



MEMORANDUM

March 16, 2015

To: Members of the Senate Committee on Business and Transportation

From: Richard Y. Blackwell, Senior Policy Analyst, Division of Finance and Corporate Securities

Subject: Section-by-Section Analysis of SB 275

Section 2. Adds definitions to ORS 86A.100 to cover servicing activities contained in the Act. The bill defines a “mortgage loan servicer” as an entity that:

- Holds the right or obligation to collect payments of principal and interest, hazard insurance, and taxes, in order to send those payments to:
 - A lender
 - A note owner;
 - A note holder or another person that holds an interest in a note; or
 - A mortgage banker’s or mortgage broker’s account.
- Performs services related to loss mitigation and foreclosure; and
- Goes to court to collect outstanding payments or to foreclose a property.

For flexibility and to meet federal law, if an entity would not necessarily be a servicer under state law but would be one under the federal Real Estate Settlement Procedures Act, they still must license in Oregon.

Under the bill, the following are not considered mortgage loan servicers:

- A financial institution – a bank or credit union chartered by Oregon, another state, or the federal government.
- A financial holding company or a bank holding company. The exemption persists as long as the holding company does not service mortgage loans itself.
- An attorney licensed to practice law in this state and acting as a mortgage loan servicer while representing a client.
- A nonprofit corporation exempt from federal taxation, as determined by rule.
- An escrow agent, as long as the escrow agent collects payments as part of closing a mortgage loan or collecting installment payments as a neutral third party. An escrow

company that also acts as a trustee on a trust deed is exempt. A proposed amendment corrects an error in the reference to trustees in chapter 86.

- An individual mortgage loan originator.

Section 3. This section amends existing law to require a license from a person that is in the business of servicing mortgage loans. This section also requires an “endorsement” for other entities normally licensed to originate the loans to also service loans.

Section 4: This section amends existing law to incorporate licensing procedures for mortgage loan servicers.

- Because the other states that license servicers without exception utilize the NMLS system, this bill also proposes licensing through that multistate database.
- The bill requires information on the servicer’s organizational structure and ownership and statements about any past issues the servicer had with other regulatory authorities. This **Section** also requires mortgage loan servicers to prove proof of financial responsibility, which we mean to be the financial backstops that prevent servicers from going insolvent.
- Servicers also need to provide audited financial statements and other information that the director specifies by rule. Unlike the statements below, this statement is used to evaluate the servicer’s fitness for initial licensure.

Section 6. This is a new section that further defines what is meant by “proof of financial responsibility,” as mentioned in section 4. Proof of financial responsibility means all of the following:

- Demonstrating an adequate reserve of liquid capital. The amount considered prudent will vary by the quality of the loans serviced, whether the loans were made in-house or the rights were bought from a lender, and how much unpaid principal the entity services.
- A surety bond, the amount of which is scaled for the volume of mortgage servicing rights held by the servicer.
- An errors and omissions insurance policy protecting the servicer from bad acts committed by its individual officers or employees. The policy limits are again based on the volume of mortgage servicing rights held by the servicer.
- In order to ensure that the servicer has enough financial backstop available and is operating prudently, the bill requires audited financial statements submitted annually.

Section 7. This new section requires disclosure by a mortgage loan servicer of certain significant events, the occurrence of which could affect the viability of the entity’s business:

- Past or pending bankruptcy filings.
- Plans to restructure the mortgage loan servicer’s business.

- Felony indictments or convictions against the servicer's officers, directors, members, partners or shareholders that own 10 percent or more of the mortgage loan servicer's outstanding stock.
- Administrative actions by another federal or state regulator, including license denials, cease and desist orders, or some other administrative action.
- Civil actions initiated by the Attorney General or the attorneys general of another state against the mortgage loan servicer, including whether the Attorney General or an attorney general of another state went to a court to enforce an existing judgment.
- Suspension or termination of the servicer's approval to sell or service loans for the government-sponsored enterprises (i.e., Fannie Mae or Freddie Mac).
- Loss of certain servicing rights by the mortgage loan servicer which significantly affects the mortgage loan servicer's ability to service the mortgage loan servicer's portfolio.
- Filing of bankruptcy by any of the mortgage loan servicer's officers, directors, members, partners or shareholders that own 10 percent or more of the mortgage loan servicer's outstanding stock.
- A class action lawsuit filed against the mortgage loan servicer related to the operation of the mortgage loan servicer's business.

Section 8. This section amends existing law to specify that the mortgage servicing license expires one year from the date it is issued.

Section 9. This section amends existing law to apply existing recordkeeping requirements to mortgage loan servicers. Section 9 clarifies that a report of condition that all licensees file to meet Oregon law, including mortgage loan servicers, can be the report filed with the NMLS system. This removes a duplicate and unnecessary report from law.

Sections 10 through 12. These sections amend existing law to extend the director's existing licensing and enforcement authority governing the activities of mortgage bankers and mortgage brokers to the activities of mortgage loan servicers.

Section 13. This section amends existing law to address the examination of mortgage loan servicers. The bill specifies that the director may examine a mortgage loan servicer for servicing practices, its loss mitigation efforts, its prudential operation (i.e., liquidity) and compliance with state and federal laws. Information developed under this section is treated as confidential, through the director may provide general information about servicing examinations without disclosing a particular source.

Section 15. This is a new section, in conjunction with the examination procedures in section 13, which allows the director to participate in multistate examinations. Examinations under this section may occur with other states or federal Consumer Financial Protection Bureau following protocols for multistate examinations. This section treats information developed, received or compiled during an examination as confidential.

Section 16. The printed bill mirrors language in the Oregon Bank Act, but we propose to change it significantly under a proposed amendment.

- Under the Bank Act, the director may exercise certain powers when a state-chartered financial institution is insolvent or repeatedly violates certain laws. This kind of authority makes sense when financial institutions are created by the department, and a failed bank can cause rippling economic damage. But loan servicing may not have quite the same effect, so mirroring the language is inappropriate.
- Instead, a proposed amendment will remove the language about taking possession of the servicer, directing its sale, or directing a servicer to develop an acquisition plan. In its place, the director can seek appointment of a third-party receiver either along or together with other states when a servicer is insolvent or repeatedly violates the law. That way, a court can apply due process when deciding whether to appoint the receiver and then equitably supervise the receivership.

Section 17. This section amends the director's existing rulemaking authority to include rules governing mortgage loan servicers. This section covers the general topics of regulations in place in other states (e.g., New York), and is written to ensure that the director can implement the results of a state working group on the regulation of loan servicing. Rules the director may adopt, after a robust public process, include:

- How a licensee or endorsee conducts business.
- A licensee's duty of care to borrowers.
- The payment of taxes, insurance premiums, and crediting payments.
- The form and contents of statements of account and the form and manner in which a licensee must deliver late payment notices.
- Defining acceptable loss mitigation efforts.

Section 18. This section amends the existing private right of action to include violations of servicing practices. Sets the statute of limitations for actions under this section against mortgage loan servicer at two years after the violation, or more than two years after the plaintiff discovered the violation, but not later than three years after the date on which the mortgage banker, mortgage broker or other person stopped servicing the plaintiff's loan.

Section 19. Existing law already considers "fraud," "defraud" and "deceit" to be broader than common-law fraud; this change simply moves the law from the definitions to the anti-fraud provision of the law.

Section 21. This new section of law covers the use of escrow accounts by the mortgage loan servicer, for both the protection of consumers and the ease of examination.

- It requires a mortgage loan servicer to deposit amounts paid by an Oregon borrower into one or more escrow accounts located at a federally insured financial institution that maintains a branch in this state.

- It treats the servicer as the fiduciary for the consumer with respect to those accounts, and that the accounts may only contain funds from Oregon consumers.
- It requires that escrow account be separate from all other accounts or requires that histories of the loan accounts for residential mortgage loans in this state be provided to the director, along with escrow account statements that show how, when and where the licensee or endorsee held, applied or distributed payments that the loan was serviced.
- It prohibits escrow funds from being used to pay for personal affairs or business affairs, and prohibits the accounts from being encumbered by a lien or other claim.
- The section also gives the director authority to examine the accounts and escrow records must be produced upon the director's request.
- The section allows the escrow funds to be used to: make payments required by contract, state or federal law; make refunds to borrowers; make transfers to depository institutions; make a transfer to the appropriate mortgage lender or mortgage loan servicer; or comply with an order of the director or a court of competent jurisdiction.

Section 22. This section amends existing law to apply the director's existing rulemaking authority over advertising to include mortgage loan servicers.

Section 23. This section amends existing law to apply existing designations of principal place of business, other offices, personnel changes, and registered agent requirement to mortgage loan servicers.

Section 24. This section amends existing law to update the effective date for Truth in Lending Act disclosures under federal regulation.

Section 25. This section amends existing law to apply prohibited conduct provisions to mortgage loan servicer servicers.

Section 27. This is a new section that adds certain servicer prohibitions to the law.

- Prohibits servicers from engaging in unfair or deceptive practices or making misrepresentations relating to the servicing of a residential mortgage loan
- Requires servicers to comply with federal law governing mortgage loan servicing transfer, escrow account administration, and borrower inquiry responses
- Places restrictions on hazard and flood insurance
- Requires timely premium refunds and timely application of mortgage payments
- Prohibits obtaining property through fraud or misrepresentation.

Section 28. This section amends the Unlawful Trade Practices Act to add mortgage loan servicing as an activity the Attorney General may pursue, but only after notice and approval by the director. This is already the case for state-chartered financial institutions.