

Enrolled House Bill 2239

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of Consumer and Business Services)

CHAPTER

AN ACT

Relating to licensing for mortgage loan lending; amending ORS 86A.100.

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

SECTION 1. ORS 86A.100 is amended to read:

86A.100. As used in ORS 86A.095 to 86A.198:

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

(2) "License" means a license issued to a mortgage banker or mortgage broker under ORS 86A.095 to 86A.198.

(3)(a) "Mortgage banker" means a person 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, **if the financial holding company or bank holding company does not do more than control a subsidiary or affiliate, as described in 12 U.S.C. 1841, and does not engage in the business of a mortgage banker or mortgage broker.** *[holding an institution described in subparagraph (A) of this paragraph; a savings and loan holding company as defined in 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 86A.095 to 86A.198.]*

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

(D) 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 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 a state or of the United States.

(G) A person 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*] **improving** the real property or a lien created without the consent of the owner of the real property.

(H) A person that funds a mortgage banking loan or mortgage loan 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 negotiating mortgage banking loans or mortgage loans. For the purpose of this subparagraph, “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 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) A person designated by rule or order of the Director of the Department of Consumer and Business Services.

(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, that is directly or indirectly secured by a mortgage or deed of trust or any lien interest on real estate and 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 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 control, are controlled by or are under common control with the entity specified.

(5)(a) “Mortgage broker” means a person 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)] **(B)** A financial holding company or a bank holding company, as defined in ORS 706.008, **if the financial holding company or bank holding company does not do more than control a subsidiary or affiliate, as described in 12 U.S.C. 1841, and does not engage in the business of a mortgage banker or mortgage broker.** [*holding an institution described in subparagraph (A) of this paragraph;*]

[(ii) A savings and loan holding company as defined in 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 the persons' mortgage brokering activities in accordance with the purposes of ORS 86A.095 to 86A.198.]

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

(G) 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 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 a state or of the United States.

(J) A person 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*] **improving** the real property or a lien created without the consent of the owner of the real property.

(K) A person that funds a mortgage loan 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 negotiating mortgage loans. For the purpose of this subparagraph, "negotiating mortgage loans" does not include setting the terms under which a person may buy or fund a mortgage loan 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 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. **and Regulation H, 12 C.F.R. part 1008, as in effect on the effective date of this 2013 Act;**

(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) A person designated by rule or order of the director.

(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 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 ORS 86A.200.

(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.

Passed by House February 20, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 22, 2013

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2013

Approved:

.....M.,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

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Kate Brown, Secretary of State