

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)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires certain entities previously exempt from requirement to have license in order to engage in business of making mortgage loans to now obtain license from Department of Consumer and Business Services.

A BILL FOR AN ACT

1
2 Relating to licensing for mortgage loan lending; amending ORS 86A.100.

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

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

5 86A.100. As used in ORS 86A.095 to 86A.198:

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

7 (2) "License" means a license issued to a mortgage banker or mortgage broker under ORS
8 86A.095 to 86A.198.

9 (3)(a) "Mortgage banker" means a person that for compensation or in the expectation of com-
10 pensation:

11 (A) Either directly or indirectly makes, negotiates or offers to make or negotiate a mortgage
12 banking loan or a mortgage loan; and

13 (B) Services or sells a mortgage banking loan.

14 (b) "Mortgage banker" does not include:

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

16 (B) A financial holding company or a bank holding company, as defined in ORS 706.008, **if the**
17 **financial holding company or bank holding company does not do more than control a sub-**
18 **subsidiary or affiliate, as described in 12 U.S.C. 1841, and does not engage in the business of a**
19 **mortgage banker or mortgage broker.** [*holding an institution described in subparagraph (A) of this*
20 *paragraph; a savings and loan holding company as defined in 12 U.S.C. 1467a(a)(1)(D), holding an*
21 *association described in subparagraph (A) of this paragraph; the subsidiaries and affiliates of the fi-*
22 *nanical holding company, bank holding company or savings and loan holding company; or subsidiaries*
23 *and affiliates of institutions described in subparagraph (A) of this paragraph, provided that the ap-*
24 *propriate statutory regulatory authority is exercising control over or is regulating or supervising the*
25 *persons listed in this subparagraph in their mortgage banking activities in accordance with the pur-*
26 *poses of ORS 86A.095 to 86A.198.*]

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

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

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

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

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

9 (G) A person that receives a mortgage or deed of trust on real property as security for an ob-
 10 ligation payable on an installment or deferred payment basis and arising out of materials furnished
 11 or services rendered in [*the improvement of*] **improving** the real property or a lien created without
 12 the consent of the owner of the real property.

13 (H) A person that funds a mortgage banking loan or mortgage loan that a licensee or exempt
 14 person originated and processed and that does not maintain a place of business in this state in
 15 connection with funding mortgage banking loans or mortgage loans, does not directly or indirectly
 16 solicit borrowers in this state for the purpose of making mortgage banking loans or mortgage loans
 17 and does not participate in negotiating mortgage banking loans or mortgage loans. For the purpose
 18 of this subparagraph, "negotiating mortgage banking loans or mortgage loans" does not include
 19 setting the terms under which a person may buy or fund a mortgage banking loan or a mortgage
 20 loan that a licensee or exempt person originated.

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

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

25 (K) A retirement or pension fund.

26 (L) An insurer as defined in ORS 731.106.

27 (M) A court appointed fiduciary.

28 (N) A person designated by rule or order of the Director of the Department of Consumer and
 29 Business Services.

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

35 (a) Cash, corporate capital, warehouse credit lines at financial institutions defined in ORS
 36 706.008 or other sources that are liability items of the mortgage banker's financial statements for
 37 which the mortgage banker's assets are pledged;

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

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

1 (5)(a) “Mortgage broker” means a person that:

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

5 (B) Engages all or part of the time, for the account of others or for the person’s own account,
 6 in the business of accepting funds from one or more persons other than persons enumerated in ORS
 7 59.035 (4) for investment in real estate paper; or

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

10 (b) “Mortgage broker” does not include:

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

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

17 *[(ii) A savings and loan holding company as defined in 12 U.S.C. 1467a(a)(1)(D), holding an as-*
 18 *sociation described in subparagraph (A) of this paragraph;]*

19 *[(iii) The subsidiaries and affiliates of the financial holding company, bank holding company or*
 20 *savings and loan holding company; or]*

21 *[(iv) Subsidiaries and affiliates of institutions described in subparagraph (A) of this paragraph,*
 22 *provided that the appropriate statutory regulatory authority is exercising control over or is regulating*
 23 *or supervising the persons listed in this subparagraph in the persons’ mortgage brokering activities in*
 24 *accordance with the purposes of ORS 86A.095 to 86A.198.]*

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

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

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

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

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

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

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

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

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

44 (J) A person that receives a mortgage or deed of trust on real property as security for an obli-
 45 gation payable on an installment or deferred payment basis and arising out of materials furnished

1 or services rendered in *[the improvement of]* **improving** the real property or a lien created without
 2 the consent of the owner of the real property.

3 (K) A person that funds a mortgage loan that a licensee or exempt person originated and pro-
 4 cessed and that does not maintain a place of business in this state in connection with funding
 5 mortgage loans, does not directly or indirectly solicit borrowers in this state for the purpose of
 6 making mortgage loans and does not participate in negotiating mortgage loans. For the purpose of
 7 this subparagraph, “negotiating mortgage loans” does not include setting the terms under which a
 8 person may buy or fund a mortgage loan that a licensee or exempt person originated.

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

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

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

18 (ii) For the benefit of a potential purchaser, the person completes a loan application form or
 19 other document that is part of a mortgage banking loan and completes a good faith estimate under
 20 the federal Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq. **and Regulation H, 12**
 21 **C.F.R. part 1008, as in effect on the effective date of this 2013 Act;**

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

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

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

27 (6) “Mortgage loan” means a loan, extension of credit or retail sales contract, other than a
 28 mortgage banking loan, secured by a mortgage or deed of trust or a lien interest on real estate that
 29 is created with the consent of the owner of the real estate.

30 (7) “Mortgage loan originator” has the meaning given that term in ORS 86A.200.

31 (8) “Residential mortgage transaction” means a transaction in which a mortgage, deed of trust,
 32 purchase money security interest arising under an installment sales contract, or equivalent
 33 consensual security interest is created or retained in property upon which four or fewer residential
 34 dwelling units are planned or situated, including but not limited to individual units or condominiums
 35 and cooperatives. As used in this subsection, “residential dwelling unit” means an improvement de-
 36 signed for residential occupancy.

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