

**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:

PROPOSED August 2, 2007

- (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 correspondence sent or received by the licensee;
  - (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 advertising relating to the licensee's business in Arkansas.
- (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;