

House Bill 312 (COMMITTEE SUBSTITUTE)

By: Representatives Hill of the 21<sup>st</sup>, Mills of the 25<sup>th</sup>, Coan of the 101<sup>st</sup>, Greene of the 149<sup>th</sup>, Knight of the 126<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to  
2 financial institutions, so as to incorporate provisions of the federal S.A.F.E. Mortgage  
3 Licensing Act of 2008, a part of the Housing and Economic Recovery Act of 2008, Public  
4 Law 110-289; to provide for related matters; to provide for an effective date; to repeal  
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to financial  
9 institutions, is amended by revising Article 13, relating to the licensing of mortgage lenders  
10 and mortgage brokers, as follows:

11 "ARTICLE 13

12 7-1-1000.

13 As used in this article, the term:

14 (1) 'Affiliate' or 'person affiliated with' means, when used with reference to a specified  
15 person, a person who directly, indirectly, or through one or more intermediaries controls,  
16 is controlled by, or is under common control with the person specified. Any beneficial  
17 owner of ~~20~~ 10 percent or more of the ~~combined voting power of all classes of voting~~  
18 securities of a person or any executive officer, director, trustee, joint venturer, or general  
19 partner of a person is an affiliate of such person unless the shareholder, executive officer,  
20 director, trustee, joint venturer, or general partner shall prove that he or she in fact does  
21 not control, is not controlled by, or is not under common control with such person.

22 (2) 'Audited financial statement' means the product of the examination of financial  
23 statements in accordance with generally accepted auditing standards by an independent

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24 certified public accountant, which product consists of an opinion on the financial  
 25 statements indicating their conformity with generally accepted accounting principles.

26 (3) 'Commissioner' means the commissioner of banking and finance.

27 ~~(3)~~(4) 'Commitment' or 'commitment agreement' means a statement by a lender required  
 28 to be licensed or registered under this article that sets forth the terms and conditions upon  
 29 which the lender is willing to make a particular mortgage loan to a particular borrower.

30 ~~(4)~~(5) 'Control,' including 'controlling,' 'controlled by,' and 'under common control with,'  
 31 means the direct or indirect possession of the power to direct or cause the direction of the  
 32 management and policies of a person, whether through the ownership of voting or  
 33 nonvoting securities, by contract, or otherwise.

34 (6) 'Department' means the Department of Banking and Finance.

35 (7) 'Depository institution' has the same meaning as in Section 3 of the Federal Deposit  
 36 Insurance Act, 12 U.S.C. Section 1813(c), and includes any credit union.

37 (8) 'Dwelling' means a residential structure that contains one to four units, whether or not  
 38 that structure is attached to real property pursuant to Regulation Z Section 226.2(a)(19).  
 39 The term includes an individual condominium unit, cooperative unit, mobile home, and  
 40 trailer if it is used as a residence.

41 ~~(5)~~(9) 'Executive officer' means the chief executive officer, the president, the principal  
 42 financial officer, the principal operating officer, each vice president with responsibility  
 43 involving policy-making functions for a significant aspect of a person's business, the  
 44 secretary, the treasurer, or any other person performing similar managerial or supervisory  
 45 functions with respect to any organization whether incorporated or unincorporated.

46 ~~(6)~~(10) 'Extortionate means' means the use or the threat of violence or other criminal  
 47 means to cause harm to the person, reputation of the person, or property of the person.

48 (11) 'Federal banking agencies' means the Comptroller of the Currency, the Director of  
 49 the Office of Thrift Supervision, the National Credit Union Administration, and the  
 50 Federal Deposit Insurance Corporation. Such term shall also include the Board of  
 51 Governors of the privately owned Federal Reserve System.

52 ~~(6.1)~~(12) 'Georgia Residential Mortgage Act' means this article, which also includes  
 53 certain provisions in order to implement the federal Secure and Fair Enforcement for  
 54 Mortgage Licensing Act of 2008.

55 (13) 'Individual' means a natural person.

56 ~~(7)~~(14) 'License' means a license issued by the department under this article to act as a  
 57 mortgage loan originator, mortgage lender, or mortgage broker.

58 (15) 'Loan processor or underwriter' means an individual who performs clerical or  
 59 support duties as an employee at the direction of and subject to the supervision and  
 60 instruction of a person licensed or exempt from licensing. For purposes of this paragraph,

61 'clerical or support duties' may include, subsequent to the receipt of an application, the  
 62 receipt, collection, distribution, and analysis of information common for the processing  
 63 or underwriting of a residential mortgage loan; and communicating with a consumer to  
 64 obtain the information necessary for the processing or underwriting of a loan, to the  
 65 extent that such communication does not include offering or negotiating loan rates or  
 66 terms or counseling consumers about residential mortgage loan rates or terms. An  
 67 individual engaging solely in loan processor or underwriter activities shall not represent  
 68 to the public, through advertising or other means of communicating or providing  
 69 information, including the use of business cards, stationery, brochures, signs, rate lists,  
 70 or other promotional items, that such individual can or will perform any of the activities  
 71 of a mortgage loan originator.

72 ~~(8)~~(16) 'Lock-in agreement' means a written agreement whereby a lender or a broker  
 73 required to be licensed or registered under this article guarantees for a specified number  
 74 of days or until a specified date the availability of a specified rate of interest for a  
 75 mortgage loan, a specified formula by which the rate of interest will be determined, or  
 76 a specific number of discount points if the mortgage loan is approved and closed within  
 77 the stated period of time.

78 ~~(9)~~(17) 'Makes a mortgage loan' means to advance funds, offer to advance funds, or  
 79 make a commitment to advance funds to an applicant for a mortgage loan.

80 ~~(10)~~(18) 'Misrepresent' means to make a false statement of a substantive fact.  
 81 Misrepresent may also mean to intentionally engage in any conduct which leads to a false  
 82 belief which is material to the transaction.

83 ~~(11)~~(19) 'Mortgage broker' means any person who directly or indirectly solicits,  
 84 processes, places, or negotiates mortgage loans for others, or offers to solicit, process,  
 85 place, or negotiate mortgage loans for others or who closes mortgage loans which may  
 86 be in the mortgage broker's own name with funds provided by others and which loans are  
 87 assigned within 24 hours of the funding of the loans to the mortgage lenders providing  
 88 the funding of such loans.

89 ~~(12)~~(20) 'Mortgage lender' means any person who directly or indirectly makes,  
 90 originates, underwrites, or purchases mortgage loans or who services mortgage loans.

91 ~~(13)~~(21) 'Mortgage loan' means a loan or agreement to extend credit made to a natural  
 92 person, which loan is secured by a deed to secure debt, security deed, mortgage, security  
 93 instrument, deed of trust, or other document representing a security interest or lien upon  
 94 any interest in one-to-four family residential property located in Georgia, regardless of  
 95 where made, including the renewal or refinancing of any such loan.

96 (22) 'Mortgage loan originator' means an individual who for compensation or gain or in  
 97 the expectation of compensation or gain takes a residential mortgage loan application or

98 offers or negotiates terms of a residential mortgage loan. Generally, this does not include  
99 an individual engaged solely as a loan processor or underwriter except as otherwise  
100 provided in paragraph (5) of subsection (a) of Code Section 7-1-1002; a person or entity  
101 that only performs real estate brokerage activities and is licensed or registered in  
102 accordance with Georgia law unless the person or entity is compensated by a mortgage  
103 lender, mortgage broker, or other mortgage loan originator or by any agent of such  
104 mortgage lender, mortgage broker, or other mortgage loan originator; and does not  
105 include a person or entity solely involved in extensions of credit relating to time-share  
106 plans, as that term is defined in 11 U.S.C. Section 101(53D).

107 (23) 'Nationwide Mortgage Licensing System and Registry' means a mortgage licensing  
108 system developed and maintained by the Conference of State Bank Supervisors and the  
109 American Association of Residential Mortgage Regulators for the licensing and  
110 registration of licensed mortgage loan originators, mortgage loan brokers, and mortgage  
111 loan lenders.

112 (24) 'Nontraditional mortgage product' means any mortgage product other than a 30 year  
113 fixed rate mortgage.

114 ~~(14)~~(25) 'Person' means any individual, sole proprietorship, corporation, limited liability  
115 company, partnership, trust, or any other group of individuals, however organized.

116 (26) 'Real estate brokerage activity' means any activity that involves offering or  
117 providing real estate brokerage services to the public, including acting as a real estate  
118 agent or real estate broker for a buyer, seller, lessor, or lessee of real property; bringing  
119 together parties interested in the sale, purchase, lease, rental, or exchange of real  
120 property; negotiating, on behalf of any party, any portion of a contract relating to the sale,  
121 purchase, lease, rental, or exchange of real property, other than in connection with  
122 providing financing with respect to any such transaction; engaging in any activity for  
123 which a person engaged in the activity is required to be registered or licensed as a real  
124 estate agent or real estate broker under any applicable law; and offering to engage in any  
125 activity or act in any capacity described herein.

126 (27) 'Registered mortgage loan originator' means any individual who meets the definition  
127 of mortgage loan originator, is registered with and maintains a unique identifier through  
128 the Nationwide Mortgage Licensing System and Registry, and is an employee of:

129 (A) A depository institution;

130 (B) A subsidiary that is:

131 (i) Owned and controlled by a depository institution; and

132 (ii) Regulated by a federal banking agency; or

133 (C) An institution regulated by the Farm Credit Administration.

134 ~~(15)~~(28) 'Registrant' means any person required to register pursuant to Code Sections  
135 7-1-1001 and 7-1-1003.2.

136 ~~(16)~~(29) 'Residential property' means improved real property used or occupied, or  
137 intended to be used or occupied, as the ~~principal~~ primary residence of a natural person.  
138 Such term does not include rental property or second homes. A natural person can have  
139 only one primary residence.

140 (30) 'Residential mortgage loan' means any loan primarily for personal, family, or  
141 household use that is secured by a mortgage, deed of trust, or other equivalent consensual  
142 security interest on a dwelling, as defined in Section 103(v) of the Truth in Lending Act,  
143 or residential real estate upon which is constructed or intended to be constructed a  
144 dwelling.

145 (31) 'Residential real estate' means any real property located in Georgia upon which is  
146 constructed or intended to be constructed a dwelling.

147 ~~(17)~~(32) 'Service a mortgage loan' means the collection or remittance for another or the  
148 right to collect or remit for another of payments of principal, interest, trust items such as  
149 insurance and taxes, and any other payments pursuant to a mortgage loan.

150 ~~(18)~~(33) 'Ultimate equitable owner' means a natural person who, directly or indirectly,  
151 owns or controls an ownership interest in a corporation or any other form of business  
152 organization, regardless of whether such natural person owns or controls such ownership  
153 interest through one or more natural persons or one or more proxies, powers of attorney,  
154 nominees, corporations, associations, limited liability companies, partnerships, trusts,  
155 joint-stock companies, other entities or devices, or any combination thereof.

156 (34) 'Unique identifier' means a number or other identifier assigned by protocols  
157 established by the Nationwide Mortgage Licensing System and Registry.

158 7-1-1001.

159 (a) The following persons shall not be required to obtain a mortgage loan originator,  
160 mortgage broker, or mortgage lender license and shall not be subject to the provisions of  
161 this article but may be subject to registration ~~or notification~~ requirements, unless otherwise  
162 provided by this article:

163 (1) Any lender authorized to engage in business as a bank, credit card bank, savings  
164 institution, building and loan association, or credit union under the laws of the United  
165 States, any state or territory of the United States, or the District of Columbia, the deposits  
166 of which are federally insured;

167 (2) Any wholly owned subsidiary of any lender described in paragraph (1) of this Code  
168 section; ~~provided, however, such subsidiary shall be subject to the filing of a notification~~  
169 ~~statement in order to facilitate the department's handling of consumer inquiries. Such~~

170 requirements are contained in Code Section 7-1-1003.4. Any subsidiary which fails to  
 171 file the notification statement or keep the information current will immediately be subject  
 172 to the registration requirements of this article. In addition, any. Any subsidiary that  
 173 violates any applicable law of this article may be subject to a cease and desist order as  
 174 provided for in Code Section 7-1-1018;

175 (2.1) Any wholly owned subsidiary of any bank holding company; provided, however,  
 176 that such subsidiary shall be subject to registration requirements in order to facilitate the  
 177 department's handling of consumer inquiries. Such requirements are contained in Code  
 178 Section 7-1-1003.3;

179 (3) ~~An attorney at law licensed to practice law in Georgia who is not principally engaged~~  
 180 ~~in negotiating mortgage loans when such attorney renders services in the course of his or~~  
 181 ~~her practice as an attorney at law~~ Registered mortgage loan originators, when acting for  
 182 an entity described in paragraphs (1) or (2) of this Code section. To qualify for this  
 183 exemption, an individual shall be registered with and maintain a unique identifier through  
 184 registration with the Nationwide Mortgage Licensing System and Registry;

185 (4) Any individual who offers or negotiates terms of a residential mortgage loan with or  
 186 on behalf of an immediate family member of such individual. For purposes of this  
 187 exemption, the term 'immediate family member' means a spouse, child, sibling, parent,  
 188 grandparent, or grandchild. Immediate family members shall include stepparents,  
 189 stepchildren, stepsiblings, and adoptive relationships;

190 (5) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf  
 191 of a client as an ancillary matter to the attorney's representation of the client, unless the  
 192 attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator  
 193 or by any agent of such lender, mortgage broker, or other mortgage loan originator;

194 ~~(4)(6)~~ A real estate broker or real estate salesperson not actively engaged in the business  
 195 of negotiating mortgage loans; however, a real estate broker or real estate salesperson  
 196 who ~~receives any fee, commission, kickback, rebate, or other payment for~~ directly or  
 197 indirectly ~~negotiating, placing, or finding~~ negotiates, places, or finds a mortgage for  
 198 others shall not be exempt from the provisions of this article;

199 ~~(5)(7)~~ Any person performing any act relating to mortgage loans under order of any  
 200 court;

201 ~~(6)(8)~~ Any natural person or the estate of or trust created by a natural person making a  
 202 mortgage loan with his or her own funds for his or her own investment, including those  
 203 natural persons or the estates of or trusts created by such natural persons who make a  
 204 purchase money mortgage for financing sales of their own property;

205 ~~(7)(9)~~ The United States of America, the State of Georgia or any other state, and any  
 206 agency, division, or corporate instrumentality of any governmental entity, including

207 without limitation: the Georgia Housing and Finance Authority, the Georgia  
 208 Development Authority, the Federal National Mortgage Association (FNMA), the  
 209 Federal Home Loan Mortgage Corporation (FHLMC), the Government National  
 210 Mortgage Association (GNMA), the United States Department of Housing and Urban  
 211 Development (HUD), the Federal Housing Administration (FHA), the Department of  
 212 Veterans Affairs (VA), the Farmers Home Administration (FmHA), and the Farm Credit  
 213 Administration and its chartered agricultural credit associations;

214 (10) Any individual who offers or negotiates terms of a residential mortgage loan  
 215 secured by a dwelling that serves as the individual's residence;

216 ~~(8)~~(11) Any person who makes a mortgage loan to an employee of such person as an  
 217 employment benefit;

218 ~~(9)~~(12) Any licensee under Chapter 3 of this title, the 'Georgia Industrial Loan Act,'  
 219 provided that any mortgage loan made by such licensee is for \$3,000.00 or less;

220 ~~(10)~~(13) Nonprofit corporations making mortgage loans to promote home ownership or  
 221 improvements for the disadvantaged;

222 ~~(11)~~(14) A natural person employed by a licensed or registered mortgage broker, a  
 223 licensed or registered mortgage lender, or any person exempted from the mortgage broker  
 224 or mortgage lender licensing requirements of this article when acting within the scope of  
 225 employment and under the supervision of the licensee mortgage broker or mortgage  
 226 lender or exempted person as an employee and not as an independent contractor, except  
 227 those natural persons exempt from licensure as a mortgage broker or mortgage lender  
 228 under paragraph (17) of this Code section. To be exempt from licensure as a mortgage  
 229 broker or mortgage lender, a natural person must shall be employed by only one such  
 230 employer and must shall be at all times eligible for employment in compliance with the  
 231 provisions and prohibitions of Code Section 7-1-1004. Such natural person, who meets  
 232 the definition of mortgage loan originator provided in paragraph (22) of Code Section  
 233 7-1-1000, shall be subject to mortgage loan originator licensing requirements. A natural  
 234 person against whom a cease and desist order has become final shall not qualify for this  
 235 exemption while under the employment time restrictions of subsection (o) of Code  
 236 Section 7-1-1004 if such order was based on a violation of Code Sections 7-1-1002 or  
 237 7-1-1013 or whose license was revoked within five years of the date such person was  
 238 hired;

239 ~~(12)~~(15) Any person who purchases mortgage loans from a mortgage broker or mortgage  
 240 lender solely as an investment and who is not in the business of brokering, making,  
 241 purchasing, or servicing mortgage loans;

242 ~~(13)~~(16) Any natural person who makes five or fewer mortgage loans in any one  
 243 calendar year. A person other than a natural person who makes five or fewer mortgage

244 loans in any one calendar year shall not be exempt from the licensing requirements of this  
245 article; or

246 ~~(14)~~(17)(A) A natural person otherwise required to be licensed as a mortgage lender  
247 or mortgage broker, who is under an exclusive written independent contractor  
248 agreement with any person that is a wholly owned subsidiary of a financial holding  
249 company or bank holding company, savings bank holding company, or thrift holding  
250 company, which subsidiary also meets the following requirements, subject to the review  
251 and approval of the department:

252 (i) The subsidiary has provided an undertaking of accountability supported by a  
253 surety bond equal to the lesser of \$1 million or \$50,000.00 per exempt person, to  
254 cover all of its persons exempted by this paragraph, that includes full and direct  
255 financial responsibility for the mortgage broker activities of each such exempted  
256 person, and also provides for the education of the exempt persons, the handling of  
257 consumer complaints related to the exempt persons, and the supervision of the  
258 mortgage broker activities of the exempt persons;

259 (ii) The subsidiary has applied for and been granted a mortgage broker or mortgage  
260 lender license, consistent with the provisions of this article and renewable annually;  
261 and

262 (iii) The subsidiary has paid applicable fees for this license, which license fees shall  
263 be the lesser of one-half of the sum of the cost of the individual licenses or  
264 \$100,000.00.

265 (B) To maintain the exemption, a natural person ~~must~~ shall:

266 (i) Solicit, process, place, or negotiate a mortgage loan to be made only by the  
267 licensed subsidiary or its affiliate; and

268 (ii) Be at all times in compliance with the provisions and prohibitions of Code  
269 Section 7-1-1013 and the provisions and prohibitions applicable to employees under  
270 Code Section 7-1-1004.

271 (C) For purposes of this paragraph, the term 'financial holding company' ~~shall mean~~  
272 means a financial holding company as defined in the Bank Holding Company Act of  
273 1956, as amended.

274 (D) The commissioner shall provide by rule or regulation for the implementation of  
275 this paragraph.

276 (b) Exemptions enumerated in paragraphs (1), (2), (2.1), (7), (8), (9), (11), (12), (13), (14),  
277 (15), (16), and (17) of subsection (a) of this Code section shall be exemptions from  
278 licensure as a mortgage broker or mortgage lender only. Nothing in paragraphs (1), (2),  
279 (2.1), (7), (8), (9), (11), (12), (13), (14), (15), (16), and (17) of subsection (a) of this Code  
280 section shall be intended to exempt natural persons from compliance with mortgage loan

281 originator licensing requirements as set forth in this article and the Secure and Fair  
 282 Enforcement for Mortgage Licensing Act of 2008. Individuals that transact business as a  
 283 mortgage loan originator, unless specifically exempted by paragraphs (3), (4), (5), (6), or  
 284 (10) of subsection (a) of this Code section shall obtain a mortgage loan originator license  
 285 as required by Code Section 7-1-1002 whether they are employed by a mortgage broker,  
 286 mortgage lender, or person exempted as a mortgage broker or lender as set forth in this  
 287 subsection.

288 7-1-1001.1.

289 (a) In order to comply with the federal requirements contained in the federal Secure and  
 290 Fair Enforcement for Mortgage Licensing Act of 2008, also known as the S.A.F.E.  
 291 Mortgage Licensing Act of 2008, on and after January 1, 2010, or such later date approved  
 292 by the Secretary of the United States Department of Housing and Urban Development,  
 293 pursuant to the authority granted under Public Law 110-289, Section 1508(a), it shall be  
 294 prohibited for any person to engage in the activities of a mortgage loan originator without  
 295 first obtaining and maintaining a mortgage loan originator license as set forth in this article.

296 All provisions within this article that relate to the licensing requirements and associated  
 297 duties and responsibilities of mortgage loan originators shall be effective on and after  
 298 January 1, 2010, or such later date approved by the Secretary of the United States  
 299 Department of Housing and Urban Development, pursuant to the authority granted under  
 300 Public Law 110-289, Section 1508(a).

301 (b) The department shall have the broad administrative authority to administer, interpret,  
 302 and enforce this article and the Secure and Fair Enforcement for Mortgage Licensing Act  
 303 of 2008, and promulgate rules or regulations implementing it, in order to carry out the  
 304 intentions of the federal legislature.

305 (c) The provisions of the federal Secure and Fair Enforcement for Mortgage Licensing Act  
 306 of 2008 shall apply to the activities of retail sellers of manufactured homes to the extent  
 307 determined by the United States Department of Housing and Urban Development through  
 308 written guidelines, rules, regulations, or interpretive letters.

309 7-1-1002.

310 (a) ~~On and after July 1, 1993, it is~~ It shall be prohibited for any person to transact business  
 311 in this state directly or indirectly as a mortgage broker, ~~or~~ a mortgage lender, or a mortgage  
 312 loan originator unless such person:

313 (1) Is licensed or registered as such by the department utilizing the Nationwide Mortgage  
 314 Licensing System and Registry;

- 315 (2) Is a person exempted from the licensing or registration requirements pursuant to  
 316 Code Section 7-1-1001; ~~or~~
- 317 (3) In the case of an employee of a mortgage broker or mortgage lender, such person has  
 318 qualified to be relieved of the necessity for a license under the employee exemption in  
 319 paragraph ~~(H)~~(8) of Code Section 7-1-1001;
- 320 (4) In the case of a mortgage loan originator, such person is supervised by a mortgage  
 321 broker, mortgage lender, or exemptee on a daily basis while performing mortgage  
 322 functions; is employed by and works exclusively for only one mortgage broker, mortgage  
 323 lender, or exemptee; and is paid on a W-2 basis by the employing mortgage broker,  
 324 mortgage lender, or exemptee, except those natural persons exempt from licensure as a  
 325 mortgage broker or mortgage lender under paragraph (17) of Code Section 7-1-1001.  
 326 Each licensed mortgage loan originator shall register with and maintain a valid unique  
 327 identifier issued by the Nationwide Mortgage Licensing System and Registry. For the  
 328 purposes of implementing an orderly and efficient mortgage loan originator process, the  
 329 department may establish licensing rules or regulations and interim procedures for  
 330 licensing and acceptance of applications; or
- 331 (5) A loan processor or underwriter who is an independent contractor shall not engage  
 332 in the activities of a loan processor or underwriter unless such independent contractor  
 333 loan processor or underwriter obtains and maintains a mortgage broker or mortgage  
 334 lender license. Each independent contractor loan processor or underwriter licensed as a  
 335 mortgage broker or mortgage lender shall have and maintain a valid unique identifier  
 336 issued by the Nationwide Mortgage Licensing System and Registry.
- 337 (b) ~~On and after July 1, 1995, it is~~ It shall be prohibited for any person, as defined in Code  
 338 Section 7-1-1000, ~~including a corporation but not including any natural person who~~  
 339 ~~purchases five or fewer mortgage loans in any one calendar year solely as an investment~~  
 340 ~~and who is not in the business of brokering, making, purchasing, or servicing mortgage~~  
 341 ~~loans, knowingly~~ to purchase, sell, or transfer one or more mortgage loans or loan  
 342 applications from or to a mortgage loan originator, mortgage broker, or mortgage lender  
 343 who is neither licensed nor exempt from the licensing or registration provisions of this  
 344 article. Such a purchase shall not affect the obligation of the borrower under the terms of  
 345 the mortgage loan. The department shall provide for distribution or availability of  
 346 information regarding approved or revoked licenses.
- 347 (c) ~~On or after July 1, 1996, every~~ Every person who directly or indirectly controls a  
 348 person who violates subsection (a) or (b) of this Code section, every general partner,  
 349 executive officer, joint venturer, or director of such person, and every person occupying  
 350 a similar status or performing similar functions as such person violates with and to the  
 351 same extent as such person, unless the person whose violation arises under this subsection

352 sustains the burden of proof that he or she did not know and, in the exercise of reasonable  
 353 care, could not have known of the existence of the facts by reason of which the original  
 354 violation is alleged to exist.

355 7-1-1003.

356 (a) An application for a license under this article shall be made in writing, under oath, and  
 357 in such form as the department may prescribe. Each such form shall contain content as set  
 358 forth by rule, regulation, instruction, or procedure of the department and may be changed  
 359 or updated as necessary by the department in order to carry out the purposes of this article.

360 The department, by regulation, may prescribe different classes of licenses for ~~both~~  
 361 mortgage loan originators, mortgage brokers, and mortgage lenders.

362 (b) The application shall include the following:

363 (1) The legal name and address of the applicant and, if the applicant is a partnership,  
 364 association, corporation, or other business entity, of every member, officer, and director  
 365 thereof;

366 (2) ~~The name~~ All names, including, but not limited to, website domain names (URLs),  
 367 under which the applicant will conduct business in Georgia;

368 (3) ~~The~~ For mortgage brokers and mortgage lenders, the address of the main office or  
 369 principal place of business where books and records are located and any other locations  
 370 at which the applicant will engage in any business activity covered by the provisions of  
 371 this article, together with the mailing address where the department shall send all  
 372 correspondence, orders, or notices. Any changes in this mailing address ~~must~~ shall be  
 373 delivered in writing to the department before the change is effective;

374 (4) ~~The~~ For mortgage brokers and mortgage lenders, the complete name and address of  
 375 the applicant's initial registered agent and registered office for service of process in  
 376 Georgia. If the applicant is a Georgia corporation, this registered agent shall be the same  
 377 as the agent recorded with the Secretary of State. Any changes in the registered agent or  
 378 registered office shall be delivered in writing to the department and the Secretary of State,  
 379 if applicable, before the change is effective. The registered agent may, but is not required  
 380 to, be an officer of the applicant, and the registered office ~~must~~ shall be a Georgia  
 381 location where the registered agent may be served;

382 (5) ~~The~~ For mortgage brokers and mortgage lenders, the general plan and character of  
 383 the business;

384 (6) ~~A~~ For mortgage brokers and mortgage lenders, a financial statement of the applicant;

385 (7) ~~Such~~ For mortgage brokers and mortgage lenders, such other data, financial  
 386 statements, and pertinent information as the department may require with respect to the

387 applicant, its directors, trustees, officers, members, agents, or ultimate equitable owners  
388 of 10 percent or more of the applicant; and

389 (8) For mortgage brokers and mortgage loan originators, evidence of satisfaction of  
390 experience or education requirements, as required by regulations of the department.

391 (c) ~~The application~~ All applications filed under this Code section shall be filed together  
392 with:

393 (1) Investigation and supervision fees established by regulation. The investigation fee  
394 shall not be refundable; provided, however, that any supervision fee paid at the time of  
395 the application shall be refunded if the license is not granted; ~~and~~

396 (2) The items required by Code Section 7-1-1003.2; and

397 (3) Other information as may be required by the department.

398 7-1-1003.1.

399 If the applicant for a mortgage broker license or a renewal of such license does not have  
400 a physical place of business in Georgia, a license or renewal ~~may~~ shall only be issued if the  
401 applicant's home state does not require that in order to be licensed a mortgage broker ~~must~~  
402 shall have a physical place of business in such home state. In either case, an applicant ~~must~~  
403 shall have a registered agent and a registered office in this state.

404 7-1-1003.2.

405 (a) Each licensed or registered mortgage broker ~~must~~ shall provide the department with  
406 a bond. The bond for a mortgage broker shall be in the principal sum of \$50,000.00 or  
407 such greater sum as the department may require as set forth by regulation based on an  
408 amount that reflects the dollar amount of loans originated, and the bond shall meet the  
409 other requirements of subsection ~~(c)~~(d) of this Code section.

410 (b) Except as otherwise provided in subsection ~~(c)~~(d) of this Code section, the department  
411 shall not license or register any mortgage lender unless the applicant or registrant provides  
412 the department with a bond. The bond for a mortgage lender shall be in the principal sum  
413 of \$150,000.00 or such greater sum as the department may require as set forth by regulation  
414 based on an amount that reflects the dollar amount of loans originated, and which bond  
415 shall meet the other requirements of subsection ~~(c)~~(d) of this Code section.

416 (c) Each mortgage loan originator shall be covered by a surety bond in accordance with  
417 this Code section. In the event that the mortgage loan originator is an employee of a  
418 licensed or registered mortgage broker or lender or under an exclusive written independent  
419 contractor agreement as described in paragraph (17) of Code Section 7-1-1001, the surety  
420 bond of such licensed or registered mortgage broker or lender may be used in lieu of the  
421 mortgage loan originator's surety bond requirement. If the surety bond of the licensed or

422 registered mortgage broker or lender is used in lieu of an individual mortgage loan  
 423 originator's surety bond then that surety bond shall provide coverage for each covered  
 424 mortgage loan originator in such amount as the department may require that reflects the  
 425 dollar amount of loans originated as determined by the department.

426 (d) General bond ~~Bond~~ requirements:

427 (1) The bond requirements for mortgage loan originators, mortgage brokers, and  
 428 mortgage lenders are continuous in nature and ~~must~~ shall be maintained at all times as a  
 429 condition of licensure; ~~and~~

430 (2) The corporate surety bond shall be for a term and in a form satisfactory to the  
 431 department, shall be issued by a bonding company or insurance company authorized to  
 432 do business in this state and approved by the department, and shall run to the State of  
 433 Georgia for the benefit of any person damaged by noncompliance of a licensee with this  
 434 article, the 'Georgia Residential Mortgage Act,' or with any condition of such bond.  
 435 Damages under the bond shall include moneys owed to the department for fees, fines, or  
 436 penalties. Such bond shall be continuously maintained thereafter in full force. Such bond  
 437 shall be conditioned upon the applicant or the licensee conducting his or her licensed  
 438 business in conformity with this article and all applicable laws;

439 (3) When an action is commenced on a licensee's bond, the department may require the  
 440 filing of a new bond; and

441 (4) Immediately upon recovery upon any action on the bond, the licensee shall file a new  
 442 bond.

443 ~~(d) As an alternative to a bond, an applicant or a licensee may supply an irrevocable letter~~  
 444 ~~of credit from a federally insured financial institution in form and terms acceptable and~~  
 445 ~~payable to the department.~~

446 (e) Any person including the department who may be damaged by noncompliance of a  
 447 licensee with any condition of a bond or this article, the 'Georgia Residential Mortgage  
 448 Act,' may proceed on such bond against the principal or surety thereon, or both, to recover  
 449 damages.

450 7-1-1003.3.

451 An application to register as a mortgage lender or broker under this article shall be made  
 452 annually in writing, under oath, on a form provided by the department, subject to  
 453 requirements specified by rules and regulations of the department.

454 7-1-1003.4.

455 ~~(a) A notification statement shall contain the following:~~

456 ~~(1) The name or names under which business will be conducted in Georgia;~~

457 ~~(2) The name and address of the parent financial institution;~~  
 458 ~~(3) The name, mailing address, telephone number, and fax number of the person or~~  
 459 ~~persons responsible for handling consumer inquiries and complaints;~~  
 460 ~~(4) The name and address of the registered agent for service of process in Georgia; and~~  
 461 ~~(5) A statement signed by the president or chief executive officer of the entity stating that~~  
 462 ~~the entity will receive and process consumer inquiries and complaints promptly, fairly,~~  
 463 ~~and in compliance with all applicable laws.~~  
 464 ~~(b) A notification statement shall be filed before commencing to do a mortgage business~~  
 465 ~~in this state and shall be updated by the entity as the information changes. Any entity~~  
 466 ~~which fails to file the notification statement or keep the information current will~~  
 467 ~~immediately be subject to the registration requirements of Code Section 7-1-1003.3~~  
 468 Reserved.

469 7-1-1003.5.

470 (a) The General Assembly has determined that a uniform ~~multi-state~~ multistate  
 471 administration of an automated licensing system for mortgage loan originators, mortgage  
 472 brokers, and mortgage lenders is consistent with both the public interest and the purpose  
 473 of this chapter; therefore, for the sole purpose of participating in the establishment and  
 474 implementation of a ~~multi-state~~ multistate automated licensing system for mortgage loan  
 475 originators, mortgage brokers, and mortgage lenders, the department is authorized to:  
 476 (1) Participate in a nation-wide residential mortgage licensing system established to  
 477 facilitate the sharing of information and standardization of the licensing and application  
 478 processes for mortgage loan originators, mortgage brokers, and mortgage lenders by  
 479 electronic or other means;  
 480 (2) Enter into operating agreements, information sharing agreements, interstate  
 481 cooperative agreements, and other contracts necessary for the department's participation  
 482 in the nation-wide residential mortgage licensing system;  
 483 (3) Ensure that the nation-wide residential mortgage licensing system adopts an  
 484 appropriate privacy, data security, and security breach notification policy that is in full  
 485 compliance with existing state and federal law;  
 486 (4) Disclose or cause to be disclosed without liability applicant and licensee information,  
 487 including, but not limited to, violations of this article and enforcement actions, via the  
 488 nation-wide residential mortgage licensing system to facilitate regulatory oversight of  
 489 mortgage loan originators, mortgage brokers, and mortgage lenders across state  
 490 jurisdictional lines;  
 491 (5) Establish and adopt, by rule or regulation, requirements for participation by  
 492 applicants and licensees in the nation-wide residential mortgage licensing system upon

493 the department's finding that each new or amended requirement is consistent with both  
494 the public interest and the purposes of this article;

495 (6) Pay all fees received from licensees and applicants related to applications, licenses,  
496 and renewals to the Office of Treasury and Fiscal Services; provided, however, that the  
497 department may net such fees to recover the cost of participation in the nation-wide  
498 residential mortgage licensing system; and

499 (7) Modify by rule the license renewal dates set forth in Code Section 7-1-1005 for  
500 mortgage brokers and mortgage lenders from a fiscal year to a calendar year, including  
501 providing for a one-time, six-month licensing period accompanied by a one-time reduced  
502 fee during the conversion year from a fiscal licensing year to a calendar licensing year.

503 (b) Irrespective of its participation in a nation-wide residential mortgage licensing system,  
504 the department retains full and exclusive authority over determinations whether to grant,  
505 renew, suspend, or revoke licenses issued to mortgage loan originators, mortgage brokers,  
506 and mortgage lenders under this article. Nothing in this Code section shall be construed  
507 to reduce this authority.

508 7-1-1003.6.

509 (a) Except as otherwise provided in the Secure and Fair Enforcement for Mortgage  
510 Licensing Act of 2008, the requirements under any federal law or Georgia state law  
511 regarding the privacy or confidentiality of any information or material provided to the  
512 Nationwide Mortgage Licensing System and Registry and any privilege arising under  
513 federal or state law, including the rules of any federal or state court, with respect to such  
514 information or material, shall continue to apply to such information or material after the  
515 information or material has been disclosed to the Nationwide Mortgage Licensing System  
516 and Registry. Such information and material may be shared with all state and federal  
517 regulatory officials with mortgage industry oversight authority without the loss of privilege  
518 or the loss of confidentiality protection provided by federal or state law.

519 (b) Information or material that is subject to a privilege or confidentially under  
520 subsection (a) of this Code section shall not be subject to:

521 (1) Disclosure under any federal or state law governing the disclosure to the public of  
522 information held by an officer or an agency of the federal government or the respective  
523 state; or

524 (2) Subpoena or discovery, or admission into evidence, in any private civil action or  
525 administrative process, unless with respect to any privilege held by the Nationwide  
526 Mortgage Licensing System and Registry with respect to such information or material,  
527 the person to whom such information or material pertains waives, in whole or in part, in  
528 the discretion of such person that privilege.

529 (c) This Code section shall not apply with respect to the information or material relating  
530 to the employment history of, and publicly adjudicated disciplinary and enforcement  
531 actions against, licensees that are included in the Nationwide Mortgage Licensing System  
532 and Registry for access by the public.

533 7-1-1003.7.

534 (a) Any education provider which offers mortgage industry related courses designed to  
535 satisfy education requirements as provided in subsection (c) of Code Section 7-1-1004 and  
536 associated department rules shall be approved by the department.

537 (b) An application under this section shall be made in writing, under oath, and in such  
538 form as the department may prescribe. The application shall include the following:

539 (1) The name and address of the applicant and, if the entity is not a sole proprietorship,  
540 the name of every member, officer, principal, or director thereof;

541 (2) The name under which the applicant will conduct business in Georgia;

542 (3) A proposed certificate program or course of study which lists each subject to be  
543 taught and credit or classroom hours for each course designed to satisfy education  
544 requirements;

545 (4) Qualifications and credentials of any and all instructors teaching courses named in  
546 paragraph (3) of this subsection; and

547 (5) Other information as may be required by the department.

548 (c) The initial application shall be filed with the department along with fees established  
549 by rule, no portion of which shall be refunded or prorated. Upon receipt of an application,  
550 the department shall conduct such investigation as it deems necessary to determine that the  
551 applicant and the individuals who direct the affairs or establish policy for the applicant,  
552 including the officers, directors, or the equivalent, are of good character and ethical  
553 reputation; that the applicant and such persons meet the requirements of subsection (d) of  
554 Code Section 7-1-1004; that the applicant and such persons demonstrate reasonable  
555 financial responsibility; that the applicant has and maintains a registered agent for service  
556 in this state; and the applicant and such persons are qualified by education and experience  
557 to present courses directly related to the mortgage brokering process.

558 (d) All education providers approved under this Code section shall be required to file a  
559 renewal application on an annual basis in writing, under oath, and in such a form as the  
560 department may prescribe. A fee established by the department shall be paid with each  
561 renewal application, which fee shall not be refunded or prorated. Failure to file a renewal  
562 application shall result in the education provider being removed from the department list  
563 of approved mortgage education providers.

564 (e) The department may audit or investigate course offerings of the applicant or approved  
 565 mortgage education provider as it deems necessary and without cost to the department.

566 7-1-1004.

567 (a) Upon receipt of an application for license or registration, the department shall conduct  
 568 such investigation as it deems necessary to determine that the mortgage broker and  
 569 mortgage lender applicant and the individuals who direct the affairs or establish policy for  
 570 the mortgage broker and mortgage lender applicant, including the officers, directors, or the  
 571 equivalent, are of good character and ethical reputation; that the mortgage broker and  
 572 mortgage lender applicant is not disqualified for licensure as a result of adverse  
 573 administrative civil or criminal findings in any jurisdiction; that the mortgage broker and  
 574 mortgage lender applicant and such persons meet the requirements of subsection ~~(d)~~(h) of  
 575 this Code section; that the mortgage broker and mortgage lender applicant and such persons  
 576 demonstrate reasonable financial responsibility; that the mortgage broker and mortgage  
 577 lender applicant has reasonable policies and procedures to receive and process customer  
 578 grievances and inquiries promptly and fairly; and that the mortgage broker and mortgage  
 579 lender applicant has and maintains a registered agent for service in this state.

580 (b) The department shall not license or register any mortgage broker and mortgage lender  
 581 applicant unless it is satisfied that the mortgage broker and mortgage lender applicant may  
 582 be expected to operate its mortgage lending or brokerage activities in compliance with the  
 583 laws of this state and in a manner which protects the contractual and property rights of the  
 584 citizens of this state.

585 (c) The department may establish by rule or regulation minimum education or experience  
 586 requirements for an applicant for a mortgage broker license or renewal of such a license.

587 (d) Upon receipt of an application for a mortgage loan originator license, the department  
 588 shall conduct such investigation as it deems necessary to determine that the mortgage loan  
 589 originator applicant:

590 (1) Has never had a mortgage loan originator license revoked in any governmental  
 591 jurisdiction, except that a subsequent formal vacation of such revocation shall not be  
 592 deemed a revocation;

593 (2) Has not been convicted of, or pled guilty or nolo contendere to, a felony in a  
 594 domestic, foreign, or military court; provided, however, that any pardon of a conviction  
 595 shall not be a conviction for purposes of this subsection;

596 (3) Has demonstrated financial responsibility, character, and general fitness such as to  
 597 command the confidence of the community and to warrant a determination that the  
 598 mortgage loan originator will operate honestly, fairly, and efficiently within the purposes  
 599 of this article;

600 (4) Has completed the prelicensing education requirement described in subsection (e) of  
601 this Code section;

602 (5) Has passed a written test that meets the test requirement described in subsection (f)  
603 of this Code section; and

604 (6) Has met the surety bond requirement pursuant to subsection (c) of Code Section  
605 7-1-1003.2.

606 (e)(1) An individual shall complete at least 20 hours of prelicensing education courses  
607 reviewed and approved by the Nationwide Mortgage Licensing System and Registry  
608 based upon reasonable standards. Review and approval of a prelicensing education  
609 course shall include review and approval of the course provider. The 20 hours of  
610 prelicensing education shall include at least:

611 (A) Three hours of federal law and regulations;

612 (B) Three hours of ethics, which shall include instruction on fraud, consumer  
613 protection, and fair lending issues; and

614 (C) Two hours of training related to lending standards for the nontraditional mortgage  
615 product marketplace.

616 (2) Nothing in this subsection shall preclude any prelicensing education course, as  
617 approved by the Nationwide Mortgage Licensing System and Registry, that is provided  
618 by the employer of the mortgage loan originator applicant or an entity which is affiliated  
619 with the applicant by an agency contract, or any subsidiary or affiliate of such employer  
620 or entity.

621 (3) Prelicensing education may be offered either in a classroom, online, or by any other  
622 means approved by the Nationwide Mortgage Licensing System and Registry.

623 (4) The prelicensing education requirements approved by the Nationwide Mortgage  
624 Licensing System and Registry in paragraph (1) of this Code section for any state shall  
625 be accepted as credit towards completion of prelicensing education requirements in  
626 Georgia.

627 (5) A person previously licensed under this article subsequent to January 1, 2010,  
628 applying to be licensed again shall prove that they have completed all of the continuing  
629 education requirements for the year in which the license was last held.

630 (f)(1) In order to meet the written test requirement referred to in subsection (d) of this  
631 Code section for mortgage loan originators, an individual shall pass, in accordance with  
632 the standards established under this subsection, a qualified written test developed by the  
633 Nationwide Mortgage Licensing System and Registry and administered by a test provider  
634 approved by the Nationwide Mortgage Licensing System and Registry based upon  
635 reasonable standards.

636 (2) A written test shall not be treated as a qualified written test for purposes of this  
 637 subsection unless the test adequately measures the applicant's knowledge and  
 638 comprehension in appropriate subject areas, including:

639 (A) Ethics;

640 (B) Federal law and regulation pertaining to mortgage origination;

641 (C) State law and regulation pertaining to mortgage origination; and

642 (D) Federal and state law and regulation, including instruction on fraud, consumer  
 643 protection, the nontraditional mortgage marketplace, and fair lending issues.

644 (3) Nothing in this subsection shall prohibit a test provider approved by the Nationwide  
 645 Mortgage Licensing System and Registry from providing a test at the location of the  
 646 employer of the applicant or the location of any subsidiary or affiliate of the employer of  
 647 the applicant or the location of any entity with which the applicant holds an exclusive  
 648 arrangement to conduct the business of a mortgage loan originator.

649 (4)(A) An individual shall not be considered to have passed a qualified written test  
 650 unless the individual achieves a test score of not less than 75 percent correct answers  
 651 to questions.

652 (B) An individual may retake a test three consecutive times with each consecutive  
 653 taking occurring at least 30 days after the preceding test.

654 (C) After failing three consecutive tests, an individual shall wait at least six months  
 655 before taking the test again.

656 (D) A licensed mortgage loan originator who fails to maintain a valid license for a  
 657 period of five years or longer shall retake the test, not taking into account any time  
 658 during which such individual is a registered mortgage loan originator.

659 (g)(1) In order to meet the annual continuing education requirements referred to in  
 660 paragraph (2) of subsection (e) of Code Section 7-1-1005, a licensed mortgage loan  
 661 originator shall complete at least eight hours of education approved in accordance with  
 662 paragraph (2) of this subsection which shall include at least:

663 (A) Three hours of federal law and regulations;

664 (B) Two hours of ethics, which shall include instruction on fraud, consumer protection,  
 665 and fair lending issues; and

666 (C) Two hours of training related to lending standards for the nontraditional mortgage  
 667 product marketplace.

668 (2) For purposes of paragraph (1) of this subsection, continuing education courses shall  
 669 be reviewed and approved by the Nationwide Mortgage Licensing System and Registry  
 670 based upon reasonable standards. Review and approval of a continuing education course  
 671 shall include review and approval of the course provider.

672 (3) Nothing in this subsection shall preclude any education course from approval by the  
 673 Nationwide Mortgage Licensing System and Registry that is provided by the employer  
 674 of the mortgage loan originator or any entity which is affiliated with the mortgage loan  
 675 originator by an agency contact, or any subsidiary or affiliate of such employer or entity.

676 (4) Continuing education may be offered either in a classroom, online, or by any other  
 677 means approved by the Nationwide Mortgage Licensing System and Registry.

678 (5) A licensed mortgage loan originator, except for as provided for in paragraph (9) of  
 679 this subsection and subsection (f) of Code Section 7-1-1005, shall only receive credit for  
 680 a continuing education course in the year in which the course is taken and shall not take  
 681 the same approved course in the same or successive years to meet the annual  
 682 requirements for continuing education.

683 (6) A licensed mortgage loan originator who is an approved instructor of an approved  
 684 continuing education course may receive credit for the licensed mortgage loan  
 685 originator's own annual continuing education requirement at the rate of two hours of  
 686 credit for every one hour taught.

687 (7) An individual having successfully completed the education requirements approved  
 688 by the Nationwide Mortgage Licensing System and Registry in paragraph (1) of this  
 689 subsection for any state shall be accepted as credit towards completion of continuing  
 690 education requirements in Georgia.

691 (8) A licensed mortgage loan originator who subsequently becomes unlicensed shall  
 692 complete the continuing education requirements for the last year in which the license was  
 693 held prior to issuance of a new or renewed license.

694 (9) An individual meeting the requirements of paragraphs (1) and (3) of subsection (e)  
 695 of Code Section 7-1-1005 may make up any deficiency in continuing education as  
 696 established by rule or regulation of the department.

697 (d)(h) The department may shall not issue or may revoke a license or registration if it finds  
 698 that the mortgage loan originator, mortgage broker, or mortgage lender applicant or  
 699 licensee, or any person who is a director, officer, partner, agent, employee, or ultimate  
 700 equitable owner of 10 percent or more of the mortgage broker or mortgage lender  
 701 applicant, registrant, or licensee or any individual who directs the affairs or establishes  
 702 policy for the mortgage broker or mortgage lender applicant, registrant, or licensee, has  
 703 been convicted of a felony involving moral turpitude in any jurisdiction or of a crime  
 704 which, if committed within this state, would constitute a felony involving moral turpitude  
 705 under the laws of this state. For the purposes of this article, a person shall be deemed to  
 706 have been convicted of a crime if such person shall have pleaded guilty to a charge thereof  
 707 before a court or federal magistrate or shall have been found guilty thereof by the decision  
 708 or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the

709 pronouncement of sentence or the suspension thereof, and regardless of whether first  
 710 offender treatment without adjudication of guilt pursuant to the charge was entered, unless  
 711 and until such plea of guilty, or such decision, judgment, or verdict, shall have been set  
 712 aside, reversed, or otherwise abrogated by lawful judicial process ~~or until probation,~~  
 713 ~~sentence, or both probation and sentence of a first offender have been successfully~~  
 714 ~~completed and documented~~ or unless the person convicted of the crime shall have received  
 715 a pardon therefor from the President of the United States or the governor or other  
 716 pardoning authority in the jurisdiction where the conviction ~~was had~~ occurred or shall have  
 717 received an official certification or pardon granted by the ~~State Board of Pardons and~~  
 718 ~~Paroles which removes the legal disabilities resulting from such conviction and restores~~  
 719 ~~civil and political rights in this state~~ state's pardoning body in the jurisdiction where the  
 720 conviction occurred. Any pardon of a conviction shall not be a conviction for purposes of  
 721 this subsection.

722 ~~(e)~~(i) The department shall be authorized to obtain conviction data with respect to any  
 723 mortgage loan originator, mortgage broker, or mortgage lender applicant or any person  
 724 who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10  
 725 percent or more of the mortgage broker or mortgage lender applicant and any individual  
 726 who directs the affairs of the company or establishes policy. The department ~~shall~~ may  
 727 directly submit to the Georgia Crime Information Center two complete sets of fingerprints  
 728 of such applicant or such person, together with the required records search fees and such  
 729 other information as may be required. Fees for background checks that the department  
 730 administers shall be sent to the department by applicants and licensees together with the  
 731 fingerprints. ~~Applicants and~~ Mortgage broker and mortgage lender applicants, licensees,  
 732 and registrants shall have the primary responsibility for obtaining background checks of  
 733 covered employees which are defined as employees who work in this state and also have  
 734 the authority to enter, delete, or verify any information on any mortgage loan application  
 735 form or document. The department shall, however, retain the right to obtain conviction  
 736 data on covered employees.

737 (j) In connection with an application for licensing with respect to any mortgage loan  
 738 originator applicant, mortgage broker, or lender applicant, at the direction of the  
 739 department, the applicant shall at a minimum, furnish to the Nationwide Mortgage  
 740 Licensing System and Registry information concerning the applicant's identity, including:  
 741 (1) Fingerprints for submission to the Federal Bureau of Investigation, and any  
 742 governmental agency or entity authorized to receive such information for a state, national,  
 743 and international criminal history background check; and

744 (2) Personal history and experience in a form prescribed by the Nationwide Mortgage  
 745 Licensing System and Registry, including the submission of authorization for the  
 746 Nationwide Mortgage Licensing System and Registry and the department to obtain;

747 (A) An independent credit report obtained from a consumer reporting agency described  
 748 in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. Section 1681a(f); and

749 (B) Information related to any administrative, civil, or criminal findings by any  
 750 governmental jurisdiction.

751 (3) For the purposes set forth in this subsection and in order to reduce the points of  
 752 contact which the Federal Bureau of Investigation may have to maintain for purposes of  
 753 such section, the department may use the Nationwide Mortgage Licensing System and  
 754 Registry as a channeling agent for requesting information from and distributing  
 755 information to the Department of Justice or any governmental agency.

756 (4) For the purposes of this subsection and in order to reduce the points of contact which  
 757 the department may have to maintain for purposes of such subsection, the department  
 758 may use the Nationwide Mortgage Licensing System and Registry as a channeling agent  
 759 for requesting and distributing information to and from any source so directed by the  
 760 department.

761 ~~(f)~~(k) Every mortgage broker and mortgage lender licensee, registrant, and applicant shall  
 762 be authorized and required to obtain background checks on covered employees. Such  
 763 background checks shall be handled by the Georgia Crime Information Center pursuant to  
 764 Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information  
 765 Center. Licensees, registrants, and applicants shall be responsible for any applicable fees  
 766 charged by the center. A background check ~~must~~ shall be initiated for a person in the  
 767 employ of a licensee, registrant, or applicant within ten days of the date of initial hire and  
 768 be completed with satisfactory results within the first 90 days of employment. This  
 769 provision ~~does~~ shall not apply to directors, officers, partners, agents, or ultimate equitable  
 770 owners of 10 percent or more or to persons who direct the company's affairs or establish  
 771 policy, whose background ~~must~~ shall have been investigated through the department before  
 772 taking office, beginning employment, or securing ownership. Upon receipt of information  
 773 from the Georgia Crime Information Center that is incomplete or that indicates an  
 774 employee has a criminal record in any state other than Georgia, the employer shall submit  
 775 to the department two complete sets of fingerprints of such person, together with the  
 776 applicable fees and any other required information. The department shall submit such  
 777 fingerprints as provided in subsection ~~(e)~~(i) of this Code section.

778 ~~(g)~~(l) Upon receipt of fingerprints, fees, and other required information, the Georgia Crime  
 779 Information Center shall promptly transmit one set of fingerprints to the Federal Bureau  
 780 of Investigation for a search of bureau records and an appropriate report and shall retain

781 the other set and promptly conduct a search of its own records and records to which it has  
 782 access. The Georgia Crime Information Center shall notify the department in writing of  
 783 any derogatory finding, including, but not limited to, any conviction data regarding the  
 784 fingerprint records check, or if there is no such finding. All conviction data received by  
 785 the department or by the applicant, registrant, or licensee shall be used by the party  
 786 requesting such data for the exclusive purpose of carrying out the responsibilities of this  
 787 article, shall not be a public record, shall be privileged, and shall not be disclosed to any  
 788 other person or agency except to any person or agency which otherwise has a legal right  
 789 to inspect the file. The department shall be entitled to review any applicant's, registrant's,  
 790 or licensee's files to determine whether the required background checks have been run and  
 791 whether all covered employees are qualified. The department shall be authorized to discuss  
 792 the status of employee background checks with licensees. All such records shall be  
 793 maintained by the department and the applicant or licensee or registrant pursuant to laws  
 794 regarding such records and the rules and regulations of the Federal Bureau of Investigation  
 795 and the Georgia Crime Information Center, as applicable. As used in this subsection,  
 796 'conviction data' means a record of a finding, verdict, or plea of guilty or plea of nolo  
 797 contendere with regard to any crime, regardless of whether an appeal of the conviction has  
 798 been sought, subject to the conditions set forth in subsection ~~(d)~~(h) of this Code section.  
 799 Violation of this Code section may subject a licensee or registrant to the revocation of its  
 800 license or registration.

801 (m) In connection with an application for licensing or registration under this Code section,  
 802 the department may use the Nationwide Mortgage Licensing System and Registry, when  
 803 such service is available, as a channeling agent for the submission of fingerprints to the  
 804 Federal Bureau of Investigation and any governmental agency or entity authorized to  
 805 receive such information for a state, national, and international criminal history background  
 806 check. The department is authorized to set forth rules and regulations in order to  
 807 implement the provisions of this subsection.

808 ~~(h)~~(n) The department may deny or revoke a license or registration or otherwise restrict  
 809 a license or registration if it finds that the mortgage broker or mortgage lender applicant  
 810 or any person who is a director, officer, partner, or ultimate equitable owner of 10 percent  
 811 or more or person who directs the company's affairs or who establishes policy of the  
 812 applicant has been in one or more of these roles as a mortgage lender, broker, or registrant  
 813 whose license or registration has been denied, revoked, or suspended within ~~three~~ five  
 814 years of the date of the application.

815 ~~(i)~~(o) The department ~~may~~ shall not issue a license or registration to and may revoke a  
 816 license or registration from ~~an~~ a mortgage broker or mortgage lender applicant, ~~or~~ licensee,  
 817 or registrant if such person employs any other person against whom a final cease and desist

818 order has been issued within the preceding five years; if such order was based on a  
 819 violation of Code Section 7-1-1013 or based on the conducting of a mortgage business; for  
 820 a violation of Code Section 7-1-1002, subsection (h) of Code Section 7-1-1004, or Code  
 821 Section 7-1-1013; without a required license, or whose license ~~has been~~ was revoked  
 822 within five years of the date such person was hired. Each mortgage broker and mortgage  
 823 lender applicant, and licensee, and registrant shall, before hiring an employee, examine the  
 824 department's public records to determine that such employee is not subject to the type of  
 825 cease and desist order described in this subsection.

826 ~~(j)~~(p) Within 90 days after receipt of a completed application and payment of licensing  
 827 fees prescribed by this article, the department shall either grant or deny the request for  
 828 license or registration.

829 ~~(k)~~(q) A person shall not be indemnified for any act covered by this article or for any fine  
 830 or penalty incurred pursuant to this article as a result of any violation of the law or  
 831 regulations contained in this article, due to the legal form, corporate structure, or choice of  
 832 organization of such person, including, but not limited to, a limited liability company.

833 7-1-1004.1.

834 Each mortgage broker and mortgage lender shall submit to the Nationwide Mortgage  
 835 Licensing System and Registry reports of condition, which shall be in such form and shall  
 836 contain such information as the department and the Nationwide Mortgage Licensing  
 837 System and Registry may require.

838 7-1-1004.2.

839 The department shall establish a process whereby licensees may challenge information  
 840 entered into the Nationwide Mortgage Licensing System and Registry by the department.

841 7-1-1004.3.

842 The unique identifier of any person originating a residential mortgage loan shall be clearly  
 843 shown on all residential mortgage loan application forms, solicitations, or advertisements,  
 844 including business cards, websites, and any other documents as established by rule,  
 845 regulation, or order of the department.

846 7-1-1005.

847 (a) Except as otherwise specifically provided in this article, all licenses and registrations  
 848 issued pursuant to this article shall expire on ~~June 30~~ December 31 of each year, and  
 849 application for renewal shall be made annually on or before ~~April 1~~ December 1 of each  
 850 year.

851 (b) Any licensee or registrant making proper application, including all supporting  
 852 documents, demonstration that all necessary continuing education has been successfully  
 853 completed, moneys owed to the department, and all applicable fees required by this article  
 854 and any regulations promulgated by the department, for a license or registration renewal  
 855 to operate during the following license year and filing the application prior to ~~April 1~~  
 856 December 1 shall be permitted to continue to operate pending final approval or disapproval  
 857 of the application for the license or registration renewal for the following year if final  
 858 approval or disapproval is not granted prior to ~~July 1~~ January 1.

859 (c) No investigation fee shall be payable in connection with the renewal application, but  
 860 an annual license or registration fee established by regulation of the department to defray  
 861 the cost of supervision shall be paid with each renewal application, which fee shall not be  
 862 refunded or prorated if the renewal application is approved.

863 (d) Any person holding a license or registration pursuant to this article who fails to file a  
 864 proper application for a license or registration renewal for the following license year,  
 865 including the proper fee accompanying the application, on or before ~~April 1~~ December 1  
 866 and who files an application after ~~April 1~~ December 1 may be required to pay, in addition  
 867 to the license or registration fees, a fine in an amount to be established by regulations  
 868 promulgated by the department.

869 (e) The minimum standards for license renewal for mortgage loan originators shall  
 870 include:

871 (1) The mortgage loan originator continues to meet the minimum standards for license  
 872 issuance;

873 (2) The mortgage loan originator has satisfied the annual continuing education  
 874 requirements; and

875 (3) The mortgage loan originator has paid all required fees for renewal of the license.

876 (f) The license of a mortgage loan originator failing to satisfy the minimum standards for  
 877 license renewal shall expire. The department may adopt procedures for the reinstatement  
 878 of expired licenses consistent with the standards established by the Nationwide Mortgage  
 879 Licensing System and Registry.

880 7-1-1006.

881 (a) Each license issued under this article shall state the name of the licensee.

882 (b) A licensee shall post a copy of such license in a conspicuous place in each place of  
 883 business of the licensee.

884 (c) A license ~~may~~ shall not be transferred or assigned.

885 (d) No licensee shall transact business under any name or names other than ~~that~~ those  
 886 designated in the license records of the department.

887 (e) For mortgage brokers and mortgage lenders, each ~~Each~~ licensee shall notify the  
 888 department in writing of any change in the address of the principal place of business or of  
 889 any additional location of business in Georgia, any change in registered agent or registered  
 890 office, any change of executive officer, contact person for consumer complaints, or  
 891 ultimate equitable owner of 10 percent or more of any corporation or other entity licensed  
 892 under this article, or of any material change in the licensee's financial statement. Notice  
 893 of changes ~~must~~ shall be received by the department no later than 30 business days after  
 894 the change is effective.

895 (f) No ~~licensee~~ mortgage broker or mortgage lender shall open a new additional office in  
 896 Georgia without prior approval of the department. Applications for such additional office  
 897 shall be made in writing on a form prescribed by the department and shall be accompanied  
 898 by payment of a \$350.00 nonrefundable application fee. The application shall be approved  
 899 unless the department finds that the applicant has not conducted business under this article  
 900 efficiently, fairly, in the public interest, and in accordance with law. The application shall  
 901 be deemed approved if notice to the contrary has not been mailed by the department to the  
 902 applicant within 45 days of the date the application is received by the department.

903 (g) All branch managers in Georgia ~~must~~ shall be approved by the department. A ~~licensee~~  
 904 mortgage broker or mortgage lender may place a new branch manager subject to the  
 905 department's approval but ~~must~~ shall file for approval within 15 days of the placement and  
 906 ~~must~~ shall remove the person immediately should the department deny approval.

907 7-1-1007.

908 (a) A licensee shall give notice to the department by registered or certified mail or  
 909 statutory overnight delivery of any action which may be brought against it by any creditor  
 910 or borrower where such action is brought under this article, involves a claim against the  
 911 bond filed with the department for the purposes of compliance with Code Section ~~7-1-1003~~  
 912 7-1-1003.2 or 7-1-1004, or involves a claim for damages in excess of \$25,000.00 for a  
 913 mortgage broker or mortgage loan originator and \$250,000.00 for a lender and of any  
 914 judgment which may be entered against it by any creditor or any borrower or prospective  
 915 borrower, with details sufficient to identify the action or judgment, within 30 days after the  
 916 commencement of any such action or the entry of any such judgment.

917 (b) A corporate surety shall, within ten days after it pays any claim to any claimant, give  
 918 notice to the department by registered or certified mail or statutory overnight delivery of  
 919 such payment with details sufficient to identify the claimant and the claim or judgment so  
 920 paid. Whenever the principal sum of such bond is reduced by one or more recoveries or  
 921 payments thereon, the ~~licensee~~ mortgage loan originator, mortgage broker, or mortgage  
 922 lender shall furnish a new or additional bond so that the total or aggregate principal sum

923 of such bond or bonds shall equal the sum required under Code Section ~~7-1-1003~~  
 924 7-1-1003.2 or 7-1-1004 or shall furnish an endorsement duly executed by the corporate  
 925 surety reinstating the bond to the required principal sum thereof.

926 (c) A bond filed with the department for the purpose of compliance with Code Section  
 927 ~~7-1-1003~~ 7-1-1003.2 or 7-1-1004 ~~may~~ shall not be canceled by either the ~~licensee~~ mortgage  
 928 loan originator, mortgage broker, or mortgage lender or the corporate surety except upon  
 929 notice to the department by registered or certified mail or statutory overnight delivery with  
 930 return receipt requested, the cancellation to be effective not less than 30 days after receipt  
 931 by the department of such notice and only with respect to any breach of condition occurring  
 932 after the effective date of such cancellation.

933 (d) A licensee or registrant shall, within ten days after knowledge of the event, report in  
 934 writing to the department:

935 (1) Any knowledge or discovery of an act prohibited by Code Section 7-1-1013; ~~and~~

936 (2) The discharge of any employee for dishonest or fraudulent acts; and

937 (3) Any administrative, civil, or criminal action initiated against the licensee, registrant,  
 938 or any of its control persons by any government entity.

939 Any person reporting such an event shall be protected from civil liability as provided in  
 940 Code Section 7-1-1009.

941 7-1-1008.

942 (a) Except as provided in this Code section, no person shall acquire directly or indirectly  
 943 10 percent or more of the voting shares of a corporation or 10 percent or more of the  
 944 ownership of any other entity licensed to conduct business as a mortgage broker or  
 945 mortgage lender under this article unless it first:

946 (1) Files an application with the department in such form as the department may  
 947 prescribe from time to time;

948 (2) Delivers such other information to the department as the department may require  
 949 concerning the financial responsibility, background, experience, and activities of the  
 950 applicant, its directors and officers, if a corporation, and its members, if applicable, and  
 951 of any proposed new directors, officers, or members of the licensee; and

952 (3) Pays such application fee as the department may prescribe.

953 (b) Upon the filing and investigation of an application, the department shall permit the  
 954 applicant to acquire the interest in the mortgage broker or mortgage lender licensee if it  
 955 finds that the applicant and its members, if applicable, its directors and officers, if a  
 956 corporation, and any proposed new directors and officers have the financial responsibility,  
 957 character, reputation, experience, and general fitness to warrant belief that the business will  
 958 be operated efficiently and fairly, in the public interest, and in accordance with law. The

959 department shall grant or deny the application within 60 days from the date a completed  
 960 application accompanied by the required fee is filed unless the period is extended by order  
 961 of the department reciting the reasons for the extension. If the application is denied, the  
 962 department shall notify the applicant of the denial and the reasons for the denial.

963 (c) The provisions of this Code section shall not apply to:

964 (1) The acquisition of an interest in a licensee directly or indirectly, including an  
 965 acquisition by merger or consolidation by or with a person licensed by this article or a  
 966 person exempt from this article under Code Section 7-1-1001;

967 (2) The acquisition of an interest in a mortgage broker or mortgage lender licensee  
 968 directly or indirectly, including an acquisition by merger or consolidation by or with a  
 969 person affiliated through common ownership with the licensee; or

970 (3) The acquisition of an interest in a mortgage broker or mortgage lender licensee by  
 971 a person by bequest, descent, or survivorship or by operation of law.

972 The person acquiring an interest in a mortgage broker or mortgage lender licensee in a  
 973 transaction which is exempt from filing an application by this subsection shall send written  
 974 notice to the department of such acquisition within 30 days of the closing of such  
 975 transaction.

976 7-1-1009.

977 (a) ~~Any person~~ Mortgage brokers and mortgage lenders required to be licensed or  
 978 registered under this article shall maintain at ~~its~~ their offices or such other location as the  
 979 department shall permit such books, accounts, and records as the department may  
 980 reasonably require in order to determine whether such ~~person is~~ mortgage brokers and  
 981 mortgage lenders are complying with the provisions of this article and rules and regulations  
 982 adopted in furtherance thereof. Such books, accounts, and records shall be maintained  
 983 separately and distinctly from any other personal or unrelated business matters in which  
 984 the ~~person is~~ mortgage brokers and mortgage lenders are involved.

985 (b) The department may, by its designated officers and employees, as often as it deems  
 986 necessary, but at least once every 24 months, investigate and examine the affairs, business,  
 987 premises, and records of any ~~person~~ mortgage broker or mortgage lender required to be  
 988 licensed or registered under this article insofar as such affairs, business, premises, and  
 989 records pertain to any business for which a license or registration is required by this article.  
 990 Notwithstanding the provisions of this subsection, the department has the discretion to  
 991 examine a ~~person~~ mortgage broker or mortgage lender less frequently, provided that its  
 992 record of complaints, comments, or other information demonstrates that ~~person's~~ mortgage  
 993 broker's or mortgage lender's ability to meet the standards of Code Sections 7-1-1003,  
 994 7-1-1003.2, and 7-1-1004. In the case of registrants, the department shall not be required

995 to conduct such examinations if it determines that the registrant has been adequately  
 996 examined by another bank regulatory agency. In order to avoid unnecessary duplication  
 997 of examinations, the department may accept examination reports performed and produced  
 998 by other state or federal agencies, unless the department determines that the examinations  
 999 are not available or do not provide information necessary to fulfill the responsibilities of  
 1000 the department under this article.

1001 (c) In addition to any authority allowed under this article, the department shall be  
 1002 authorized to conduct investigations and examinations of mortgage loan originators as  
 1003 follows:

1004 (1) For purposes of initial licensing, license renewal, license suspension, license  
 1005 conditioning, license revocation or termination, or general or specific inquiry or  
 1006 investigation to determine compliance with this article, the department shall have the  
 1007 authority to access, receive, and use any books, accounts, records, files, documents,  
 1008 information, or evidence, including, but not limited to:

1009 (A) Criminal, civil, and administrative history information, including nonconviction  
 1010 data;

1011 (B) Personal history and experience information, including independent credit reports  
 1012 obtained from a consumer reporting agency described in section 603(p) of the Fair  
 1013 Credit Reporting Act, 15 U.S.C. Section 1681a(f); and

1014 (C) Any other documents, information, or evidence the department deems relevant to  
 1015 the inquiry or investigation regardless of the location, possession, control, or custody  
 1016 of such documents, information, or evidence;

1017 (2) For the purposes of investigating violations or complaints, or for the purposes of  
 1018 examination, the department may review, investigate, or examine any mortgage loan  
 1019 originator licensee, individual, or person subject to this article as often as necessary in  
 1020 order to carry out the purposes of this article. The department may direct, subpoena, or  
 1021 order the attendance of and examine under oath all persons whose testimony may be  
 1022 required about the loans or the business or subject matter of any such examination or  
 1023 investigation and may direct, subpoena, or order such person to produce books, accounts,  
 1024 records, files, and any other documents the department deems relevant to the inquiry;

1025 (3) Each mortgage loan originator licensee, individual, or person subject to this article  
 1026 shall make available to the department upon request the books and records relating to the  
 1027 activities of a mortgage loan originator;

1028 (4) Each mortgage loan originator subject to this article shall make or compile reports  
 1029 or prepare other information as directed by the commissioner in order to carry out the  
 1030 purposes of this subsection, including, but not limited to:

1031 (A) Accounting compilations;

- 1032 (B) Information lists and data concerning loan transactions in a format prescribed by  
 1033 the department; or
- 1034 (C) Use, hire, contract, or employ public or privately available analytical systems,  
 1035 methods, or software to examine or investigate a mortgage loan originator;
- 1036 (5) In making any examination or investigation authorized by this article, the department  
 1037 may control access to any documents and records of the licensee or person under  
 1038 investigation. In order to carry out the purposes of this Code section, the department  
 1039 may:
- 1040 (A) Enter into agreements or relationships with other government officials or  
 1041 regulatory associations in order to improve efficiencies and reduce regulatory burden  
 1042 by sharing resources, standardized or uniform methods or procedures, and documents,  
 1043 records, information, or evidence obtained under this Code section;
- 1044 (B) Accept and rely on examination or investigation reports made by other government  
 1045 officials, within or without this state; and
- 1046 (C) Accept audit reports made by an independent certified public accountant for the  
 1047 licensee, individual, or person subject to this article in the course of that part of the  
 1048 examination covering the same general subject matter as the audit and may incorporate  
 1049 the audit report in the report of examination, report of investigation, or other writing of  
 1050 the department;
- 1051 (6) The authority to investigate provided for in this subsection shall remain in effect  
 1052 whether such licensee, individual, or person subject to this article acts or claims to act  
 1053 under any licensing or registration law of this state or claims to act without such  
 1054 authority; and
- 1055 (7) No mortgage loan originator licensee, individual, or person subject to investigation  
 1056 or examination under this article shall knowingly withhold, abstract, remove, mutilate,  
 1057 destroy, or secrete any books, records, computer records, or other information.
- 1058 ~~(e)~~(d) The department, at its discretion, may:
- 1059 (1) Make such public or private investigations within or outside of this state as it deems  
 1060 necessary to determine whether any person has violated or is about to violate this article  
 1061 or any rule, regulation, or order under this article, to aid in the enforcement of this article,  
 1062 or to assist in the prescribing of rules and regulations pursuant to this article;
- 1063 (2) Require or permit any person to file a statement in writing, under oath or otherwise  
 1064 as the department determines, as to all the facts and circumstances concerning the matter  
 1065 to be investigated;
- 1066 (3) Disclose information concerning any violation of this article or any rule, regulation,  
 1067 or order under this article, provided the information is derived from a final order of the  
 1068 department; and

1069 (4) Disclose the imposition of an administrative fine or penalty under this article.

1070 ~~(d)~~(e)(1) For the purpose of conducting any investigation as provided in this Code  
 1071 section, the department shall have the power to administer oaths, to call any party to  
 1072 testify under oath in the course of such investigations, to require the attendance of  
 1073 witnesses, to require the production of books, records, and papers, and to take the  
 1074 depositions of witnesses; and for such purposes, the department is authorized to issue a  
 1075 subpoena for any witness or for the production of documentary evidence. Such  
 1076 subpoenas may be served by certified mail or statutory overnight delivery, return receipt  
 1077 requested, to the addressee's business mailing address, by examiners appointed by the  
 1078 department, or shall be directed for service to the sheriff of the county where such witness  
 1079 resides or is found or where the person in custody of any books, records, or paper resides  
 1080 or is found. The required fees and mileage of the sheriff, witness, or person shall be paid  
 1081 from the funds in the state treasury for the use of the department in the same manner that  
 1082 other expenses of the department are paid.

1083 (2) The department may issue and apply to enforce subpoenas in this state at the request  
 1084 of a government agency regulating mortgage lenders or brokers of another state if the  
 1085 activities constituting the alleged violation for which the information is sought would be  
 1086 a violation of this article if the activities had occurred in this state.

1087 ~~(e)~~(f) In case of refusal to obey a subpoena issued under this article to any person, a  
 1088 superior court of appropriate jurisdiction, upon application by the department, may issue  
 1089 to the person an order requiring him or her to appear before the court to show cause why  
 1090 he or she should not be held in contempt for refusal to obey the subpoena. Failure to obey  
 1091 a subpoena may be punished as contempt by the court.

1092 ~~(f)~~(g) Examinations and investigations conducted under this article and information  
 1093 obtained by the department in the course of its duties under this article are confidential,  
 1094 except as provided in this subsection, pursuant to the provisions of Code Section 7-1-70.  
 1095 In addition to the exceptions set forth in subsection (b) of Code Section 7-1-70 and in  
 1096 paragraphs (3) and (4) of subsection ~~(e)~~(d) of this Code section, the department is  
 1097 authorized to share information obtained under this article with other state and federal  
 1098 regulatory agencies or law enforcement authorities. In the case of such sharing, the  
 1099 safeguards to confidentiality already in place within such agencies or authorities shall be  
 1100 deemed adequate. The commissioner or an examiner specifically designated may disclose  
 1101 such limited information as is necessary to conduct a civil or administrative investigation  
 1102 or proceeding. ~~The department shall compile information on the number of written~~  
 1103 ~~complaints received on all licensees. The department shall annually disclose to the public~~  
 1104 ~~the number of such complaints together with the number of Georgia residential mortgage~~  
 1105 ~~loans made during the same period. In preparing the disclosure, the department shall be~~

1106 ~~authorized to rely upon the number of mortgage loans reported to it in the mortgage license~~  
 1107 ~~renewal application.~~ Information contained in the records of the department which is not  
 1108 confidential and may be made available to the public either on the department's website or  
 1109 upon receipt by the department of a written request shall include:

1110 (1) For mortgage brokers and mortgage lenders, the ~~The~~ name, business address, and  
 1111 telephone, fax, and license numbers of a licensee or registrant;

1112 (2) For mortgage brokers and mortgage lenders, the ~~The~~ names and titles of the principal  
 1113 officers;

1114 (3) For mortgage brokers and mortgage lenders, the ~~The~~ name of the owner or owners  
 1115 thereof;

1116 (4) For mortgage brokers and mortgage lenders, the ~~The~~ business address of a licensee's  
 1117 or registrant's agent for service; and

1118 (5) The terms of or a copy of any bond filed by a licensee or registrant.

1119 ~~(g)~~(h) In the absence of malice, fraud, or bad faith, a person ~~is not~~ shall not be subject to  
 1120 civil liability arising from the filing of a complaint with the department or furnishing other  
 1121 information required by this Code section or required by the department under the authority  
 1122 granted in this article. No civil cause of action of any nature shall arise against such  
 1123 person:

1124 (1) For any information relating to suspected prohibited acts furnished to or received  
 1125 from law enforcement officials, their agents, or employees or to or from other regulatory  
 1126 or licensing authorities;

1127 (2) For any such information furnished to or received from other persons subject to the  
 1128 provisions of this title; or

1129 (3) For any such information furnished in complaints filed with the department.

1130 ~~(h)~~(i) The commissioner or any employee or agent ~~is not~~ shall not be subject to civil  
 1131 liability, and no civil cause of action of any nature exists against such persons arising out  
 1132 of the performance of activities or duties under this article or by publication of any report  
 1133 of activities under this Code section.

1134 7-1-1010.

1135 (a) If a mortgage broker is a United States Department of Housing and Urban  
 1136 Development loan correspondent, such broker ~~must~~ shall also submit to the department the  
 1137 audit that is required for the United States Department of Housing and Urban  
 1138 Development. The department may require the mortgage broker to have made an audit of  
 1139 the books and affairs of the licensed or registered business and submit to the department  
 1140 an audited financial statement if the department finds that such an audit is necessary to

1141 determine whether the mortgage broker is complying with the provisions of this article and  
 1142 the rules and regulations adopted in furtherance of this article.

1143 (b) Each mortgage lender licensed or registered under this article shall at least once each  
 1144 year have made an audit of the books and affairs of the licensed or registered business and  
 1145 submit to the department at renewal an audited financial statement, except that a mortgage  
 1146 lender licensed or registered under this article which is a subsidiary shall comply with this  
 1147 provision by annually providing a consolidated audited financial statement of its parent  
 1148 company and a financial statement, which may be unaudited, of the licensee or registrant  
 1149 which is prepared in accordance with generally accepted accounting principles. A lender  
 1150 who utilizes a bond in lieu of an audit need not supply such audit, unless specially required  
 1151 by the department. An audit ~~must~~ shall be less than 15 months old to be acceptable. The  
 1152 department may by regulation establish additional minimum standards for audits and  
 1153 reports under this Code section.

1154 7-1-1011.

1155 (a) The department may, by regulation, prescribe annual fees to be paid by licensees and  
 1156 registrants, which fees shall be set at levels necessary to defray costs and expenses incurred  
 1157 by the state in providing the examinations and supervision required by this article and its  
 1158 federally mandated participation in the Nationwide Mortgage Licensing System and  
 1159 Registry, and which fees may vary according to whether a person is a licensee or registrant  
 1160 or is a mortgage loan originator, mortgage broker, or a mortgage lender ~~and according to~~  
 1161 ~~the class of license issued to a mortgage broker or mortgage lender.~~

1162 (b)(1) As used in this subsection, the term 'collecting agent' means the person listed as  
 1163 the secured party on a security deed or other loan document that establishes a lien on the  
 1164 residential real property taken as collateral at the time of the closing of the mortgage loan  
 1165 transaction.

1166 (2) There shall be imposed on the closing of every mortgage loan subject to regulation  
 1167 under this article which, as defined in Code Section 7-1-1000, includes all mortgage  
 1168 loans, whether or not closed by a mortgage broker or mortgage lender licensee or  
 1169 registrant, a fee of \$6.50. The fee shall be paid by the borrower to the collecting agent  
 1170 at the time of closing of the mortgage loan transaction. The collecting agent shall remit  
 1171 the fee to the department at the time and in the manner specified by regulation of the  
 1172 department. Revenue collected by the department pursuant to this subsection shall be  
 1173 deposited in the general fund of the state.

1174 (3) The fee imposed by this subsection shall be a debt from the borrower to the collecting  
 1175 agent until such assessment is paid and shall be recoverable at law in the same manner  
 1176 as authorized for the recovery of other debts. Any collecting agent who neglects, fails,

1177 or refuses to collect the fee imposed by this subsection shall be liable for the payment of  
1178 the fee.

1179 7-1-1012.

1180 Without limitation on the power conferred by Article 1 of this chapter, the department may  
1181 make reasonable rules and regulations, not inconsistent with law, for the enforcement of  
1182 this article, to effectuate the purposes of this article, and to clarify the meaning of terms.

1183 7-1-1013.

1184 It ~~is~~ shall be prohibited for any person transacting a mortgage business in or from this state,  
1185 including any person required to be licensed or registered under this article and any person  
1186 exempted from the licensing or registration requirements of this article under Code Section  
1187 7-1-1001, to:

1188 (1) Misrepresent the material facts, make false statements or promises, or submit false  
1189 statements or documents likely to influence, persuade, or induce an applicant for a  
1190 mortgage loan, a mortgagee, or a mortgagor to take a mortgage loan, or, through agents  
1191 or otherwise, pursue a course of misrepresentation by use of fraudulent or unauthorized  
1192 documents or other means to the department or anyone;

1193 (2) Misrepresent or conceal or cause another to misrepresent or conceal material factors,  
1194 terms, or conditions of a transaction to which a mortgage lender or broker is a party,  
1195 pertinent to an applicant or application for a mortgage loan or a mortgagor;

1196 (3) Fail to disburse funds in accordance with a written commitment or agreement to  
1197 make a mortgage loan;

1198 (4) Improperly refuse to issue a satisfaction of a mortgage loan;

1199 (5) Fail to account for or deliver to any person any personal property obtained in  
1200 connection with a mortgage loan such as money, funds, deposit, check, draft, mortgage,  
1201 or other document or thing of value which has come into the possession of ~~the mortgage~~  
1202 ~~lender or broker~~ a licensee or registrant and which is not the property of the ~~mortgage~~  
1203 ~~lender or broker~~ licensee or registrant, or which the mortgage lender or broker is not in  
1204 law or at equity entitled to retain;

1205 (6) Engage in any transaction, practice, or course of business which is not in good faith  
1206 or fair dealing, or which operates a fraud upon any person, in connection with the  
1207 attempted or actual making of, purchase of, transfer of, or sale of any mortgage loan;

1208 (7) Engage in any fraudulent home mortgage underwriting practices;

1209 (8) Induce, require, or otherwise permit the applicant for a mortgage loan or mortgagor  
1210 to sign a security deed, note, loan application, or other pertinent financial disclosure  
1211 documents with any blank spaces to be filled in after it has been signed, except blank

1212 spaces relating to recording or other incidental information not available at the time of  
1213 signing;

1214 (9) Make, directly or indirectly, any residential mortgage loan with the intent to foreclose  
1215 on the borrower's property. For purposes of this paragraph, there is shall be a  
1216 presumption that a person has made a residential mortgage loan with the intent to  
1217 foreclose on the borrower's property if the following circumstances can be demonstrated:

1218 (A) Lack of substantial benefit to the borrower;

1219 (B) Lack of probability of full payment of the loan by the borrower; and

1220 (C) A significant proportion of similarly foreclosed loans by such person;

1221 (10) Provide an extension of credit or collect a mortgage debt by extortionate means; or

1222 (11) Purposely withhold, delete, destroy, or alter information requested by an examiner  
1223 of the department or make false statements or material misrepresentations to the  
1224 department or the Nationwide Mortgage Licensing System and Registry or in connection  
1225 with any investigation conducted by the department or another governmental agency.

1226 7-1-1014.

1227 In addition to such other rules, regulations, and policies as the department may promulgate  
1228 to effectuate the purposes of this article, the department shall promulgate regulations  
1229 governing the disclosure required to be made to applicants for mortgage loans, including,  
1230 without limitation, the following requirements:

1231 (1) Any person required to be licensed or registered under this article shall provide to  
1232 each applicant for a mortgage loan prior to accepting an application fee or any third-party  
1233 fee such as a property appraisal fee, credit report fee, or any other similar fee a disclosure  
1234 of the fees payable and the conditions under which such fees may be refundable;

1235 (2) Any mortgage lender required to be licensed or registered under this article shall  
1236 make available to each applicant for a mortgage loan at or before the time a commitment  
1237 to make a mortgage loan is given a written disclosure of the fees to be paid in connection  
1238 with the commitment and the loan, or the manner in which such fees shall be determined  
1239 and the conditions under which such fees may be refundable; and

1240 (3) Any mortgage lender required to be licensed or registered under this article shall  
1241 disclose to each borrower of a mortgage loan that failure to meet every condition of the  
1242 mortgage loan may result in the loss of the borrower's property through foreclosure. The  
1243 borrower shall be required to sign the disclosure at or before the time of the closing of the  
1244 mortgage loan.

1245 The department may prescribe standards regarding the accuracy of required disclosures and  
1246 may provide for applicable administrative or civil penalties or fines for failure to provide  
1247 the disclosures or to meet the prescribed standards.

1248 7-1-1015.

1249 The department may promulgate rules with respect to the placement in escrow accounts by  
 1250 any person required to be licensed or registered by this article of any money, fund, deposit,  
 1251 check, or draft entrusted to it by any persons dealing with it as a residential mortgage loan  
 1252 originator, mortgage broker, mortgage lender, or servicer.

1253 7-1-1016.

1254 In addition to such other rules, regulations, and policies as the department may promulgate  
 1255 to effectuate the purpose of this article, the department shall prescribe regulations  
 1256 governing the advertising of mortgage loans, including, without limitation, the following  
 1257 requirements:

1258 (1)(A) Advertisements for loans regulated under this article ~~may~~ shall not be false,  
 1259 misleading, or deceptive. No person whose activities are regulated under this article  
 1260 ~~may~~ shall advertise in any manner so as to indicate or imply that its interest rates or  
 1261 charges for loans are in any way 'recommended,' 'approved,' 'set,' or 'established' by the  
 1262 state or this article;

1263 (B) An advertisement shall not include an individual's loan number, loan amount, or  
 1264 other publicly available information unless it is clearly and conspicuously stated in  
 1265 ~~bold-faced~~ boldface type at the beginning of the advertisement that the person  
 1266 disseminating it is not authorized by, in sponsorship with, or otherwise affiliated with  
 1267 the individual's lender, which shall be identified by name. Such an advertisement shall  
 1268 also state that the loan information contained therein was not provided by the recipient's  
 1269 lender;

1270 (2) All advertisements, including websites, disseminated by a licensee or a registrant in  
 1271 this state by any means shall contain the name, license number, Nationwide Mortgage  
 1272 Licensing System and Registry unique identifier, and an office address of such licensee  
 1273 or registrant, which shall conform to a name and address on record with the department;  
 1274 and

1275 (3) No mortgage broker or mortgage lender licensee shall advertise its services in  
 1276 Georgia in any media disseminated in this state, whether print or electronic, without the  
 1277 words 'Georgia Residential Mortgage Licensee' or, for those advertisers licensed in more  
 1278 than one state, a listing of Georgia as a state in which the advertiser is licensed.

1279 7-1-1017.

1280 (a)(1) The department may suspend or revoke an original or renewal license, registration,  
 1281 or mortgage broker education approval on any ground on which it might refuse to issue  
 1282 an original license, registration, or approval or for a violation of any provision of this

1283 article or of Chapter 6A of this title or any rule or regulation issued under this article or  
1284 under Chapter 6A of this title, including failure to provide fees on a timely basis, or for  
1285 failure of the licensee or registrant to pay, within 30 days after it becomes final, a  
1286 judgment recovered in any court within this state by a claimant or creditor in an action  
1287 arising out of the licensee's or registrant's business in this state as a mortgage loan  
1288 originator, mortgage lender, or mortgage broker or for violation of a final order  
1289 previously issued by the department.

1290 (2) Where an applicant or licensee has been found not in compliance with an order for  
1291 child support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action ~~is~~ shall be  
1292 sufficient grounds for refusal of a license or suspension of a license. In such actions, the  
1293 hearing and appeal procedures provided for in those Code sections shall be the only such  
1294 procedures required under this article. The department shall be permitted to share,  
1295 without liability, information on its applications or other forms with appropriate state  
1296 agencies to assist them in recovering child support when required by law.

1297 (3) Where an applicant or licensee has been found to be a borrower in default as  
1298 provided in Code Section 20-3-295, such action ~~is~~ shall be sufficient grounds for refusal  
1299 of a license or suspension of a license. In such actions, the hearing and appeal procedures  
1300 provided for in Code Section 20-3-295 shall be the only such procedures required under  
1301 this article.

1302 (b) Notice of the department's intention to enter an order denying an application for a  
1303 license or registration under this article or of an order suspending or revoking a license or  
1304 registration under this article shall be given to the applicant, licensee, or registrant in  
1305 writing, sent by registered or certified mail or statutory overnight delivery addressed to the  
1306 principal place of business of such applicant, licensee, or registrant. Within 20 days of the  
1307 date of the notice of intention to enter an order of denial, suspension, or revocation under  
1308 this article, the applicant, licensee, or registrant may request in writing a hearing to contest  
1309 the order. If a hearing is not requested in writing within 20 days of the date of such notice  
1310 of intention, the department shall enter a final order regarding the denial, suspension, or  
1311 revocation. Any final order of the department denying, suspending, or revoking a license  
1312 or registration shall state the grounds upon which it is based and shall be effective on the  
1313 date of issuance. A copy thereof shall be forwarded promptly by registered or certified  
1314 mail or statutory overnight delivery addressed to the principal place of business of such  
1315 applicant, licensee, or registrant. If a person refuses to accept service of the notice or order  
1316 by registered or certified mail or statutory overnight delivery, the notice or order shall be  
1317 served by the commissioner or the commissioner's authorized representative under any  
1318 other method of lawful service; and the person shall be personally liable to the  
1319 commissioner for a sum equal to the actual costs incurred to serve the notice or order. This

1320 liability shall be paid upon notice and demand by the commissioner or the commissioner's  
1321 representative and shall be assessed and collected in the same manner as other fees or fines  
1322 administered by the commissioner.

1323 (c) A licensee or registrant may, at the discretion of and with the consent of the  
1324 department, agree to a voluntary suspension of its license or registration for a period of  
1325 time to be agreed upon by the parties. Such order of suspension shall be considered a final  
1326 order and shall be forwarded to the licensee or registrant in the same manner as any other  
1327 final order. Grounds for such a voluntary suspension shall be the same as provided in  
1328 subsection (a) of this Code section, and the licensee or registrant may waive its right to an  
1329 administrative hearing before issuance of the suspension. With the consent of the  
1330 department, a licensee or registrant may voluntarily surrender its license or registration.  
1331 A voluntary surrender of a license or registration shall have the same effect as a revocation  
1332 of said license or registration. A voluntary surrender of a license shall be regarded as a  
1333 final order of the department.

1334 (d) A decision of the department denying a license or registration application, original or  
1335 renewal, shall be conclusive, except that it may be subject to judicial review under Code  
1336 Section 7-1-90. A decision of the department suspending or revoking a license or  
1337 registration shall be subject to judicial review in the same manner as a decision of the  
1338 department to take possession of the assets and business of a bank under Code Section  
1339 7-1-155.

1340 (e) Except as otherwise provided by law, a revocation, suspension, or surrender of a  
1341 license or registration shall not impair or affect the obligation of a preexisting contract  
1342 between the licensee and another person.

1343 (f) Nothing in this article shall preclude a ~~person~~ mortgage broker or mortgage lender  
1344 whose license or registration has been suspended or revoked from continuing to service  
1345 mortgage loans pursuant to servicing contracts in existence at the time of the suspension  
1346 or revocation for a period not to exceed six months after the date of the final order of the  
1347 department suspending or revoking the license or registration.

1348 (g) Whenever a person subject to an order of the department fails to comply with the terms  
1349 of such order which has been properly issued, the department upon notice of three days to  
1350 such person may, through the Attorney General, petition the principal court for an order  
1351 directing such person to obey the order of the department within the period of time fixed  
1352 by the court. Upon the filing of such petition, the court shall allow a motion to show cause  
1353 why such motion should not be granted. Whenever, after a hearing upon the merits or after  
1354 failure of such person to appear when ordered, it shall appear that the order of the  
1355 department was properly issued, the court shall grant the petition of the department.

1356 (h) Whenever the department initiates an administrative action against a current licensee,  
1357 the department may pursue that action to its conclusion despite the fact that a licensee may  
1358 withdraw its license or fail to renew it.

1359 7-1-1018.

1360 (a) Whenever it shall appear to the department that any person required to be licensed or  
1361 registered ~~or required to file a notification statement~~ under this article or employed by a  
1362 licensee ~~or registrant pursuant to Code Section 7-1-1001~~ or who would be covered by the  
1363 prohibitions in Code Section 7-1-1013 has violated any law of this state or any order or  
1364 regulation of the department, the department may issue an initial written order requiring  
1365 such person to cease and desist immediately from such unauthorized practices. Such cease  
1366 and desist order shall be final 20 days after it is issued unless the person to whom it is  
1367 issued makes a written request within such 20 day period for a hearing. The hearing shall  
1368 be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative  
1369 Procedure Act.' A cease and desist order to an unlicensed person that orders them to cease  
1370 doing a mortgage business without the appropriate license shall be final 30 days from the  
1371 date of issuance, and there shall be no opportunity for an administrative hearing. If the  
1372 proper license or evidence of exemption or valid employment status during the time of the  
1373 alleged offense is delivered to the department within the 30 day period, the order shall be  
1374 rescinded by the department. If a cease and desist order is issued to a person who has been  
1375 sent a notice of bond cancellation and if the bond is reinstated or replaced and such  
1376 documentation is delivered to the department within the 30 day period following the date  
1377 of issuance of the order, the order shall be rescinded. If the notice of reinstatement of the  
1378 bond is not received within the 30 days, the license shall expire at the end of the 30 day  
1379 period, and the person shall be required to make a new application for license and pay the  
1380 applicable fees. In the case of an unlawful purchase of mortgage loans, such initial cease  
1381 and desist order to a purchaser shall constitute the knowledge required under subsection (b)  
1382 of Code Section 7-1-1002 for any subsequent violations. Any cease and desist order sent  
1383 to the person at both his or her personal and business addresses pursuant to this Code  
1384 section that is returned to the department as 'refused' or 'unclaimed' shall be deemed as  
1385 received and sufficiently served.

1386 (b) Whenever a person shall fail to comply with the terms of an order of the department  
1387 which has been properly issued under the circumstances, the department, upon notice of  
1388 three days to such person, may, through the Attorney General, petition the principal court  
1389 for an order directing such person to obey the order of the department within the period of  
1390 time as shall be fixed by the court. Upon the filing of such petition, the court shall allow  
1391 a motion to show cause why it should not be granted. Whenever, after a hearing upon the

1392 merits or after failure of such person to appear when ordered, it shall appear that the order  
 1393 of the department was properly issued, the court shall grant the petition of the department.

1394 (c) Any person who violates the terms of any order issued pursuant to this Code section  
 1395 shall be liable for a civil penalty not to exceed \$1,000.00. Each day during which the  
 1396 violation continues shall constitute a separate offense. In determining the amount of  
 1397 penalty, the department shall take into account the appropriateness of the penalty relative  
 1398 to the size of the financial resources of such person, the good faith efforts of such person  
 1399 to comply with the order, the gravity of the violation, the history of previous violations by  
 1400 such person, and such other factors or circumstances as shall have contributed to the  
 1401 violation. The department may at its discretion compromise, modify, or refund any penalty  
 1402 which is subject to imposition or has been imposed pursuant to this Code section. Any  
 1403 person assessed as provided in this subsection shall have the right to request a hearing into  
 1404 the matter within ten days after notification of the assessment has been served upon the  
 1405 person involved; otherwise, such penalty shall be final except as to judicial review as  
 1406 provided in Code Section 7-1-90.

1407 (d) Initial judicial review of the decision of the department entered pursuant to this Code  
 1408 section or Code Section 7-1-1017 shall be available solely in the superior court of the  
 1409 county of domicile of the department.

1410 (e) All penalties and fines recovered by the department as authorized by subsection (g) of  
 1411 this Code section shall be paid into the state treasury to the credit of the general fund;  
 1412 provided, however, that the department at its discretion may remit such amounts recovered,  
 1413 net of the cost of recovery, if it makes an accounting of all such costs and expenses of  
 1414 recovery in the same manner as prescribed for judgments received through derivative  
 1415 actions pursuant to the provisions of Code Section 7-1-441.

1416 (f) For purposes of this Code section, the term 'person' also includes any officer, director,  
 1417 employee, agent, or other person participating in the conduct of the affairs of the person  
 1418 subject to the orders issued pursuant to this Code section.

1419 (g) In addition to any other administrative penalties authorized by this article, the  
 1420 department may, by regulation, prescribe administrative fines for violations of this article  
 1421 and of any rules promulgated by the department pursuant to this article.

1422 7-1-1019.

1423 Any person and the several members, officers, directors, agents, and employees thereof  
 1424 who:

1425 (1) Shall violate the provisions of subsection (a) of Code Section 7-1-1002, by the willful  
 1426 transaction of a mortgage business without a license or exemption, shall be guilty of a  
 1427 felony punishable as provided in Code Section 7-1-845; or

1428 (2) Shall violate any of the other provisions of this article shall be guilty of a  
1429 misdemeanor and shall be punished by imprisonment for not more than one year or by  
1430 a fine of not more than \$1,000.00, or by both fine and imprisonment.

1431 7-1-1020.

1432 Nothing in this article ~~limits~~ shall limit any statutory or common law right of any person  
1433 to bring any action in any court for any act involved in the mortgage business or the right  
1434 of the state to punish any person for any violation of any law. Without limiting the  
1435 generality of the foregoing, nothing in this article shall be construed as limiting in any  
1436 manner the application of Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair Business  
1437 Practices Act of 1975.'

1438 7-1-1021.

1439 The department may promulgate regulations governing the use and contents of lock-in  
1440 agreements and commitment agreements."

1441 **SECTION 2.**

1442 This Act shall become effective on July 1, 2009.

1443 **SECTION 3.**

1444 All laws and parts of laws in conflict with this Act are repealed.