

Red Text below. Changes suggested by David at DFCS.

59.971

Green Text below. Additional Changes suggested by Steve Emory at Pacific Sunset Mortgage Inc. (I am not an attorney by trade so someone that is should review my suggestions for text intent and placement)

59.925 (include LO in bond liability section)

59.969 (Add LO individual Bonding requirement to be registered, provide bond to state with registration to state, show bond to escrow, escrow verify LO info at DCBS)

59.971 (Add text for LO registrant maintaining Bond)

59.860 (Add ML licensee requirement for annual reports on production for tracking and regulatory compliance)

59.865 (Add requirement for ML licensee to pay appraisers in a timely manner and ML can not base payment on influencing value or closed loan)

I would as well suggest increasing the ML Bond amounts starting at \$100,000 and increasing in amount as number of offices increases. I would also suggest a number of registered loan originators be a trigger to increase the bonding along with the number of offices.

Blue Text below. One additional change suggested by Steve Emory to prevent consumer problems after close with inside knowledge

59.930 (Add requirement to prevent ML or LO from using knowledge gained during a loan to use for personal gain after the loan closes) Oregonian Article 11/11/07

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## Chapter 59 — Securities Regulation; Mortgage Bankers and Brokers

2005 EDITION

### SECURITIES; MORTGAGE BANKERS AND BROKERS

### CORPORATIONS AND PARTNERSHIPS

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## MORTGAGE BANKERS; MORTGAGE BROKERS; LOAN ORIGINATORS

### **59.840 Definitions for ORS 59.840 to 59.980.** As used in ORS 59.840 to 59.980:

- (1) "Director" means the Director of the Department of Consumer and Business Services.
- (2) "Fraud," "deceit" and "defraud" are not limited to common-law deceit.
- (3) "License" means a license issued to a mortgage banker or mortgage broker under ORS 59.840 to 59.980.
- (4)(a) "Loan originator" means an individual employed by or purporting to act as an agent or independent contractor for a mortgage banker or mortgage broker that is required to be licensed under ORS 59.840 to 59.980, with the expectation by the individual of compensation or gain that is determined by the amount borrowed or the terms and conditions agreed to by the mortgage loan borrower, and having primary job responsibilities that include negotiating with a borrower or potential borrower for the purpose of establishing the terms and conditions of a mortgage loan.
  - (b) "Loan originator" includes a person employed at a location outside this state whose primary job responsibilities include contacting or attempting to contact a borrower or potential borrower within this state through any medium or mode of communication for purposes of providing a mortgage loan within this state.
  - (c) "Loan originator" does not include an individual whose responsibilities are clerical or administrative functions, including but not limited to gathering information, requesting information, word processing, soliciting general interest in mortgage loans, sending correspondence and assembling files.
  - (d) "Loan originator" does not include an employee of a mortgage banker that is rated as good or better under the federal rating system in effect on May 1, 2001, for seller-servicers of Federal Housing Administration, Federal Home Loan Mortgage Corporation or Federal National Mortgage Association loans and that has an office within this state at which the mortgage banker maintains complete and current copies of all employment records and other records as required by the Director of the Department of Consumer and Business Services by order or rule, in a format acceptable to the director.
  - (e) "Loan originator" does not include an insurance producer licensed under ORS 744.052 to 744.089 or insurance consultant licensed under ORS 744.002.
  - (f) "Loan originator" does not include a person or group of persons exempted by rule or order of the director.
- (5) "Mortgage banker":
  - (a) Means any person who for compensation or in the expectation of compensation:
    - (A) Either directly or indirectly makes, negotiates or offers to make or negotiate a mortgage banking loan or a mortgage loan; and
    - (B) Services or sells a mortgage banking loan.
  - (b) Does not include:
    - (A) A financial institution, as defined in ORS 706.008.
    - (B) A financial holding company or a bank holding company, as defined in ORS 706.008, holding an institution described in subparagraph (A) of this paragraph; a savings and loan holding company as defined in section 408 of the National Housing Act, 12 U.S.C. 1730a (1982), holding an association described in subparagraph (A) of this paragraph; the subsidiaries and affiliates of the financial holding company, bank holding company or savings and loan holding company; or subsidiaries and affiliates of institutions described in subparagraph (A) of this paragraph, provided that the appropriate statutory regulatory authority is exercising

control over or is regulating or supervising the persons listed in this subparagraph in their mortgage banking activities in accordance with the purposes of ORS 59.840 to 59.980.

(C) A person who makes a loan secured by an interest in real estate with the person's own moneys, for the person's own investment and who is not engaged in the business of making loans secured by an interest in real estate.

(D) An attorney licensed in this state who negotiates mortgage banking loans or mortgage loans in the ordinary course of business, unless the business of negotiating mortgage banking loans or mortgage loans constitutes substantially all of the attorney's professional activity.

(E) A person who, as seller of real property, receives one or more mortgages or deeds of trust as security for a separate money obligation.

(F) An agency of any state or of the United States.

(G) A person who receives a mortgage or deed of trust on real property as security for an obligation payable on an installment or deferred payment basis and arising out of materials furnished or services rendered in the improvement of that real property or any lien created without the consent of the owner of the real property.

(H) A person who funds a mortgage banking loan or mortgage loan which has been originated and processed by a licensee or by an exempt person and who does not maintain a place of business in this state in connection with funding mortgage banking loans or mortgage loans, does not directly or indirectly solicit borrowers in this state for the purpose of making mortgage banking loans or mortgage loans and does not participate in the negotiation of mortgage banking loans or mortgage loans. For the purpose of this subparagraph, "negotiation of mortgage banking loans or mortgage loans" does not include setting the terms under which a person may buy or fund a mortgage banking loan or a mortgage loan originated by a licensee or exempt person.

(I) A nonprofit federally tax exempt corporation certified by the United States Small Business Administration and organized to promote economic development within this state whose primary activity consists of providing financing for business expansion.

(J) A licensee licensed under ORS chapter 725 or a mortgage broker.

(K) A retirement or pension fund.

(L) An insurer as defined in ORS 731.106.

(M) A court appointed fiduciary.

(N) Any other person designated by rule or order of the director.

(6) "Mortgage banking loan" means a loan, extension of credit or a retail sales contract that is funded exclusively from the mortgage banker's own resources, which is directly or indirectly secured by a mortgage or deed of trust or any lien interest on real estate and which is created with the consent of the owner of the real property. For purposes of this subsection, "own resources" means any of the following:

(a) Cash, corporate capital, warehouse credit lines at financial institutions defined in ORS 706.008 or other sources that are liability items of the mortgage banker's financial statements for which its assets are pledged;

(b) Correspondent contracts between the mortgage banker and a bank, savings bank, trust company, savings and loan association, credit union, profit sharing or pension trust, a licensee under ORS chapter 725 or an insurance company; or

(c) The mortgage banker's affiliates' cash, corporate capital, warehouse credit lines at financial institutions defined in ORS 706.008 or other sources that are liability items on the affiliates' financial statements for which the affiliates' assets are pledged. As used in this paragraph, "affiliates" means entities that, directly or indirectly, through one or more intermediaries controls, are controlled by or are under common control with the entity specified.

(7) "Mortgage broker":

(a) Means a person who:

(A) Engages all or part of the time, for the account of others or for the person's own account, in the business of selling real estate paper whether as issuer, agent or principal to persons other than persons enumerated in ORS 59.035 (4);

(B) Engages all or part of the time, for the account of others or for the person's own account, in the business of accepting funds from one or more persons other than persons enumerated in ORS 59.035 (4) for investment in real estate paper; or

(C) For compensation, or in the expectation of compensation, either directly or indirectly makes, negotiates or offers to make or negotiate a mortgage loan.

(b) Does not include:

(A) A financial institution, as defined in ORS 706.008.

(B) A financial holding company or a bank holding company, as defined in ORS 706.008, holding an institution described in subparagraph (A) of this paragraph; a savings and loan holding company as defined in section 408 of the National Housing Act, 12 U.S.C. 1730a (1982), holding an association described in subparagraph (A) of this paragraph; the subsidiaries and affiliates of the financial holding company, bank holding company or savings and loan holding company; or subsidiaries and affiliates of institutions described in subparagraph (A) of this paragraph, provided that the appropriate statutory regulatory authority is exercising control over or is regulating or supervising the persons listed in this subparagraph in their mortgage brokering activities in accordance with the purposes of ORS 59.840 to 59.980.

(C) A person who purchases real property and issues an obligation to finance the transaction to the seller incidentally to the sale.

(D) A real estate licensee as defined in ORS 696.010 who performs services solely incidental to the practice of professional real estate activity as defined in ORS 696.010, unless the real estate licensee performs the functions of a mortgage banker or a mortgage broker as defined in this section.

(E) A person licensed under the provisions of ORS chapter 725 or a mortgage banker.

(F) A person who makes a loan secured by an interest in real estate with the person's own moneys, for the person's own investment and who is not engaged in the business of making loans secured by an interest in real estate.

(G) An attorney licensed in this state who negotiates mortgage loans in the ordinary course of business, unless the business of negotiating mortgage loans constitutes substantially all of the attorney's professional activity.

(H) A person who, as seller of real property, receives one or more mortgages or deeds of trust as security for a separate money obligation.

(I) An agency of any state or of the United States.

(J) A person who receives a mortgage or deed of trust on real property as security for an obligation payable on an installment or deferred payment basis and arising out of materials furnished or services rendered in the improvement of that real property or any lien created without the consent of the owner of the real property.

(K) A person who funds a mortgage loan which has been originated and processed by a licensee or by an exempt person and who does not maintain a place of business in this state in connection with funding mortgage loans, does not directly or indirectly solicit borrowers in this state for the purpose of making mortgage loans and does not participate in the negotiation of mortgage loans. For the purpose of this subparagraph, "negotiation of mortgage loans" does not include setting the terms under which a person may buy or fund a mortgage loan originated by a licensee or exempt person.

(L) A nonprofit federally tax exempt corporation certified by the United States Small Business Administration and organized to promote economic development within this state whose primary activity consists of providing financing for business expansion.

(M) A person licensed under ORS 446.691 or 446.696 or a temporary manufactured structure dealer licensee under ORS 446.701 who provides services customarily associated with the retail sales of manufactured dwellings, including communication of generally available information regarding mortgage loans, unless:

(i) The person receives from a purchaser a fee or commission as a mortgage broker or mortgage banker that is disclosed in the sales contract, purchase agreement or applicable federal documents;

(ii) For the benefit of a potential purchaser, the person completes a loan application form or other document that is part of a mortgage banking loan and completes a good faith estimate under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.);

(iii) The person solicits or receives credit information from a prospective purchaser for the purpose of making credit decisions; or

(iv) The person negotiates with a potential purchaser the terms of a mortgage loan including but not limited to points, interest rates, length of loan or other loan conditions.

(N) Any other person designated by rule or order of the director.

(8) "Mortgage loan" means a loan, extension of credit or retail sales contract, other than a mortgage banking loan, secured by a mortgage or deed of trust or any lien interest on real estate that is created with the consent of the owner of the real estate.

(9) "Residential mortgage transaction" means a transaction in which a mortgage, deed of trust, purchase money

security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in property upon which four or fewer residential dwelling units are planned or situated, including but not limited to individual units or condominiums and cooperatives. As used in this subsection, “residential dwelling unit” means an improvement designed for residential occupancy. [1993 c.508 §1; 1995 c.129 §1; 1995 c.622 §13; 1997 c.211 §1; 1997 c.631 §377; 1999 c.36 §1; 2001 c.377 §40; 2001 c.952 §1; 2003 c.364 §47; 2003 c.655 §48]

**59.845 License required to engage in residential mortgage transactions as mortgage banker or mortgage broker.** (1) It is unlawful for any person to engage in residential mortgage transactions in this state as a mortgage banker or mortgage broker unless the person is licensed under ORS 59.840 to 59.980. A person who is a mortgage banker or mortgage broker under ORS 59.840, but who does not engage in residential mortgage transactions in this state, is not required to obtain a license under ORS 59.840 to 59.980.

(2) For purposes of this section, a person “engages in residential mortgage transactions in this state” when any act constituting the business of a mortgage banker or mortgage broker and involving a residential mortgage transaction originates from this state or is directed to and received in this state or when the real estate that is the subject of the activities of the mortgage banker or mortgage broker is located in this state. [1993 c.508 §2; 1999 c.36 §2]

**59.850 Procedures for licensing; experience required; surety bond or letter of credit; fees; rules.** (1) The Director of the Department of Consumer and Business Services by rule shall establish procedures for licensing mortgage bankers or mortgage brokers. The director may coordinate licensing with any national registration or licensing system.

(2) An applicant for a license as a mortgage banker or mortgage broker, or a managing partner, director, executive officer or other individual occupying a similar position or performing similar functions for the applicant, shall have, during the five years immediately preceding the time of application, not less than three years’ experience in the mortgage business, three years’ experience negotiating loans in a related business satisfactory to the director or three years’ equivalent lending experience in a related business satisfactory to the director.

(3) If a license as a mortgage banker or mortgage broker is issued to a person other than an individual, at least one managing partner, director, executive officer or other individual occupying a similar position or performing similar functions for the person shall, at all times during the term of the license, satisfy the experience requirement described in subsection (2) of this section.

(4) Every applicant for a license as a mortgage banker or mortgage broker shall file with the director a corporate 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) The total amount of the corporate surety bond or irrevocable letter of credit for a single applicant under subsection (4) of this section shall be not less than \$25,000 but not more than \$50,000, regardless of the number of offices of the applicant. If an applicant has more than one office in this state to engage in residential mortgage transactions as a mortgage banker or mortgage broker, the amount of the bond or letter of credit shall increase for each additional office in an amount determined by the director by rule. The amount of the increase in the bond or letter of credit for each additional office shall be not less than \$5,000 but not more than \$10,000. The director may adjust the minimum amount of the increase in the bond or letter of credit for additional offices as necessary to comply with the \$50,000 limit.

(6) If the application, surety bond or irrevocable letter of credit and fees are in order and the director is satisfied that the application should not be denied upon one or more of the grounds specified in ORS 59.865, 59.870 or 59.875, the director shall license the mortgage banker or mortgage broker.

(7) A licensee shall amend the license application and, if necessary, increase the amount of the corporate surety bond or irrevocable letter of credit as described in subsection (5) of this section when there are material changes in the information contained in the original application.

(8) The director shall:

(a) Charge and collect fees for initial and renewal license applications;

(b) Set by rule all fees required under this section. Fees shall be set to reflect those amounts sufficient to meet the costs of administering ORS 59.840 to 59.980, including those amounts sufficient to establish and maintain a reasonable emergency fund; and

(c) Set by rule the amounts of corporate surety bonds and irrevocable letters of credit required under this

section.

(9) The fees under this section are not refundable except for those fees that the director determines by rule may be refundable. [1993 c.508 §3; 1995 c.129 §2; 1997 c.631 §378; 1999 c.36 §3]

**59.855 Expiration of license; renewal; duration of renewed license; change in personnel; rules.** (1) The initial license of a mortgage banker or mortgage broker expires one year after the date of issuance unless the Director of the Department of Consumer and Business Services establishes a different expiration date for purposes of coordination with any national registration or licensing system.

(2) The director by rule shall establish procedures for renewing licenses of mortgage bankers and mortgage brokers. The rule shall specify the duration of renewed licenses.

(3) If there is a change in the partners, directors, officers, persons occupying similar positions or performing similar functions, or persons directly or indirectly controlling a mortgage banker or mortgage broker, written notification of the change shall promptly be filed with the director. No fee shall be required for the notification. [1993 c.508 §4; 1995 c.129 §3]

**59.860 Licensees to keep records; inspection; filing of financial reports.** (1) Every mortgage banker and mortgage broker shall make and keep such accounts, correspondence, memoranda, papers, books and other records as the Director of the Department of Consumer and Business Services by rule or order prescribes. All such records shall be preserved for five years unless the director by rule prescribes otherwise. The director may examine all such records within or without this state at any reasonable time or times and may require without subpoena the production of such records at the office of the director as often as is reasonably necessary.

(2) Every mortgage banker and mortgage broker shall file financial reports or other information as the director by rule or order may require and shall promptly correct any document filed with the director that is or becomes incomplete or inaccurate in any material respect. [1993 c.508 §5]

(3) Every mortgage banker and mortgage broker shall file an annual loan production report on Oregon properties in a manner determined by the director by rule and shall promptly correct any part filed with the director that is or becomes incomplete or inaccurate in any material respect. The annual loan production report shall be due by May 15<sup>th</sup> of each year for annual loan production in the previous calendar year and shall include a breakdown of loans in a mortgage industry accepted standard practice and terms including a breakdown of total number and dollar volume of closed loans by loan type. Any information provided by a mortgage banker or mortgage broker in an annual loan production may only be used for purposes reasonably related to the regulation of mortgage bankers or mortgage brokers to ensure compliance with ORS 59.840 to 59.980 or statewide Oregon statistical tracking without breaking down individual licensees numbers and may not be released to other parties.

**59.865 Grounds for denying, suspending, conditioning or revoking license.** Except as provided in ORS 59.870, the Director of the Department of Consumer and Business Services may by order deny, suspend, condition or revoke a license of a person as a mortgage banker or mortgage broker if the director finds that the applicant or licensee:

(1) Is insolvent, either in the sense that the liabilities of the applicant or licensee exceed the assets of the applicant or licensee or that the applicant or licensee cannot meet the obligations of the applicant or licensee as the obligations mature, or is in such financial condition that the applicant or licensee cannot continue in business with safety to the customers of the applicant or licensee.

(2) Has engaged in dishonest, fraudulent or illegal practices or conduct in any business or profession or unfair or unethical practices or conduct in connection with the mortgage business.

(3) Has willfully or repeatedly violated or failed to comply with any provision of ORS 59.840 to 59.980 or any rule or order of the director.

(4) Has been convicted of a misdemeanor, an essential element of which is fraud, or of a felony.

(5) Has filed an application for a license that, as of the date the license was issued, or as of the date of an order denying, suspending, conditioning or revoking a license, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

(6) Has failed to account to persons interested for all money or property received in connection with a

mortgage loan.

(7) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage business.

(8) Is the subject of an order of the director denying, suspending, conditioning or revoking a license as a mortgage banker or mortgage broker.

(9) Is the subject of a United States Postal Service fraud order that is currently effective and was issued within the last five years.

(10) Does not have the experience required by ORS 59.850 (2) or (3).

(11) Has failed to comply with the requirements of ORS 59.860 to make and keep records prescribed by rule or order of the director, to produce such records required by the director or to file any financial reports or other information the director by rule or order may require.

(12) Is the subject of an order of the director denying, suspending, conditioning or revoking a license under the provisions of any other law administered by the director.

(13) Is the subject of a cease and desist order entered after notice and opportunity for hearing and issued by the director within the last five years.

(14) Has demonstrated negligence or incompetence in performing any act for which the licensee is required to hold a license.

(15) Has failed to supervise diligently and control the mortgage-related activities of a loan originator employed by the licensee.

(16) Has knowingly misrepresented to the director the training of, examination of or continuing education time earned by a loan originator employed by the licensee.

(17) Has willfully or repeatedly employed persons as loan originators who do not meet the training, education or continuing education requirements for loan originators.

(18) Has failed to notify the director of the termination of a loan originator for failure to comply with state or federal laws, regulations or rules. [1993 c.508 §6; 2001 c.952 §10]

(19) Has failed to pay a third party provider for their services in a timely manner as set by Rule by the director, or has conditioned the third party provider's payment on a loan closing at the mortgage banker or mortgage broker, or in the case of a third party provider that is an appraiser that the appraisal meet a predetermined value target for payment of services.

**59.870 Action against applicant or licensee for act or omission of associate; exception.** The Director of the Department of Consumer and Business Services may enter an order against the applicant or licensee under ORS 59.865 if any partner, officer or director of a mortgage banker or mortgage broker, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the mortgage banker or mortgage broker has been guilty of any act or omission which would be cause for denying, suspending or revoking the license of an individual mortgage banker or mortgage broker. This section shall not apply to ORS 59.865 (1). [1993 c.508 §7]

**59.875 Cancellation of license or application; application for withdrawal.** (1) If the Director of the Department of Consumer and Business Services finds that an applicant or licensee has ceased to do business as a mortgage banker or mortgage broker, or has failed to maintain a bond required by ORS 59.850 or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the director may cancel the license or application.

(2) A mortgage banker or mortgage broker may withdraw a license by filing an application to withdraw. Unless the director determines that the license should be suspended or revoked, the director shall allow the withdrawal subject to any conditions, limitations and restrictions the director may impose. [1993 c.508 §8]

**59.880 Supervisory authority of director over mortgage bankers, mortgage brokers and loan originators.** The Director of the Department of Consumer and Business Services shall have general supervision and control over all loan originators, mortgage bankers and mortgage brokers residing or doing business in this state and engaged in any activity subject to the provisions of ORS 59.840 to 59.980. All such persons and their records and everything connected with their activities shall be subject to examination by the director at any time. The provisions of this section and of any other section of ORS 59.840 to 59.980 relating to examinations shall extend to

any person who should have been reported as a loan originator under ORS 59.969 or licensed as a mortgage banker or mortgage broker, any person exempted by rule from those definitions or any person whose license has expired or has been withdrawn, canceled, suspended, conditioned or revoked. The director may collect from each such person the actual expenses incurred in that examination. [1993 c.508 §9; 2001 c.952 §11]

**59.885 Investigations; publicity with respect to violations; cease and desist order.** The Director of the Department of Consumer and Business Services:

(1) May make such public or private investigations within or outside this state as the director deems necessary to determine whether a person has violated any provision of ORS 59.840 to 59.980 or any rule or order of the director, or to aid in the enforcement of ORS 59.840 to 59.980 or in the formulation of rules and forms thereunder;

(2) May require or permit a person to file a statement in writing, under oath or otherwise as the director determines, as to all the facts and circumstances concerning the matter to be investigated;

(3) May publish information concerning any violation under this section or ORS 59.890, 59.992 or 59.996 or any rule or order of the director after an action taken under this section or ORS 59.890, 59.992 or 59.996; and

(4) If the director has reasonable cause to believe that any person has been engaged, is engaging or is about to engage in any violation of any provision of ORS 59.840 to 59.980, the director may issue an order, subject to ORS 59.905, directed to the person, and to any other person directly or indirectly controlling the person, to cease and desist from the violation or threatened violation. [1993 c.508 §10]

**59.890 Enjoining violations; fine; appointment of receiver; attorney fees; damages to private parties.** (1) Whenever the Director of the Department of Consumer and Business Services has reasonable cause to believe that a person has been engaged or is engaging in any violation of any provision of ORS 59.840 to 59.980 or any rule or order of the director, the director may bring suit in the name and on behalf of the State of Oregon in the circuit court of any county of this state to enjoin the violation and to enforce compliance with any provision of ORS 59.840 to 59.980 or such rule or order. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted. The court may fine the person against whom the order is entered not more than \$5,000 for each violation, which shall be entered as a judgment and paid to the General Fund of the State Treasury. Each violation is a separate offense. In the case of a continuing violation, each day's continuance is a separate violation, but the maximum penalty for any continuing violation shall not exceed \$20,000 for each offense. If the court finds that the defendant has violated any provision of ORS 59.840 to 59.980 or any such rule or order, the court may appoint a receiver, who may be the director, for the defendant or the defendant's assets. The court may not require the director to post a bond. The court may award reasonable attorney fees to the director if the director prevails in an action under this section. The court may award reasonable attorney fees to a defendant who prevails in an action under this section if the court determines that the director had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(2) The director may include in any action authorized by subsection (1) of this section:

(a) A claim for restitution or damages under ORS 59.925 on behalf of the persons injured by the act or practice constituting the subject matter of the action. The court shall have jurisdiction to award appropriate relief to such persons, if the court finds that enforcement of the rights of such persons by private civil action, whether by class action or otherwise, would be so burdensome or expensive as to be impractical; or

(b) A claim for disgorgement of illegal gains or profits derived. Any recovery under this paragraph shall be turned over to the General Fund of the State Treasury unless the court requires other disposition. [1993 c.508 §11; 1995 c.696 §12]

**59.895 Procedures where assets or capital of mortgage banker or broker found impaired; involuntary liquidation.** (1) When the Director of the Department of Consumer and Business Services ascertains that the assets or capital of any mortgage banker or mortgage broker is impaired, or that the mortgage banker's or mortgage broker's affairs are in an unsound condition, the director may take possession of all the property, business and assets of the mortgage banker or mortgage broker located in this state and retain possession of them pending the further proceedings specified in this section. The director shall inventory the assets and liabilities of the mortgage banker or mortgage broker. The director shall file one copy of the inventory in the office of the director and one copy in the office of the clerk of the circuit court of the county in which the principal place of business of the mortgage banker or mortgage broker is located, and shall mail one copy to each shareholder or partner of the

mortgage banker or mortgage broker at the last-known address of the shareholder or partner. The clerk of the court shall file the inventory as a pending proceeding and give it a case number.

(2) If any mortgage banker or mortgage broker refuses to permit the director to take possession under this section, the director may apply to the circuit court of the county in which the principal place of business of the mortgage banker or mortgage broker is located for an order appointing a receiver, who may be the director, to take possession.

(3) If the deficiency in assets or capital has not been made good or the unsound condition remedied within 60 days from the date when the director or receiver took possession, the property, business and assets of the mortgage banker or mortgage broker located in this state shall be liquidated. If a receiver has not been appointed, the director shall apply for such appointment by the court in which the inventory was filed. The liquidation shall proceed as provided by law for liquidation of a private corporation in receivership.

(4) The expenses of the receiver and compensation of counsel, as well as all expenditures required in the liquidation proceedings, shall be fixed by the director, subject to the approval of the court, and, upon certification by the director, shall be paid out of the funds in the hands of the director as such receiver. [1993 c.508 §12; 2003 c.576 §187]

**59.900 Rules; financial statements.** (1) In accordance with this section and ORS chapter 183, the Director of the Department of Consumer and Business Services may from time to time make, amend and rescind such rules as are necessary to carry out the provisions of ORS 59.840 to 59.980, including but not limited to rules governing the activities of loan originators, mortgage bankers and mortgage brokers and rules governing the purchase or sale of mortgage banking loans, mortgage loans or real estate paper in coordination with applicable provisions of ORS 59.005 to 59.451, 59.660 to 59.830, 59.991 and 59.995 and rules adopted thereunder.

(2) Any financial statement required under ORS 59.840 to 59.980 shall be prepared in accordance with generally accepted accounting principles. The director may by rule prescribe:

(a) The form and content of financial statements required under ORS 59.840 to 59.980;

(b) The circumstances under which consolidated financial statements shall be filed; and

(c) Whether any required financial statements shall be certified by independent or certified public accountants.

[1993 c.508 §13; 2001 c.952 §12]

**59.905 Notice of orders; hearings on orders.** (1) Except as provided in ORS 183.745, upon the entry of an order under ORS 59.840 to 59.980, the Director of the Department of Consumer and Business Services shall promptly give appropriate notice of the order as provided in this subsection. The notice shall state that a hearing will be held on the order if a written demand for hearing is filed with the director within 20 days after the date of service of the order. The notice shall be given to:

(a) The applicant or licensee with respect to orders entered pursuant to ORS 59.865;

(b) The loan originator and the licensee employing the loan originator with respect to orders entered pursuant to ORS 59.973; or

(c) All interested persons with respect to orders entered pursuant to any other provision of ORS 59.840 to 59.980.

(2) If timely demand for a hearing is filed by a person entitled to notice of the order, the director shall hold a hearing on the order as provided by ORS chapter 183. In the absence of a timely demand for a hearing, a person is not entitled to judicial review of the order.

(3) After the hearing, the director shall enter a final order vacating, modifying or affirming the order.

(4) The director may enter a final order revoking a license notwithstanding the fact that the license has expired, if the initial order of revocation was issued prior to expiration of the license or registration. [1993 c.508 §14; 2001 c.952 §13]

**59.910 Judicial review of orders.** (1) A person aggrieved by an order of the Director of the Department of Consumer and Business Services which has been the subject of a timely application for hearing before the director shall be entitled to judicial review of the order under ORS chapter 183.

(2) A judgment of a reviewing court under ORS chapter 183 may not bar the director from thereafter vacating or modifying an order involved in the proceeding for review, or entering any new order, for a proper cause that was not decided by the reviewing court. [1993 c.508 §15; 2003 c.576 §322]

**59.915 Oaths and subpoenas in proceedings before director.** (1) For the purpose of an investigation or proceeding under ORS 59.840 to 59.980, the Director of the Department of Consumer and Business Services may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records that the director deems relevant or material to the inquiry. Each witness who appears before the director under a subpoena shall receive the fees and mileage provided for witnesses in ORS 44.415 (2).

(2) If a person fails to comply with a subpoena so issued or a party or witness refuses to testify on any matters, the judge of the circuit court or of any county, on the application of the director, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1993 c.508 §16]

**59.920 Copies of documents; fees; effect of certification.** (1) The Director of the Department of Consumer and Business Services shall furnish to any person, upon payment of a fee established by rule, copies of any document which is a matter of public record. Certified copies shall be furnished upon request. In a proceeding or prosecution under ORS 59.840 to 59.980, a copy so certified shall be prima facie evidence of the contents of the entry or document certified.

(2) A certificate of the director as to compliance or noncompliance with licensing provisions of ORS 59.840 to 59.980 shall be taken and received in a civil or criminal proceeding in this state as prima facie evidence of the facts stated in the certificate. [1993 c.508 §17]

**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]

**59.930 Fraud and deceit with respect to mortgage banker or broker business.** It is unlawful for any person, directly or indirectly, in connection with the conduct of a mortgage banker or mortgage broker business:

(1) To employ any device, scheme or artifice to defraud;

(2) Knowingly to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or

(4) To make or file, or cause to be made or filed, to or with the Director of the Department of Consumer and Business Services any statement, report or document which is known to be false in any material respect or matter. [1993 c.508 §19]; or

(5) To use knowledge obtained from or about a person during the conduct of the mortgage banker or mortgage broker business to engage in any act or practice which operates or would operate as a fraud, deceit, or for personal gain of any person operating under license or registration as a mortgage banker, mortgage broker, loan originator and/or their employees, not related to current or future licensed mortgage banker or mortgage broker business activity, upon any person.

**59.935 Clients' Trust Account; examination; deposit of funds; interest; rules.** (1) Each mortgage banker or mortgage broker shall maintain in this state one or more separate bank accounts that shall be designated a Clients' Trust Account in which all trust funds received or handled by the mortgage banker or mortgage broker shall be deposited unless, pursuant to written agreement of all parties having an interest in the trust funds, the trust funds are immediately placed in a neutral escrow depository in this state.

(2) Each mortgage banker or mortgage broker shall file with the Director of the Department of Consumer and Business Services, on forms approved by the director, a statement identifying the name of the bank or banks, account number or account numbers, and name of account or accounts for each Clients' Trust Account maintained.

(3) Each mortgage banker or mortgage broker shall authorize the director or an authorized representative of the director, on a form approved by the director, to examine any Clients' Trust Account, by a duly authorized representative of the director. The examination shall be made at such times as the director may direct.

(4) If a branch office maintains a separate Clients' Trust Account, a separate bookkeeping system shall be maintained in the branch office, provided a copy of all documents evidencing payments into and from the Clients' Trust Account is maintained in the main office of the mortgage banker or mortgage broker.

(5) Trust funds received by a mortgage banker or mortgage broker may be placed by the mortgage banker or mortgage broker in a federally insured interest-bearing bank account, designated a Clients' Trust Account, but only with the prior written approval of all parties having an interest in the trust funds. The earnings of such interest-bearing account shall not inure to the benefit of the mortgage banker or mortgage broker unless expressly approved in writing before deposit of the trust funds by all parties having an interest in the trust funds.

(6) A mortgage banker or mortgage broker is not entitled to any part of any interest earnings on trust funds deposited under subsection (5) of this section or to any part of the earnest money or other money paid to the mortgage banker or mortgage broker in connection with any real estate transaction as part or all of the mortgage banker's or mortgage broker's commission or fee until the transaction has been completed or terminated. The question of the disposition of forfeited earnest money shall be negotiated between a mortgage banker or mortgage broker and a client at the time of executing any earnest money agreement. The result of such negotiation shall be filled in on the agreement form at the time of signing by the client and either separately initialed by the client or placed immediately above the signature of the client.

(7) Clients' Trust Account funds are not subject to execution or attachment on any claim against the mortgage banker or mortgage broker.

(8) No person shall knowingly keep or cause to be kept any funds or money in any bank under the heading of Clients' Trust Account or any other name designating such funds or money as belonging to the clients of any mortgage banker or mortgage broker, except actual trust funds deposited with the banker or broker.

(9) The director may provide by rule for other records to be maintained and for the manner in which trust funds are deposited, held and disbursed. [1993 c.508 §20; 1995 c.191 §1]

**59.940 Notice to bank regarding Clients' Trust Account.** (1) Each mortgage banker or mortgage broker, at the time a Clients' Trust Account is opened under ORS 59.935, shall provide the bank in which the account is opened with a notice in substantially the following form:

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NOTICE OF CLIENTS' TRUST ACCOUNT

To: (name of bank) \_\_\_\_\_

I, \_\_\_\_\_, am the (owner, president, managing general partner or other position description) \_\_\_\_\_ of (name of mortgage banker or mortgage broker) \_\_\_\_\_ and am authorized to act on behalf of (name of mortgage banker or mortgage broker) \_\_\_\_\_.

Under the provisions of ORS 59.935, I am required to maintain in Oregon a Clients' Trust Account for the purpose of holding funds belonging to others.

With regard to the account(s) numbered \_\_\_\_\_ which is/are designated as a Clients' Trust Account, the account(s) is/are maintained with you as a depository for money belonging to persons other than myself and in my fiduciary capacity as a mortgage banker or mortgage broker established by client agreements in separate documents.

Dated: (insert date)

\_\_\_\_\_  
(signature of person authorized to act  
on behalf of mortgage banker  
or mortgage broker)

ACKNOWLEDGMENT OF RECEIPT

I, \_\_\_\_\_, a duly authorized representative of (bank) \_\_\_\_\_, do hereby acknowledge receipt of the above NOTICE OF CLIENTS' TRUST ACCOUNT on (date) \_\_\_\_\_.

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(title)

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(2) The acknowledged copy of the notice described in subsection (1) of this section shall be retained by the mortgage banker or mortgage broker as provided in ORS 59.935 for the retention of trust account records, subject to inspection by the Director of the Department of Consumer and Business Services or the director's authorized representative. [1993 c.508 §20a; 1995 c.191 §2]

**59.945 Prohibited advertisements.** A mortgage banker or mortgage broker shall not use or cause to be published any advertisement that:

- (1) Contains any false, misleading or deceptive statement or representation; or
- (2) Identifies the mortgage banker or mortgage broker by any name other than the name listed on the license issued by the Director of the Department of Consumer and Business Services or an assumed business name registered under ORS chapter 648. [1993 c.508 §21]

**59.950 Designation of principal place of business; other offices; change of personnel; registered agent. (1)**

Every licensed mortgage banker and mortgage broker shall designate and maintain a principal place of business for the transaction of business.

(2) If a licensed mortgage banker or mortgage broker intends to transact business at any place other than the principal place of business, the licensee shall notify the Director of the Department of Consumer and Business Services, in writing, not later than 30 days prior to opening another office. The notice shall contain the address of any other office. A copy of the license issued to the mortgage banker or mortgage broker shall be displayed in each place of business of the licensee.

(3) If there is any change among the members, officers, partners or directors of any licensee, the licensee shall notify the director within 30 days of the name, address and occupation of each new member, officer, partner or director and provide any other information the director may require.

(4) A mortgage banker or mortgage broker whose principal place of business is not in this state shall continuously maintain a registered agent in this state. The name and address of the agent shall be included in the application for a license. A mortgage banker or mortgage broker shall notify the director immediately of any change in the name or address of the registered agent.

(5) The registered agent of a mortgage banker or mortgage broker shall be an agent upon whom any process, notice or demand required or permitted by law to be served upon the mortgage banker or mortgage broker may be served. The director shall be an agent of a mortgage banker or mortgage broker if the mortgage banker or mortgage broker fails to appoint or maintain a registered agent in this state or the registered agent cannot with reasonable diligence be found. [1993 c.508 §22]

**59.955 Disclosure required before closing mortgage loan or mortgage banking loan.** Prior to the closing of any mortgage loan or any mortgage banking loan, the mortgage banker or mortgage broker shall supply the borrower with a disclosure as required by the real estate lending provisions of 15 U.S.C. 1601 et seq. and Regulation Z, 12 C.F.R. Part 226. [1993 c.508 §23]

**59.960 Consultation with licensees before rules adopted.** Before adopting any rules under ORS 59.840 to 59.980, the Director of the Department of Consumer and Business Services shall consult with an equal number of persons required to be licensed as mortgage bankers or mortgage brokers. The director shall consider the suggestions of those persons in adopting rules under ORS 59.840 to 59.980. [1993 c.508 §24]

**59.962 Servicing or collecting mortgage banking loan or mortgage loan by mortgage banker or mortgage broker.** (1) With the permission of the lender, note owner, note holder or other holder of an interest in a note, a mortgage banker or mortgage broker may service or collect any mortgage banking loan or mortgage loan in its own name or the name of the lender, note owner, note holder or other holder of an interest in the note.

(2) Except as provided in ORS 59.840 to 59.980, nothing in subsection (1) of this section is intended to grant the Director of the Department of Consumer and Business Services the authority to regulate the servicing or collection of any mortgage banking loan or mortgage loan by a mortgage banker or mortgage broker.

(3) As used in this section:

(a) "Mortgage banker" has the meaning given that term in ORS 59.840 (5)(a) but also includes those persons exempted from the definition of mortgage banker in ORS 59.840 (5)(b).

(b) "Mortgage banking loan" has the meaning given that term in ORS 59.840.

(c) "Mortgage broker" has the meaning given that term in ORS 59.840.

(d) "Mortgage loan" has the meaning given that term in ORS 59.840.

(e) "Service or collect any mortgage banking loan or mortgage loan" includes but is not limited to:

(A) Holding documents or written instruments and receiving and disbursing payments according to the instructions of the parties to the documents or written instruments;

(B) Collecting or remitting, or having the right or obligation to collect or remit, for any lender, note owner, note holder or other holder of an interest in a note or for a mortgage banker's or mortgage broker's own account, payments, interest, principal and trust items, including but not limited to hazard insurance and taxes, on a mortgage banking loan or mortgage loan in accordance with the terms of the loan, and includes loan payment follow-up, delinquency loan follow-up, loan analysis and any notifications to the borrower that are necessary to enable the

borrower to keep the loan current and in good standing; and

(C) Bringing and maintaining any suit or action to collect any amounts owed on a mortgage banking loan or mortgage loan, including but not limited to the exercise of any contractual, statutory or common law remedies such as injunction, specific performance, judicial or nonjudicial foreclosure or receivership. [1999 c.36 §4; 2001 c.952 §14]

**Note:** 59.962 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 59 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**59.965** [1995 c.129 §5; renumbered 59.980 in 2001]

**59.967 Legislative findings regarding loan originators.** (1) The Legislative Assembly finds and declares that:

(a) The public interest is served by identifying a loan originator with a specific mortgage banker or mortgage broker; and

(b) The public must be protected from the conflicts of interest created when a loan originator is employed by more than one mortgage lender.

(2) A loan originator may not originate loans for more than one mortgage banker, mortgage broker or other mortgage lender or independent mortgage agency at the same time. [2001 c.952 §3]

**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.

(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.

(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]

(10) The Director of the Department of Consumer and Business Services by rule shall establish procedures for registering of loan originators.

(a) Every applicant for registration as a loan originator shall file with the director 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.

(b) The total amount of the individual surety bond or irrevocable letter of credit for an applicant under subsection (10)(a) of this section shall be not less than \$10,000 but not more than \$25,000.

(c) Loan Originators named on the mortgage loan application FNMA form 1003 or similar type document shall provide a copy of their current individual surety bond or irrevocable letter of credit to the settlement service provider or escrow company closing the mortgage loan for the mortgage banker or mortgage broker named on the mortgage loan application. The settlement service provider or escrow company shall verify the loan originator has provided a current individual surety bond or irrevocable letter of credit and that the loan originator is listed on the Department of Consumer and Business Services list as a loan originator with the mortgage banker or mortgage broker listed on the mortgage loan application before closing the mortgage loan.

**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 (4).

(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) Be permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving an aspect of the mortgage business.

(f) Be the subject of an order of the director denying, suspending, conditioning or revoking a license as a mortgage banker or mortgage broker or a registration of a loan originator.

(g) Be the subject of an order of the director denying, suspending, conditioning or revoking a license under the provisions of any other law administered by the director.

(h) Be the subject of a cease and desist order entered after notice and opportunity for hearing and issued by the director within the last five years.

(i) Demonstrate negligence or incompetence in performing any act for which the loan originator must be licensed as a loan originator.

(j) Is the subject of an order by a state or federal agency entered after notice and opportunity for hearing, denying, suspending or revoking the person's registration or license as a mortgage broker, mortgage banker or loan originator or the substantial equivalent of those terms as defined in the Oregon Mortgage Lender Law.

(k) Fail to maintain the individual surety bond or irrevocable letter of credit as required in ORS 59.969

(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]

**59.973 Complaints against loan originators; investigation; hearing; rules; action by director.** (1) If the Director of the Department of Consumer and Business Services receives a complaint against a loan originator for a violation of ORS 59.967 (2) or 59.971, the director may notify the loan originator and the mortgage banker or mortgage broker employing the loan originator.

(2) The director may investigate a complaint against a loan originator. Upon the conclusion of the investigation, the director shall promptly notify the loan originator and the mortgage banker or mortgage broker employing the loan originator of the director's proposed determination regarding the complaint.

(3) Any hearing on a complaint must be conducted as provided by rules of the director and pursuant to ORS chapter 183.

(4) If the director determines, after opportunity for hearing, that a complaint is justified, the director shall note the complaint in the records kept pursuant to ORS 59.969 (8). For a violation of ORS 59.967 (2) or 59.971, the director may impose requirements for supervision and remedial education of the loan originator, assess civil penalties against the loan originator as provided in ORS 59.996 or refer the matter for criminal prosecution pursuant to ORS 59.992. [2001 c.952 §7; 2003 c.526 §5]

**59.975 Continuing education requirements for loan originators; rules.** The Director of the Department of Consumer and Business Services shall, by rule, establish continuing education requirements for persons employed by mortgage bankers or mortgage brokers as loan originators. The requirements established by the director may not be less than 10 hours every two years and not more than 20 hours every two years. The continuing education must be obtained through continuing education programs approved or provided by an organization whose continuing education curriculum and testing is certified by the director as described in ORS 59.977. [2001 c.952 §8]

**59.977 Certification of organizations to provide training for loan originators; rules.** (1) The Director of the Department of Consumer and Business Services may certify an organization as qualified to approve or provide entry-level training or continuing education curricula and testing for loan originators. The director, by rule, shall establish criteria for certifying an organization under this subsection.

(2) An organization certified by the director to approve or provide loan originator examinations must be experienced in professional test administration.

(3) All loan originator examinations shall be conducted at a secure location to protect the integrity of the testing process.

(4) The director, by rule, may provide for the acceptance or conditional acceptance of continuing education hours completed pursuant to the laws of another state that the director determines provide protection to the public that exceeds or is substantially similar to the protection provided by ORS 59.840 to 59.980. [2001 c.952 §9; 2005 c.97 §3]

**59.980 Short title.** ORS 59.840 to 59.980 may be cited as the "Oregon Mortgage Lender Law." [Formerly 59.965]

## PENALTIES

**59.990** [Amended by 1955 c.180 §1; repealed by 1967 c.537 §36]

**59.992 Criminal penalties for ORS 59.840 to 59.980.** (1) Violation of any provision of ORS 59.840 to 59.980 or any rule adopted by the Director of the Department of Consumer and Business Services under ORS 59.840 to 59.980, except ORS 59.915 (2) and 59.975, is a Class C felony.

(2) Violation of ORS 59.915 (2) is a Class A misdemeanor. [1993 c.508 §25; 1995 c.622 §14; 2005 c.97 §2]

**59.996 Civil penalties for ORS 59.840 to 59.980.** (1) In addition to all other penalties and enforcement

provisions provided by law, any person who violates or who procures, aids or abets in the violation of any provision of ORS 59.840 to 59.980 or any rule or order of the Director of the Department of Consumer and Business Services shall be subject to a penalty of not more than \$5,000 for every violation, which shall be paid to the General Fund of the State Treasury.

(2) Every violation is a separate offense and, in the case of a continuing violation, each day's continuance is a separate violation, but the maximum penalty for any continuing violation shall not exceed \$20,000 for each offense.

(3) Civil penalties under this section shall be imposed as provided in ORS 183.745. [1993 c.508 §26]

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