

## **Enforcement Issues**

MLWG  
12/11/07

- Exclusion of LOs working for Oregon licensed mortgage bankers - ORS 59.840(4)(d)
- Expansion of enforcement powers over LOs to ban or suspend – ORS 59.971 and 59.973
- Expansion and clarification of LO registry – 59.969(8)
- Annual filing of report of lending activity – ORS 59.860
- Expanded Private Right of Action ORS - 59.925

## LO Definition

### **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.~~

## Expanding LO oversight

**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) Demonstrate negligence or incompetence in performing any act as a loan originator.**

(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:

**(a) if the person has been convicted of any crime or category of crime specified by the director by rule;**

**(b) if the person has been suspended or prohibited from being employed as a loan originator pursuant to ORS 59.973(5)(c);**

**(c) if such employment is in violation of any conditions imposed pursuant to ORS 59.973(5)(c); or**

**(d) if such employment is in violation of any other order issued by the director, another state or federal agency, or a court of competent jurisdiction.**

**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 **and any actions** taken in the records kept pursuant to ORS 59.969 (8).

**(5) In addition to the other powers and authorities of the director under ORS 59.840 to 59.980, the director may take any of the following actions, singly or in**

**combination, upon determining that a loan originator has violated any provision of ORS 59.840 to 59.980 or any rule or order of the director:**

**(a)** impose requirements for supervision and remedial education of the loan originator;

**(b)** assess civil penalties against the loan originator as provided in ORS 59.996;

**(c)** **suspend or permanently prohibit the loan originator from being employed as a loan originator, or place conditions on the loan originator's employment;** or

**(d)** refer the matter for criminal prosecution pursuant to ORS 59.992.

## Loan Originator Registry

**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. \* \* \*

(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, **and complaints determined to be justified and actions taken pursuant to ORS 59.973.** The director shall retain the records for a period of not less than **ten years, and shall maintain a registry of loan originators reflecting the information contained in the records.**

## Annual Loan Report Filing

### **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.

**(3) On or before May 1 of each year, or on such other date established by the Director of the Department of Consumer and Business Services by rule, every licensee shall file a report with the director. The report shall contain relevant information required by the director concerning the business and operations during the preceding calendar year of each licensee for lending activity conducted by the licensee within the state. The report shall be in the form prescribed by the director.**

**(4) Every licensee who fails to file any report required under this chapter within the time specified may be subject to a penalty of \$100 per day for each day's delay.**

## Private Right of Action

**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.