

Enrolled
House Bill 2189

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CHAPTER

AN ACT

Relating to regulation of mortgage professionals; creating new provisions; amending ORS 59.840, 59.850, 59.855, 59.860, 59.865, 59.875, 59.880, 59.900, 59.905, 59.925, 59.962, 59.967, 59.971, 59.972, 59.992, 446.691, 446.696, 446.706, 446.741, 697.612, 725.010, 725.140 and 725.230 and sections 2 and 3, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2188); repealing ORS 59.969, 59.970, 59.973, 59.975 and 59.977; and declaring an emergency.

Whereas the activities of mortgage loan originators and the origination or offer of financing for real property have a direct, valuable and immediate impact on consumers, on the economy, neighborhoods and communities of this state and on the housing and real estate industry; and

Whereas access to mortgage credit is vital to the citizens of this state; and

Whereas reasonable standards to license and regulate the business practices of mortgage loan originators are essential to protect the citizens of this state and the stability of this state's economy; and

Whereas the Legislative Assembly therefore declares that the purpose of sections 1 to 13 of this 2009 Act is to protect consumers that seek mortgage loans and to ensure that the mortgage lending industry operates without unfair, deceptive or fraudulent practices among mortgage loan originators; now, therefore,

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 13 of this 2009 Act:

(1) "Depository institution" means a depository institution, as defined in 12 U.S.C. 1813(c), and a credit union, as defined in ORS 723.008.

(2) "Federal banking agency" means:

(a) The Board of Governors of the Federal Reserve System;

(b) The Comptroller of the Currency;

(c) The Director of the Office of Thrift Supervision in the United States Department of the Treasury;

(d) The National Credit Union Administration Board; and

(e) The Board of Directors of the Federal Deposit Insurance Corporation.

(3)(a) "Loan processor or underwriter" means an individual who, after receiving an application, performs clerical or support duties that include:

(A) Receiving, collecting, distributing and analyzing information commonly used in processing or underwriting a residential mortgage loan; or

(B) Communicating with a consumer to obtain information necessary to process or underwrite a residential mortgage loan.

(b) "Loan processor or underwriter" does not include an individual who communicates with a consumer for the purpose of offering or negotiating residential mortgage loan terms with the consumer or offering counsel or consultation to the consumer concerning residential mortgage loan terms or rates.

(4)(a) "Mortgage loan originator" means an individual who, for compensation or gain:

- (A) Takes an application for a residential mortgage loan; or
- (B) Offers or negotiates terms for a residential mortgage loan.

(b) "Mortgage loan originator" does not include:

(A) An individual who, as an employee or independent contractor, works solely as a loan processor or underwriter;

(B) A person that performs professional real estate activities, as defined in ORS 696.010, unless the person is compensated by a mortgage banker, mortgage broker, mortgage loan originator or lender or an agent of a mortgage banker, mortgage broker, mortgage loan originator or lender;

(C) An individual that extends credit solely in connection with a timeshare plan, as defined in 11 U.S.C. 101(53D); or

(D) An individual who:

(i) Is employed by a person that is licensed by the Director of the Department of Consumer and Business Services; and

(ii) Collects or receives payments on behalf of a person that holds a residential mortgage, including payments of principal, interest, escrow amounts and other amounts due on obligations that under the terms of the note are due and owed to the person that holds the residential mortgage.

(5) "Nationwide Mortgage Licensing System and Registry" means a system that the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators maintain to register and license mortgage loan originators.

(6) "Nontraditional mortgage" means a mortgage other than a 30-year fixed-rate mortgage or a mortgage that the director by rule defines as a nontraditional mortgage.

(7) "Registered mortgage loan originator" means an individual who:

(a) Is employed by:

(A) A depository institution;

(B) A subsidiary of a depository institution that is regulated by a federal banking agency;

or

(C) An institution that is regulated by the Farm Credit Administration;

(b) Performs the duties of a mortgage loan originator; and

(c) Complies with the registration requirements set forth in 12 U.S.C. 5106.

(8) "Residential mortgage loan" means a loan that is secured by a mortgage, deed of trust or equivalent consensual security interest on four or fewer residential dwelling units, including but not limited to individual dwelling units, mobile homes, condominiums or cooperatives that are planned for or situated on real property in this state.

(9) "Unique identifier" means a number or other means of identification that is assigned by or under protocols established by the Nationwide Mortgage Licensing System and Registry.

SECTION 2. (1) Except as provided in subsection (2) of this section, an individual may not engage in business as a mortgage loan originator in this state without first:

(a) Obtaining and maintaining a mortgage loan originator's license under section 4 of this 2009 Act or renewing a mortgage loan originator's license under section 6 of this 2009 Act; and

(b) Obtaining a unique identifier from the Nationwide Mortgage Licensing System and Registry.

(2) Subsection (1) of this section does not apply to:

(a) A registered mortgage loan originator who acts within the scope of the registered mortgage loan originator's employment;

(b) An individual who offers or negotiates terms of a residential mortgage loan with or on behalf of the individual's spouse, child, sibling, parent, grandparent, grandchild or a relative in a similar relationship with the individual that is created by law, marriage or adoption;

(c) An individual who offers or negotiates terms of a residential mortgage loan that is secured by a dwelling that served as the individual's residence; or

(d) An attorney licensed or otherwise authorized to practice law in this state if the attorney:

(A) Negotiates the terms of a residential mortgage loan as an ancillary matter in the attorney's representation of a client; and

(B) Does not receive compensation from a mortgage banker, mortgage broker, mortgage loan originator or lender or an agent of the mortgage banker, mortgage broker, mortgage loan originator or lender.

(3) The director by rule may exempt a person from the requirement to obtain a mortgage loan originator's license under sections 1 to 13 of this 2009 Act if the United States Department of Housing and Urban Development requires or permits the exemption under 12 U.S.C. 5101 et seq.

(4)(a) Except as provided in paragraph (b) of this subsection, an employee of a dealer, as defined in ORS 446.003, is not subject to the provisions of sections 1 to 13 of this 2009 Act if the employee:

(A) Performs only administrative or clerical tasks; and

(B) Receives in connection with a sale or other transaction related to a manufactured structure, as defined in ORS 446.003, only a salary or commission that is customary among dealers and employees of dealers.

(b) An employee of a dealer is subject to the provisions of sections 1 to 13 of this 2009 Act if the United States Department of Housing and Urban Development in a guideline, rule, regulation or interpretive letter determines that the exemption granted in paragraph (a) of this subsection is inconsistent with requirements set forth in 12 U.S.C. 5101 et seq.

SECTION 3. (1) The Director of the Department of Consumer and Business Services by rule shall determine the manner in which an applicant must apply and the form and contents of an application for a license to conduct business as a mortgage loan originator.

(2) In connection with an application under this section, an applicant shall apply for and receive a unique identifier from the Nationwide Mortgage Licensing System and Registry. As part of the application, the director by rule shall require the applicant to submit to the director or directly to the Nationwide Mortgage Licensing System and Registry:

(a) Fingerprints that the Federal Bureau of Investigation, or another government agency that is authorized to receive fingerprints, can use to perform a state, national and international criminal background check;

(b) A summary of the applicant's personal history and experience on a form prescribed by the Nationwide Mortgage Licensing System and Registry;

(c) A document that authorizes the Nationwide Mortgage Licensing System and Registry to obtain, with reference to the applicant:

(A) A credit report from a consumer reporting agency, as defined in 15 U.S.C. 1681a(f), or a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in 15 U.S.C. 1681a(p); and

(B) Information about administrative, civil or criminal proceedings and findings concerning the applicant in any governmental jurisdiction; and

(d) Other information the director or the Nationwide Mortgage Licensing System and Registry may require.

SECTION 3a. The Director of the Department of Consumer and Business Services may issue an interim mortgage loan originator's license to a person that is not licensed under

section 4 of this 2009 Act if the director finds that issuing the interim license will facilitate the business of licensed mortgage loan originators or prevent an undue delay in issuing a mortgage loan originator's license. The director may specify the term of the interim mortgage loan originator's license and may issue the interim license to an applicant for a mortgage loan originator's license only if the director finds that the applicant:

(1) Is employed by a person that has a valid license or registration from the Department of Consumer and Business Services;

(2) Substantially meets the requirements of sections 3, 4 and 5 of this 2009 Act as of the operative date of this section; and

(3) Has not committed an act prohibited under section 12 of this 2009 Act.

SECTION 4. (1) The Director of the Department of Consumer and Business Services may not issue a mortgage loan originator's license to an applicant unless the director finds, at a minimum, that the applicant:

(a) Has obtained a unique identifier from the Nationwide Mortgage Licensing System and Registry.

(b) Has not had a mortgage loan originator's license revoked in another jurisdiction. For purposes of this paragraph, an applicant's mortgage loan originator's license was not revoked if an order or decision to revoke the license was later rescinded or vacated.

(c) Has not been convicted of or pleaded guilty or no contest in a state, federal, foreign or military court to a felony or to a misdemeanor if an essential element of the misdemeanor involved false statements or dishonesty:

(A) During a period of seven years before the date the applicant submits an application under section 3 of this 2009 Act; or

(B) At any time before the date the applicant submits an application under section 3 of this 2009 Act, if the conviction or plea involved a felony and an element of the felony was an act of fraud, dishonesty, a breach of trust or laundering a monetary instrument. For purposes of this paragraph, a conviction that was later pardoned is not a conviction.

(d) Has demonstrated financial responsibility sufficient to command the confidence of the community and warrant the determination that the applicant will operate honestly, fairly and efficiently within the purposes of sections 1 to 13 of this 2009 Act.

(e) Has completed the education requirement set forth in section 5 of this 2009 Act and passed a test that meets the standards set forth in section 5 of this 2009 Act.

(f) Is covered by a surety bond in accordance with the provisions of section 9 of this 2009 Act.

(2) The director may not:

(a) Deny a mortgage loan originator's license to an applicant because of the applicant's credit score; or

(b) Use information in a credit report as the sole basis for denying the mortgage loan originator's license.

(3) The director shall issue a mortgage loan originator's license to an applicant if:

(a) The director is satisfied that the information contained in the application for a mortgage loan originator's license is accurate and complete; and

(b) No reason exists under subsection (1) of this section to deny the applicant a mortgage loan originator's license.

(4) The director by rule may specify criteria for determining financial responsibility under subsection (1)(d) of this section.

SECTION 5. (1) An applicant for a mortgage loan originator's license shall:

(a) Complete, at a minimum, 20 hours of an approved course of prelicensing education that, at a minimum, must include:

(A) Three hours devoted to federal laws and regulations;

(B) Three hours devoted to ethics, with instruction concerning fraud, consumer protection and fair lending; and

(C) Two hours devoted to lending standards applicable to nontraditional mortgages; and
(b) Pass a qualified written test with a score of 75 percent correct or better. The test must measure the applicant's knowledge of:

(A) Ethics; and

(B) Federal and state laws, regulations and rules that apply to residential mortgage loan origination, including laws, regulations and rules that concern fraud, consumer protection, fair lending and nontraditional mortgages.

(2) For purposes of this section:

(a) An approved course of prelicensing education is a course that the Nationwide Mortgage Licensing System and Registry has reviewed and for which the Nationwide Mortgage Licensing System and Registry has approved the contents, provider, instructional standards and means and methods of delivery, using reasonable standards.

(b) A qualified written test is a test that the Nationwide Mortgage Licensing System and Registry develops and for which the Nationwide Mortgage Licensing System and Registry approves the test provider and method of test administration, using reasonable standards.

(3) The director shall accept for the purposes of the requirements set forth in subsection (1) of this section an approved course of prelicensing education that an applicant completed in another state.

(4) This section does not preclude:

(a) An applicant's employer or a subsidiary, agent or affiliate of the employer from providing an approved course of prelicensing education; or

(b) An approved test provider from administering a qualified test at the business location of the applicant's employer or an affiliate, subsidiary or agent of the employer or at the business location of a person with which the employer has an exclusive contractual arrangement related to mortgage loan origination.

(5) An applicant may take a qualified test four consecutive times, provided that each test administration occurs 30 days after a previous test administration. If the applicant fails the approved test four consecutive times, the applicant must wait at least six months before retaking the test.

SECTION 6. (1) The Director of the Department of Consumer and Business Services shall renew a mortgage loan originator's license if the director finds that:

(a) The licensed mortgage loan originator continues to meet the requirements set forth under section 4 of this 2009 Act;

(b) The licensed mortgage loan originator paid the fee required to renew the mortgage loan originator's license; and

(c) The licensed mortgage loan originator satisfied the continuing education requirements set forth in section 7 of this 2009 Act. If the licensed mortgage loan originator did not satisfy the requirements under section 7 of this 2009 Act, instead of declining to renew the mortgage loan originator's license, the director by rule or order may permit or require the licensed mortgage loan originator to make up the deficiency in continuing education.

(2)(a) A mortgage loan originator's license expires if:

(A) The licensed mortgage loan originator does not apply to renew the mortgage loan originator's license;

(B) The director declines to renew the mortgage loan originator's license; or

(C) The licensed mortgage loan originator does not otherwise maintain eligibility under the requirements set forth in sections 1 to 13 of this 2009 Act.

(b) The director by rule may establish a procedure and requirements for reinstating a license that has expired. The procedure and requirements the director establishes must be consistent with standards established by the Nationwide Mortgage Licensing System and Registry and must at a minimum provide that an applicant for reinstatement who has allowed the applicant's mortgage loan originator's license to lapse for a period of five or more

years, whether or not the applicant was employed or continued to engage in business as a mortgage loan originator during the period of the lapse, shall:

(A) Demonstrate to the director that the applicant completed the continuing education requirements set forth in section 7 of this 2009 Act that were required in the year in which the applicant last held a mortgage loan originator's license; and

(B) Pass the qualified written test as provided in section 5 of this 2009 Act.

SECTION 7. (1) A licensed mortgage loan originator each year shall complete at least eight hours of an approved course of continuing education that, at a minimum, must include:

(a) Three hours devoted to federal laws and regulations;

(b) Two hours devoted to ethics, with instruction concerning fraud, consumer protection and fair lending; and

(c) Two hours devoted to lending standards applicable to nontraditional mortgages.

(2) For purposes of this section, an approved course of continuing education is a course that the Nationwide Mortgage Licensing System and Registry has reviewed and for which the Nationwide Mortgage Licensing System and Registry has approved the contents, provider, instructional standards and means and methods of delivery, using reasonable standards.

(3) This section does not preclude a licensed mortgage loan originator's employer or a subsidiary, agent or affiliate of the employer from providing an approved course of continuing education.

(4) The Director of the Department of Consumer and Business Services shall accept for the purposes of the requirement set forth in subsection (1) of this section an approved course of continuing education that a licensed mortgage loan originator completed in another state.

(5) A licensed mortgage loan originator:

(a) May receive credit for a continuing education course only in the year in which the licensed mortgage loan originator takes the course, unless the director under section 6 of this 2009 Act permits or requires the mortgage loan originator to make up a deficiency in continuing education; and

(b) May not for the purposes of meeting the requirement set forth in subsection (1) of this section take the same approved course of continuing education in the same year or in any two successive years.

(6) A licensed mortgage loan originator who is also approved as an instructor for an approved course of continuing education may receive two hours of credit toward the licensed mortgage loan originator's own continuing education requirement for each hour of the approved course of continuing education that the licensed mortgage loan originator teaches.

SECTION 8. (1) In addition to authority the Director of the Department of Consumer and Business Services has under ORS 59.840 to 59.980, the director under this section has the authority, subject to ORS chapter 183, to deny, suspend, place conditions upon, revoke or decline to renew a mortgage loan originator's license or permanently prohibit a person from conducting business as a mortgage loan originator if:

(a) A licensed mortgage loan originator violates a provision of sections 1 to 13 of this 2009 Act or a rule or order the director issues under sections 1 to 13 of this 2009 Act;

(b) The director makes a finding under section 4 or 6 of this 2009 Act that the director believes justifies a decision to deny or decline to renew a mortgage loan originator's license;

(c) An applicant makes a false statement or a material misstatement of fact on an application for a mortgage loan originator's license or a licensed mortgage loan originator makes a false statement or a material misstatement of fact on an application to renew a mortgage loan originator's license; or

(d) A person who is not exempted from the requirement to obtain a mortgage loan originator's license under section 2 (2) of this 2009 Act conducts business as a mortgage loan originator without applying for and receiving a mortgage loan originator's license under sections 3 and 4 of this 2009 Act.

(2) The director, subject to ORS chapter 183, may order a person that is subject to regulation under sections 1 to 13 of this 2009 Act to:

(a) Cease and desist immediately or permanently from violating a provision of sections 1 to 13 of this 2009 Act or from an act or practice related to mortgage loan origination that the director deems harmful to a consumer or to the public;

(b) Stop or suspend business related to mortgage loan origination;

(c) Pay restitution to a consumer or another person that the director finds suffered harm from the person's acts, omissions, practices or operations or as a result of the person's violation of a provision of sections 1 to 13 of this 2009 Act; or

(d) Take or refrain from taking an action the director deems necessary to comply with sections 1 to 13 of this 2009 Act.

(3)(a) The director, in accordance with ORS 183.745, may impose a civil penalty in an amount not to exceed \$5,000 for each separate instance of a violation of or failure to comply with the provisions of sections 1 to 13 of this 2009 Act or a rule or order the director adopted or issued under sections 1 to 13 of this 2009 Act.

(b) Every violation described in paragraph (a) of this subsection is a separate offense that is subject to a separate penalty. Each day in which the same violation occurs is a separate violation. A violation that continues for more than one day is a continuing violation that is subject to a maximum penalty of \$20,000.

(4)(a) A person may not knowingly:

(A) Violate a provision of section 2 of this 2009 Act;

(B) Fail to comply with an order the director issues under this section;

(C) Fail to produce records at the director's request under section 11 of this 2009 Act;

(D) Employ a device, scheme or artifice to defraud or engage in an act, practice or course of business that operates or would operate as a fraud or deceit;

(E) Make an untrue statement of a material fact or omit from a statement a material fact that would make the statement not misleading in light of the circumstances under which the person makes the statement; or

(F) Make or file or cause to be made or filed with the director a statement, report or document that the person knows is false in a material respect or matter.

(b) A person who takes an action described in paragraph (a) of this subsection commits a Class C felony.

SECTION 9. (1) A person that employs a mortgage loan originator shall file with the Director of the Department of Consumer and Business Services a corporate surety bond that runs to the State of Oregon and that covers each mortgage loan originator the person employs. The corporate surety bond must be issued by a corporate surety or an insured institution, as defined in ORS 706.008, that is authorized to transact business in this state.

(2) The director by rule shall:

(a) Prescribe the form of the corporate surety bond;

(b) Require the person to maintain the corporate surety bond in an amount that reflects the dollar amount of the loans the person originated or in a minimum amount the director specifies; and

(c) Prescribe other requirements for the corporate surety bond as are necessary to accomplish the purposes of sections 1 to 13 of this 2009 Act.

(3) A right of action against the corporate surety bond required under this section exists to the same extent that a right of action exists under ORS 59.925.

(4) The director may require the person to file a new corporate surety bond if an action is commenced against the corporate surety bond on file with the director. The person shall file a new corporate surety bond immediately if a recovery is obtained against the bond.

SECTION 10. (1) The Director of the Department of Consumer and Business Services may contract with or otherwise agree with the Nationwide Mortgage Licensing System and

Registry, or a person the Nationwide Mortgage Licensing System and Registry designates, to:

(a) Collect and maintain records in connection with an application under section 4 or 6 of this 2009 Act;

(b) Collect and process application fees or other fees that are authorized under sections 1 to 13 of this 2009 Act and imposed by a government agency or association of government agencies;

(c) Serve as a point of contact the director may use to request information from and provide information to the United States Department of Justice, the Federal Bureau of Investigation or other government agencies;

(d) Apply, abide by and implement standards the Nationwide Mortgage Licensing System and Registry establishes for:

(A) Setting or resetting dates for reporting information or renewing a mortgage loan originator's license; and

(B) Amending or surrendering a mortgage loan originator's license; and

(e) Otherwise participate in the Nationwide Mortgage Licensing System and Registry.

(2) The director may agree with the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators or other government agencies or associations of government agencies to share and to maintain under subsection (4) of this section the confidentiality or privilege applicable to information or material that:

(a) An applicant provides under section 3 of this 2009 Act;

(b) A mortgage loan originator provides under section 6 of this 2009 Act; or

(c) The director obtains from investigations, inquiries, proceedings, submissions or other sources under the authority of sections 1 to 13 of this 2009 Act.

(3) The director shall provide copies of information and material that the director supplies to or receives from the Nationwide Mortgage Licensing System and Registry to an applicant for a mortgage loan originator's license under section 4 of this 2009 Act or to a licensed mortgage loan originator who applies to renew a license under section 6 of this 2009 Act. The director by rule shall establish a procedure for challenging the accuracy or completeness of the information and materials.

(4)(a) Except as provided in subsections (5) and (6) of this section and 12 U.S.C. 5111, information or material that an applicant, a mortgage loan originator or the director provides or discloses to the Nationwide Mortgage Licensing System and Registry retains the confidentiality or privilege from public disclosure that applies to the information under ORS 192.410 to 192.505 or under other applicable state or federal law, including court rules. The confidentiality or privilege applies to the information or material despite disclosure to state or federal agencies with regulatory authority over persons, businesses or activities related to mortgage lending.

(b) Information that is subject to a privilege described in paragraph (a) of this subsection is not subject to:

(A) Disclosure under state or federal law that governs disclosure of information in the possession of a public official; or

(B) Subpoena, discovery or admission into evidence in an administrative proceeding or private civil action, unless the person whose information is protected by the confidentiality or privilege waives the confidentiality or privilege in whole or in part.

(c) To the extent that the provisions of ORS 192.410 to 192.505 conflict with the provisions of this section, the provisions of this section control.

(5) Subsection (4) of this section does not apply to information or material concerning an applicant's or a mortgage loan originator's employment history or records of discipline and enforcement actions that appear in and are open to public access in the Nationwide Mortgage Licensing System and Registry. The director may publish on the Internet infor-

mation that the director receives from the Nationwide Mortgage Licensing System and Registry that is not subject to a privilege described in subsection (4) of this section.

(6) The director shall regularly report to the Nationwide Mortgage Lending System and Registry violations of the provisions of sections 1 to 13 of this 2009 Act, enforcement actions against a person subject to sections 1 to 13 of this 2009 Act and other information the director deems necessary to meet the director's obligations under agreements with the Nationwide Mortgage Licensing System and Registry.

(7) To the extent reasonably necessary to participate in the Nationwide Mortgage Licensing System and Registry, the director by rule or order may waive or modify, in whole or in part, the requirements set forth in sections 1 to 13 of this 2009 Act or establish new requirements consistent with the provisions of sections 1 to 13 of this 2009 Act.

SECTION 11. (1) The Director of the Department of Consumer and Business Services, as often as the director deems necessary to carry out the purposes of sections 1 to 13 of this 2009 Act, may:

(a) Request or require a person that employs a mortgage loan originator or that under the provisions of sections 1 to 13 of this 2009 Act should employ a mortgage loan originator to produce, for the director's examination and use, books, accounts, records, files, documents or other information or evidence;

(b) Investigate or examine an applicant or a licensed mortgage loan originator and review the applicant's or licensed mortgage loan originator's:

(A) History of criminal, civil and administrative proceedings, enforcement actions, arrests or other information related to the applicant's or licensed mortgage loan originator's compliance with state and federal law, rules or regulations; and

(B) Personal history and experience, including information obtained from credit reports from a consumer reporting agency, as defined in 15 U.S.C. 1681a(f) or from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in 15 U.S.C. 1681a(p);

(c) Direct, subpoena, examine, compel the attendance of, administer oaths and affirmations to, and request production of books, accounts, records, files, documents or other information or evidence from witnesses and persons that are subject to regulation under sections 1 to 13 of this 2009 Act; and

(d) Interview and take and preserve testimony concerning business practices and operations from the applicant's or licensed mortgage loan originator's officers, principals, mortgage loan originators, employees, agents and customers or independent contractors associated with the applicant or licensed mortgage loan originator.

(2)(a) The director may, with reference to documents, materials or records described in subsection (1) of this section:

(A) Take possession of, sequester, control or restrict access to the documents, materials or records; or

(B) Designate a person to take exclusive charge of the documents, materials or records in the location in which the documents, materials or records are usually kept.

(b) At a time in which the director has taken an action described in paragraph (a) of this subsection, a person may not, without the director's permission or a court order, remove or attempt to remove the documents, materials or records from the director's possession or control or from the location in which the documents, materials or records are kept under the exclusive charge of the person the director designates.

(c) A person who owns or has a right to possess or control the documents, materials or records may have access necessary to conduct the person's ordinary business, unless the director reasonably believes that the documents, materials or records have been or are at risk of alteration or destruction for the purposes of concealing a violation of sections 1 to 13 of this 2009 Act.

(3) In carrying out the purposes of this section, the director may:

(a) Retain attorneys, accountants or other professionals or specialists to conduct investigations, audits or examinations or assist in conducting investigations, audits or examinations;

(b) Agree with other government agencies or officials to share resources, information, methods, procedures, documents, records, materials and information obtained in the course of investigations, audits, examinations and related activities;

(c) Purchase, share, use or employ analytical systems, methods or software available from public or private sources;

(d) Accept and rely upon the results of or reports concerning investigations, audits, examinations or proceedings conducted by other government agencies or officials in this state or in other states; and

(e) Accept, use and incorporate in the director's findings, reports, orders or other actions audit reports from an independent certified public accountant.

(4) The director's authority under this section applies to a person who is subject to regulation under sections 1 to 13 of this 2009 Act, whether or not the person is licensed as a mortgage loan originator.

(5) An applicant or licensed mortgage loan originator shall:

(a) Make available to the director at the director's request books, accounts, records, files and other documents relating to the applicant's or licensed mortgage loan originator's business operations and practices; and

(b) Prepare, compile and deliver to the director reports, accounting compilations, lists and data concerning loan transactions and other information the director requires to carry out the purposes of sections 1 to 13 of this 2009 Act.

(6) A person subject to investigation, audit or examination under this section may not knowingly withhold, abstract, remove, mutilate, destroy or conceal books, accounts, records, computer records, files, documents or other information or evidence that is subject to the director's authority under this section.

SECTION 12. A person who is subject to regulation under sections 1 to 13 of this 2009 Act in connection with the person's activities as a mortgage loan originator may not:

(1) Perform an act as a mortgage loan originator in a negligent or incompetent manner;

(2) Employ a device, scheme or artifice to defraud or engage in an act, practice or course of business that operates or would operate as a fraud or deceit;

(3) Knowingly make an untrue statement of a material fact or omit from a statement a material fact that would make the statement not misleading in light of the circumstances under which the person makes the statement;

(4) Make or file or cause to be made or filed with the Director of the Department of Consumer and Business Services a statement, report or document that the person knows is false in a material respect or matter;

(5) Engage in an unfair or deceptive practice toward another person;

(6) Obtain property by fraud or misrepresentation;

(7) Solicit or enter into a contract with a borrower, the terms of which provide that the person may earn a fee or commission for using the person's best efforts to obtain a residential mortgage loan even if the person does not obtain a residential mortgage loan for the borrower, except that the terms of the contract may provide that the person may earn an advance fee or recover actual expenses that the person incurs;

(8) Solicit, advertise or enter into a contract, the terms of which specify an interest rate, points or other financing terms unless the interest rate, points or other financing terms are available to a prospective borrower at the time the person makes the solicitation or advertisement or enters into the contract;

(9) Conduct or operate a business that requires a mortgage loan originator's license without holding a license issued under section 4 or 6 of this 2009 Act or assist or enable an-

other person who does not have a mortgage loan originator's license to conduct or operate a business that requires a mortgage loan originator's license;

(10) Fail to disclose or provide information required under sections 1 to 13 of this 2009 Act or by state or federal laws, rules or regulations;

(11) Fail to comply with a provision of sections 1 to 13 of this 2009 Act, a rule adopted by the Director of the Department of Consumer and Business Services or state or federal laws, rules or regulations that apply to a business that is subject to regulation under sections 1 to 13 of this 2009 Act;

(12) Fail to conduct business as a mortgage loan originator in compliance with the provisions of:

(a) The Truth in Lending Act, 15 U.S.C. 1601 et seq. and Regulation Z, 12 C.F.R. part 226, as in effect on October 1, 2009;

(b) The Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq. and Regulation X, 24 C.F.R. part 3500, as in effect on January 1, 2010;

(c) The Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq. and Regulation B, 12 C.F.R. 202.9, 202.11, 202.12 and 202.14, as in effect on the effective date of this 2009 Act; or

(d) 12 U.S.C. 5101 et seq. and regulations adopted under 12 U.S.C. 5101 et seq.;

(13) Make, negligently or intentionally, a false or deceptive statement or representation in any manner concerning the rates, points or other financing terms or conditions for a residential mortgage loan;

(14) Make a false statement negligently in, or omit knowingly or willfully a material fact from, a report or information the person submits to a government agency or the Nationwide Mortgage Licensing System and Registry or in connection with an investigation or examination conducted by the director or a government agency;

(15) Make a payment, threat or promise, directly or indirectly, to another person for the purpose of influencing the other person's independent judgment concerning a residential mortgage loan or to an appraiser for the purpose of influencing the appraiser's independent judgment concerning the value of property;

(16) Charge or collect, attempt to charge or collect or propose or enter into an agreement in which the person charges or collects a fee that is prohibited under sections 1 to 13 of this 2009 Act;

(17) Cause or require a borrower to obtain property insurance in an amount that exceeds the replacement cost of the property subject to the residential mortgage loan; or

(18) Fail to account truthfully for moneys that belong to a party to a residential mortgage loan transaction.

SECTION 13. (1)(a) A licensed mortgage loan originator shall clearly display the licensed mortgage loan originator's unique identifier on a residential mortgage loan application form, solicitation, advertisement, promotional material or website the licensed mortgage loan originator uses in connection with the licensed mortgage loan originator's business.

(b) The Director of the Department of Consumer and Business Services by rule may specify the location, size or other characteristics of the unique identifier that must appear on the materials described in paragraph (a) of this subsection and the materials on which the unique identifier must appear.

(2) A person that employs a licensed mortgage loan originator shall submit a report of condition to the Nationwide Mortgage Licensing System and Registry. The form and contents of the report and the times at which the licensed mortgage loan originator submits the report shall comply with the specifications of the Nationwide Mortgage Licensing System and Registry.

(3) A loan processor or underwriter may not represent to the public by means of advertising, business cards, stationery, brochures, signs, rate lists or other communications, promotional items or methods that the loan processor or underwriter can, will or is au-

thorized to perform the duties of a mortgage loan originator unless the loan processor or underwriter obtains a mortgage loan originator's license under section 4 of this 2009 Act.

SECTION 13a. The Director of the Department of Consumer and Business Services may adopt, amend and repeal rules that are necessary to carry out the provisions of sections 1 to 13 of this 2009 Act.

SECTION 14. ORS 59.840 is amended to read:

59.840. As used in ORS 59.840 to 59.980:

[(1) "Director" means the Director of the Department of Consumer and Business Services.]

[(2)] (1) "Fraud," "deceit" and "defraud" are not limited to common-law deceit.

[(3)] (2) "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)] (3)(a) "Mortgage banker"[:]

[(a)] means [any] a person [who] **that** 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) "**Mortgage banker**" 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)] **12 U.S.C. 1467a(a)(1)(D)**, 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]* **that** makes a loan secured by an interest in real estate with the person's own moneys[,] for the person's own investment and *[who]* **that** 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.] An attorney licensed or otherwise authorized to practice law in this state if the attorney:*

(i) **Negotiates the terms of a residential mortgage loan as an ancillary matter in the attorney's representation of a client; and**

(ii) **Does not receive compensation from a mortgage banker, mortgage broker, mortgage loan originator or lender or an agent of the mortgage banker, mortgage broker, mortgage loan originator or lender.**

(E) A person *[who]* **that**, 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]* a state or of the United States.

(G) A person *[who]* **that** 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]* **the** real property or *[any]* a lien created without the consent of the owner of the real property.

(H) A person *[who]* **that** funds a mortgage banking loan or mortgage loan *[which has been originated and processed by a licensee or by an exempt person and who]* **that a licensee or exempt person originated and processed and that** 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]* **negotiating** mortgage banking loans or mortgage loans. For the purpose of this subparagraph, "*[negotiation of]* **negotiating** 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]* **that** a licensee or exempt person **originated**.

(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]* **A** person designated by rule or order of the Director **of the Department of Consumer and Business Services.**

[(6)] (4) "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]* **that** is directly or indirectly secured by a mortgage or deed of trust or any lien interest on real estate and *[which]* **that** 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]* **the mortgage banker's** 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*] **control**, are controlled by or are under common control with the entity specified.

[(7)] **(5)(a)** “Mortgage broker”[:]

[(a)] means a person [*who*] **that**:

(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) **“Mortgage broker”** does not include:

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

(B)(i) 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;

(ii) A savings and loan holding company as defined in [*section 408 of the National Housing Act, 12 U.S.C. 1730a (1982)*] **12 U.S.C. 1467a(a)(1)(D)**, holding an association described in subparagraph (A) of this paragraph;

(iii) The subsidiaries and affiliates of the financial holding company, bank holding company or savings and loan holding company; or

(iv) 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*] **the persons’** mortgage brokering activities in accordance with the purposes of ORS 59.840 to 59.980.

(C) A person [*who*] **that** 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*] **that** makes a loan secured by an interest in real estate with the person’s own moneys, for the person’s own investment and [*who*] **that** 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.*] **An attorney licensed or otherwise authorized to practice law in this state if the attorney:**

(i) **Negotiates the terms of a residential mortgage loan as an ancillary matter in the attorney’s representation of a client; and**

(ii) **Does not receive compensation from a mortgage banker, mortgage broker, mortgage loan originator or lender or an agent of the mortgage banker, mortgage broker, mortgage loan originator or lender.**

(H) A person [*who*] **that**, as a 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*] a state or of the United States.

(J) A person [*who*] **that** 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*] **the** real property or [*any*] a lien created without the consent of the owner of the real property.

(K) A person *[who]* **that** funds a mortgage loan *[which has been originated and processed by a licensee or by an exempt person and who]* **that a licensee or exempt person originated and processed and that** 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]* **negotiating** mortgage loans. For the purpose of this subparagraph, *“[negotiation of] negotiating mortgage loans”* does not include setting the terms under which a person may buy or fund a mortgage loan *[originated by]* **that a licensee or exempt person originated.**

(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]* **that** 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]* **A** person designated by rule or order of the director.

[(8)] **(6)** “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]* **a** lien interest on real estate that is created with the consent of the owner of the real estate.

(7) “Mortgage loan originator” has the meaning given that term in section 1 of this 2009 Act.

[(9)] **(8)** “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.

SECTION 15. ORS 59.850 is amended to read:

59.850. (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]* **the Nationwide Mortgage Licensing System and Registry.**

(2) An applicant for a license *[as a mortgage banker or mortgage broker]*, or a managing partner, director, executive officer or other individual *[occupying]* **that occupies** a similar position or *[performing]* **performs** 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]* **that occupies** a similar position or *[performing]* **performs** 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] **An applicant for a license that is not subject to the requirement set forth in section 9 of this 2009 Act [as a mortgage banker or mortgage broker]** shall file with the director a corporate surety bond or irrevocable letter of credit **that is approved by the director in an amount the director specifies by rule, that runs to the State of Oregon and that is 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 **\$50,000**. [\$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.] **The director by rule shall require the sum of the corporate surety bond or irrevocable letter of credit to reflect the dollar amount of the loans that the mortgage banker or mortgage broker originates.**

(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) **An applicant for a license under this section or a licensee who applies to renew a license under ORS 59.855 shall certify to the director in a form and manner the director specifies by rule that the applicant or licensee has independently verified that every individual the applicant or licensee hired or intends to hire as a mortgage loan originator:**

(a) **Meets the requirements set forth in sections 1 to 13 of this 2009 Act;**

(b) **Has undergone a state criminal records check in accordance with ORS 59.972; and**

(c) **Is covered, if applicable, by a corporate surety bond as provided in section 9 of this 2009 Act.**

[(8)] (9) The director shall:

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

(b) Set by rule all fees required under this section. **The director shall set the 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)] (10) The fees under this section are not refundable except for [those] fees that the director determines by rule [may be] **are** refundable.

SECTION 16. ORS 59.855 is amended to read:

59.855. (1) [The initial] **An 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] to coordinate with the Nationwide Mortgage Licensing System and Registry.**

(2) The director by rule shall establish procedures [for renewing licenses of mortgage bankers and mortgage brokers] **to renew a license.** The rule shall specify the duration of a renewed [licenses] **license.**

(3) If there is a change in the partners, directors, officers[,] **or** persons [occupying] **that occupy** similar positions or [performing] **perform** similar functions, or persons **that** directly or indirectly

[controlling] **control** a mortgage banker or mortgage broker, written notification of the change [shall promptly] **must** be filed **promptly** with the director. No fee [shall be] **is** required for the notification.

SECTION 17. ORS 59.860, as amended by section 1, chapter 38, Oregon Laws 2008, is amended to read:

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

(2) [Every] **A** mortgage banker [and] **or** mortgage broker shall file financial reports or other information [as] **that** the director by rule or order [may require] **requires** and shall promptly correct [any] **a** 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 a date the director establishes by rule, [every] **a** mortgage banker [and] **or** mortgage broker shall file a report with the director in a form prescribed by the director. The report shall contain information the director requires concerning the mortgage banker's or mortgage broker's business and operations related to residential mortgage lending during the preceding calendar year. The information shall include the number and nature of loans originated by **mortgage** loan originators that the mortgage banker or mortgage broker employed.

(4) The report and any records submitted to the director under this section are exempt from disclosure or production and are confidential as provided under ORS 705.137.

(5) Notwithstanding the exemption and confidentiality provisions of subsection (4) of this section, the director may abstract information contained in reports submitted under subsection (3) of this section and may make the abstracted information available for public inspection provided that the abstracted information does not identify a particular mortgage banker or mortgage broker as a source of the information.

SECTION 18. ORS 59.865 is amended to read:

59.865. 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 **that the applicant or licensee** 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] **a** provision of ORS 59.840 to 59.980 or [any] **a** rule or order of the director.

(4) **Failed, in conducting business as a mortgage banker or mortgage broker, to comply with the provisions of:**

(a) **The Truth in Lending Act, 15 U.S.C. 1601 et seq. and Regulation Z, 12 C.F.R. part 226, as in effect on October 1, 2009;**

(b) **The Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq. and Regulation X, 24 C.F.R. part 3500, as in effect on January 1, 2010;**

(c) **The Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq. and Regulation B, 12 C.F.R. 202.9, 202.11, 202.12 and 202.14, as in effect on the effective date of this 2009 Act; or**

(d) **12 U.S.C. 5101 et seq. and regulations adopted under 12 U.S.C. 5101 et seq.**

[(4)] (5) [Has been] **Was** convicted of a misdemeanor, an essential element of which is fraud, or of a felony.

[(5)] (6) [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] **that denied, suspended, conditioned or revoked** a license, was incomplete in any material respect or contained [any] a statement that was, in light of the circumstances under which [it] **the statement** was made, false or misleading with respect to [any] a material fact.

[(6)] (7) [Has] Failed to account to persons interested for [all] money or property received in connection with a mortgage loan.

[(7)] (8) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing [any] conduct or a practice [involving any] **that involves an** aspect of the mortgage business.

[(8)] (9) Is [the] subject [of] **to** an order of the director [denying, suspending, conditioning or revoking] **that denies, suspends, conditions or revokes** a license [as a mortgage banker or mortgage broker].

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

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

[(11)] (12) [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.*]

(13) Is subject to an order of the director that denies, suspends, conditions or revokes a license under any other law the director administers.

(14) Is subject to a cease and desist order the director entered within the previous five years after the applicant or licensee had notice and an opportunity for a hearing.

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

[(15)] (16) [Has] Failed to supervise diligently and control the mortgage-related activities of a **mortgage** loan originator [employed by] the licensee **employs**.

[(16)] (17) [Has] Knowingly misrepresented to the director the training of, examination of or continuing education time earned by a **mortgage** loan originator [employed by] the licensee **employs**.

[(17)] (18) [Has] Willfully or repeatedly employed [persons] **individuals** as **mortgage** loan originators who do not meet the training, education or continuing education requirements for **mortgage** loan originators.

[(18)] (19) [Has] Failed to notify the director of the termination of a **mortgage** loan originator for failure to comply with state or federal laws, regulations or rules.

SECTION 19. ORS 59.875 is amended to read:

59.875. [(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.*]

(1) The Director of the Department of Consumer and Business Services may cancel an application or license if the director finds that the applicant or licensee:

(a) Has ceased to do business as a mortgage banker or mortgage broker;

(b) Has failed to maintain a corporate surety bond or irrevocable letter of credit required under ORS 59.850 or section 9 of this 2009 Act; or

(c) Cannot be located after a reasonable search.

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

SECTION 20. ORS 59.880 is amended to read:

59.880. The Director of the Department of Consumer and Business Services [*shall have*] **has** general supervision and control over [*all*] **mortgage** loan originators, mortgage bankers and mortgage brokers residing or doing business in this state and engaged in [*any*] **an activity that is** 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*] **Mortgage bankers and mortgage brokers and the records and activities connected with mortgage bankers, mortgage brokers and mortgage loan originators are** 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*] **a person [who] that is or** should have been [*reported*] **licensed** as a **mortgage** loan originator under [*ORS 59.969*] **sections 1 to 13 of this 2009 Act** or licensed as a mortgage banker or mortgage broker, [*any*] **a person exempted by rule from [those] the definitions of mortgage banker, mortgage broker or mortgage loan originator** or [*any*] **a person** whose license has expired or has been withdrawn, canceled, suspended, conditioned or revoked. The director may collect from [*each such*] **the** person the actual expenses incurred in [*that*] **the** examination.

SECTION 21. ORS 59.900 is amended to read:

59.900. (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 **mortgage** 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, 59.710 to 59.830, 59.991 and 59.995 and rules adopted [*thereunder*] **under the applicable provisions**.

(2) [*Any*] **A** financial statement required under ORS 59.840 to 59.980 [*shall*] **must** 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*] **must** be filed; and
- (c) Whether any required financial statements [*shall*] **must** be certified by independent or certified public accountants.

SECTION 22. ORS 59.905 is amended to read:

59.905. (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; **or**

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

[*(c) (b) [All] An interested [persons] person,* 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 **files a timely demand for a hearing**, 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]* **before** the license or registration **expired**.

SECTION 23. ORS 59.925 is amended to read:

59.925. *[(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 under ORS 59.840 to 59.980.]*

[(2)] (1) A [mortgage banker or mortgage broker] person that employs a mortgage loan originator or under the provisions of sections 1 to 13 of this 2009 Act should employ a mortgage loan originator is liable as provided in subsection *[(3)] (2)* of this section *[to any person who suffers any] for an* ascertainable loss of money or property, real or personal, in a *[mortgage banker transaction or a mortgage broker] residential mortgage* transaction if the *[mortgage banker or mortgage broker] person engages in a residential mortgage transaction in which the person:*

(a) *[Transacts business as a mortgage banker or mortgage broker in violation of any] Violates a* provision of **sections 1 to 13 of this 2009 Act, except section 12 (11) of this 2009 Act, or ORS 59.840 to 59.980, except ORS 59.865 (4); or**

(b)(A)(i) *[Transacts business as a mortgage banker or mortgage broker by means of] Makes an* untrue statement of a material fact; or

(ii) *[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.] Omits from a statement a material fact that would make the statement not misleading in light of the circumstances under which the person makes the statement; and*

(B) **Fails to prove that the person did not know, or in the exercise of reasonable care could not have known, of the untrue statement or omission.**

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

[(4)] (3) A person whose sole function in connection with a **residential mortgage** 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 **residential mortgage** 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] the* facts was the result of the person’s recklessness or gross negligence.

[(5)] (4) Except as otherwise provided in this subsection, an action or suit may not be commenced under this section more than three years after the **residential mortgage** 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 **residential mortgage** 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] not later* than five years after the date of the **residential mortgage** transaction. Failure to commence an action on a timely basis is an affirmative defense.

[(6)] (5) A person has a right of action under the **corporate surety** bond or irrevocable letter of credit *[provided in] required under* ORS 59.850 **or section 9 of this 2009 Act** if the person:

(a) *[Signs] Initiates* a mortgage banking loan or mortgage loan application; and

(b) Has a right of action against *[a mortgage banker or mortgage broker] another person* under this section.

[(7)] (6) Subsection *[(4)] (3)* of this section does not limit **a person’s [the]** liability *[of any person]:*

(a) For conduct other than in the circumstances described in subsection *[(4)] (3)* of this section; or

(b) Under any other law.

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

[(9)] (8) The court may not award attorney fees to a prevailing defendant under the provisions of subsection [(8)] (7) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

SECTION 24. ORS 59.962 is amended to read:

59.962. (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] a mortgage banking loan or mortgage loan in [its own name] **the name of the mortgage banker or mortgage broker** or in 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] **grants** the Director of the Department of Consumer and Business Services the authority to regulate the servicing or collection of [any] a 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)] (3)(a) but also includes [those persons] a **person** exempted from the definition of mortgage banker in ORS 59.840 [(5)(b)] (3)(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] a 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] a 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] **exercising** contractual, statutory or common law remedies such as injunction, specific performance, judicial or nonjudicial foreclosure or receivership.

SECTION 25. ORS 59.967 is amended to read:

59.967. (1) The Legislative Assembly finds and declares that:

(a) The public interest is served by identifying a **mortgage** 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 **mortgage** loan originator is employed by more than one mortgage lender.

(2) A **mortgage** 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.

SECTION 26. ORS 59.971, as amended by section 3, chapter 38, Oregon Laws 2008, is amended to read:

59.971. (1) A [person employed by a] mortgage banker, [or] mortgage broker [as a] **or mortgage** loan originator may not:

(a) Engage in dishonest, fraudulent or illegal practices or conduct in [any] a 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, **sections 1 to 13 of this 2009 Act** 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 **mortgage** loan originators **set forth in sections 5 or 7 of this 2009 Act**.

(e) Perform an act as a **mortgage** loan originator in a negligent or incompetent manner.

(2) *[A person]* **An individual** may not be employed by a mortgage banker or mortgage broker as a **mortgage** loan originator *[as defined in ORS 59.840 or 59.970]* if:

(a) The *[person has been]* **individual was** convicted of *[any]* a crime or category of crime specified by the director by rule;

(b) The *[person]* **individual** is suspended or has been prohibited from employment as a **mortgage** loan originator under *[ORS 59.973 (5)(c)]* **section 8 of this 2009 Act**;

(c) The employment violates any conditions imposed under *[ORS 59.973 (5)(c)]* **section 8 of this 2009 Act**; or

(d) The employment violates an order issued by the director, a state or federal agency or a court of competent jurisdiction.

SECTION 27. ORS 59.972 is amended to read:

59.972. (1) A *[mortgage banker or mortgage broker]* **person that employs or intends to employ an individual as a mortgage loan originator** shall conduct a **state** criminal records check of *[each]* **the** individual *[who the mortgage banker or mortgage broker employs or intends to employ as a loan originator]*.

(2) A *[mortgage banker or mortgage broker]* **person that employs or intends to employ an individual as a mortgage loan originator** shall report to the Director of the Department of Consumer and Business Services the results of each **state** criminal records check conducted under subsection (1) of this section.

(3) The director shall adopt rules **to**:

(a) *[Necessary for the implementation and administration of]* **Implement and administer state** criminal records checks required under this section *[and ORS 59.970]*; and

(b) *[Specifying]* **Specify crimes and categories of crimes for which a conviction** *[categories of criminal convictions that]* will prevent a person from acting as a **mortgage** loan originator under ORS 59.971.

SECTION 28. ORS 59.992 is amended to read:

59.992. (1) *[Violation of any]* **A person that knowingly violates** a provision of ORS 59.840 to 59.980 or *[any]* a 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]*, **commits** a Class C felony.

(2) Violation of ORS 59.915 (2) is a Class A misdemeanor.

SECTION 29. ORS 446.691 is amended to read:

446.691. The **Director of the** Department of Consumer and Business Services shall issue a manufactured structure dealer license to *[a person]* **an applicant** if the *[person]* **applicant**:

(1) Delivers to the *[department]* **director** a bond or letter of credit that meets the requirements under ORS 446.726;

(2) **Provides evidence acceptable to the director that the applicant obtained a corporate surety bond as provided in section 9 of this 2009 Act if the applicant employs or intends to employ a mortgage loan originator, as defined in section 1 of this 2009 Act, or is otherwise subject to sections 1 to 13 of this 2009 Act;**

(3) **Certifies to the director in a form and manner the director specifies by rule that the applicant has independently verified that every individual the applicant or licensee hired or intends to hire as a mortgage loan originator meets the requirements set forth in sections 1 to 13 of this 2009 Act and in ORS 59.972;**

[2] (4) Pays the fee specified in ORS 446.721 for issuance of a manufactured structure dealer license; and

[3] (5) Completes the application for a dealer license in a form approved by the [department] **director** that includes:

(a) The name and residence address of the applicant. If the applicant is a firm or partnership, the application must include the names and residence addresses of the members of the [applicant] **firm or partnership**. If the applicant is a corporation, the application must include the names and residence addresses of the principal officers of the [applicant] **corporation** and the name of the state in which the [applicant] **corporation** is incorporated.

(b) The name under which the business will be conducted.

(c) The street address, including city and county in Oregon, where the business will be conducted.

(d) **A statement that indicates whether the applicant handles** used manufactured structures [are handled].

(e) An affidavit from the applicant showing that the applicant will act as a manufactured structure dealer and will conduct business at the location given on the application.

(f) If the street address where the dealer will conduct the business is in a residential zone, a statement by the dealer that all manufactured structures sold or displayed at that address will meet any architectural and aesthetic standards regulating the placement of manufactured structures in that residential zone.

(g) [Any] Information [required by] the [department] **director requires** to efficiently regulate manufactured structures, manufactured structure dealers and dealerships or other relevant information [required by] the [department] **director requires**.

(h) If the applicant will offer for sale new manufactured structures that are recreational vehicles greater than eight and one-half feet in width, an affidavit from the applicant stating that the applicant will maintain a recreational vehicle service facility for those recreational vehicles at a street address provided in the application.

SECTION 30. ORS 446.696 is amended to read:

446.696. A manufactured structure dealer license is valid for three years, but the **Director of the Department of Consumer and Business Services** may adjust the term of an initial license for the purpose of establishing uniform expiration dates. A dealer may renew a license as provided by the [department] **director**. The [department] **director** may renew a license only if the dealer:

(1) Delivers to the [department] **director** a bond or letter of credit that meets the requirements under ORS 446.726.

(2) **Provides evidence acceptable to the director that the dealer obtained a corporate surety bond as provided in section 9 of this 2009 Act if the dealer employs or intends to employ a mortgage loan originator, as defined in section 1 of this 2009 Act, or is otherwise subject to sections 1 to 13 of this 2009 Act.**

(3) **Certifies to the director in a form and manner the director specifies by rule that the dealer has independently verified that every individual the dealer hired or intends to hire as a mortgage loan originator meets the requirements set forth in sections 1 to 13 of this 2009 Act and in ORS 59.972.**

[2] (4) Pays the fee specified in ORS 446.721 for renewal of a manufactured structure dealer license.

[3] (5) Submits a completed application for renewal in a form approved by the [department] **director** that includes:

(a) The name and residence address of the dealer. If the dealer is a firm or partnership, the application must include the names and addresses of the members of the [dealer] **firm or partnership**. If the dealer is a corporation, the application must include the names and addresses of the principal officers of the [dealer] **corporation** and the name of the state in which the [dealer] **corporation** is incorporated.

(b) The name under which the business will be conducted.

(c) The street address, including city and county in Oregon, where the business will be conducted.

(d) If the location of the dealership is being changed at the time of renewal:

(A) For a business that will be conducted in a residential zone, a statement by the dealer that all manufactured structures sold or displayed at that address will meet any architectural and aesthetic standards regulating the placement of manufactured structures in that residential zone.

(B) For a business that will offer for sale new manufactured structures that are recreational vehicles greater than eight and one-half feet in width, a certificate from the applicant stating that the applicant will maintain a recreational vehicle service facility for those recreational vehicles at a street address provided in the application.

(e) [Any] Information [required by] the [department] **director requires** to efficiently regulate manufactured structure dealers and dealerships or other relevant information [required by] the [department] **director requires**.

SECTION 31. ORS 446.706 is amended to read:

446.706. (1) A person who holds a limited manufactured structure dealer license issued under this section may sell during a calendar year up to 10 manufactured dwellings located at a manufactured dwelling park identified in the license. The manufactured dwellings sold under a limited manufactured structure dealer license must be dwellings that:

(a) Have been abandoned as described in ORS 90.675 at any manufactured dwelling park. If the manufactured dwelling is not subject to sale by the limited manufactured structure dealer under ORS 90.675 (10), the dealer must have the certificate of title or registration for the dwelling transferred to the dealer prior to offering the dwelling for sale; or

(b) Have been purchased by the park owner from a person holding title, and at the time of purchase by the park owner, were sited in the manufactured dwelling park identified in the license.

(2) Notwithstanding ORS 90.525, if a limited manufactured structure dealer sells a manufactured dwelling that was abandoned at a manufactured dwelling park other than the park where the dwelling is being sold, the sale terms for the manufactured dwelling must require that the dwelling is to be sited under a rental agreement at the park where sold for at least 12 months following the sale.

(3) Except as provided in ORS 446.741, the **Director of the Department of Consumer and Business Services** shall issue a limited manufactured structure dealer license to a person if the person:

(a) Owns or operates a manufactured dwelling park as defined in ORS 446.003;

(b) Submits a completed application for a limited manufactured structure dealer license in a form approved by the [department] **director**;

(c) Delivers to the [department] **director** a bond or letter of credit that meets the requirements under ORS 446.726, except that the bond or letter of credit must be in the sum of \$15,000 for each year that the license is valid;

(d) Delivers to the director a corporate surety bond that meets the requirements specified in section 9 of this 2009 Act if the person employs or intends to employ a mortgage loan originator, as defined in section 1 of this 2009 Act, or is otherwise subject to sections 1 to 13 of this 2009 Act;

(e) Certifies to the director in a form and manner the director specifies by rule that the person has independently verified that every individual the person hired or intends to hire as a mortgage loan originator meets the requirements set forth in sections 1 to 13 of this 2009 Act and in ORS 59.972;

[(d)] **(f)** Is 18 years of age or older or is legally emancipated; and

[(e)] **(g)** Pays the fee specified in ORS 446.721 for issuance of a limited manufactured structure dealer license.

(4) If the person is a firm or partnership, the application for a limited manufactured structure dealer license must include the names and residence addresses of the members of the firm or partnership. If the person is a corporation, the application must include the names of the principal officers of the corporation and [their] residence addresses **of the officers** and the name of the state

under whose laws the corporation is organized. If the person is the owner of a manufactured dwelling park, the person may submit a joint application on behalf of the person and a named park operator employed by the person. If the person is the operator of a manufactured dwelling park, the application must include the name and signature of the park owner.

(5) A limited manufactured structure dealer license is valid for use at a single manufactured dwelling park. The manufactured dwelling park location must be specified in the license application. A limited manufactured structure dealer may not employ a salesperson.

(6) A limited manufactured structure dealer license is valid for two years, but the [department] **director** may adjust the term of an initial license for the purpose of establishing uniform expiration dates.

(7) Notwithstanding subsection (6) of this section, the limited manufactured structure dealer license for the person expires immediately if the person ceases to be an operator or owner of the manufactured dwelling park at which the license may be used. The owner of a manufactured dwelling park shall immediately notify the [department] **director** if a person licensed under this section ceases to be an owner or operator of a manufactured dwelling park at which the license may be used.

(8) Notwithstanding subsections (6) and (7) of this section, if a licensed person ceases to be an operator of the manufactured dwelling park, the park owner may apply to have a corrected license issued to a new operator employed by the owner. A corrected license issued under this subsection is valid for the unexpired portion of the original license term. The [department] **director** shall charge the fee specified in ORS 446.721 for issuing a corrected license.

(9) A limited manufactured structure dealer may renew a license as provided by the [department] **director**. The [department] **director** shall renew a license only if the dealer:

(a) Submits a completed application for renewal in a form approved by the [department] **director**;

(b) Delivers to the department a bond or letter of credit that meets the requirements described in subsection (3) of this section; and

(c) Pays the fee specified in ORS 446.721 for renewal of a limited manufactured structure dealer license.

SECTION 32. ORS 446.741 is amended to read:

446.741. (1) The **Director of the** Department of Consumer and Business Services may revoke or suspend a manufactured structure dealer license, or place a dealer on probation, if the dealer does any of the following:

(a) [Violates any] **Commits an act that is** grounds for suspension, revocation or probation **under rules** [adopted by] the [department] **director adopted** [by rule].

(b) Fails to comply with the requirements for notices or reports of the transfer of interest in manufactured structures.

(c) Moves a manufactured structure or causes a manufactured structure to be moved without complying with the requirements for variance permits under ORS 818.200 and trip permits under ORS 446.631.

(d) Knowingly provides false information on an application for a dealer license, supplemental license or corrected dealer license.

(e) Deals in a manufactured structure that both before and after the sale is assessed as real property under ORS 308.875 or is recorded in the deed records of a county. This paragraph does not apply if an ownership document is issued for the manufactured structure prior to sale.

(f) Employs a person in an administrative or managerial capacity while the person is disqualified under subsection (5) of this section.

(g) Fails, in conducting activities of a mortgage loan originator, to comply with the provisions of:

(A) The Truth in Lending Act, 15 U.S.C. 1601 et seq. and Regulation Z, 12 C.F.R. part 226, as in effect on October 1, 2009;

(B) The Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq. and Regulation X, 24 C.F.R. part 3500, as in effect on January 1, 2010;

(C) The Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq. and Regulation B, 12 C.F.R. 202.9, 202.11, 202.12 and 202.14, as in effect on the effective date of this 2009 Act; or

(D) 12 U.S.C. 5101 et seq. and regulations adopted under 12 U.S.C. 5101 et seq.

(h) Fails to certify to the director in a form and manner the director specifies by rule that the dealer has independently verified that every individual the dealer hired or intends to hire as a mortgage loan originator meets the requirements set forth in sections 1 to 13 of this 2009 Act and ORS 59.972.

(i) Employs a device, scheme or artifice to defraud or engage in an act, practice or course of business that operates or would operate as a fraud or deceit.

(j) Knowingly makes an untrue statement of a material fact or omits from a statement a material fact that would make the statement not misleading in light of the circumstances under which the dealer makes the statement.

(k) Makes or files or causes to be made or filed with the director a statement, report or document that the dealer knows is false in a material respect or matter.

(2) The [department] director shall cancel a manufactured structure dealer license immediately upon receipt of legal notice that [the] a bond described under ORS 446.726 or under section 9 of this 2009 Act is canceled.

(3) Upon suspension, revocation or cancellation of a manufactured structure dealer license under this section, the [department] director shall demand the return of the license.

(4) The [department] director shall cancel a dealer license or supplemental license immediately upon receipt of notice that zoning approval for a place of business has been revoked.

(5) If the [department] director revokes a manufactured structure dealer license pursuant to subsection (1) of this section, the [department] director shall disqualify the person whose license is revoked from obtaining any type of license as a manufactured structure dealer and from working in an administrative or managerial capacity for any type of manufactured structure dealer, for a period of not more than five years after the date the revocation becomes effective. If the person applies for licensing as a manufactured structure dealer following a period of disqualification under this subsection, the person must meet the requirements for issuance of an initial manufactured structure dealer license.

SECTION 33. ORS 725.010 is amended to read:

725.010. As used in this chapter:

(1)(a) "Broker or facilitator" means a person that conducts a business in which, for a fee or consideration, the person:

(A) Processes, receives or accepts for delivery to a lender an application for a loan, individually or in conjunction or cooperation with another person;

(B) Accepts and delivers to a lender all or most of the proceeds of a payment made in connection with a loan; or

(C) Assists in making a loan in a material capacity other than as a lender.

(b) "Broker or facilitator" does not include a mortgage broker [or loan originator, as those terms are], as that term is defined in ORS 59.840, a mortgage loan originator, as that term is defined in section 1 of this 2009 Act, or an employee of a licensee.

(2) "Consumer finance loan" means a loan or line of credit that is unsecured or secured by personal or real property and that has periodic payments and terms longer than 60 days.

(3) "Licensee" means a person licensed under this chapter.

SECTION 34. ORS 725.140 is amended to read:

725.140. (1) Conditioned upon [the] an applicant's compliance with this chapter and the payment of the license fee, the Director of the Department of Consumer and Business Services, within 90 days after the date [of filing] the applicant filed the application [referred to] described in ORS 725.120, shall disapprove the application or shall issue and deliver a license to the applicant to make loans

in accordance with this chapter at the location specified in the application. However, before issuing a license, the director must first find upon investigation **that**:

(a) *[That]* The financial responsibility, experience, character and general fitness of the applicant, and of the members thereof if the applicant is a partnership or association, and of the officers and directors thereof if the applicant is a corporation, are such as to command the confidence of the community and to warrant the belief that the business will be operated honestly, fairly and efficiently within the purposes of this chapter; *[and]*

(b) *[That]* Grounds *[for disapproval of]* **to disapprove** an application described in ORS 725.145 do not exist and that, in the judgment of the director, *[there are]* no other reasons or conditions *[that would]* warrant the refusal to grant a license*].*; **and**

(c) The applicant obtained a corporate surety bond that meets the requirements specified in section 9 of this 2009 Act if the applicant employs or intends to employ a mortgage loan originator, as defined in section 1 of this 2009 Act, or is otherwise subject to sections 1 to 13 of this 2009 Act.

(2) A license issued under this section *[shall be]* is a continuing license and *[shall]* **will** remain in full force and effect until the **licensee surrenders the license** *[is surrendered by the licensee]* as provided in ORS 725.250 or **the director revokes or suspends the license** *[revoked or suspended]* as provided in ORS 725.230.

SECTION 35. ORS 725.230 is amended to read:

725.230. (1) The Director of the Department of Consumer and Business Services may revoke *[any]* a license under this chapter upon 10 days' notice to the licensee stating the contemplated action and in general the grounds *[therefor]* **for the action** and *[upon]* **after giving the licensee** reasonable opportunity for a hearing *[in connection therewith]*, if the director finds that:

(a) The licensee *[has]* failed to pay the annual license fee or to comply with *[any]* a demand, ruling or requirement of the director made pursuant to this chapter or, **if the licensee is a corporation**, to comply with *[the]* provisions of law **that require the licensee** to keep the corporation in good standing *[if such licensee is a corporation]*;

(b) The licensee has violated *[any]* a **provision** *[provisions]* of this chapter or *[any]* a rule made by the director under the authority of this chapter; *[or]*

(c) The licensee employs mortgage loan originators licensed under sections 1 to 13 of this 2009 Act and failed to:

(A) File with the director and to maintain a corporate surety bond required under section 9 of this 2009 Act; or

(B) Certify to the director in a form and manner the director specifies by rule that the licensee has independently verified that every individual the licensee hired or intends to hire as a mortgage loan originator meets the requirements set forth in sections 1 to 13 of this 2009 Act and ORS 59.972;

(d) The licensee, in connection with the activities of a mortgage loan originator:

(A) Failed to maintain a corporate surety bond as provided in section 9 of this 2009 Act;

(B) Failed to comply with:

(i) The Truth in Lending Act, 15 U.S.C. 1601 et seq. and Regulation Z, 12 C.F.R. part 226, as in effect on October 1, 2009;

(ii) The Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq. and Regulation X, 24 C.F.R. part 3500, as in effect on January 1, 2010;

(iii) The Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq. and Regulation B, 12 C.F.R. 202.9, 202.11, 202.12 and 202.14, as in effect on the effective date of this 2009 Act; or

(iv) 12 U.S.C. 5101 et seq. and regulations adopted under 12 U.S.C. 5101 et seq.;

(e) The licensee employed a device, scheme or artifice to defraud or engage in an act, practice or course of business that operates or would operate as a fraud or deceit;

(f) The licensee knowingly made an untrue statement of a material fact or omitted from a statement a material fact that would make the statement not misleading in light of the circumstances under which the licensee made the statement;

(g) The licensee made or filed or caused to be made or filed with the director a statement, report or document that the licensee knew was false in a material respect or matter; or

[(c)] (h) [Any] A fact or condition exists [which] that, if [it] the fact or condition had existed at the time the licensee originally applied [of the original application] for [such] the license, clearly would have warranted the director in refusing originally to issue the license.

(2) The director, without notice or hearing, may suspend *[any]* a license issued under this chapter for a period not exceeding 30 days, pending investigation.

(3) The director may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist, or, if the director finds that *[such]* the grounds for revocation or suspension are of general application to all *[offices or to]* or more than one of the licensee's offices *[office operated by a licensee]*, the director may revoke or suspend all the licenses or such number of the licenses issued to the licensee as the grounds for revocation or suspension apply to, as the case may be.

SECTION 36. ORS 59.969, 59.970, 59.973, 59.975 and 59.977 are repealed.

SECTION 37. (1) Sections 1 to 13 of this 2009 Act and the amendments to ORS 59.840, 59.850, 59.855, 59.860, 59.865, 59.875, 59.880, 59.900, 59.905, 59.925, 59.962, 59.967, 59.971, 59.972, 59.992, 446.691, 446.696, 446.706, 446.741, 725.010, 725.140 and 725.230 by sections 14 to 35 of this 2009 Act and the repeal of ORS 59.969, 59.970, 59.973, 59.975 and 59.977 by section 36 of this 2009 Act become operative on July 31, 2010.

(2) The Director of the Department of Consumer and Business Services may take any action before July 31, 2010, that is necessary to enable the director to exercise, on or after July 31, 2010, all of the duties, functions and powers conferred on the director by sections 1 to 13 of this 2009 Act and the amendments to ORS 59.840, 59.850, 59.855, 59.860, 59.865, 59.875, 59.880, 59.900, 59.905, 59.925, 59.962, 59.967, 59.971, 59.972, 59.992, 446.691, 446.696, 446.706, 446.741, 725.010, 725.140 and 725.230 by sections 14 to 35 of this 2009 Act.

SECTION 38. If House Bill 2188 becomes law, section 2, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2188), is amended to read:

Sec. 2. (1)(a) As used in this section, "negative amortization loan" means a mortgage loan or mortgage banking loan that is structured in such a way that a borrower in any period may make a scheduled loan payment that is insufficient to pay accruing interest.

(b) "Negative amortization loan" does not include:

(A) A loan commonly known as a bridge loan, the terms of which specify that:

(i) The maturity period for the loan is less than 18 months; and

(ii) The borrower may pay only interest until a time when the entire unpaid loan balance is due and payable.

(B) A mortgage loan in which:

(i) The principal amount is not more than \$50,000; and

(ii) The combined loan to value ratio between all mortgage loans that are secured by the same property and the value of the securing property is not more than 50 percent.

(C) A loan commonly known as a reverse mortgage, the terms of which specify that the loan:

(i) Is a non-recourse loan secured by real property;

(ii) Provides cash advances to the borrower based on the equity or value in the borrower's owner-occupied principal residence;

(iii) Requires no payment of principal or interest until the entire loan becomes due and payable; and

(iv) Is made by a mortgage lender licensed in this state or licensed under the laws of the United States.

(D) A loan commonly known as a home equity line of credit, in which:

(i) The amounts borrowed and the interest and other charges are debited to an account that is secured by an interest in real estate;

(ii) Interest on the account is computed periodically;

(iii) The borrower has the right to pay in full at any time without penalty or to pay in installments that are specified in the loan agreement; and

(iv) The lender agrees to permit a borrower from time to time to borrow money, with the maximum limit on the amount of each borrowing established by the loan agreement.

(2) A mortgage banker, mortgage broker or **mortgage** loan originator may not negotiate or make, or offer to negotiate or make, a negative amortization loan without regard to the borrower's repayment ability at the time the loan is made, including the borrower's current and reasonably expected income, employment, assets other than the collateral, current obligations and mortgage related obligations. The mortgage banker, mortgage broker or **mortgage** loan originator shall verify the income and assets of the borrower that will be relied on to evaluate the borrower's repayment ability. The borrower's repayment ability must be evaluated and the borrower's income and assets must be verified in a manner that is consistent with the requirements of 12 C.F.R. 226.34, as promulgated on the effective date of **chapter __, Oregon Laws 2009 (Enrolled House Bill 2188) [this 2009 Act]**.

(3) A negative amortization loan may not contain a prepayment penalty beyond the first 24 months after the date on which the loan is made.

(4) A creditor may not collect a prepayment penalty on an existing negative amortization loan in return for or as a consequence of refinancing or providing funds to refinance the negative amortization loan.

SECTION 39. If House Bill 2188 becomes law, section 3, chapter __, Oregon Laws 2009 (Enrolled House Bill 2188), is amended to read:

Sec. 3. (1) A mortgage banker, a mortgage broker or a **mortgage** loan originator shall provide in writing the materials identified in subsection (2) of this section to a borrower if the mortgage banker, mortgage broker or **mortgage** loan originator:

(a) Communicates or causes to be communicated an advertisement in a language other than English or otherwise solicits business in a language other than English; and

(b) Offers to negotiate or make, or negotiates or makes, a residential mortgage transaction in the course of which a substantial portion of the communication with the borrower that is related to the transaction takes place in the language other than English that was used to communicate the advertisement or make the solicitation.

(2) A mortgage banker, mortgage broker or **mortgage** loan originator that takes an action described in subsection (1) of this section shall provide the following materials to the borrower in English and in the language other than English in which a substantial portion of the communication that is related to the transaction takes place:

(a) A good faith estimate required under the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq., and under Regulation X, 24 C.F.R. part 3500, as enacted or promulgated on January 1, 2010;

(b) The disclosures related to the transaction that are required under the Truth in Lending Act, 15 U.S.C. 1601 et seq., and under Regulation Z, 12 C.F.R. part 226, as enacted or promulgated on the effective date of **chapter __, Oregon Laws 2009 (Enrolled House Bill 2188) [this 2009 Act]**; and

(c) A statement notifying the borrower that loan documents associated with the transaction will be in English and advising the borrower to obtain appropriate assistance with any necessary translations.

(3) The Director of the Department of Consumer and Business Services shall develop and distribute translated versions of the materials identified in subsection (2) of this section in the three languages other than English that are most commonly spoken in this state.

SECTION 40. The amendments to sections 2 and 3, chapter __, Oregon Laws 2009 (Enrolled House Bill 2188), by sections 38 and 39 of this 2009 Act become operative on January 1, 2010.

SECTION 41. If House Bill 2191 becomes law, ORS 697.612, as amended by section 2, chapter __, Oregon Laws 2009 (Enrolled House Bill 2191), is amended to read:

697.612. (1) A person that has not registered with the Director of the Department of Consumer and Business Services under ORS 697.632 may not engage in business in this state in the course of which the person:

- (a) Performs a debt management service; or
- (b) Receives money or other valuable consideration or expects to receive money or other valuable consideration for:
 - (A) Soliciting or receiving an application from a consumer for a debt management service;
 - (B) Forwarding or providing a completed application for a debt management service to a debt management service provider;
 - (C) Referring a consumer to another debt management service provider, if the person is a debt management service provider;
 - (D) Providing a consumer's name, address or other information that identifies the consumer to a debt management service provider for the purpose of arranging the provision of a debt management service; or
 - (E) Providing advice, assistance, instruction or instructional material concerning a debt management service to a consumer.

(2) A debt management service provider registered under ORS 697.632 may negotiate on a consumer's behalf for a reasonable alternative repayment schedule or to reduce a claim described in 11 U.S.C. 502 if the debt management service provider is a nonprofit budget and credit counseling agency approved in accordance with 11 U.S.C. 111.

(3) Subsection (1) of this section does not apply to:

- (a) An employee of a debt management service provider, if the debt management service provider is registered under ORS 697.632.
- (b) An attorney licensed or authorized to practice law in this state, if the attorney provides a debt management service only incidentally in the practice of law.
- (c) A financial institution or a trust company, both as defined in ORS 706.008.
- (d) A consumer finance company licensed under ORS chapter 725.
- (e) An escrow agent licensed under ORS 696.505 to 696.590.
- (f) A mortgage banker or mortgage broker licensed under ORS 59.840 to 59.980 or a **mortgage** loan originator, as defined in ORS 59.840.
- (g) A broker-dealer registered with the United States Securities and Exchange Commission or the United States Commodity Futures Trading Commission, if the broker-dealer is subject to and acts in accordance with regulations promulgated by either commission.
- (h) A consumer reporting agency, as defined in 15 U.S.C. 1681a(f).
- (i) A public body, as defined in ORS 174.109.
- (j) A person that is obeying or acting in accordance with a court order.
- (k) An accredited educational institution or program that offers or performs a debt management service without receiving money or other valuable consideration, if the institution or program performs the debt management service as an incidental part of a class or a duty the institution or program provides regularly.

(L) A nonprofit budget and credit counseling agency approved in accordance with 11 U.S.C. 111 that:

- (i) Provides only an individual or group briefing, as described in 11 U.S.C. 109(h), or an instructional course concerning personal financial management, as described in 11 U.S.C. 111; and
- (ii) Does not receive or offer to receive funds from a consumer for the purpose of distributing the funds among the consumer's creditors in full or partial payment of the consumer's debts.
- (m) A nonprofit entity that provides advice, assistance, instruction or instructional materials to a consumer in return for a fee that is reasonably calculated to pay the cost of making the advice, assistance, instruction or instructional materials available.

(n) An organization or a counselor approved by the United States Department of Housing and Urban Development under 12 U.S.C. 1701x.

SECTION 42. The amendments to ORS 697.612 by section 41 of this 2009 Act become operative on January 1, 2010.

SECTION 43. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by House June 24, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate June 27, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State