

Oregon State Bar Real Estate and Land Use Section
Comments on HB 2856
Presented to the Senate General Government, Consumer and Small
Business Protection Committee

May 7, 2013

The Real Estate and Land Use Section of the Oregon State Bar would like to express some reservations regarding House Bill 2856. Our section is concerned that the bill may be inconsistent with federal statutory schemes, and that there are still rules at the federal level that have not yet been promulgated. This legislation may be more appropriate once there is more certainty regarding federal regulation.

The bill concerns exemptions from the requirement to use a licensed mortgage loan originator (MLO) when offering the terms of a seller carryback residential mortgage loan. MLO licenses involve a lot of overhead. The proposed exemption does not assist small property investor-owners as it should, in line with new federal law. The federal law in question is the SAFE Act, which generally requires the states to implement MLO law consistent with it.

HB 2856 as written adds the following modest exemption, referencing federal law but not in accord with it. A flaw exists in the language even for the purpose it describes; "the individual's residence" should read the "the buyer's residence," to distinguish from the "individual" identified as the seller.

"[The requirement to be a licensed mortgage loan originator] does not apply to: ...

"(d) An individual who, as a seller during any 12-month period, offers or negotiates terms for not more than three residential mortgage loans that are secured by a dwelling unit that did not serve as the ~~individual's~~ [buyer's] residence, unless the United States Consumer Financial Protection Bureau expressly determines, on or after the effective date of this 2013 Act, that the definition of loan originator in section 1503 of Title V of the Housing and Economic Recovery Act of 2008, P.L. 110-289, includes an individual whose activities are described in this paragraph."

The bill should update Oregon law to match federal law. As of January 2013, the United States Consumer Financial Protection Bureau referred to in the language of the bill issued an updated Reg Z with two new exemptions implementing the Dodd-Frank Act, one for a natural person and one for a broadly defined person including limited liability entities. The 2 federal exemptions are:

12 CFR § 1026.36(a)(4) says the federal exemption from requiring an MLO in order to make a residential mortgage loan applies to "a natural person, estate or trust that provides seller financing for one property in

any 12-month period, where the buyer can use the residence as principal residence; the loan has no negative amortization and has a fixed interest rate for at least the first 5 years with a reasonable cap and floor; and the buyer has the reasonable ability to repay the loan."

12 CFR § 1026.36(a)(5) says the federal exemption from requiring an MLO in order to make a residential mortgage loan applies to "a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust or government unit that provides seller financing for no more than three (3) properties in any 12-month period, where the buyer can use the residence as principal residence; the loan is fully amortizing and has a fixed interest rate for at least the first 5 years with a reasonable cap and floor; and the buyer has the reasonable ability to repay the loan."

Because of the complex structure of these exemptions in Reg Z (involving multiple cross-references) the language in quotes is necessarily a paraphrase.

Thank you for your consideration of this important issue.