mortgage loan as defined in O.C.G.A. § 7-1-1000(21) shall pay to the department a per loan fee of \$10.00. The \$10.00 fee will be due if the loan is secured by a deed to secure debt, security deed, mortgage, security instrument, deed of trust, a modification of a security deed, or other form or modification of a security interest which has been recorded. A change to a security instrument made solely for the purpose of correcting a clerical error will not be subject to a \$10.00 fee. Any person who closes mortgage loans that are subject to regulation under Article 13, regardless of whether said person is required to be licensed or registered under the Georgia Residential Mortgage Act, shall act as collecting agent for payment to the department of said per loan fee for each mortgage loan closed by that person. A mortgage loan shall be deemed to have been closed by a person if such person is indicated as the secured party on the security deed or any other loan document that establishes a lien on the residential real estate taken as collateral for the mortgage loan.

(b) The fees payable under the provisions of subsection (a) shall be payable to the department by the collecting agent, who is the person responsible for remittance of such fees on a semiannual basis. More specifically, such fees for the period January 1 through June 30 of each year shall be remitted to the department no later than the first business day of September of each year and such fees for the period July 1 through December 31 of each year shall be remitted to the department no later than the first business day of March of each year. A fee statement indicating the number of mortgage loans closed during the applicable reporting period by the collecting agent shall accompany the fees remitted. The per loan fees and the corresponding fee statement shall be remitted to the Department through its online reporting and payment system located on the Department's website. Failure to timely remit per loan fees along with the

corresponding fee statement via the online reporting and payment system may result in the imposition of a fine.

Authority Ga. L. 1974, pp. 732, 733; Ga. L. 1988, p. 243; 1993, p. 543; O.C.G.A. § 7-1-41; § 7-1-61; § 7-1-1011; § 7-1-1012.

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## CHAPTER 80-5-4

### REGULATIONS REGARDING THE SALE OF INSURANCE

#### BY FINANCIAL INSTITUTIONS

80-5-4-.02 Notification of Intent to Sell Insurance.

#### **80-5-4-.02 Notification of Intent to Sell Insurance.**

A financial institution that wishes to sell insurance must give prior notification to the Office of the Commissioner of Insurance, with a copy of the notice and any subsequent amendments to the Department of Banking and Finance, attention: Corporate Division.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(11).

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## 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 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) 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 Mortgage 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.

## CHAPTER 80-12-11

### HOLDING COMPANY

80-12-11-.03 Lawful and Unlawful Acquisitions by a Company.

#### **80-12-11-.03 Lawful and Unlawful Acquisitions by a Company.**

(1) It shall be unlawful for:

(a) a holding company to acquire direct or indirect ownership or control of any voting shares of any MALPB, if, after such acquisition, such holding company will directly or indirectly own or control five (5) percent or more of the voting shares of such MALPB, or

(b) any company to become a holding company as a result of the acquisition or control of such MALPB,

unless the MALPB has been in existence and continuously operating as an MALPB for a period of three (3) years or more prior to the date of acquisition and the company has sought and obtained written approval from the Department prior to acquiring voting shares or the control of the MALPB.

(2) Notwithstanding the express provisions of Paragraph 1, a holding company is authorized to acquire or control an MALPB through formation or chartering of an MALPB in Georgia.

(3) The Department has the discretion to waive the three (3) year minimum age requirement set forth in Paragraph 1, if it has issued a written determination, prior to acquisition, that the waiver will not adversely impact the MALPB or the merchant acquiring industry. In making such a determination the Department will take into consideration competitive, financial, managerial, safety and soundness, compliance and other concerns.

(4) No holding company shall acquire control of any MALPB if it will result in the holding company having control of more than two (2) MALPBs in a five (5) year period. The Department has the discretion to waive this restriction, if it has issued a written determination, prior to acquisition, that the additional MALPB the holding company seeks to own or control is insolvent or in an unsafe or unsound condition to conduct business.

(5) Acquisitions of ownership or control of less than twenty-five (25) percent of any voting shares of a holding company that is a public company are not subject to the requirements of this Rule if:

(a) the company has acquired such voting shares solely for investment purposes and not with the purpose or the effect of changing or influencing the control of the holding company, nor in connection with or as a participant in any transaction having such purpose or effect, and provides written notice of the acquisition to the Department, in the form and manner prescribed by the Department, no later than thirty (30) days following the end of the quarter in which the acquisition occurred; or

(b) the company submits a written application to the Department seeking approval of the acquisition of the shares or control no later than thirty (30) days after (i) the acquisition has occurred, if the preceding paragraph (a) does not apply, (ii) the transaction was made under the preceding paragraph (a) but no longer qualifies under such paragraph as a result of the company's change of purpose such that the company's purpose is to change or influence control



of the holding company either individually or in concert with others; or (iii) the Department determines that the company is seeking to change or influence control of the holding company either individually or in concert with others and informs the company of such determination; provided that, within thirty (30) days after receiving the company's application under this paragraph (b), the Department may disapprove in writing the acquisition of shares or control, in which case the Department may require the company to unwind the acquisition, take other appropriate action to limit or otherwise restrict the ability of the company to exercise control over the holding company or, if the acquisition involves a transaction to which the holding company was a party, for the holding company to sell or surrender the charter of its MALPBs, in each case subject to a reasonable transition period determined by the Department in its discretion.

- (6) Subject to Paragraph 7, the provisions set forth in Paragraph 1 shall not apply to the direct or indirect acquisition of the voting shares or control of a holding company as a result of any of the following transactions which are internal corporate reorganizations of a holding company:
  - (a) merger of holding companies that are subsidiaries of a holding company;
  - (b) the formation of a subsidiary holding company; or
  - (c) the transfer of control or ownership of a subsidiary MALPB or subsidiary holding company to another subsidiary company.
- (7) An acquisition described in Paragraph 6 qualifies for this exception if:
  - (a) the transaction represents solely a corporate reorganization involving one or more non-MALPB subsidiary companies that, both preceding and following the transaction, are controlled by the holding company;
  - (b) the transaction does not involve the acquisition of additional voting shares of a subsidiary MALPB that, prior to the transaction, was less than majority owned by the holding company;
  - (c) the holding company provides written notice to the Department no later than ten (10) days after the internal corporate reorganization has taken place; and
  - (d) the transaction is in compliance with all legal requirements, including, but not limited to, the Act and the related regulations, and all other required regulatory approvals and authorizations have been obtained prior to the transaction.
- (8) Any fines or penalties arising under Rule 80-12-12-.01 that are applicable to prohibited acquisitions of shares or control of a public company under this Rule shall be assessed against the acquiring company rather than the MALPB whose shares, or as to which control, is acquired.

Authority O.C.G.A. §§ 7-1-73, 7-9-3, 7-9-6, 7-9-13.