

I. Board Roles and Responsibilities

A. General

1. Establishment of the State Board of Financial Institutions

a) *The South Carolina State Board of Financial Institutions is organized pursuant to Title 34, Chapter 1 of the South Carolina Code of Laws and consists of an eleven-member regulatory and supervisory board (“Board”) as well as an agency of the State of South Carolina (“Agency”), collectively referred to herein as “BOFI.”*

b) *BOFI is formerly known as the South Carolina State Board of Bank Control and is occasionally referenced by this name in statute. All references to “the Board” in Title 34 of the South Carolina Code of Laws refer to the BOFI Board, except where context clearly indicates otherwise. S.C. Code § 34-1-10.*

2. Purpose of BOFI

a) *BOFI was established for the purpose of supervising, licensing, and examining all State-chartered banks, savings banks, credit unions, trust companies, non-depository mortgage lenders and servicers, savings and loan associations, building and loan associations, supervised lenders, restricted lenders, deferred presentment service providers and check cashing service providers. S.C. Code § 34-1-60; BOFI By-Laws, Art. I, § 2*

B. Divisions within the Agency

1. The Agency is comprised of two divisions: a Banking Division and a Consumer Finance Division. The Board appoints a Commissioner for each division who serves at the pleasure of the Board (together, the “Commissioners”). Each Commissioner, subject to the Board’s approval, may hire staff necessary to carry out his division’s responsibilities. S.C. Code §§ 34-1-80; 34-29-200; BOFI By-Laws, Art. IV, § 1.

a) *Banking Division: The Banking Division enforces statutory requirements for the establishment and supervision of state-chartered banks, savings and loan associations, savings banks, credit unions, and trust companies. S.C. Code Ann. §§ 34-1-60 to -80, 34-3-310, 34-26-200, 34-21-10 to -20. The Banking Division may also examine certain business development corporations. S.C. Code Ann. § 34-1-80.*

b) *Consumer Finance Division: The Consumer Finance Division is responsible for the licensing, supervision, and examination of supervised lenders, restricted lenders, deferred-presentment service providers, check-cashing service providers, mortgage lenders/servicers (including mortgage loan originators). S.C. Code Ann. §§ 34-29-10 to -260, 34-39-110 to 290, 34-41-10 to -130, 37-3-500 to -515, 37-22-110 to -270.*

C. Board Membership

1. Composition of the Board

a) Pursuant to S.C. Code § 34-1-20, the Board is composed of eleven members. The State Treasurer is an ex officio member and the chairman of the Board. The remaining ten members are appointed by the Governor, with the advice and consent of the State Senate. The ten appointed members of the board must be as follows:

- (1) Four members must be engaged in banking and recommended by the South Carolina Bankers Association;
- (2) One member must be recommended by the association of supervised lenders;¹
- (3) One member must be engaged in the mortgage lending business and recommended by the Mortgage Bankers Association of the Carolinas;
- (4) One member must be engaged in the licensed consumer finance business as a restricted lender or a supervised lender and recommended by the Independent Consumer Finance Association;
- (5) Two members must be engaged in the cooperative credit union business and recommended by the Carolinas Credit Union League; and
- (6) One member must be unaffiliated with a financial organization and serve as a representative of the consumers of the State.

b) *Term of Office*

- (1) Except for the Treasurer serving ex officio, each position on the Board has a pre-defined four-year term such that the expiration of such terms does not occur at the same time.
- (2) Members shall be appointed for a term of four years and shall serve until their successors are appointed and have qualified. Each member shall not serve more than two consecutive four-year terms. S.C. Code § 34-1-20; BOFI By-Laws, Art. II, § 2
- (3) A member who initially has served only a portion of an unexpired term may still serve up to two consecutive four-year terms. 2007 WL 3244889 (S.C.A.G).

c) *Commencement of the Term of Office*

- (1) Each of the Governor's appointments shall state the commencement and ending date (i.e., the four-year term) of the prospective member's term of office. S.C. Code Ann. § 1-3-215(A).
- (2) When an appointment has been confirmed by the Senate, the Clerk of the Senate transmits evidence of the confirmation to the Secretary of State, who obtains the necessary oath of office. The oath shall be as follows:

¹ Section 34-1-20 says that one Board Member must be recommended by the association of supervised lenders; however, that association does not exist. Therefore, in recent years, this Board Member has been recommended by the South Carolina Financial Services Association.

“I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been appointed, and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect, and defend the Constitution of this State and the United States. So help me God.” S.C. Const. Art. VI, §5; S.C. Code § 8-3-10.

(3) The taking of the oath of office shall fully vest the person appointed with the full rights, privileges, and powers of the office. S.C. Code Ann. § 1-3-215(B).

(4) Board members may not take the oath of office or enter upon his official responsibilities (e.g., attend a Board meeting as a Member of the Board) unless he or she has properly filed his or her Statement of Economic Interest with the State Ethics Commission. S.C. Code Ann. § 8-13-1110(A).

d) Statement of Economic Interest

(1) Board members must file a Statement of Economic Interests with the State Ethics Commission prior to taking the oath of office or entering upon his official responsibilities, and annually thereafter by noon on March 30.

(2) The Statement of Economic Interests must be filed on forms prescribed by the State Ethics Commission. S.C. Code § 8-13-1120(A). Filing must be done electronically on the State Ethics Commission’s website.

e) Removal from Board Membership

(1) Except for the Treasurer serving ex officio, a Board member may be removed from the Board by the Governor at his discretion by an Executive Order removing the member. S.C. Code § 1-3-240(B).

f) Resignation from Board Membership

(1) State law assumes that a member will serve until his replacement is qualified to serve.

(2) However, a Member wishing to resign from the Board should notify the Chairman of his resignation, in writing.

(3) The Chairman will then notify the other Board members, the Governor, and the entity responsible for nominating individuals for the resigning member’s position. BOFI By-Laws, Art. II, § 4.

D. Officers of the Board

The Roles and Responsibilities of the Chairman and Chairman Pro-Tempore are set forth in Section II of this Manual.

E. Responsibilities of the Board

1. General Responsibilities

- a) *The Board appoints a Commissioner of Banking with assistants to perform the duties incidental to the work of the Board. S.C. Code Ann. § 34-1-80.*
- b) *The Board appoints a Commissioner of Consumer Finance and such other personnel as it deems necessary to perform the duties and exercise the powers conferred under Chapter 29 of Title 34 of the S.C. Code of Laws. S.C. Code Ann. § 34-29-200. The Board has also designated the Commissioner of Consumer Finance to license and regulate mortgage lenders/servicers pursuant to Chapter 22 of Title 37 of the S.C. Code. See S.C. Code Ann. § 37-22-110.*
- c) *For state-chartered banks, savings and loan associations, cooperative credit unions, supervised lenders, and mortgage lenders/servicers, the Board may permit certain activities by operational instruction as well as by regulation. See S.C. Code Ann. § 34-1-110.*
- d) *The Board meets regularly to make these appointments as necessary, take other regulatory action generally as proposed by one of the Commissioners, and to address various administrative matters such as the Agency budget, personnel matters, and addressing various reports such as the annual Accountability Report.*
- e) *The Board must follow the Administrative Procedures Act, S.C. Code Ann. Section 1-23-10, et seq. when promulgating regulations, when applicable.*

2. Banking Division

- a) *The Board has set up a Banking Division. The Banking Division regulates state-chartered banks, building and loan associations, savings and loan associations, savings banks, credit unions, and trust companies and may examine certain business development corporations.*
- b) *Banks, Building and Loan Associations, Savings and Loan Associations, and Savings Banks.*
 - (1) *Charters: The Board must approve an application for a charter submitted by banks, building and loan associations, savings and loan associations, and savings banks before the Secretary of State may grant the charter. S.C. Code Ann. § 34-1-70.*
 - (2) *Supervision and Examination of Banks and Building and Loan Associations: The Board may supervise all banks and building and loan associations and provide regulations and instructions for the direction, control, and protection of all such institutions, the conservation of their assets and the liquidation thereof, as may be necessary or proper to effectuate the purposes of Title 34. S.C. Code Ann. § 34-1-60. The Board exercises its powers of supervision over banks and building and loan associations through its examining department. S.C. Code Ann. § 34-1-90. The Board may examine banks, bank holding companies, and branches. S.C. Code Ann. §§ 34-3-310, 34-25-70, 34-25-100, 34-25-280.*

(3) Supervision and Examination of Savings and Loan Associations and State Savings Banks: The Board may examine savings and loan associations and state savings banks. S.C. Code Ann. §§ 34-28-410, 34-28-700, 34-30-160, 34-30-540.

c) *Business Development Corporations: The Board may examine the Business Development Corporation of South Carolina and Carolina Capital Investment Corporation. S.C. Code Ann. § 34-1-80.*

d) *Credit Unions:*

(1) The Board is responsible for the supervision and regulation of credit unions incorporated under Chapter 26 of Title 34 of the S.C. Code of Laws. S.C. Code Ann. 34-26-200.

(2) The Board shall act upon an application for a credit union charter within ninety days. S.C. Code Ann. § 34-26-310(1).

(3) The Board examines credit unions at least every twenty-four months. S.C. Code Ann. § 34-26-240(1).

(4) The Board also has authority over an out-of-state credit union seeking to conduct business as a credit union in this State and over that out-of-state credit union after the Board has granted approval for that credit union to conduct business in this State. S.C. Code Ann. § 34-26-370.

(5) By issuing operational instructions, the Board may authorize state credit unions to engage in activities approved for federally-chartered credit unions. S.C. Code Ann. § 34-26-210(5).

(6) The Board shall establish annual supervisory fees to be paid by credit unions. S.C. Code Ann. § 34-26-270.

e) *Trust Companies:*

(1) The Board has the power to approve an application by a person seeking to perform a trust business in South Carolina and, before approving any application, to perform an appropriate investigation of the applicant. S.C. Code Ann. § 34-21-10.

(2) The Board may examine trust companies or certain other persons who are authorized to conduct a trust business in South Carolina.

(3) Further, those authorized to conduct trust business in South Carolina are subject to rules and regulations promulgated by the Board. S.C. Code Ann. § 34-21-20.

f) *The management of a bank by conservators is governed by S.C. Code Ann. § 34-5-20, et seq.*

g) *The Reorganization of Insolvent Banks is governed by S.C. Code Ann. § 34-7-10, et seq.*

3. Consumer Finance Division

a) *The Board has set up a Consumer Finance Division. The Consumer Finance Division regulates supervised lenders, restricted lenders, deferred-presentment service providers, check-cashing service providers, and mortgage lenders/servicers (including mortgage loan originators).*

b) *Supervised Lenders*

(1) The Board shall issue or deny an application for a license to make supervised loans under Title 37 of the S.C. Code of Laws. S.C. Code Ann. § 37-3-503(1), (3).

(2) If the Board denies the application, it must notify the applicant in writing of the denial and stating in substance the Board's finding supporting the denial of the application. The applicant is entitled to a hearing on the question of his qualifications if he has received the written notice of denial or if the Board has not issued a license within sixty days after the application was filed. S.C. Code Ann. § 37-3-503(3).

(3) The Board shall prescribe the manner in which an applicant shall file an application for a license. The Board shall set forth by rule the information to be contained in an application to evaluate the financial responsibility, character, and fitness of the applicant and to evaluate the convenience and advantage to the community in which the licensed office is to be located. S.C. Code Ann. § 37-3-503(1).

(4) The Board shall issue additional licenses to the same licensee upon compliance with all the provisions of Title 37. A separate license is required for each place of business. S.C. Code Ann. § 37-3-503(4).

(5) The Board may revoke or suspend a license. S.C. Code Ann. §§ 37-3-503(4), 37-3-504.

(6) The Board shall examine periodically the loans, business, and records of every licensee. S.C. Code Ann. § 37-3-506(1).

(7) The Board is entitled to collect from applicants and licensees the regulatory fees provided on Chapter 29 of Title 34; however, all lenders shall pay the notification fee in Title 37 to the administrator. S.C. Code Ann. § 37-3-503(8).

c) *Restricted Lenders*

(1) The Board, based on its investigation of the facts of an application and statutory requirements, is authorized to issue or deny a license to restricted lenders who intend to make loans under Section 34-29-20(a). S.C. Code Ann. § 34-29-40(b).

(2) In order to issue a restricted lender license, the Board must find that

(i) the financial responsibility, character, experience, and general fitness of the applicant are such as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly, and efficiently within the purposes of Chapter 29 of Title 34;

(ii) the applicant has available liquid assets of not less than \$25,000 for operation of such business at the specified location; and

(iii) allowing such applicant to engage in business will promote the convenience and advantage of the community in which the licensed office is to be located. S.C. Code Ann. § 34-29-40(b).

(3) The Board must notify the applicant and each licensee having a place of business in the community where the applicant proposes to do business of such application and provide a hearing on the application if one of the existing licensees objects to the granting of a license to the applicant. S.C. Code Ann. § 34-29-40(a).

(4) If the Board denies an application, it shall enter an order denying the application, which shall include its findings of facts, and notify the applicant of the denial. If denied, the Board shall return the application fee but retain the investigation fee. S.C. Code Ann. § 34-29-40(c).

(5) The Board shall determine the form of the application and determine what information is required to be included in the application. S.C. Code Ann. § 34-29-30.

(6) The Board may revoke, suspend, or reinstate a license. S.C. Code Ann. § 34-29-80.

(7) The Board may examine and investigate restricted lenders, enter a cease and desist order, and seek an injunction from a circuit court to restrain the licensee. S.C. Code Ann. §§ 34-29-90, -130(a).

(8) The Board may assess a civil penalty, not exceeding \$2,000 for each violation, against a violator of any provision in Chapter 29 of Title 34. S.C. Code Ann. § 34-29-250.

(9) The Board has the authority to make rules and regulations which interpret or explain any section of Chapter 29 of Title 34. S.C. Code Ann. § 34-29-110(a).

(10) At the time of the application, the Board shall collect two fees from the applicant: one for investigating the application and another for the license. The Board shall determine the amount of both fees based on guidelines in the statute. S.C. Code Ann. § 34-29-30.

(11) The Board shall also collect an annual renewal fee, as prescribed by the Board, from each licensed restricted lender. S.C., Code Ann. 34-29-50(b).

(12) Restricted lenders are subject to the supervision of the agency which issued its license. S.C. Code Ann. § 37-3-506(1).

(13) The Board shall collect from the licensee the actual cost of any examination, except for the first examination in each licensed year. S.C. Code Ann. § 34-29-90(a).

d) *Deferred Presentment Service Providers*

- (1) The Board may issue or deny an application from a person seeking to be licensed to perform deferred presentment services. S.C. Code Ann. § 34-39-150(B).
- (2) The Board must find that the applicant satisfies the qualifications in order to grant the license. S.C. Code Ann. § 34-39-150(B).
- (3) The Board shall prescribe the form of the application. S.C. Code Ann. § 34-29-150(A). The Board may require that the application include information concerning the financial responsibility, background experience, and activities of the applicant and its members, officers, managing employees, and directors. S.C. Code Ann. § 34-41-40(A)(5).
- (4) Upon receiving the application and the required fees (\$1,000 for application and \$500 for investigation), the Board shall investigate whether the applicant satisfies the qualifications for licensure. S.C. Code Ann. § 34-39-150(B), (C).
- (5) The Board may establish record-keeping requirements by regulation. S.C. Code Ann. § 34-39-190(A). The Board may examine a licensee, and the licensee will pay the cost of the examination to the Board. S.C. Code Ann. § 34-39-190(B).
- (6) The Board may take a range of actions against a licensee including revoking or suspending a license, issuing cease and desist orders, imposing civil penalties for violations of Chapter 39 of Title 34, ordering repayment of unlawful or excessive fees charged to customers, and referring willful violation to the Attorney General or to a circuit solicitor for criminal prosecution. S.C. Code Ann. §§ 34-39-210 to -240.
- (7) The Board may promulgate regulations under the Administrative Procedures Act. S.C. Code Ann. § 34-39-260.
- (8) Additionally, the Board has various responsibilities concerning the establishment and operation of the third-party deferred-presentment database. S.C. Code Ann. § 34-39-270.

e) *Check Cashing Service Providers*

- (1) The Board may issue or deny an application from a person seeking to be licensed to perform check cashing services. S.C. Code Ann. §§ 34-41-20(A), 34-41-50(B).
- (2) To grant the license, the Board must find that the financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, officers, directors, and principals are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with the law. S.C. Code Ann. § 34-41-50(B).
- (3) The Board shall prescribe the form of the application. S.C. Code Ann. § 34-41-40(A).

(4) The Board may require the application to include information concerning the financial responsibility, background experience, and activities of the applicant and its members, officers, directors, and principals. S.C. Code Ann. § 34-41-40(A)(5).

(5) The Board may conduct an investigation as necessary to determine if the applicant has complied to all applicable provisions of Chapter 41 of Title 34 and state and federal law. S.C. Code Ann. § 34-41-40(B).

(6) The Board may require each check-cashing service provider to maintain certain books, records, and accounts. The Board may also determine the period of time that such information must be retained. S.C. Code Ann. § 34-41-70(A).

(7) The Board may examine the books, records, and accounts to assess whether the licensee is complying with Chapter 41 of Title 34 and the accompanying rules. The Board shall determine the cost of such examination, and the licensee shall pay that cost to the Board. S.C. Code Ann. § 34-41-70(C).

(8) The Board may revoke or suspend a license, issue a cease and desist order, designate a hearing officer or hearing panel to conduct a hearing or take other actions concerning the cease and desist order, impose and collect civil penalties to enforce the Chapter 41 of Title 34, order repayment of unlawful fees charged to customers, refer willful violations to the Attorney General or a circuit solicitor for criminal prosecution, and promulgate necessary regulations. S.C. Code Ann. §§ 34-41-90 to -130.

(9) The Board may seek the assistance of the Attorney General or the Department of Consumer Affairs in enforcing compliance with Chapter 41 of Title 34. S.C. Code Ann. § 34-41-100.

f) *Mortgage Lenders/Serviceers*

(1) By statute, the majority of the licensing and regulation of mortgage lenders/serviceers (including mortgage loan originators) is conducted by a designee of the Board. See S.C. Code Ann. § 37-22-110(11).

(2) The Board has designated the licensing and regulation of mortgage lenders/serviceers (including mortgage loan originators) to the Commissioner of Consumer Finance. However, the Board retains the power to establish the annual renewal fee of no more than \$800 for a licensed mortgage lender/serviceer, no more than \$150 for each branch office of a mortgage lender/serviceer, and no more than \$50 for a licensed mortgage loan originator. S.C. Code Ann. § 37-22-150(A).

(3) The Board also retains the power to establish a late fee for not renewing a license during the renewal period of no more than \$500 for a licensed mortgage lender/servicer and no more than \$100 for a mortgage loan originator. S.C. Code Ann. § 37-41-150(B).

F. Responsibilities of Individual Board Members

1. General

a) Although individual Board members have no authority to act or bind BOFI outside of a duly called meeting of the Board or a Committee or outside of any emergency authority, the Board deems the following to be necessary responsibilities of each individual Board member:

- (1) Be informed about BOFI's mission and policies;
- (2) Attend Board meetings or, if unable to attend, notify the Chair as soon as possible to ensure that a quorum will be present;
- (3) Review the agenda and supporting materials prior to Board and Committee meetings;
- (4) Serve on Board Committees and offer to take on special assignments;
- (5) Keep up to date on developments in the banking and consumer finance areas;
- (6) Comply with ethics, the oath of office, conflict of interest, disclosure, and confidentiality laws and policies;
- (7) Counsel and work with the Commissioners as appropriate;
- (8) At all times meet the high ethical standards to avoid even the appearance of impropriety.

2. Standards of Conduct; Conflicts of Interest

a) Board members shall comply with all applicable provisions of the State Ethics law, S.C. Code § 8-13-100, et seq., and other applicable laws related to ethics and conflicts of interest.

b) Additionally, although Board members may be a part of and be recommended by certain interest groups, Board members shall represent the best interests of the public, even when that responsibility conflicts with the wishes and the interests of those groups. See S.C. Code Ann. § 34-1-20.

3. Confidentiality

All matters discussed or materials reviewed in executive sessions are confidential and shall be released to the public only as the Board shall direct or, in the event an executive session of a standing committee is involved, only as that standing committee shall direct.

4. Delegation of Functions by the Board

The day-to-day management functions of the Agency are delegated to the Commissioners of Banking and of Consumer Finance, and their roles and responsibilities are set forth in Section V of this manual.

II. Chairman and Chairman Pro-Tempore Roles and Responsibility

A. General Roles

The State Treasurer is an *ex officio* member of the Board and serves as the Board's Chairman (the "Chairman"). S.C. Code Ann. § 34-1-20. In Article III, Section 2 of its By-Laws, the Board has designated the member who at the time of the Chairman's unavailability has the most uninterrupted service on the Board to serve as its Chairman Pro-Tempore. The Chairman Pro-Tempore shall chair Board meetings and perform any urgent duties of the Chairman until the Chairman is available. The same rule shall apply to committees of the Board.

B. Roles and Responsibilities of the Chairman

1. General Responsibilities

a) *Seeks to ensure that the Board discharges its duties and responsibilities in accordance with all applicable laws and governance policies.*

b) *Provide leadership to the Board in terms of collegiality and ethical conduct.*

c) *Encourages discussion and consensus among the Board members.*

d) *When appropriate, serves as a liaison between the Board and the Commissioner of Banking and the Commissioner of Consumer Finance.*

e) *Regularly consults with the Commissioners and other appropriate staff to stay informed on key administrative, including but not limited to organizational changes and salary adjustments, and regulatory matters and ensure that Board Members are timely informed of pertinent information.*

f) *Announces the name of the Chairman Pro Tempore at the first Board meeting each calendar year or at the first Board meeting after the Chairman Pro Tempore changes.*

2. Board Meetings

a) *For each Board meeting, ensures the coordination among the agenda, the schedules of relevant meeting participants, and meeting materials.*

b) *In consultation with the Commissioners, approves the agenda for each meeting before it is published.*

c) *Ensures that each meeting is planned and the agenda is set in a sufficient time before the meeting to anticipate and address any issues that may arise including any parliamentary matters.*

d) *Presides at meetings of the Board, ensuring that such meetings are conducted in an efficient manner and in accordance with the South Carolina Freedom of Information Act, Board By-Laws and these policies.*

e) *Enforces the rules of order established by the Board and possesses the sole power to rule on questions of order or to answer parliamentary inquiries.*

3. Committees

a) *Appointment of Committee Members: The Chairman shall determine and make the appointment of Members to standing and special committees. The Chairman may also fill any vacancy that may arise in a committee.*

b) *Committee Chairman: The Chairman shall designate the Member who will serve as the Chairman of each standing and special committee (the "Committee Chairman"). A Committee Chairman may create a subcommittee, may appoint the subcommittee's members from the respective committee's membership, and may appoint the chair of the subcommittee.*

c) *Appropriate Representation on Committees: In determining assignments for standing committees, the Chairman shall seek to ensure that each committee has equitable representation from Members engaged in activities regulated by the Banking Division and Members engaged in activities regulated by the Consumer Finance Division. In determining assignments for special committees, the Chairman shall consider the purpose for which the special committee was established and the desirable size and composition of the special committee and then appoint its members.*

4. Appointment of Administrator and Assistant

a) *Article IV, Section 3 of the By-Laws authorizes the Chairman to appoint an Administrator and an Assistant.*

b) *Administrator: The Administrator shall be responsible for maintaining the official records and minutes of the Board and of all Committees, assist the Chairman with his Board Meeting responsibilities listed above, and coordinate administrative issues for Board Members. The Administrator shall also ensure that:*

(1) Proper and timely public notice of Board and Committee meetings is provided under Section 30-4-80;

(2) Minutes of those meetings are made and maintained under Section 30-4-90;

(3) The documents listed in Section 30-4-30(D) are available for public inspection and copying;

(4) Agendas, minutes, and documents distributed to or reviewed by a Member of the Board or of a Committee during a public meeting within the last six months are posted to the Board's website under Section 30-4-30(E).

c) *The Administrator is not the "Executive Secretary" as described in the Eleventh Edition of Robert's Rules of Order nor is the Administrator the "chief administrative officer" of the Consumer Finance Division as described in section 34-29-200.*

d) *Assistant: The Assistant shall assist the Chairman as directed.*

5. Enforcing the Rules of Order

a) *The Chairman shall enforce the rules of order established by the Board. The Chairman may appoint a Parliamentarian who advises the Chairman, Committees, and Members on matters of parliamentary procedure. If appointed, the Parliamentarian's role during a meeting is purely an advisory and consultative one.*

C. Roles and Responsibilities of the Chairman Pro-Tempore

1. The Chairman Pro-Tempore chairs the Board meeting until the Chairman is available. Article III, Section 2 of the By-Laws.
2. The Chairman Pro-Tempore is the Member who at the time of the Chairman's unavailability has the most uninterrupted service on the Board. Article III, Section 2 of the By-Laws.
3. If there is more than one Member with the most uninterrupted service, Article III, Section 2 of the By-Laws provides instructions on how to conduct a vote of the Board to elect the Chairman Pro-Tempore.
4. The Chairman Pro-Tempore shall serve in this position until the end of his or her service as a Member of the Board. Article III, Section 2 of the By-Laws.

D. Emergency Authority

Under the below conditions, the Chairman has the authority pursuant to Article III, Section 3 of the By-Laws to act in an emergency to protect the best interest of the State.

1. In order to act under this emergency authority, the Chairman must find that an emergency or similar situation exists and that immediate action is needed to protect the best interest of the State.
2. Upon such findings, the Chairman shall attempt to coordinate an emergency Board meeting, if possible, which may be held by telephone or some other appropriate electronic means.
3. If an emergency Board meeting is not possible, the Chairman, with the assistance of the applicable Commissioner(s) and after proper consultation with as many Board members as practical, may then authorize the appropriate Commissioner(s) to act as may be needed, and such action shall be ratified by the Board at its next meeting.
4. By the nature of the position, the Chairman Pro-Tempore may exercise the same emergency authority if the Chairman is not available and the Chairman Pro-Tempore determines that an emergency or similar situation exists and it is in the best interest of the State to act before the Chairman becomes available. The Chairman Pro-Tempore must ensure that good faith efforts have been made to contact the Chairman before exercising this emergency authority.

III. Committees of the Board

A. Standing Committees

1. Budget and Operations Committee
2. Policy and Planning Committee
3. Legislative and Regulatory Committee

B. Special Committees

1. A special committee is a committee created to carry out a specific task.
2. The Board has the sole authority to create a special committee and to define its specific task.
3. When a special committee has finished its work on its specific task, a motion is made to adjourn sine die and for the Committee Chairman or another appropriate person to make its report to the Board.
4. A special committee shall cease to exist after the assignment has been completed or at the direction of the Chairman.

C. Budget and Operations Committee

1. The Budget and Operations Committee is responsible for the following:
 - a) *Reviewing the proposed annual budget developed by the staff and, after conducting this review and making any adjustments it believes are appropriate, recommending to the Board an annual budget for BOFI.*
 - b) *Reviewing BOFI's annual budget as finally enacted and reporting back to the Board all material changes from the annual budget previously adopted by the Board.*
 - c) *Reviewing revenue and fees.*
 - d) *Reviewing BOFI's financial reports.*
 - e) *Reviewing updates on staff salary and other compensation matters and when necessary making recommendations to the Board.*
 - f) *Receiving non-regulatory updates from a Commissioner or as requested by the committee.*
 - g) *Performing any other matters which may be assigned by the Board.*

D. Policy and Planning Committee

1. The Policy and Planning Committee is responsible for the following:
 - a) *Serving as BOFI's "Think Tank" to research and explore best practices in the industries under BOFI's authority.*
 - b) *Reviewing or proposing policies and procedures, or amendments thereto, that the committee believes are appropriate to the regulated persons under the jurisdiction of the Board and then recommending the policies and procedures to the Board for approval.*

- c) *Preparing annual performance plans for each Commissioner, including critical goals/targets of short-term and long-term visions, and presenting the annual performance plans to the Board for approval.*
- d) *Directing the preparation of the annual performance evaluations for each Commissioner and presenting the evaluations to the Board for approval.*
- e) *Developing and updating the short-term and long-term visions at least every two years and then recommending the updated visions to the Board for approval.*
- f) *Developing annual action steps for BOFI and the Board to realize the short-term and long-term visions, getting consensus from other committees, and then recommending the annual action steps to the Board for approval. Ensuring these are incorporated into the Commissioners' EPMS document.*
- g) *Reviewing, modifying, and recommending to the Board for approval any governance policies or other policies related to the Board operations and Board activities*
- h) *Performing any other matters which may be assigned by the Board.*

E. Legislative and Regulatory Committee

1. The Legislative and Regulatory Committee is responsible for the following:
 - a) *Receiving updates from the Commissioners on important regulatory matters that may indicate a need for new or modified legislation or for other actions.*
 - b) *Reviewing, modifying, and, if approved by the committee, recommending to the Board for approval any proposed legislation, proposed regulations, proposed operational instructions, or similar documents.*
 - c) *Reviewing existing and proposed State legislation and monitoring Federal legislation and regulatory matters which the committee believes are important to the Board and discussing such matters and next steps with the applicable Commissioner(s).*
 - d) *Reviewing threatened and pending legal matters on non-regulatory matters that arise and pertain to BOFI and recommending a course of action to the Board for approval.*
 - e) *Approving a list of hearing officers authorized to conduct administrative hearings and make recommendations to the Board, as allowed by law.*
 - f) *Performing any other matters which may be assigned by the Board.*

F. Reports to the Board from a Committee

1. A report of a committee is an official statement formally adopted by, and in the name of, the committee informing the Board of action taken or recommended or information obtained.
2. Standing Committees
 - a) *Each standing committee shall report on its activities and everything referred to it to the Board at least once per year.*

- b) *If a standing committee wishes to recommend action by the Board on a matter within the committee's concern, the report should conclude with one or more proposed recommendations embodying the committee's recommendation(s). Such recommendations should be in writing, although the reporting member may give limited accompanying explanations orally.*
- c) *After giving or reading the report that includes a recommendation, the reporting member moves the adoption of the recommendation by moving as follows: "Mr. Chairman, on behalf of the [insert name] Committee, I move the adoption of the recommendation just read." A motion coming from a committee does not need to be seconded.*
- d) *The Chairman then restates the motion and it is considered just as any other main motion.*
- e) *If the committee intends to make more than one recommendation, the reporting member shall give a separate report and make a separate motion for each recommendation. Therefore, each report and motion will be made and voted on before addressing the next report and motion.*

3. Each special committee shall make a final report on its activities to the Board. The report and recommendation(s) of, or a statement of the information gathered by, a special committee shall be submitted to the Board in writing; however, upon request, the Chairman may allow the report, except for the recommendation(s), and any statement of information gathered to be given orally.

IV. Administrative Actions

A. General

- 1. Individuals and entities have a right to due process and an opportunity to be heard in certain situations where an agency decision affects the private rights of those individuals/entities. S.C. Const. Art. 1 § 22. The process for challenging action by BOFI is determined by the type of license.
- 2. Agency Decisions Affecting Charters/Licenses
 - a) *Banking Division*

(1) The Banking Division regulates state-chartered banks, building and loan associations, savings and loan associations, savings banks, credit unions, and trust companies and may examine certain business development corporations. *See, e.g.*, S.C. Code Ann. § 34-1-60. In doing so, the Board may take actions that are adverse to an applicant, a regulated person, or an interested person, such as, for some or all types of financial institutions, approving or denying an application for a charter (*see, e.g.*, S.C. Code Ann. § 34-1-60); issuing a cease and desist order (*see, e.g.*, S.C. Code Ann. 34-26-210(3)); suspending or prohibiting a director, officer, or other person from further participation in the affairs of the financial institution (*see, e.g.*, S.C. Code Ann. § 34-26-210(4)); and suspending operations, issuing a notice of involuntary liquidation, and revoking a charter (*see, e.g.*, S.C. Code Ann. § 34-26-220).

(a) The Board issues the final agency decision for each of these types of financial institutions.² The Board's decision generally must be issued in writing to the affected person and must include a short and plain statement of the matters asserted, the law, and the Board's findings and provide notice that the decision may be appealed.

(b) Before making that decision and if a hearing by the Board is necessary, the Board or its designee conducts a hearing, which may be non-adversarial, in which it will give all parties the ability to submit additional information and make its argument to the Board or its designee. If the hearing is held before the Board's designee (hearing officer), the hearing officer shall make a non-binding recommendation to the Board, and the Board shall review the entire record and render the final agency decision.

(c) A person aggrieved by the Board's final agency decision has the right to judicial review in a court of competent jurisdiction, which may be the appropriate South Carolina Court of Common Pleas.

² In some circumstances, South Carolina law grants the Commissioner of Banking with the authority to approve or deny certain actions. *See, e.g.*, S.C. Code Ann. §§ 34-26-330(2), 34-26-350(1)-(2), 34-26-410(5)-(6), 34-26-510, 34-26-710, 34-26-1380(2). In these circumstances and if a hearing by the Board is necessary, the Board or its designee would conduct the hearing, and judicial review phases of the administrative process as described herein would remain the same.

(2) In other circumstances, the Commissioner of Banking may desire to take an informal action – either getting the institution’s board to adopt a resolution stating that it will take corrective actions or entering into a memorandum of understanding with the institution in which the institution agrees to take corrective actions. The Board delegates the necessary authority to the Commissioner of Banking to take these informal actions and to amend and terminate them, as he deems necessary and appropriate. In such situations, the Commissioner of Banking shall notify the Board of the actions at its next scheduled Board meeting. Formal actions, including consent orders and cease and desists orders, require Board approval.

b) Consumer Finance Division

(1) Supervised lenders, restricted lenders, deferred presentment service providers and check cashing service providers

(a) The Board issues the final agency decision for each of these types of licenses.

(b) The Board or its designee conducts the contested case hearing, if timely requested. If the hearing is held before the Board’s designee (hearing officer), the hearing officer shall make a non-binding recommendation to the Board, and the Board shall review the entire record and render a final decision.

(c) Appeals of the Board’s decision shall be made to the South Carolina Court of Appeals (section 1-23-380) or the Administrative Law Court (section 1-23-600(D)).

(2) Mortgage lenders/servicers (including mortgage loan originators)

(a) The Commissioner of Consumer Finance issues the final agency decision for each of these types of licenses.

(b) The Administrative Law Court conducts the contested case hearing, if timely requested.

(c) Appeals of the decision of the Administrative Law Court shall be made to the South Carolina Court of Appeals.

V. Roles and Responsibilities of Commissioners

- A. The Board shall appoint a Commissioner for each division of the Agency—the Banking Division and the Consumer Finance Division—who serves at the pleasure of the Board. Each Commissioner, subject to the Agency’s budget and/or the full-time equivalent positions approved by the Board and enacted by the General Assembly, may hire staff necessary to carry out his division’s responsibilities. S.C. Code §§ 34-1-80; 34-29-200; BOFI By-Laws, Art. IV, § 1. Each Commissioner is authorized to carry out or implement orders or directives of the Board. BOFI By-Laws, Art. IV, § 2. Commissioner duties are indicated on his or her position description and Employee Performance Management System (EPMS) documents.
- B. Each Commissioner shall, directly and/or through his designated Agency representatives, attend meetings, coordinate with the Board and Agency staff to develop agendas for Board and committee meetings, and keep the Board reasonably informed of the Agency’s operations.
- C. The Board has designated the Commissioner of Consumer Finance to conduct the majority of the licensing and regulation of mortgage lenders/services (including mortgage loan originators). This designation gives the Commissioner of Consumer Finance a broad array of power to license, examine, and regulate mortgage lenders/services and to otherwise enforce the provisions of Chapter 22 of Title 37.
- D. Each Commissioner shall make regular reports to the Board addressing each of the license types overseen by the respective Commissioner. These reports may include, among others, routine or problematic findings identified by the division, updates on poor performing licensees, industry trends and challenges, and legislative or regulatory obstacles encountered or foreseen.

VI. Board Operations

- A. New Member Orientation
1. New Board members will attend an orientation.
 2. The orientation will include, but is not limited to:
 - a) *Overview of Duties of the Board and Rules of Governance*
 - b) *Legal briefing and overview of the State Ethics law*
- B. Travel/Per diem
1. Board members will receive the allowed per diem for attendance at Board and Committee meetings.

2. Board members are entitled to reimbursement for travel for in-person attendance at Board and Committee meetings. All Board member's travel must comply with the Comptroller General's Policy on Reimbursement for Travel and Subsistence Expenses (Guidance and Forms are on the Comptroller General's Website).

C. Meeting Policies

1. Types of Meetings: Meetings of the Board may include regular meetings, special meetings, emergency meetings, committee meetings, and public hearings usually concerning proposed regulations.

2. Meeting Schedule: Before the beginning of each calendar year, the Board shall publish a tentative meeting schedule for the new calendar year which may be amended as necessary.

3. Generally, the regular meetings will be held on the first Wednesday of each month.

4. Special Board Meeting and Emergency Meetings may be called by the Chairman.

5. A "meeting" for purposes of the FOIA means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power. S.C. Code Ann. §30-4-20(d).

6. Every meeting of the Board shall be open to the public unless closed pursuant to S.C. Code Ann. §30-4-70.

7. Board members may participate in a meeting by means of conference call or other means of communication by which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at such meeting.

8. No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of FOIA requirements related to matters of the Board. S.C. Code Ann. §30-4-70(c).

D. Rules of Order

1. General

a) The Board and its Committees will follow as closely as practicable the rules of order prescribed for small boards or similar small bodies in the most recently published revision of Robert's Rules of Order in conducting business; however, all motions must be seconded except those motions coming out of a committee.

b) The Chair will be counted in determining the number of members required for a quorum.

c) *The Chair shall determine that a quorum is present before calling the meeting to order and shall attempt to remain aware of the continued presence of a quorum throughout the meetings.*

2. Speaking

a) *The Chairman must recognize an individual before he or she speaks at a Board meeting, unless a member has a right to speak under the applicable rules.*

b) *Members, Officers, Commissioners, designated Senior Staff of the Agency, and those making a presentation at a meeting and recognized by the Chairman may speak when appropriate at meetings.*

c) *Nonmembers, other than those listed in Section VI.D.2.b. above, have no right to speak at a meeting; however, the rule may be suspended by a two-thirds vote of the Board.*

E. Meeting Agenda Format and Additions

1. The order of business is the established sequence in which business will be taken up at a Board meeting.

2. The order of business will be at the discretion of the Chairman in consultation with the Board, but will normally be as follows:

- a) *Approval of Meeting Agenda*
- b) *Approval of previous Board meeting minutes*
- c) *Board Member Recusal or Conflicts of Interest*
- d) *Presentations*
- e) *Committee Reports*
- f) *Commissioner Reports*
- g) *Consumer Finance Division Board Approvals*
- h) *Banking Division Board Approvals*
- i) *Executive Session*
- j) *Actions Following Executive Session*
- k) *Other New Business*
- l) *Announcements*
- m) *Adjournment*

3. The Board may rearrange the normal order of business outlined above by majority vote of the voting members of the Board; however, no item which binds the Board to action may be added to the agenda which has been posted pursuant to FOIA, except as permitted by the FOIA. (See, VI(E)(4)-(5), below).

a) *Agenda Development and Procedure*

(1) Proposed meeting agenda will be sent to Board members by the Administrator of the Board, at the Chairman's direction, in consultation with the Commissioner of Banking and the Commissioner of Consumer Finance.

(2) The agenda must be posted in a publicly accessible place at the office or meeting place and on the website maintained by the Board, at least twenty-four (24) hours prior to the meeting.

4. No items may be added to the agenda without an additional 24-hour notice to the public, which must be made in the same manner as the original posting.

5. After the meeting begins, an action item may be added to the agenda by two-thirds vote of the members present and voting, subject to the following limitation:

a) "if the item is one upon which final action can be taken at the meeting or if the item is one in which there has not been and will not be an opportunity for public comment with prior public notice given in accordance with this section, it only may be added to the agenda by a two-thirds vote of the members present and voting and upon a finding by the body that an emergency or an exigent circumstance exists if the item is not added to the agenda." S.C. Code Ann. § 30-4-80.

F. Meeting Minutes

1. Minutes of the Board meetings will be taken by the appointed Administrator, in accordance with state law and such records are open to public inspection, and shall include:

- a) The date, time and place of the meeting.*
- b) The members of the Board recorded as either present or absent.*
- c) The substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken.*
- d) Any other information that any member of the Board requests be included or reflected in the minutes.*

2. The minutes shall be public records and shall be available within a reasonable time after the meeting

3. All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic or video reproduction, except when a meeting is closed, provided that in so recording there is no active interference with the conduct of the meeting. The public body is not required to furnish recording facilities or equipment.

4. The minutes as approved by the Board, will be preserved as a part of the official public record of the Board and will be open to public inspection in accordance with law.

G. Executive Session

1. The Board may enter executive session, which will be closed to the public, under the following conditions:

a) *Before going into executive session, the Board shall vote in public on the question and, when the vote is favorable, the Chairman or his designee shall announce the specific purpose of the executive session*

b) *No action may be taken in executive session except to adjourn or return to public session. The members of a Board may not commit the Board to a course of action by a polling of members in executive session.*

2. The executive session is held for the purpose of considering a matter as set forth in Section 30-4-70, or in accordance with any applicable law, including but not limited to:

a) *To discuss employment, appointment, compensation, promotion, demotion, discipline, or release of an employee or a person regulated by a public body; however, employee may demand that adversary hearing be held in public. Section 30-4-70(1).*

b) *To discuss negotiations incident to proposed contractual arrangements and proposed sale or purchase of property. Section 30-4-70(2); see also Section 30-4-40(3).*

c) *To receive legal advice where the legal advice related to a pending, threatened, or potential claim or other matters covered by attorney-client privilege, settlement of legal claims, or the position of BOFI in other adversary situations involving the assertion against the agency of a claim. Section 30-4-70(2); see also Section 30-4-40(7).*

d) *To discuss investigatory proceedings regarding allegations of criminal misconduct. Section 30-4-70(4).*

e) *To discuss matters pertaining to applications and surveys for charters and branches of banks and savings & loan associations or surveys and examinations of the institutions required to be made by law. Section 30-4-20(c).*

f) *To discuss information related to security plans and devices proposed, adopted, installed, or utilized by a public body, other than amounts expended. Section 30-4-20(c).*

g) *To discuss trade secrets. Section 30-4-40(1).*

h) *To discuss information of a personal nature where the public disclosure would constitute unreasonable invasion of personal privacy, which includes certain non-public financial data about an applicant or a licensee. Section 30-4-40(2).*

3. The Chairman or his designee must announce the reasons that the Board will enter executive sessions; therefore, if a Member wants to discuss an appropriate item in executive session, it is the Member's responsibility to identify that item before the Board enters executive session.

4. When executive session has commenced, only the following persons may be present:

a) *Members of the Board;*

b) *Select Agency and STO staff and others, as determined by the Chair.*

- (1) All matters discussed in executive sessions are confidential and shall be released to the public only as the Board shall direct.

H. Quorum and Voting

1. A majority of members who have been duly appointed must be present to conduct business. A member may be counted in the quorum and vote if participating by phone or other electronic means.
2. Voting by proxy is not permitted.
3. Except as otherwise specifically provided herein, all matters coming before the Board for determination shall be determined by a majority vote of the members present. Upon request of any member of the Board, a vote by the Board shall be by a call of the roll and results of such roll call vote shall be recorded in the minutes of the Board.
4. Any member of the Board who would be required to vote on a matter that would result in a conflict of interest must abstain from voting, exit the meeting room during discussion and voting, refrain from participating in any discussions pertaining to the matter, and, prior to any discussion or voting, explain the conflict and disclose the nature of his or her interest for the record. This information shall be recorded into the meeting minutes.
 - a) *Members shall utilize the Conflict of Interest form in disclosing conflicts.*
 - b) *Members should complete the form and notify the designated Administrator in advance of the meeting, if the conflict is known prior to the meeting.*
 - c) *If a conflict is discovered during the meeting, the member shall immediately notify the Chairman and recuse himself from the meeting for that portion of the meeting and record the conflict on a Conflict of Interest form to be included as part of the minutes.*

VII. Committee Operations

A. General

1. Committee meeting schedule shall be determined by the Committee.
2. The Committee Chairman or his designee shall present the committee report to the Board.
3. Committees and the Committee Chairman shall follow the same rules as outlined in section VI (C-H).

B. Policy, Regulation and Rule Development

1. Proposed new policies, rules, regulations, or revisions to existing policies, rules, or regulations shall be prepared and submitted in writing to the appropriate committee of the Board.

2. New policies, rules, regulations, or revisions to existing policies, rules, or regulations must be approved in the appropriate committee prior to being considered by the Board. Items that are not approved in committee do not have to be presented to or discussed with the Board.
3. The Board Chairman may add any item to the Board agenda in compliance with FOIA regardless as to whether the item received a favorable vote in committee.