

**RULES OF THE ARKANSAS SECURITIES COMMISSIONER UNDER THE FAIR MORTGAGE LENDING ACT, ARK. CODE ANN. § 23-39-501, ET SEQ.**

**RULE 5005-1 FINANCIAL STATEMENT AND ACCOUNTS**

(1) Each applicant filing for initial licensure as a mortgage broker or renewal of a license as a mortgage broker shall file with the commissioner financial statements, which may be unaudited but shall consist of at least a balance sheet and income statement, prepared in accordance with generally accepted accounting principles, reflecting that the licensee has a net worth of at least twenty-five (\$25,000) dollars. These unaudited financial statements must be certified as true and correct by the president or chief financial officer of the mortgage broker on a form acceptable to the commissioner.

(2) If a mortgage broker is a sole proprietorship, a separate account shall be maintained relating to mortgage broker activities that is not commingled with any other business or personal account with respect to income and expenses.

**RULE 5010 LICENSEE DUTIES**

**RULE 5010-1 FINANCIAL PRIVACY**

(1) A licensee shall institute and utilize all reasonably necessary and prudent procedures and measures to protect a loan applicant's or borrower's financial information and social security number. Any unauthorized disclosure or breach of a loan applicant's or borrower's financial information or social security number shall be reported by the licensee from whom the information was obtained to the Commissioner within two business days following the date on which the licensee either discovered or, in the exercise of reasonable diligence, should have discovered the unauthorized disclosure or breach. The licensee shall use reasonable diligence to notify the applicant or borrower and all other affected persons of the unauthorized disclosure or breach within a reasonable time following the disclosure or breach.

**RULE 5010-2 DISCLOSURES AND CERTIFICATION**

(1) At or prior to the time of closing of a mortgage loan, the principal or branch manager of the mortgage broker that brokered the loan, or if none, the mortgage banker that is funding the loan, shall certify in a record to be included in the closing documents of the loan and retained in the records set forth in Rule 5011-1(2)(b), to each of the following:

(a) All transactions related to the loan transfer have been fully disclosed and all fees and costs have been documented and are reflected on the Form HUD-1 or other settlement statement, whether paid at closing or paid outside of closing.

(b) There are no split fees or shared commissions involved in the loan, other than those disclosed on the Form HUD-1 or other settlement statement, and no person is receiving any funds for services not actually rendered.

## **RULE 5011 RECORDS-ESCROW FUNDS OR TRUST ACCOUNTS**

### **RULE 5011-1 REQUIRED BOOKS AND RECORDS**

(1) In addition to any statutory or other requirement regarding records, each licensee shall maintain books, records and documents sufficient to allow the Commissioner to determine the licensee's compliance with the Act. Such records may be maintained in the form of magnetic tape, magnetic disk or other form of computer, electronic or microfilm media available for examination by computer printed reproduction, video display or other medium that is convertible into legible, tangible documents, and provided that the means to examine such records in a fashion acceptable to the Commissioner is available at the office of the licensee.

(a) The licensee shall maintain all records required by this Rule 5011-1 for at least five (5) years, and shall make them available to the Commissioner or his or her designee immediately upon request if the records are located on the premises at which a request for inspection is made or are otherwise readily available, or within seventy-two (72) hours after notice to the licensee if the records are located somewhere other than on the premises at which a request for inspection is made and are not readily available. All records required by this rule shall be available for inspection and copying at the expense of the licensee upon request by the Commissioner;

(b) All records required to be maintained shall be secured against unauthorized access and damage, and kept in either the licensee's principal place of business in Arkansas or in the licensee's home office unless the Commissioner approves, in writing, a different location. Each licensee shall notify the Commissioner at the time of application for licensure of the location of its books and records. In addition, a copy of the records set forth in subparagraphs (2)(a) and (2)(b) of this rule shall be maintained in the branch office where the loan was originated if different than the office or location in which all of the licensee's records are kept.

(c) All records required to be maintained shall at all times be true, accurate and complete to the best of the knowledge, information and belief of the licensee and its agents.

(d) A licensee shall notify the Commissioner of any change in the location of its books and records within 30 days following such change.

(2) Such books, records and documents shall include, at a minimum, the following:

- (a) A list of all executed loan applications or executed fee agreements that includes the following information for each application or agreement:
- (i) The loan applicant's name;
  - (ii) The date of the loan application;
  - (iii) The amount of the initial loan request;
  - (iv) The final disposition of the loan application (whether funded, denied, etc.) and the date of such disposition; and
  - (v) The name of each loan officer or employee, including any employee processing the application or offering the fee agreement, who receives compensation other than such person's normal hourly wages as a result of the funding of the loan.
- (b) A file for each application for a mortgage loan containing:
- (i) The agreement with the customer concerning the licensee's services, whether a loan application or fee agreement, including commitment and lock-in agreements where applicable;
  - (ii) A document showing the final disposition of the application, such as a settlement statement or denial or withdrawal letter;
  - (iii) All material correspondence sent or received by the licensee to or from the borrower or any agent of the borrower;
  - (iv) A copy of the initial and all subsequent loan applications, including the final loan application that is signed and dated by the loan applicant and the loan officer;
  - (v) All contracts, agreements, and escrow instructions to or with any depository institution;
  - (vi) Documents showing compliance with the Consumer Credit Protection Act disclosure requirements (15 U.S.C. §§ 1601 through 1666j) and the Real Estate Settlement Procedures Act disclosure requirements (12 U.S.C. §§ 2601 through 2617), to the extent applicable;
  - (vii) A copy of all closing documents including the closing instructions, any applicable rescission notice, Form HUD-1, other settlement statement, final truth-in-lending disclosure, executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee; and
  - (viii) A copy of each disclosure document and evidence of delivery required by Rule 5010-2(1).
- (c) A record, such as a cash receipts journal, of all money received in connection with each mortgage loan showing at least:
- (i) The payor's name;
  - (ii) The date received;
  - (iii) The amount; and
  - (iv) The purpose of the receipt including identification of each mortgage loan.

(d) A general ledger which shows a description and the balance of each of the licensee's asset accounts, liability accounts, equity accounts, income accounts and expense accounts.

(e) A general journal in which all entries to the general ledger, other than those posted in the cash disbursement journal and cash receipts journal, are posted.

(f) A sequential listing of checks written for each bank account, such as a cash disbursement journal, relating to the licensee's business as a mortgage loan broker, mortgage loan banker, or mortgage loan servicer showing at least:

- (i) The payee's name;
- (ii) The amount;
- (iii) The date; and
- (iv) The purpose of the payment including identification of each related loan.

(g) Bank activity source documents for the licensee's business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, wire transfer receipts and bank advices.

(h) An escrow and/or trust subsidiary ledger for each borrower that deposits trust funds showing:

- (i) The borrower's name or co-borrowers' names;
- (ii) The loan number, if any;
- (iii) The amount received;
- (iv) The purpose for the amount received;
- (v) The date received;
- (vi) The date deposited into the trust account;
- (vii) The amount disbursed;
- (viii) The date disbursed;
- (ix) The payee of such disbursement;
- (x) The purpose of such disbursement and
- (xi) The balance.

(i) A copy of all written advertising relating to the licensee's business in Arkansas that sets forth any rate or terms of a mortgage loan.

(j) A copy of all federal or state governmental or regulatory reviews or examination reports.

(k) If the licensee is not a natural person, a file containing:

- (i) A copy of the organizational documents for the licensee with any amendments thereto;
- (ii) All minutes of meetings of directors, shareholders, partners, or similar parties;

(iii) If the licensee is a non-public company, a record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and  
(vi) All Franchise Tax Reports or Annual Reports required by law to be filed with the Arkansas Secretary of State.

(l) A copy of each broker agreement or independent contractor agreement that has been entered into with an investor or organization that funds the loans;

(m) A copy of each employment agreement or independent contractor agreement that has been entered into with each loan officer licensed under the licensee.

(n) A file containing copies of all complaint letters or correspondence received containing all complaints made against the licensee, its loan officers, employees, or agents by borrowers, loan applicants, lenders, or any other person. In addition to the home office of the licensee, each branch office shall maintain this complaint file for all complaints involving all business conducted through the branch or by loan officers operating under the supervision of the branch.

(o) A balance sheet and income statement prepared in accordance with generally accepted accounting principles reflecting that the licensee has a net worth of at least twenty-five thousand (\$25,000) dollars.

(3) All of the books and records set forth in subparagraph (2) above shall be kept current on at least a monthly basis, except those set forth in subparagraph (2)(o), which shall be prepared and kept current on at least a quarterly basis;

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**RULE 5001 TITLE - RESERVED**

**RULE 5002 DEFINITIONS**

When the terms listed below are used in the Fair Mortgage Lending Act, any rules or forms promulgated under the Fair Mortgage Lending Act, or any order of the Commissioner under the Fair Mortgage Lending Act, the following definitions shall apply, unless a contrary definition is expressly provided or clearly required by the context, to the extent that they do not conflict with the definitions set forth in the Fair Mortgage Lending Act.

- (1) Act. The term “Act” as used in these Rules means the Fair Mortgage Lending Act, Ark. Code Ann. § 23-39-501 et seq., as the same may be codified and amended from time to time.
- (2) Continuing education program. The phrase "Continuing education program" means a classroom education program approved pursuant to Rule 5007 of these Rules.
- (3) Instructor. The term "Instructor" means an individual who is employed by a provider and who is responsible for teaching a continuing education program.
- (4) Provider. The term “Provider” means a business corporation or entity, professional organization, trade association, government entity, educational institution, or non-profit organization that offers approved continuing education programs under these Rules.

**RULE 5003 LICENSE REQUIRED – LICENSEE RECORDS - RESERVED**

**RULE 5004 RULEMAKING AUTHORITY - RESERVED**

**RULE 5005 QUALIFICATIONS FOR LICENSURE-ISSUANCE**

**RULE 5005-1 FINANCIAL STATEMENT AND ACCOUNTS**

- (1) Each applicant filing for initial licensure as a mortgage broker or renewal of a license as a mortgage broker shall file with the commissioner financial statements, which may be unaudited but shall consist of at least a balance sheet and income statement, prepared in accordance with generally accepted accounting principles, reflecting that the licensee has a net worth of at least twenty-five (\$25,000) dollars. These unaudited financial statements must be certified as true and correct by the president or chief financial officer of the mortgage broker on a form acceptable to the commissioner.

(2) If a mortgage broker is a sole proprietorship, a separate account shall be maintained relating to mortgage broker activities that is not commingled with any other business or personal account with respect to income and expenses.

## **RULE 5006 LICENSE RENEWAL-TERMINATION – RESERVED**

### **RULE 5007-1 CONTINUING EDUCATION**

(1) Beginning with the calendar year 2007, all loan officers that have held a loan officer license for a period, whether consecutive or not, of one hundred eighty (180) days or more, during the calendar year for which continuing education hours are required shall complete eight (8) hours of continuing education annually, at least one (1) hour of which shall be on mortgage industry ethics, by December 31; provided, however, that any continuing education approved by the Commissioner and completed during calendar year 2006 may be applied toward the 2007 requirement.

(a) an hour of continuing education shall consist of course instruction of fifty (50) minutes;

(b) if a licensee acquires in excess of eight (8) approved continuing education hours in one calendar year, the excess credit may be carried forward and applied to the continuing education requirement for the next calendar year only up to a maximum of eight (8) hours.

(2) A licensee shall receive credit for participation in a program if it is presented by a provider approved by the Commissioner and the Commissioner has approved the program pursuant to this Rule. The Commissioner shall make available to the public a current listing of approved providers and programs.

(3) Any provider desiring to conduct a continuing education program for which credit is to be awarded shall do the following:

(a) at least forty-five (45) days prior to the first date of the program, request that the Commissioner approve the provider's qualifications and approve each program to be offered.

(b) submit an application which includes the following information:

(i) the name and address of the provider;

(ii) the date(s) and location(s) at which the program is to be offered;

(iii) the qualifications and experience of the provider's principal officers, staff, and instructor(s);

(iv) the costs of all programs for which approval is sought; and

(v) a description of each program for which approval is sought, and if requested by the Staff, a copy of all course materials to be provided in connection with the program.

(4) A prospective provider may be approved if the Commissioner determines that its general business experience, knowledge of, and reputation and experience in the mortgage lending and brokerage industries, experience in the provision of professional educational presentations and the quality of such presentations, when taken together,

warrant a belief that its continuing education programs will enhance the professional knowledge or development of individuals participating in the program.

(5) Continuing education programs for loan officers must provide basic, fundamental information and also enhance the existing professional competence of the target group of licensees by providing updated information or more detailed or narrowly focused information.

(6) The Commissioner's approval of any provider or program shall expire on December 31 of each year.

(7) Upon written request and receipt of an extension fee of fifty dollars (\$50.00), the Commissioner may allow an extension of up to one hundred eighty (180) days beyond December 31 in order to allow a loan officer to obtain continuing education hours and meet the requirements of this rule.

(8) The Commissioner may deny or revoke approval of any provider or any individual program upon a finding that the provider has refused or failed to comply with any applicable provision of these Rules or of any condition imposed by the Commissioner, or has refused or failed to submit in a timely manner information or properly completed forms prescribed by the Commissioner.

(9) The Commissioner may, for good cause shown, waive or modify, in part or in whole, any of the requirements set forth above.

## **RULE 5007-2 REQUIREMENTS FOR PROVIDERS**

(1) A provider shall designate one person as its contact person who shall be available to the Commissioner during ordinary business hours and shall be knowledgeable and have authority to act with regard to all administrative matters concerning instructors, scheduling, advertising, recordkeeping, and supervising all programs offered by the provider.

(2) Providers shall take reasonable steps to ensure that each loan officer attending a continuing education program offered by the provider is actually present for the number of hours claimed by the loan officer.

(3) Within thirty (30) days following the conclusion of the program, the provider will furnish to the Commissioner in a form acceptable to the Commissioner a listing of each loan officer attending the program and the number of continuing education hours to which each loan officer is entitled. Such listing shall include information sufficient to allow the loan officers to be identified, and shall be certified by the provider to be accurate to the best of the provider's knowledge and belief.

(4) Providers shall retain the following material from each program on file for a minimum of three years: class schedules; advertisements; bulletins, catalogues, and other



publications distributed to attendees; a list of attendees' names with information sufficient to allow each attendee to be identified; and the name of the instructor. All files shall be made available to the Commissioner upon request.

(5) A provider shall not use any words, symbols or other means to indicate that either the provider or a program has received the Commissioner's approval unless such approval has been issued and remains in effect.

## **RULE 5008 MANAGING PRINCIPALS AND BRANCH MANAGERS - RESERVED**

## **RULE 5009 OFFICES-ADDRESS CHANGES-LOCATION OF RECORDS – RESERVED**

## **RULE 5010 LICENSEE DUTIES**

### **RULE 5010–1 FINANCIAL PRIVACY**

(1) A licensee shall institute and utilize all reasonably necessary and prudent procedures and measures to protect a loan applicant's or borrower's financial information and social security number. Any unauthorized disclosure or breach of a loan applicant's or borrower's financial information or social security number shall be reported by the licensee from whom the information was obtained to the Commissioner within two business days following the date on which the licensee either discovered or, in the exercise of reasonable diligence, should have discovered the unauthorized disclosure or breach. The licensee shall use reasonable diligence to notify the applicant or borrower and all other affected persons of the unauthorized disclosure or breach within a reasonable time following the disclosure or breach.

### **RULE 5010–2 DISCLOSURES AND CERTIFICATION**

(1) At or prior to the time of closing of a mortgage loan, the principal or branch manager of the mortgage broker that brokered the loan, or if none, the mortgage banker that is funding the loan, shall certify in a record to be included in the closing documents of the loan and retained in the records set forth in Rule 5011-1(2)(b), to each of the following:

(a) All transactions related to the loan transfer have been fully disclosed and all fees and costs have been documented and are reflected on the Form HUD–1 or other settlement statement, whether paid at closing or paid outside of closing.

(b) There are no split fees or shared commissions involved in the loan, other than those disclosed on the Form HUD–1 or other settlement statement, and no person is receiving any funds for services not actually rendered.

## **RULE 5011 RECORDS-ESCROW FUNDS OR TRUST ACCOUNTS**

## **RULE 5011-1 REQUIRED BOOKS AND RECORDS**

(1) In addition to any statutory or other requirement regarding records, each licensee shall maintain books, records and documents sufficient to allow the Commissioner to determine the licensee's compliance with the Act. Such records may be maintained in the form of magnetic tape, magnetic disk or other form of computer, electronic or microfilm media available for examination by computer printed reproduction, video display or other medium that is convertible into legible, tangible documents, and provided that the means to examine such records in a fashion acceptable to the Commissioner is available at the office of the licensee.

(a) The licensee shall maintain all records required by this Rule 5011-1 for at least five (5) years, and shall make them available to the Commissioner or his or her designee immediately upon request if the records are located on the premises at which a request for inspection is made or are otherwise readily available, or within seventy-two (72) hours after notice to the licensee if the records are located somewhere other than on the premises at which a request for inspection is made and are not readily available. All records required by this rule shall be available for inspection and copying at the expense of the licensee upon request by the Commissioner;

(b) All records required to be maintained shall be secured against unauthorized access and damage, and kept in either the licensee's principal place of business in Arkansas or in the licensee's home office unless the Commissioner approves, in writing, a different location. Each licensee shall notify the Commissioner at the time of application for licensure of the location of its books and records. In addition, a copy of the records set forth in subparagraphs (2)(a) and (2)(b) of this rule shall be maintained in the branch office where the loan was originated if different than the office or location in which all of the licensee's records are kept.

(c) All records required to be maintained shall at all times be true, accurate and complete to the best of the knowledge, information and belief of the licensee and its agents.

(d) A licensee shall notify the Commissioner of any change in the location of its books and records within 30 days following such change.

(2) Such books, records and documents shall include, at a minimum, the following:

(a) A list of all executed loan applications or executed fee agreements that includes the following information for each application or agreement:

- (i) The loan applicant's name;
- (ii) The date of the loan application;
- (iii) The amount of the initial loan request;
- (iv) The final disposition of the loan application (whether funded, denied, etc.) and the date of such disposition; and

(v) The name of each loan officer or employee, including any employee processing the application or offering the fee agreement, who receives compensation other than such person's normal hourly wages as a result of the funding of the loan.

(b) A file for each application for a mortgage loan containing:

- (i) The agreement with the customer concerning the licensee's services, whether a loan application or fee agreement, including commitment and lock-in agreements where applicable;
- (ii) A document showing the final disposition of the application, such as a settlement statement or denial or withdrawal letter;
- (iii) All material correspondence sent or received by the licensee to or from the borrower or any agent of the borrower;
- (iv) A copy of the initial and all subsequent loan applications, including the final loan application that is signed and dated by the loan applicant and the loan officer;
- (v) All contracts, agreements, and escrow instructions to or with any depository institution;
- (vi) Documents showing compliance with the Consumer Credit Protection Act disclosure requirements (15 U.S.C. §§ 1601 through 1666j) and the Real Estate Settlement Procedures Act disclosure requirements (12 U.S.C. §§ 2601 through 2617), to the extent applicable;
- (vii) A copy of all closing documents including the closing instructions, any applicable rescission notice, Form HUD-1, other settlement statement, final truth-in-lending disclosure, executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee; and
- (viii) A copy of each disclosure document and evidence of delivery required by Rule 5010-2(1).

(c) A record, such as a cash receipts journal, of all money received in connection with each mortgage loan showing at least:

- (i) The payor's name;
- (ii) The date received;
- (iii) The amount; and
- (iv) The purpose of the receipt including identification of each mortgage loan.

(d) A general ledger which shows a description and the balance of each of the licensee's asset accounts, liability accounts, equity accounts, income accounts and expense accounts.

(e) A general journal in which all entries to the general ledger, other than those posted in the cash disbursement journal and cash receipts journal, are posted.

- (f) A sequential listing of checks written for each bank account, such as a cash disbursement journal, relating to the licensee's business as a mortgage loan broker, mortgage loan banker, or mortgage loan servicer showing at least:
- (i) The payee's name;
  - (ii) The amount;
  - (iii) The date; and
  - (iv) The purpose of the payment including identification of each related loan.
- (g) Bank activity source documents for the licensee's business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, wire transfer receipts and bank advices.
- (h) An escrow and/or trust subsidiary ledger for each borrower that deposits trust funds showing:
- (i) The borrower's name or co-borrowers' names;
  - (ii) The loan number, if any;
  - (iii) The amount received;
  - (iv) The purpose for the amount received;
  - (v) The date received;
  - (vi) The date deposited into the trust account;
  - (vii) The amount disbursed;
  - (viii) The date disbursed;
  - (ix) The payee of such disbursement;
  - (x) The purpose of such disbursement and
  - (xi) The balance.
- (i) A copy of all written advertising relating to the licensee's business in Arkansas that sets forth any rate or terms of a mortgage loan.
- (j) A copy of all federal or state governmental or regulatory reviews or examination reports.
- (k) If the licensee is not a natural person, a file containing:
- (i) A copy of the organizational documents for the licensee with any amendments thereto;
  - (ii) All minutes of meetings of directors, shareholders, partners, or similar parties;
  - (iii) If the licensee is a non-public company, a record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
  - (vi) All Franchise Tax Reports or Annual Reports required by law to be filed with the Arkansas Secretary of State.
- (l) A copy of each broker agreement or independent contractor agreement that has been entered into with an investor or organization that funds the loans;

(m) A copy of each employment agreement or independent contractor agreement that has been entered into with each loan officer licensed under the licensee.

(n) A file containing copies of all complaint letters or correspondence received containing all complaints made against the licensee, its loan officers, employees, or agents by borrowers, loan applicants, lenders, or any other person. In addition to the home office of the licensee, each branch office shall maintain this complaint file for all complaints involving all business conducted through the branch or by loan officers operating under the supervision of the branch.

(o) A balance sheet and income statement prepared in accordance with generally accepted accounting principles reflecting that the licensee has a net worth of at least twenty-five thousand (\$25,000) dollars.

(3) All of the books and records set forth in subparagraph (2) above shall be kept current on at least a monthly basis, except those set forth in subparagraph (2)(o), which shall be prepared and kept current on at least a quarterly basis;

**RULE 5012 PUBLIC INSPECTION OF RECORDS-EXCEPTIONS - RESERVED**

**RULE 5013 PROHIBITED ACTIVITIES - RESERVED**

**RULE 5014 DISCIPLINARY AUTHORITY - RESERVED**

**RULE 5015 REVIEW OF ORDER OF THE COMMISSIONER - RESERVED**