



West's Code of Georgia Annotated [Currentness](#)

Title 7. Banking and Finance

[Chapter 1](#). Financial Institutions ([Refs & Annos](#))

[Article 13](#). Licensing of Mortgage Lenders and Mortgage Brokers ([Refs & Annos](#))

→ § 7-1-1000. Definitions

As used in this article, the term:

- (1) “Affiliate” or “person affiliated with” means, when used with reference to a specified person, a person who directly, indirectly, or through one or more intermediaries controls, is controlled by, or is under common control with the person specified. Any beneficial owner of 10 percent or more of the securities of a person or any executive officer, director, trustee, joint venturer, or general partner of a person is an affiliate of such person unless the shareholder, executive officer, director, trustee, joint venturer, or general partner shall prove that he or she in fact does not control, is not controlled by, or is not under common control with such person.
- (2) “Audited financial statement” means the product of the examination of financial statements in accordance with generally accepted auditing standards by an independent certified public accountant, which product consists of an opinion on the financial statements indicating their conformity with generally accepted accounting principles.
- (3) “Commissioner” means the commissioner of banking and finance.
- (4) “Commitment” or “commitment agreement” means a statement by a lender required to be licensed or registered under this article that sets forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower.
- (5) “Control,” including “controlling,” “controlled by,” and “under common control with,” means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting or nonvoting securities, by contract, or otherwise.
- (6) “Department” means the Department of Banking and Finance.
- (7) “Depository institution” has the same meaning as in Section 3 of the Federal Deposit Insurance Act, [12 U.S.C. Section 1813\(c\)](#), and includes any credit union.
- (8) “Dwelling” means a residential structure that contains one to four units, whether or not that structure is attached to real property pursuant to [Regulation Z Section 226.2\(a\)\(19\)](#). The term includes an individual condominium unit, cooperative unit, mobile home, and trailer if it is used as a residence.
- (9) “Executive officer” means the chief executive officer, the president, the principal financial officer, the principal operating officer, each vice president with responsibility involving policy-making functions for a significant aspect of a person's business, the secretary, the treasurer, or any other person performing similar managerial or supervisory functions with respect to any organization whether incorporated or unincorporated.
- (10) “Extortionate means” means the use or the threat of violence or other criminal means to cause harm to the

person, reputation of the person, or property of the person.

(11) “Federal banking agencies” means the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation. Such term shall also include the Board of Governors of the Federal Reserve System.

(12) “Georgia Residential Mortgage Act” means this article, which also includes certain provisions in order to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

(13) “Individual” means a natural person.

(14) “License” means a license issued by the department under this article to act as a mortgage loan originator, mortgage lender, or mortgage broker.

(15) “Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing. For purposes of this paragraph, “clerical or support duties” may include, subsequent to the receipt of an application, the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms. An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

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

(17) “Makes a mortgage loan” means to advance funds, offer to advance funds, or make a commitment to advance funds to an applicant for a mortgage loan.

(18) “Misrepresent” means to make a false statement of a substantive fact. Misrepresent may also mean to intentionally engage in any conduct which leads to a false belief which is material to the transaction.

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

(20) “Mortgage lender” means any person who directly or indirectly makes, originates, underwrites, or purchases mortgage loans or who services mortgage loans.

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

(22) “Mortgage loan originator” means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. Generally, this does not include an individual engaged solely as a loan processor or underwriter except as otherwise provided in paragraph (5) of subsection (a) of [Code Section 7-1-1002](#); a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Georgia law unless the person or entity is compensated by a mortgage lender, mortgage broker, or other mortgage loan originator or by any agent of such mortgage lender, mortgage broker, or other mortgage loan originator; and does not include a person or entity solely involved in extensions of credit relating to time-share plans, as that term is defined in [11 U.S.C. Section 101\(53D\)](#).

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

(24) “Nontraditional mortgage product” means any mortgage product other than a 30 year fixed rate mortgage.

(25) “Person” means any individual, sole proprietorship, corporation, limited liability company, partnership, trust, or any other group of individuals, however organized.

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

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

(A) A depository institution;

(B) A subsidiary that is:

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

(ii) Regulated by a federal banking agency; or

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

(28) “Registrant” means any person required to register pursuant to [Code Sections 7-1-1001](#) and [7-1-1003.2](#).

(29) “Residential property” means improved real property used or occupied, or intended to be used or occupied, as the primary residence of a natural person. Such term does not include rental property or second homes. A natural person can have only one primary residence.

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

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

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

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

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

CREDIT(S)

Laws 1993, p. 543, § 1; Laws 1994, p. 570, § 1; Laws 1996, p. 848, § 13; Laws 1997, p. 143, § 7; Laws 1997, p. 485, §§ 29, 30; Laws 2000, p. 174, § 22; [Laws 2005, Act 160, § 29, eff. May 5, 2005](#); [Laws 2005, Act 332, § 13, eff. July 1, 2005](#); [Laws 2009, Act 66, § 1, eff. July 1, 2009](#).

LAW REVIEW AND JOURNAL COMMENTARIES

Comment. [13 Ga. St. U. L. Rev. 17 \(1996\)](#).

LIBRARY REFERENCES

[Banks and Banking](#)6.

[Brokers](#)2, 3.

Westlaw Key Number Searches: 52k6; 65k2; 65k3.

[C.J.S. Banks and Banking §§ 15 to 18](#).

[C.J.S. Brokers §§ 2 to 6, 14 to 24](#).

RESEARCH REFERENCES

Forms

[2 Pindar's Ga. Real Estate Law & Proc. with Forms § 20-74](#), Licensing of Mortgage Lenders and Brokers.

Treatises and Practice Aids

Georgia Real Estate Finance and Foreclosure Law § 2-8, Mortgage Origination.

[Georgia Real Estate Sales Contracts § 10-1.7](#), Licensing of Mortgage Lenders and Brokers.

Ga. Code Ann., § 7-1-1000, GA ST § 7-1-1000

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