

**59.925 Liability of mortgage banker or mortgage broker or loan originator; recovery of damages; limitations on proceeding; action against bond or letter of credit; attorney fees.** (1) As used in this section, "mortgage banker transaction" and "mortgage broker transaction" mean a transaction in which a person, in order to engage in the transaction, is required to be licensed as a mortgage banker or a mortgage broker, or is required to be registered as a loan originator, under ORS 59.840 to 59.980.

(2) A mortgage banker or mortgage broker or loan originator is liable as provided in subsection (3) of this section to any person who suffers any ascertainable loss of money or property, real or personal, in a mortgage banker transaction or a mortgage broker transaction if the mortgage banker or mortgage broker or loan originator:

(a) Transacts business as a mortgage banker or mortgage broker or loan originator in violation of any provision of ORS 59.840 to 59.980; or

(b) Transacts business as a mortgage banker or mortgage broker or loan originator by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, and who does not sustain the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(3) The person suffering ascertainable loss may recover damages in an amount equal to the ascertainable loss.

(4) A person whose sole function in connection with a transaction is to provide ministerial functions of escrow, custody or deposit services in accordance with applicable law is liable only if the person participates or materially aids in the transaction and the plaintiff sustains the burden of proof that the person knew of the existence of the facts on which liability is based or that the person's failure to know of the existence of such facts was the result of the person's recklessness or gross negligence.

(5) Except as otherwise provided in this subsection, an action or suit may not be commenced under this section more than three years after the transaction. An action under this section for a violation under subsection (2)(b) of this section or ORS 59.930 may be commenced within three years after the transaction or two years after the person bringing the action discovered or should have discovered the facts on which the action is based, whichever is later, but in no event more than five years after the date of the transaction. Failure to commence an action on a timely basis is an affirmative defense.

(6) A person has a right of action under the bond or irrevocable letter of credit provided in ORS 59.850 if the person:

(a) Signs a mortgage banking loan or mortgage loan application; and

(b) Has a right of action against a mortgage banker or mortgage broker under this section.

(7) Subsection (4) of this section does not limit the liability of any person:

(a) For conduct other than in the circumstances described in subsection (4) of this section; or

(b) Under any other law.

(8) Except as provided in subsection (9) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(9) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (8) of this section if the action under this section is maintained

as a class action pursuant to ORCP 32. [1993 c.508 §18; 1995 c.696 §13; 1999 c.1001 §1; 2005 c.97 §1]

**59.969 List of loan originators; qualifications; voluntary reporting; records; waiver; rules.** (1) A mortgage banker or mortgage broker must provide to the Director of the Department of Consumer and Business Services, and keep current, a list of loan originators employed by the banker or broker. The banker or broker shall notify the director within 30 days of the employment or termination of employment of a loan originator.

(2) An applicant for issuance of a mortgage banker or mortgage broker license under ORS 59.850 shall include with the application evidence acceptable to the director that each individual the applicant has hired or intends to hire as a loan originator has:

(a)(A) Successfully completed an entry-level training course approved or provided by an organization certified by the director as described in ORS 59.977; and

(B) Passed an examination, approved or provided by an organization described in ORS 59.977, on laws and rules relating to mortgage lending in this state; or

(b) If the individual has been employed as a loan originator for two or more years in this state, completed continuing education as required by the director pursuant to ORS 59.975.

(C) An individual surety bond or irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 as the director may approve by rule running to the State of Oregon in a sum to be determined by the director by rule.

(3) A mortgage banker or mortgage broker that applies for renewal of a license pursuant to ORS 59.855 shall include with the application evidence acceptable to the director that each individual employed by the banker or broker as a loan originator has:

(a)(A) Successfully completed an entry-level training course approved or provided by an organization certified by the director as described in ORS 59.977; and

(B) Passed an examination, approved or provided by an organization described in ORS 59.977, on laws and rules relating to mortgage lending in this state; or

(b) If the individual has been employed as a loan originator for two or more years in this state, completed continuing education as required by the director pursuant to ORS 59.975.

(4) An applicant for issuance of a mortgage banker or mortgage broker license under ORS 59.850 shall include with the application evidence acceptable to the director that each individual the applicant has hired or intends to hire who is an insurance producer or insurance consultant licensed under ORS 744.002 and who is a full-time loan originator as defined in ORS 59.970 has:

(a)(A) Successfully completed an entry-level training course approved or provided by an organization certified by the director as described in ORS 59.977; and

(B) Passed an examination, approved or provided by an organization described in ORS 59.977, on laws and rules relating to mortgage lending in this state; or

(b) If the individual has been employed as a full-time loan originator for two or more years in this state, completed continuing education as required by the director pursuant to ORS 59.975.

(C) An individual surety bond or irrevocable letter of credit issued by an insured

institution as defined in ORS 706.008 as the director may approve by rule running to the State of Oregon in a sum to be determined by the director by rule.

(5) A mortgage banker or mortgage broker that applies for renewal of a license pursuant to ORS 59.855 shall include with the application evidence acceptable to the director that each individual employed by the mortgage banker or mortgage broker as a loan originator who is an insurance producer or insurance consultant licensed under ORS 744.002 and who is a full-time loan originator as defined in ORS 59.970 has:

(a)(A) Successfully completed an entry-level training course approved or provided by an organization certified by the director as described in ORS 59.977; and

(B) Passed an examination, approved or provided by an organization described in ORS 59.977, on laws and rules relating to mortgage lending in this state; or

(b) If the individual has been employed as a full-time loan originator for two or more years in this state, completed continuing education as required by the director pursuant to ORS 59.975.

(6) An applicant under subsection (2), (3), (4) or (5) of this section shall, at the time of application, certify that the applicant has conducted criminal records checks required under ORS 59.970 and 59.972 and:

(a) Certify that, to the best of the applicant's belief, no individual the applicant employs or intends to employ as a loan originator has engaged in conduct that would constitute a violation of ORS 59.967 (2) or 59.971; or

(b) Note any exceptions to the certification made in paragraph (a) of this subsection. An applicant is not subject to an action at law for making a notation under this paragraph in good faith.

(7) Except as provided in subsections (4) and (5) of this section, a mortgage banker or mortgage broker may voluntarily report to the director regarding employees who would qualify as loan originators if not exempted under ORS 59.840 (4). Voluntary reporting by a banker or broker under this subsection does not make the reported employees subject to training, examination or continuing education requirements or other laws governing loan originators.

(8) The director shall keep records that include notifications filed under subsection (1) of this section and exceptions to certifications under subsection (6) of this section. The director shall retain the records for a period of not less than three years. The director shall keep for 10 years a record of any complaint against a loan originator that has been determined to be justified pursuant to ORS 59.973.

(9) Notwithstanding subsections (1) to (5) of this section and ORS 59.865 (17), 59.970, 59.971 (1)(d) and 59.975, the director, by rule, may waive any training, examination or continuing education requirement for a loan originator for a period not to exceed six months after the individual begins or resumes employment as a loan originator. [2001 c.952 §4; 2003 c.526 §4; 2005 c.22 §40]

**59.970 Qualifications for insurance licensees acting as loan originators.** (1) As used in this section, "loan originator" means an individual who:

(a) Is an insurance producer or insurance consultant licensed under ORS 744.002;

(b) Has not transacted insurance as defined in ORS 731.146 for a period of 60 consecutive days; and

(c) Would qualify as a full-time loan originator if not exempted under ORS 59.840

(d) Has and maintains an individual surety bond or irrevocable letter of credit as defined in 59.969 4 (c)

(2) An individual who is an insurance producer or insurance consultant licensed under ORS 744.002 and who is employed full-time as a loan originator shall:

(a) Complete an entry-level training course approved or provided by an organization certified as described in ORS 59.977;

(b) Pass an examination, approved or provided by an organization described in ORS 59.977, on laws and rules relating to mortgage lending in this state;

(c) If the individual has been employed as a loan originator for two or more years in this state, complete the continuing education requirements under ORS 59.975; and

(d) Undergo a criminal records check as required in ORS 59.972. [2003 c.526 §2; 2005 c.22 §41]

**Note:** Section 7, chapter 526, Oregon Laws 2003, provides:

**Sec. 7.** (1) The training and examination requirements described in ORS 59.969 and 59.970 do not apply to an individual who, on January 1, 2004:

(a) Is an insurance producer or insurance consultant licensed under ORS 744.002;

(b) Would qualify as a loan originator if not exempted under ORS 59.840 (4); and

(c) Has worked full-time performing the functions of a loan originator since January 1, 2002.

(2) The continuing education requirements described in ORS 59.969 and 59.970 apply to an individual who is an insurance producer or insurance consultant licensed under ORS 744.002 and who is a loan originator as defined in ORS 59.970. The two-year period allowed for the individual to complete the continuing education requirements begins on the filing date of the first application under ORS 59.969 that lists the individual. [2003 c.526 §7; 2005 c.22 §42]

**59.971 Prohibited conduct for loan originators; effect of criminal conviction; rules.** (1) A person employed by a mortgage banker or mortgage broker as a loan originator may not:

(a) Engage in dishonest, fraudulent or illegal practices or conduct in any business or profession or engage in unfair or unethical practices or conduct in connection with the mortgage business.

(b) Willfully or repeatedly violate or fail to comply with a provision of ORS 59.840 to 59.980 or a rule or order of the Director of the Department of Consumer and Business Services.

(c) Fail to account to persons interested for all money or property received in connection with a mortgage loan.

(d) Fail to meet the training, education or continuing education requirements for loan originators.

(e) Fail to keep and maintain an individual surety bond or irrevocable letter of credit as required in ORS 59.969 2 (c)

(2) A person may not be employed by a mortgage banker or mortgage broker as a loan originator as defined in ORS 59.840 or 59.970 if the person has been convicted of any crime or category of crime specified by the director by rule. [2001 c.952 §6; 2003 c.526 §6]

(3) The Director of the Department of Consumer and Business Services may by order deny, suspend, condition or revoke a registration of a person as a loan originator if the director finds that the applicant or registrant has violated any provision of subsection (1) of this section.

**59.972 Loan originator criminal records checks; rules.** (1) A mortgage banker or mortgage broker shall conduct a criminal records check of each individual who the mortgage banker or mortgage broker employs or intends to employ as a loan originator.

(2) A mortgage banker or mortgage broker shall report to the Director of the Department of Consumer and Business Services the results of each criminal records check conducted under subsection (1) of this section.

(3) The director shall adopt rules:

(a) Necessary for the implementation and administration of criminal records checks required under this section and ORS 59.970; and

(b) Specifying categories of criminal convictions that will prevent a person from acting as a loan originator under ORS 59.971. [2003 c.526 §3]