

A-Engrossed Senate Bill 275

Ordered by the Senate April 29
Including Senate Amendments dated April 29

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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.

Requires mortgage loan servicers to obtain license or endorsement and requires other persons that engage in business as mortgage loan servicers to obtain endorsement. Specifies considerations Director of Department of Consumer and Business Services may use in deciding whether to issue license or endorsement. Requires applicant for license or endorsement to file corporate surety bond or irrevocable letter of credit with, and to provide proof of financial responsibility to, director and to notify director of certain changes to mortgage loan servicer's operations or governance. **Provides that director may adjust amount of bond required.**

Subjects mortgage loan servicer's books and records to director's examination or examination that Conference of State Bank Supervisors conducts. Permits director to [*take temporary possession and control of, or to direct sale of, mortgage loan servicer's assets*] **petition court to appoint receiver to manage mortgage loan servicer's affairs** in certain circumstances. Requires mortgage loan servicer to maintain escrow account for funds from borrowers in this state and directs mortgage loan servicer to segregate funds in escrow account from all of mortgage loan servicer's other funds.

Prohibits certain practices and otherwise subjects mortgage loan servicers to regulations of similar nature and extent as regulations to which mortgage bankers and mortgage brokers are subject.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to regulating mortgage loan servicers; creating new provisions; amending ORS 86A.095,
3 86A.100, 86A.103, 86A.106, 86A.109, 86A.112, 86A.115, 86A.118, 86A.121, 86A.124, 86A.136,
4 86A.151, 86A.154, 86A.163, 86A.166, 86A.169, 86A.183 and 646.633; repealing ORS 86A.175; and
5 declaring an emergency.

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

7 **SECTION 1.** ORS 86A.095 is amended to read:

8 86A.095. ORS 86A.095 to 86A.198 may be cited as the [*"Oregon Mortgage Lender Law."*] **"Oregon**
9 **Mortgage Lender and Loan Servicer Practices Act."**

10 **SECTION 2.** ORS 86A.100 is amended to read:

11 86A.100. As used in ORS 86A.095 to 86A.198:

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

13 (1) **"Endorsee" means a person that obtains an endorsement under ORS 86A.106 to en-**
14 **gage in business as a mortgage loan servicer in this state.**

15 (2) **"Endorsement" means an authorization to engage in business as a mortgage loan**
16 **servicer in this state that the Director of the Department of Consumer and Business Ser-**
17 **vices grants under ORS 86A.106 as a supplement to the authorization a mortgage banker, a**

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 mortgage broker or a person that is licensed under ORS 725.140 has under the mortgage
2 banker's, mortgage broker's or person's existing license.

3 (3) "Engage in business as a mortgage banker in this state" means to perform an act that
4 a mortgage banker may perform under a license that the director issues under ORS 86A.106,
5 if the act involves residential real property that is located in this state or a borrower who
6 resides in this state.

7 (4) "Engage in business as a mortgage broker in this state" means to perform an act that
8 a mortgage broker may perform under a license that the director issues under ORS 86A.106,
9 if the act involves residential real property that is located in this state or a borrower who
10 resides in this state.

11 (5) "Engage in business as a mortgage loan servicer in this state" means to perform an
12 act that a mortgage loan servicer may perform under a license or endorsement that the di-
13 rector issues under ORS 86A.106, if the act involves residential real property that is located
14 in this state or a borrower who resides in this state.

15 (6) "Engage in residential mortgage transactions in this state" means to perform an act
16 that a mortgage banker or mortgage broker may perform under a license that the director
17 issues under ORS 86A.106, if the act:

18 (a) Is a residential mortgage transaction that originates in this state or is directed to
19 and received in this state; or

20 (b) Involves real property that is located in this state.

21 [(2)] (7) "License" means a license that the director issues [issued] under ORS 86A.106 to a
22 person to authorize the person to engage in business as a mortgage banker, [or] a mortgage
23 broker or a mortgage loan servicer in this state [under ORS 86A.095 to 86A.198].

24 (8) "Licensee" means a person that obtains a license under ORS 86A.106 to engage in
25 business as a mortgage banker, mortgage broker or mortgage loan servicer in this state.

26 [(3)(a)] (9)(a) "Mortgage banker" means a person that for compensation or in the expectation
27 of compensation:

28 (A) [Either] Directly or indirectly makes[,] or negotiates, or offers to make or negotiate, a
29 mortgage banking loan or a mortgage loan; and

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

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

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

33 (B) A financial holding company or a bank holding company, as defined in ORS 706.008, if the
34 financial holding company or bank holding company does not do more than control a subsidiary or
35 affiliate, as [described] defined in 12 U.S.C. 1841, as in effect on the operative date specified in
36 section 31 of this 2015 Act, and does not engage in [the] business [of] as a mortgage banker, [or]
37 a mortgage broker or a mortgage loan servicer in this state.

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

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

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

45 (ii) Does not receive compensation from a mortgage banker, mortgage broker, mortgage loan

1 **servicer**, mortgage loan originator or lender or an agent of the mortgage banker, mortgage broker,
2 **mortgage loan servicer**, mortgage loan originator or lender.

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

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

6 (G) A person that receives a mortgage or deed of trust on real property as security for an ob-
7 ligation [*payable*] **that the mortgagor or grantor may pay** on an installment or deferred payment
8 basis and [*arising out of*] **that arises from furnishing** materials [*furnished*] or **rendering** services
9 [*rendered in improving*] **to improve** the real property or a **person that has a lien on real property**
10 **that is** created without the consent of the owner of the real property.

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

19 (I) A nonprofit [*federally tax exempt*] corporation **that is exempt from federal taxation, that**
20 **is** certified by the United States Small Business Administration, **that is** [*and*] organized to promote
21 economic development within this state [*whose*] **and that, as a** primary activity, [*consists of pro-*
22 *viding*] **provides** financing for business expansion.

23 (J) A **mortgage broker or a person that is** [*licensee*] licensed under ORS [*chapter 725 or a*
24 *mortgage broker*] **725.140**.

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*] **that** the director [*of the Department of Consumer*
29 *and Business Services*] **designates by rule or order**.

30 [(4)] (10) “Mortgage banking loan” means a loan, extension of credit or a retail sales contract
31 that [*is funded*] **a mortgage banker funds** exclusively from the mortgage banker’s own resources,
32 **and** that is directly or indirectly secured by a mortgage or deed of trust or any lien interest on real
33 [*estate and that is created with the consent of*] **property to which** the owner of the real property
34 **consents**. For purposes of this subsection, “own resources” means any of the following:

35 (a) Cash, corporate capital, warehouse credit lines at a financial [*institutions*] **institution, as**
36 defined in ORS 706.008, or other sources that are liability items [*of*] **in** the mortgage banker’s fi-
37 nancial statements for 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, **insurance**
40 **company or a person** [*licensee under*] **that is licensed under** ORS [*chapter 725 or an insurance*
41 *company*] **725.140**; or

42 (c) [*The mortgage banker’s affiliates’*] Cash, corporate capital, warehouse credit lines at a fi-
43 nancial [*institutions*] **institution, as** defined in ORS 706.008, or other sources **from a mortgage**
44 **banker’s affiliate** that are liability items on the [*affiliates’*] **affiliate’s** financial statements for
45 which the [*affiliates’*] **affiliate’s** assets are pledged. As used in this paragraph, [*“affiliates”*]

1 **“affiliate”** means *[entities]* **an entity** that, directly or indirectly, through one or more intermediaries
 2 *[control]* **controls**, *[are]* **is** controlled by or *[are]* **is** under common control with the *[entity specified]*
 3 **mortgage banker or another entity.**

4 *[(5)(a)]* **(11)(a)** “Mortgage broker” means a person that:

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

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

11 (C) *[For compensation, or in the expectation of compensation, either]* Directly or indirectly
 12 makes~~[,]~~ or negotiates or offers to make or negotiate a mortgage loan **for compensation or in the**
 13 **expectation of compensation.**

14 (b) “Mortgage broker” 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 subsidiary or
 18 affiliate, as described in 12 U.S.C. 1841 **as in effect on the operative date specified in section**
 19 **31 of this 2015 Act**, and does not engage in *[the]* business *[of]* **as** a mortgage banker, *[or]* **a mortgage**
 20 **broker or a mortgage loan servicer in this state.**

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

23 (D) A real estate licensee, as defined in ORS 696.010, who performs services *[solely]* **that are**
 24 **only** incidental to the practice of professional real estate activity, as defined in ORS 696.010, unless
 25 the real estate licensee performs the functions of a mortgage banker or a mortgage broker as de-
 26 fined in this section.

27 (E) A **mortgage banker or** a person licensed under *[the provisions of ORS chapter 725 or a*
 28 *mortgage banker]* **ORS 725.140.**

29 (F) A person that, **although not engaged in the business of making loans secured by an**
 30 **interest in real property**, makes a loan secured by an interest in real estate with the person’s own
 31 moneys, for the person’s own investment *[and that is not engaged in the business of making loans*
 32 *secured by an interest in real estate]*.

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

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

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

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

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

42 (J) A person that receives a mortgage or deed of trust on real property as security for an obli-
 43 gation payable on an installment or deferred payment basis and arising out of materials furnished
 44 or services rendered in improving the real property or a lien created without the consent of the
 45 owner of the real property.

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

7 (L) A nonprofit *[federally tax exempt]* corporation **that is exempt from federal taxation, that**
8 **is** certified by the United States Small Business Administration, **that is** *[and]* organized to promote
9 economic development within this state *[whose]* **and that, as a** primary activity *[consists of provid-*
10 *ing]*, **provides** financing for business expansion.

11 (M) A person licensed under ORS 446.691 or 446.696 or a temporary manufactured structure
12 dealer licensee under ORS 446.701 that provides services customarily associated with the retail sales
13 of manufactured dwellings, including *[communication of]* **communicating** generally available infor-
14 mation *[regarding]* **about** mortgage loans, unless:

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

17 (ii) *[For the benefit of a potential purchaser,]* The person completes a loan application form or
18 other document that is part of a mortgage banking loan and *[completes]* a good faith estimate under
19 the federal Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq. and Regulation H, 12
20 C.F.R. part 1008, as in effect on *[January 1, 2014]* **the operative date specified in section 31 of**
21 **this 2015 Act, for the benefit of a prospective purchaser;**

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 **designates by rule or order.**

27 [(6)] (12) “Mortgage loan” means a loan, extension of credit or retail sales contract, other than
28 a mortgage banking loan, **that is** secured by a mortgage or deed of trust or a lien interest on real
29 *[estate that is created with the consent of]* **property to which** the owner of the real *[estate]* **property**
30 **consents.**

31 [(7)] (13) “Mortgage loan originator” has the meaning given that term in ORS 86A.200.

32 (14)(a) **“Mortgage loan servicer” means a person that:**

33 (A) **Has the right or obligation under the terms of a mortgage loan or mortgage banking**
34 **loan to accept or collect, or engages all or part of the time in accepting or collecting, pay-**
35 **ments of principal, interest and trust items that include, but are not limited to, hazard in-**
36 **surance and taxes, in order to remit the payments to:**

37 (i) **A lender;**

38 (ii) **A note owner;**

39 (iii) **A note holder or another person that holds an interest in a note; or**

40 (iv) **A mortgage banker’s or mortgage broker’s account.**

41 (B) **Performs services that include loan payment follow-up, delinquency loan follow-up,**
42 **loan analysis and notifications to the borrower that enable the borrower to keep a mortgage**
43 **loan or mortgage banking loan current and in good standing.**

44 (C) **Brings or maintains a suit or action to collect amounts that a borrower owes on a**
45 **mortgage loan or mortgage banking loan or to seek remedies that include, but are not lim-**

1 ited to injunction, specific performance, judicial or nonjudicial foreclosure, receivership or
2 other contractual, statutory or common-law remedies.

3 (D) With respect to residential mortgage loans, is a servicer, as defined in 12 U.S.C.
4 2605(i)(2), as in effect on the operative date specified in section 31 of this 2015 Act.

5 (b) "Mortgage loan servicer" does not include:

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

7 (B) A financial holding company or a bank holding company, as defined in ORS 706.008,
8 if the financial holding company or bank holding company does not do more than control a
9 subsidiary or affiliate, as defined in 12 U.S.C. 1841, as in effect on the operative date specified
10 in section 31 of this 2015 Act, and does not engage in business as a mortgage loan servicer
11 in this state.

12 (C) An attorney licensed or otherwise authorized to practice law in this state, if the at-
13 torney acts as a mortgage loan servicer for a client in the attorney's representation of a
14 client.

15 (D) An entity that the director determines by rule is a nonprofit corporation that is ex-
16 empt from federal taxation.

17 (E) An escrow agent licensed under ORS 696.511, with respect to the escrow agent's:

18 (i) Collection or billing activities that are involved in closing an escrow, as defined in ORS
19 696.505, or related to a collection escrow, as defined in ORS 696.505; or

20 (ii) Service as a trustee of a trust deed in accordance with ORS 86.713.

21 (F) An individual that offers or negotiates terms for a residential mortgage loan under
22 an exemption set forth in ORS 86A.203.

23 (G) A person that the director licenses to make mortgage loans and that retains a right
24 or obligation to service a mortgage loan for a period of not more than 90 days or until the
25 person sells the mortgage loan, whichever occurs earlier.

26 (H) A person that the director licenses to make mortgage loans and that retains a right
27 or obligation to service not more than 100 of the mortgage loans the person originates.

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

29 [(8)] (15) "Residential mortgage transaction" means a transaction in which a mortgage, deed of
30 trust, purchase money security interest [*arising*] **that arises** under an installment sales contract,
31 or **an** equivalent consensual security interest is created or retained in **real** property upon which
32 four or fewer residential dwelling units are planned or situated, including but not limited to indi-
33 vidual units or condominiums and cooperatives. As used in this subsection, "residential dwelling
34 unit" means an improvement designed for residential occupancy.

35 **SECTION 3.** ORS 86A.103 is amended to read:

36 86A.103. (1) [*It is unlawful for any*] **A** person [*to*] **may not** engage in residential mortgage
37 transactions in this state as a mortgage banker, [*or*] mortgage broker **or mortgage loan servicer**
38 unless the person [*is licensed*] **obtains a license** under ORS 86A.095 to 86A.198. A person [*who*] **that**
39 is a mortgage banker, [*or*] mortgage broker **or mortgage loan servicer** [*under ORS 86A.100*], but
40 [*who*] **that** does not engage in residential mortgage transactions in this state, [*is not required to*]
41 **need not** obtain a license under ORS 86A.095 to 86A.198.

42 (2) **A person may not engage in business as a mortgage loan servicer in this state unless**
43 **the person obtains a license or an endorsement under ORS 86A.095 to 86A.198. A person that**
44 **is a mortgage loan servicer but that does not engage in business as a mortgage loan servicer**
45 **in this state need not obtain a license or an endorsement under ORS 86A.095 to 86A.198.**

1 **(3) A licensed mortgage banker or mortgage broker may service or collect a mortgage**
 2 **banking loan or mortgage loan in the mortgage banker’s or mortgage broker’s own name or**
 3 **on behalf of the lender, note owner, note holder or other person that holds an interest in the**
 4 **note if the mortgage banker or mortgage broker obtains an endorsement under ORS 86A.106**
 5 **and if the mortgage banker or mortgage broker has the permission of the lender, note owner,**
 6 **note holder or other person that holds an interest in the note.**

7 *[(2) For purposes of this section, a person “engages in residential mortgage transactions in this*
 8 *state” when any act constituting the business of a mortgage banker or mortgage broker and involving*
 9 *a residential mortgage transaction originates from this state or is directed to and received in this state*
 10 *or when the real estate that is the subject of the activities of the mortgage banker or mortgage broker*
 11 *is located in this state.]*

12 **SECTION 4.** ORS 86A.106 is amended to read:

13 86A.106. (1) The Director of the Department of Consumer and Business Services by rule shall
 14 establish procedures for licensing **or issuing an endorsement to** mortgage bankers, [or] mortgage
 15 brokers **and mortgage loan servicers**. The director may coordinate licensing with the Nationwide
 16 Mortgage Licensing System and Registry.

17 **(2) To accept an application and issue a license or endorsement under the procedures**
 18 **described in subsection (1) of this section, the director may:**

19 [(2)] **(a) Require** an applicant [*for a license*], or a managing partner, director, executive officer
 20 or other individual that occupies a similar position or performs similar functions for the applicant,
 21 [*shall*] **to** have, during the five years immediately preceding the time of application, not less than
 22 three years’ experience in the mortgage business, three years’ experience negotiating loans in a re-
 23 lated business **that the director finds** satisfactory [*to the director*] **for the purpose of demon-**
 24 **strating adequate experience** or three years’ equivalent lending experience in a related business
 25 **that the director finds** satisfactory [*to the director*] **for the purpose of demonstrating adequate**
 26 **experience.**

27 [(3)] **(b) [If a license is issued to a person other than an individual,] Require** at least one man-
 28 aging partner, director[,] **or** executive officer, or other individual that occupies a similar position
 29 or performs similar functions for [*the person shall, at all times during the term of the license,*] **an**
 30 **applicant that is not an individual, to** satisfy the experience requirement described in [*subsection*
 31 *(2) of this section*] **paragraph (a) of this subsection at all times during the term of the**
 32 **license.**

33 [(4)] **(c)(A) Require** an applicant [*for a license*] that is not subject to the requirement set forth
 34 in ORS 86A.227 [*shall*] **to** file with the director a corporate surety bond or irrevocable letter of
 35 credit that is approved by the director, in an amount the director specifies by rule, that runs to the
 36 State of Oregon and that is issued by an insured institution as defined in ORS 706.008.

37 [(5)] **(B) Require** the total amount of the corporate surety bond or irrevocable letter of credit
 38 for a single applicant under [*subsection (4) of this section shall be not*] **subparagraph (A) of this**
 39 **paragraph to be not** less than \$50,000. The director by rule shall require the sum of the corporate
 40 surety bond or irrevocable letter of credit to reflect the dollar amount of the loans that the mort-
 41 gage banker or mortgage broker originates.

42 **(d) Require an applicant for a license or an endorsement to engage in business as a**
 43 **mortgage loan servicer in this state to provide in a form and format the director specifies:**

44 **(A) The applicant’s name and address;**

45 **(B) The applicant’s organizational structure and ownership;**

1 (C) The name and address of the applicant's primary contact person;

2 (D) A list of licenses or endorsements that other states have issued to the applicant that
3 permit the applicant to engage in activities that are similar or equivalent to engaging in
4 business as a mortgage loan servicer in this state;

5 (E) A statement that, for the applicant or a managing partner, director, executive officer
6 or other individual that occupies a similar position or performs similar functions for the
7 applicant, discloses whether:

8 (i) Another state denied or refused the applicant or the individual a license to engage in
9 activities similar or equivalent to engaging in business as a mortgage loan servicer in this
10 state;

11 (ii) A final administrative order required the applicant or the individual to cease specified
12 conduct, pay a civil penalty or take any other action adverse to the applicant's or individual's
13 interests;

14 (iii) A state or a federal regulator found that the applicant or the individual engaged in
15 unsafe or unsound banking or mortgage loan servicing activities;

16 (iv) The applicant or the individual at any time pleaded guilty or no contest to or was
17 convicted in a state, federal, foreign or military court of a misdemeanor that involved false
18 statements or dishonesty; or

19 (v) The applicant or the individual pleaded guilty or no contest or was convicted in a
20 state, federal, foreign or military court of a felony that involved fraud, dishonesty, a breach
21 of trust or laundering a monetary instrument;

22 (F) Proof of financial responsibility in accordance with section 6 of this 2015 Act;

23 (G) An audited financial statement that a certified public accountant prepared and that
24 covers the two years before the date of the application, if the applicant has existed for at
25 least two years, as proof that the applicant meets the prudential requirements in section 6
26 of this 2015 Act; and

27 (H) Any other information the director reasonably considers necessary to determine an
28 applicant's financial responsibility, experience, character and general fitness to engage in
29 business as a mortgage loan servicer in this state.

30 [(6)] (3) If the application, surety bond or irrevocable letter of credit and fees are in order and
31 the director is satisfied that the **director should not deny the** application [*should not be denied*
32 *upon*] **on** one or more of the grounds specified in ORS 86A.115, 86A.118 or 86A.121, the director shall
33 **issue the license** [*the mortgage banker or mortgage broker*] **or endorsement for which the appli-**
34 **cant applied.**

35 [(7)] (4) **The director shall require** a licensee **or endorsee** [*shall*] **to** amend the license **or**
36 **endorsement** application and, if necessary, increase the amount of the corporate surety bond or
37 irrevocable letter of credit described in subsection [(5)] (2)(c) of this section [*when there are*] **if**
38 material changes in the information [*contained*] in the original application **have occurred.**

39 [(8)] (5) An applicant for a license **or endorsement** under this section or a licensee **or endorsee**
40 who applies to renew a license **or endorsement** under ORS 86A.109 shall certify to the director in
41 a form and manner the director specifies by rule that the applicant or licensee **or endorsee** has
42 independently verified that every individual the applicant or licensee **or endorsee** hired or intends
43 to hire as a mortgage loan originator:

44 (a) Meets the requirements set forth in ORS 86A.200 to 86A.239;

45 (b) Has undergone a state criminal records check in accordance with ORS 86A.186; and

1 (c) Is covered, if applicable, by a corporate surety bond as provided in ORS 86A.227.

2 [(9)] (6) The director shall:

3 (a) Charge and collect fees for initial and renewal license **or endorsement** applications.

4 (b) Set by rule all fees required under this section. The director shall set the fees to reflect
5 amounts **that, in the aggregate, are** sufficient to meet the costs of administering ORS 86A.095 to
6 86A.198, including amounts sufficient to establish and maintain a reasonable emergency fund.

7 (c) Set by rule the amounts of corporate surety bonds and irrevocable letters of credit required
8 under this section.

9 [(10)] (7) The fees under this section are not refundable except for fees that the director deter-
10 mines by rule are refundable.

11 **SECTION 5. Sections 6 and 7 of this 2015 Act are added to and made a part of ORS**
12 **86A.095 to 86A.198.**

13 **SECTION 6. (1) A person that is subject to the requirement under ORS 86A.103 to obtain**
14 **a license or endorsement to engage in business as a mortgage loan servicer shall submit**
15 **proof of financial responsibility with the person's application for the license and at intervals**
16 **that the Director of the Department of Consumer and Business Services specifies by rule.**

17 (2) Proof of financial responsibility under subsection (1) of this section must include:

18 (a) A demonstration that an applicant, licensee or endorsee retains an adequate liquid
19 reserve in accordance with requirements the director adopts by rule. The rules the director
20 adopts must allow the director to specify an adequate liquid reserve for an applicant, licensee
21 or endorsee based on:

22 (A) The amount of the unpaid principal balance that the applicant, the licensee or the
23 endorsee services;

24 (B) The quality and performance of the loans the applicant, the licensee or the endorsee
25 services; and

26 (C) Whether the applicant, licensee or endorsee services:

27 (i) The applicant's, licensee's or endorsee's own obligations; or

28 (ii) Only a third party's residential mortgage loans.

29 (b)(A) A surety bond issued by a financial institution. The surety bond must be condi-
30 tioned on the applicant's, the licensee's or the endorsee's:

31 (i) Faithfully performing any and all written agreements or commitments with or for the
32 benefit of mortgagors and mortgagees;

33 (ii) Providing a true and faithful accounting for all funds the applicant, the licensee or
34 the endorsee receives from a mortgagor or mortgagee in the applicant's, the licensee's or
35 the endorsee's capacity as a mortgage loan servicer; and

36 (iii) Engaging in business as a mortgage loan servicer in this state in a manner that is
37 consistent with the provisions of ORS 86A.095 to 86A.198.

38 (B) The director shall specify, and may adjust, the amount of the corporate surety bond
39 the applicant, the licensee or the endorsee must submit under this paragraph based on the
40 volume of business in which the applicant, the licensee or the endorsee engages as a mort-
41 gage loan servicer and taking into account the applicant's, the licensee's or the endorsee's
42 financial position and examination history.

43 (c) An errors and omissions insurance policy against losses from fraud, embezzlement,
44 forgery or similar occurrences. The director shall specify the per occurrence limit and total
45 limit for the errors and omissions policy based on the volume of business in which the ap-

1 plicant, the licensee or the endorsee engages as a loan servicer.

2 (d) Ownership or control of other appropriate liquid assets that the director approves by
3 rule.

4 (3) A mortgage loan servicer each year shall submit to the director independently audited
5 financial statements, financial projections and other documents that are necessary for the
6 director to determine whether a mortgage loan servicer has engaged in business as a mort-
7 gage loan servicer in this state in a prudent manner. The mortgage loan servicer shall sub-
8 mit the statements, projections and other documents this subsection requires at a time and
9 in a form and format the director specifies by rule.

10 **SECTION 7.** A mortgage loan servicer shall notify the Director of the Department of
11 Consumer and Business Services, in a manner and using a form or format the director
12 specifies by rule and within three business days after the mortgage loan servicer knows or
13 has reason to know, that:

14 (1) The mortgage loan servicer has filed or intends to file for bankruptcy;

15 (2) The mortgage loan servicer has or plans to restructure the mortgage loan servicer's
16 business;

17 (3) The mortgage loan servicer or any of the mortgage loan servicer's officers, directors,
18 members, partners or shareholders that own 10 percent or more of the mortgage loan
19 servicer's outstanding stock are subject to a felony indictment or were convicted of a felony;

20 (4) An agency of any state or an agency of the United States has or soon will:

21 (a) Deny a license or an equivalent authorization to the mortgage loan servicer;

22 (b) Order the mortgage loan servicer to cease and desist from specified conduct;

23 (c) Begin suspension or revocation procedures; or

24 (d) Take other formal or informal regulatory action against the mortgage loan servicer;

25 (5) The Attorney General or the attorney general of another state has commenced or
26 intends to commence a civil action against the mortgage loan servicer;

27 (6) The Attorney General or an attorney general of another state has petitioned a court
28 of competent jurisdiction to enforce an existing judgment;

29 (7) A government-sponsored enterprise has suspended or terminated the mortgage loan
30 servicer's status as an approved seller or servicer;

31 (8) Certain servicing rights of the mortgage loan servicer will be rescinded or canceled,
32 the loss of which significantly affects the mortgage loan servicer's ability to service the
33 mortgage loan servicer's portfolio;

34 (9) Any of the mortgage loan servicer's officers, directors, members, partners or share-
35 holders that own 10 percent or more of the mortgage loan servicer's outstanding stock have
36 filed for bankruptcy; or

37 (10) A consumer filed a class action lawsuit against the mortgage loan servicer that is
38 related to the operation of the mortgage loan servicer's business.

39 **SECTION 8.** ORS 86A.109 is amended to read:

40 86A.109. (1) *[An initial]* A license or endorsement that the Director of the Department of
41 Consumer and Business Services issues under ORS 86A.106 expires one year after the date the
42 director issued the license or endorsement, *[of issuance]* unless the director *[of the Department*
43 *of Consumer and Business Services]* establishes a different expiration date to coordinate with the
44 Nationwide Mortgage Licensing System and Registry.

45 (2) The director by rule shall establish procedures to renew a license or endorsement. The rule

1 shall specify the duration of a renewed license **or endorsement**.

2 (3) *[If there is a change in the]* **If a licensee or endorsee changes** partners, directors, officers
3 or persons that occupy similar positions or perform similar functions **for the licensee or**
4 **endorsee, or if the** persons that directly or indirectly control a *[mortgage banker or mortgage*
5 *broker]* **licensee or endorsee change, the licensee shall file** written notification of the change
6 *[must be filed]* promptly with the director. *[No fee is required for]* **A licensee need not pay a fee**
7 **for** the notification.

8 **SECTION 9.** ORS 86A.112 is amended to read:

9 86A.112. (1) A *[mortgage banker or mortgage broker]* **licensee** shall make and keep accounts,
10 correspondence, memoranda, papers, books and other records that the Director of the Department
11 of Consumer and Business Services **prescribes** by rule or order *[prescribes. The mortgage banker or*
12 *mortgage broker]*. **The licensee** shall preserve the records for five years unless the director by rule
13 prescribes otherwise. The director may examine the records within or outside this state at any
14 reasonable time *[or times]* and may require **the licensee to produce the records** without subpoena
15 *[the production of the records]* at the **director's** office *[of the director]* as often as is reasonably
16 necessary.

17 (2) A *[mortgage banker or mortgage broker]* **licensee** shall file financial reports or other infor-
18 mation that the director by rule or order requires and shall promptly correct a document **the**
19 **licensee** filed with the director that is or becomes incomplete or inaccurate in any material respect.

20 (3) On or before May 1 of each year or on a date the director establishes by rule, a *[mortgage*
21 *banker or mortgage broker]* **licensee** shall file a report with the director in a form *[prescribed by]*
22 the director **prescribes**. *[The report shall contain information the director requires concerning the*
23 *mortgage banker's or mortgage broker's business and operations related to residential mortgage lend-*
24 *ing during the preceding calendar year. The information shall include the number and nature of loans*
25 *originated by mortgage loan originators that the mortgage banker or mortgage broker employed.]* **For**
26 **purposes of this subsection, a report of condition that the licensee files quarterly in accord-**
27 **ance with the Nationwide Mortgage Licensing System and Registry fulfills the reporting re-**
28 **quirement.**

29 (4) The report and any records **the licensee submits** *[submitted]* to the director under this
30 section are exempt from disclosure or production and are confidential as provided under ORS
31 705.137.

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

37 **SECTION 10.** ORS 86A.115 is amended to read:

38 86A.115. Except as provided in ORS 86A.118, the Director of the Department of Consumer and
39 Business Services may by order deny, suspend, condition or revoke a license **or endorsement** if the
40 director finds that *[the]* **an** applicant, *[or]* licensee **or endorsee**:

41 (1) Is insolvent*[, either in the sense that the liabilities of the applicant or licensee exceed the assets*
42 *of the applicant or licensee or that the applicant or licensee cannot meet the obligations of the applicant*
43 *or licensee as the obligations mature, or that the applicant or licensee is in such financial condition that*
44 *the applicant or licensee cannot continue in business with safety to the customers of the applicant or*
45 *licensee]*.

1 (2) Engaged in dishonest, fraudulent or illegal practices or conduct in any business or profession
2 or unfair or unethical practices or conduct in connection with the mortgage business.

3 (3) Willfully or repeatedly violated or failed to comply with a provision of ORS 86A.095 to
4 86A.198 or a rule or order of the director.

5 (4) Failed, in *[conducting]* **engaging in** business as a mortgage banker, *[or]* **a mortgage broker**
6 **or a mortgage loan servicer in this state**, to comply with the provisions of:

7 (a) The Truth in Lending Act, 15 U.S.C. 1601 et seq. and Regulation Z, 12 C.F.R. part *[226]*
8 **1026**, as in effect on *[October 1, 2009]* **the operative date specified in section 31 of this 2015**
9 **Act**;

10 (b) The Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq. and Regulation X, *[24*
11 *C.F.R. part 3500]* **12 C.F.R. Part 1024**, as in effect on *[January 1, 2010]* **the operative date speci-**
12 **fied in section 31 of this 2015 Act**;

13 (c) The Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq. and Regulation B, 12 C.F.R. *[202.9,*
14 *202.11, 202.12 and 202.14]* **Part 1002**, as in effect on *[July 30, 2009]* **the operative date specified in**
15 **section 31 of this 2015 Act**; or

16 (d) 12 U.S.C. 5101 et seq. and regulations adopted under 12 U.S.C. 5101 et seq., **as in effect on**
17 **the operative date specified in section 31 of this 2015 Act**.

18 (5) Was convicted **in any jurisdiction** of a misdemeanor, an essential element of which is fraud,
19 or of a felony.

20 (6) Filed an application for a license **or endorsement** that, as of the date the license **or**
21 **endorsement** was issued, or as of the date of an order that denied, suspended, conditioned or re-
22 voked *[a]* **the license or endorsement**, was incomplete in any material respect or contained a
23 statement that was, in light of the circumstances under which the statement was made, false or
24 misleading with respect to a material fact.

25 (7) Failed to account to persons interested for money or property **the licensee or endorsee**
26 received in connection with a mortgage loan.

27 (8) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging
28 in or continuing conduct or a practice that involves an aspect of the mortgage business.

29 (9) Is subject to an order of the director that denies, suspends, conditions or revokes a license
30 **or endorsement**.

31 (10) Is subject to a United States Postal Service fraud order that is currently effective and was
32 issued within the last five years.

33 (11) Does not have the experience required by ORS 86A.106 *[(2) or (3)]* **(2)(a) or (b)**.

34 (12) Failed to comply with the requirements of ORS 86A.112 to make and keep records *[pre-*
35 *scribed by rule or order of]* the director **prescribes by rule or order**, to produce *[such]* records
36 *[required by]* the director **requires** or to file any financial reports or other information the director
37 by rule or order may require.

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

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

42 (15) Demonstrated negligence or incompetence in performing any act for which the licensee **or**
43 **endorsee** is required to hold a license **or endorsement**.

44 (16) Failed to supervise diligently and control the mortgage-related activities of a mortgage loan
45 originator the licensee **or endorsee** employs.

1 (17) Knowingly misrepresented to the director the training of, examination of or continuing ed-
2 ucation time earned by a mortgage loan originator the licensee **or endorsee** employs.

3 (18) Willfully or repeatedly employed individuals as mortgage loan originators who do not meet
4 the training, education or continuing education requirements for mortgage loan originators.

5 (19) Failed to notify the director of the termination of a mortgage loan originator for failure to
6 comply with state or federal laws, regulations or rules.

7 **(20) As a mortgage loan servicer, violated a provision of section 27 of this 2015 Act.**

8 **SECTION 11.** ORS 86A.118 is amended to read:

9 86A.118. The Director of the Department of Consumer and Business Services may enter an order
10 against *[the]* **an** applicant, *[or]* **a** licensee **or an endorsee** under ORS 86A.115 if any *[partner, officer*
11 *or director of a mortgage banker or mortgage broker]* **of the applicant's, licensee's or endorsee's**
12 **partners, officers or directors**, any person *[occupying]* **that occupies** a similar status or *[per-*
13 *forming]* **performs** similar functions, or any person **that** directly or indirectly *[controlling the mort-*
14 *gage banker or mortgage broker]* **controls the applicant, the licensee or the endorsee** has been
15 guilty of any act or omission *[which]* **that** would be cause for denying, suspending or revoking the
16 **applicant's, licensee's or endorsee's** license *[of an individual mortgage banker or mortgage*
17 *broker]* **or endorsement**. This section *[shall]* **does** not apply to ORS 86A.115 (1).

18 **SECTION 12.** ORS 86A.121 is amended to read:

19 86A.121. (1) The Director of the Department of Consumer and Business Services may cancel an
20 application, *[or]* **a** license **or an endorsement** if the director finds that the applicant, *[or]* licensee
21 **or endorsee**:

22 (a) Has ceased to do business as a mortgage banker, *[or]* **a** mortgage broker **or a mortgage loan**
23 **servicer**;

24 (b) Has failed to maintain a corporate surety bond or irrevocable letter of credit required under
25 ORS 86A.106 or 86A.227 **or section 6 of this 2015 Act**; or

26 (c) Cannot be located after a reasonable search.

27 (2) A *[mortgage banker or mortgage broker]* **licensee or endorsee** may surrender a license **or**
28 **endorsement** by filing an application to surrender the license **or endorsement**. Unless the director
29 determines that **the director should suspend or revoke** the license *[should be suspended or*
30 *revoked]* **or endorsement**, the director shall allow the surrender subject to any conditions, limita-
31 tions and restrictions the director may impose.

32 **SECTION 13.** ORS 86A.124 is amended to read:

33 86A.124. (1) The Director of the Department of Consumer and Business Services has general
34 supervision and control over mortgage loan originators, mortgage bankers, *[and]* mortgage brokers
35 **and mortgage loan servicers** that reside or do business in this state and that engage in an activity
36 that is subject to the provisions of ORS 86A.095 to 86A.198. The director may examine at any time
37 mortgage bankers and mortgage brokers and the records and activities connected with mortgage
38 bankers, mortgage brokers and mortgage loan originators. The provisions of this section and *[of any*
39 *other section]* **any other provisions** of ORS 86A.095 to 86A.198 *[relating]* **that relate** to examina-
40 tions extend to a person that is or should have been licensed as a mortgage loan originator under
41 ORS 86A.200 to 86A.239, **a person that is** *[or]* licensed as a mortgage banker or mortgage broker,
42 **a person that is licensed or has an endorsement to engage in business as a mortgage loan**
43 **servicer in this state**, a person *[exempted]* **the director exempts** by rule from the definitions of
44 mortgage banker, mortgage broker or mortgage loan originator or a person whose license **or**
45 **endorsement** has expired or has been withdrawn, canceled, suspended, conditioned or revoked. The

1 director may collect from the person the actual expenses incurred in the examination.

2 **(2)(a) The director may examine at any time the complete books, records and activities**
3 **of mortgage loan servicers. An examination of a mortgage loan servicer under this section**
4 **may include, but is not limited to, the mortgage loan servicer's servicing practices, the**
5 **mortgage loan servicer's ability to address loan modifications and whether the mortgage loan**
6 **servicer engages in business as a mortgage loan servicer in this state in a prudent manner**
7 **and in compliance with federal and state laws.**

8 **(b) The director may receive and accept reports from the United States Consumer Fi-**
9 **ancial Protection Bureau, other federal or state regulatory agencies or other federal or**
10 **state law enforcement agencies as part of the director's examination.**

11 **(c) The director may collect from a mortgage loan servicer the actual expenses the di-**
12 **rector incurs in the examination.**

13 ~~[(2)(a)]~~ **(3)(a)** A mortgage loan document the director obtains as part of an examination under
14 this section is exempt from disclosure and is confidential for the purposes of ORS 705.137.

15 **(b) Any information the director develops, receives or compiles in the course of partic-**
16 **ipating in an examination of a mortgage loan servicer under this section is exempt from**
17 **disclosure and is confidential for the purposes of ORS 705.137.**

18 **(c) Notwithstanding the exemption and confidentiality provisions of this subsection, the**
19 **director may abstract information the director derives from examinations under this section**
20 **and may make the abstracted information available for public inspection, if the abstracted**
21 **information does not identify a particular mortgage banker, mortgage broker or mortgage**
22 **loan servicer as a source of the information.**

23 ~~[(b)]~~ **(d)** This subsection does not prohibit an individual from inspecting and requesting the di-
24 rector to disclose any of the individual's mortgage loan documents that the director obtained during
25 the course of an examination **under paragraph (a) of this subsection.** The director shall
26 authenticate the individual's identity before disclosing the mortgage loan documents to the individ-
27 ual.

28 **SECTION 14. Sections 15 and 16 of this 2015 Act are added to and made a part of ORS**
29 **86A.095 to 86A.198.**

30 **SECTION 15. (1) To ensure that a person engages in business as a mortgage loan servicer**
31 **in this state in compliance with this chapter and with other law, the Director of the De-**
32 **partment of Consumer and Business Services may participate in multistate examinations**
33 **with other states or that are coordinated by the Conference of State Bank Supervisors or**
34 **the United States Consumer Financial Protection Bureau, or an organization or committee**
35 **that succeeds or is an assignee of the Conference of State Bank Supervisors or the United**
36 **States Consumer Financial Protection Bureau, in accordance with the protocol for a multi-**
37 **state examination.**

38 **(2) Any information that the director develops, receives or compiles in the course of**
39 **participating in a multistate examination of a mortgage loan servicer under this section or**
40 **ORS 86A.124 is exempt from disclosure and is confidential for the purposes of ORS 705.137.**

41 **SECTION 16. The Director of the Department of Consumer and Business Services, alone**
42 **or in conjunction with another state or officials from other states, may petition a court of**
43 **competent jurisdiction to appoint a receiver to prudently manage the affairs of a mortgage**
44 **loan servicer if the director finds that:**

45 **(1) The mortgage loan servicer cannot continue to engage in business as a mortgage loan**

1 **servicer in this state in a prudent manner.**

2 **(2) The mortgage loan servicer is insolvent under ORS 86A.115 (1).**

3 **(3) The mortgage loan servicer repeatedly violates a provision of section 27 of this 2015**
4 **Act.**

5 **(4) The mortgage loan servicer fails to provide proof of financial responsibility under**
6 **section 6 of this 2015 Act.**

7 **(5) A director or officer of the mortgage loan servicer has abused a consumer's trust or**
8 **was guilty of misconduct in an official position in a manner that injured the mortgage loan**
9 **servicer.**

10 **(6) The mortgage loan servicer neglects or refuses to comply with an order of the Di-**
11 **rector of the Department of Consumer and Business Services or refuses to submit to an**
12 **examination under ORS 86A.124 or section 15 of this 2015 Act.**

13 **(7) A director or officer of the mortgage loan servicer refuses to be examined under oath**
14 **concerning the mortgage loan servicer's affairs.**

15 **(8) The mortgage loan servicer fails to deposit or account for a mortgagee's funds in**
16 **accordance with section 21 of this 2015 Act.**

17 **SECTION 17.** ORS 86A.136 is amended to read:

18 86A.136. (1)(a) In accordance with this section and ORS chapter 183, the Director of the De-
19 partment of Consumer and Business Services may from time to time [*make*] **adopt**, amend and
20 rescind [*such*] rules [*as*] **that** are necessary to carry out the provisions of ORS 86A.095 to 86A.198,
21 including but not limited to rules [*governing*] **that govern** the activities of mortgage loan origina-
22 tors, mortgage bankers, [*and*] mortgage brokers and **mortgage loan servicers as well as** rules
23 [*governing*] **that govern** the purchase or sale of mortgage banking loans, mortgage loans or real
24 estate paper in [*coordination*] **accordance** with applicable provisions of, **and rules adopted under,**
25 ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995 [*and rules adopted under the applicable*
26 *provisions*].

27 **(b) Rules the director adopts under ORS 86A.095 to 86A.198 to govern the activities of**
28 **mortgage loan servicers may include but are not limited to rules that:**

29 **(A) Govern how a licensee or endorsee conducts business;**

30 **(B) Define a licensee's duty of care to borrowers;**

31 **(C) Prescribe procedures or required conduct in:**

32 **(i) Paying taxes or insurance premiums; and**

33 **(ii) Crediting payments;**

34 **(D) Prescribe the form and contents of statements of account and the form and manner**
35 **in which a licensee must deliver late payment notices; and**

36 **(E) Define acceptable loss mitigation efforts.**

37 **(2) Unless the director requires otherwise,** a financial statement required under ORS 86A.095
38 to 86A.198 must be prepared in accordance with generally accepted accounting principles. The di-
39 rector may by rule prescribe:

40 (a) The form and content of financial statements required under ORS 86A.095 to 86A.198;

41 (b) The circumstances under which **an applicant, licensee or endorsee must file** consolidated
42 financial statements [*must be filed*]; and

43 (c) Whether **an independent or certified public accountant must certify** any required finan-
44 cial statements [*must be certified by independent or certified public accountants*].

45 **SECTION 18.** ORS 86A.151 is amended to read:

1 86A.151. (1) A **mortgage banker, a mortgage broker, a mortgage loan servicer or a person**
2 that employs a mortgage loan originator or, under the provisions of ORS 86A.200 to 86A.239, should
3 employ a mortgage loan originator is liable as provided in subsection (2) of this section for an
4 ascertainable loss of money or property, real or personal, in a residential mortgage transaction if
5 the **mortgage banker, mortgage broker or person engages in a residential mortgage transaction**
6 **or engages in business as a mortgage loan servicer** [*in which the person*] **and:**

7 (a) Violates a provision of ORS 86A.200 to 86A.239, except ORS 86A.236 (11), or ORS 86A.095
8 to 86A.198, except ORS 86A.115 (4), **or section 27 of this 2015 Act**; or

9 (b)(A)(i) Makes an untrue statement of a material fact; or

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

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

14 (2) [*The person suffering*] **A plaintiff that suffers an** ascertainable loss may recover damages
15 in an amount equal to the ascertainable loss.

16 (3) A person whose sole function in connection with a residential mortgage transaction is to
17 provide ministerial functions of escrow, custody or deposit services in accordance with applicable
18 law is liable only if the person participates or materially aids in the residential mortgage trans-
19 action and the plaintiff sustains the burden of proof that the person knew of the existence of the
20 facts on which liability is based or that the person's failure to know of the existence of the facts
21 was the result of the person's recklessness or gross negligence.

22 (4) Except as otherwise provided in this subsection, **a plaintiff may not commence** an action
23 or suit [*may not be commenced*] under this section more than three years after [*the*] **a residential**
24 mortgage transaction[.] **that violates a provision of subsection (1) of this section. A plaintiff**
25 **may commence** an action under this section for a violation under subsection (1)(b) of this section
26 or ORS 86A.154 [*may be commenced*] within three years after the residential mortgage transaction
27 or two years after the [*person bringing the action*] **plaintiff** discovered or should have discovered the
28 facts on which the action is based, whichever is later, but not later than five years after the date
29 of the residential mortgage transaction. **A plaintiff's** failure to commence an action on a timely
30 basis is an affirmative defense **for the defendant in the action.**

31 **(5) A plaintiff may not commence an action or suit against a mortgage banker, mortgage**
32 **broker or other person that engages in business as a mortgage loan servicer in violation of**
33 **subsection (1) of this section more than two years after the violation or more than two years**
34 **after the plaintiff discovered or should have discovered the facts on which the action is based**
35 **but not later than three years after the date on which the mortgage banker, mortgage bro-**
36 **ker or other person stopped servicing the plaintiff's loan.**

37 [(5)] **(6)** A person has a right of action under the corporate surety bond or irrevocable letter of
38 credit required under ORS 86A.106 or 86A.227 **or section 6 of this 2015 Act** if the person:

39 (a) [*Initiates*] **Applies for** a mortgage banking loan or mortgage loan [*application*]; and

40 (b) Has a right of action against another person under this section.

41 [(6)] **(7)** Subsection (3) of this section does not limit a person's liability:

42 (a) For conduct other than in the circumstances described in subsection (3) of this section; or

43 (b) Under any other law.

44 [(7)] **(8)** Except as provided in subsection [(8)] **(9)** of this section, [*the*] **a court may award rea-**
45 **sonable attorney fees to the prevailing party in an action under this section.**

1 [(8)] (9) [The] A court may not award attorney fees to a prevailing defendant under the pro-
2 visions of subsection [(7)] (8) of this section if the **plaintiff maintains the** action under this section
3 [is maintained] as a class action [pursuant to] **in accordance with** ORCP 32.

4 **SECTION 19.** ORS 86A.154 is amended to read:

5 86A.154. (1) [It is unlawful for any] A person **may not**, directly or indirectly, in connection with
6 [the conduct of] **engaging in business as** a mortgage banker, [or] a mortgage broker [business] **or**
7 **a mortgage loan servicer in this state:**

8 [(1)] (a) [To] Employ any device, scheme or artifice to defraud;

9 [(2)] (b) Knowingly [to] make any untrue statement of a material fact or [to] omit to state a
10 material fact **that is** necessary [in order] to make [the statements made] **a statement**, in the light
11 of the circumstances under which [they are made] **the person makes the statement**, not mislead-
12 ing;

13 [(3)] (c) [To] Engage in any act, practice or course of business [which] **that** operates or would
14 operate as a fraud or deceit upon any person; or

15 [(4)] (d) [To] Make or file, or cause to be made or filed, to or with the Director of the Depart-
16 ment of Consumer and Business Services any statement, report or document [which] **that the per-**
17 **son knows** is [known to be] false in any material respect or matter.

18 (2) **For purposes of this section, the meanings of “fraud,” “defraud” and “deceit” are not**
19 **limited to the meaning of common-law deceit.**

20 **SECTION 20.** Section 21 of this 2015 Act is added to and made a part of ORS 86A.095 to
21 **86A.198.**

22 **SECTION 21.** (1) A licensee or endorsee shall deposit all amounts that an Oregon con-
23 sumer pays to the licensee or endorsee into one or more escrow accounts at a federally in-
24 sured financial institution that maintains a branch in this state. The licensee or endorsee
25 shall act as a fiduciary with respect to funds the licensee or endorsee deposits in accordance
26 with this subsection. An escrow account that a licensee or endorsee maintains in accordance
27 with this subsection may contain funds only from Oregon consumers. The licensee or
28 endorsee shall segregate the escrow account from all other accounts that the licensee or
29 endorsee maintains or shall provide histories of the loan accounts for residential mortgage
30 loans in this state to the director, along with escrow account statements that show how,
31 when and where the licensee or endorsee held, applied or distributed payments during the
32 period in which the licensee or endorsee serviced the loan. A licensee or endorsee may not
33 use the funds in the escrow account to conduct the licensee’s or endorsee’s personal affairs
34 or business affairs. The licensee or endorsee may not encumber the corpus of the escrow
35 account.

36 (2) A licensee or endorsee shall authorize the Director of the Department of Consumer
37 and Business Services, or a person the director designates, to examine an escrow account
38 required under subsection (1) of this section at any time the director requires. The licensee
39 or endorsee shall give the authorization in writing on a form and with the contents that the
40 director specifies by rule.

41 (3) A licensee or endorsee shall maintain complete and accurate account records includ-
42 ing, at a minimum, the source of all deposits, the nature and recipient of all disbursements,
43 the date and amount of each transaction and the name of each borrower. The licensee or
44 endorsee shall produce all documents that pertain to account activity at the director’s re-
45 quest.

1 **(4) A licensee or endorsee may use funds in an escrow account required under subsection**
2 **(1) of this section only to:**

3 **(a) Make a payment that the borrower or the mortgage loan contract authorizes or that**
4 **federal or state law requires;**

5 **(b) Make a refund to the borrower;**

6 **(c) Make a transfer to a depository institution;**

7 **(d) Make a transfer to the appropriate mortgage lender or mortgage loan servicer if the**
8 **licensee or endorsee is transferring responsibility for servicing the loan;**

9 **(e) Meet a purpose that the mortgage loan contract authorizes; or**

10 **(f) Comply with an order of the director or a court of competent jurisdiction.**

11 **SECTION 22.** ORS 86A.163 is amended to read:

12 86A.163. A [*mortgage banker or mortgage broker shall*] **licensee or endorsee or a person that**
13 **is otherwise subject to ORS 86A.095 to 86A.198 may not use or cause to be published any ad-**
14 **vertisement that:**

15 (1) Contains any false, misleading or deceptive statement or representation; or

16 (2) Identifies the [*mortgage banker or mortgage broker*] **licensee, endorsee or other person** by
17 any name other than the name listed on the license **or endorsement** [*issued by*] **that** the Director
18 of the Department of Consumer and Business Services **issued**, or an assumed business name **that**
19 **is registered under ORS chapter 648.**

20 **SECTION 23.** ORS 86A.166 is amended to read:

21 86A.166. (1) Every [*licensed mortgage banker and mortgage broker*] **licensee or endorsee** shall
22 designate and maintain a principal place of business for the transaction of business.

23 (2) If a [*licensed mortgage banker or mortgage broker*] **licensee or endorsee** intends to [*transact*
24 *business*] **engage in business as a mortgage banker, mortgage broker or mortgage loan**
25 **servicer in this state** at any place other than the principal place of business, the licensee **or**
26 **endorsee** shall [*notify*] **obtain or have amended a license or endorsement from** the Director of
27 the Department of Consumer and Business Services[, *in writing, not later than 30 days prior to*
28 *opening another office*] **before engaging in business as a mortgage banker, mortgage broker or**
29 **mortgage loan servicer in this state at a location other than the principal place of business.**
30 The [*notice shall*] **director shall issue or amend the license or endorsement after due consid-**
31 **eration of the requirements set forth in ORS 86A.106 and in the license, amended license or**
32 **endorsement shall show** [*contain*] **the address of the principal office and** of any other [*office*] **of**
33 **the licensee's or endorsee's offices. A licensee or endorsee shall display a copy of the license**
34 **or endorsement** [*issued to the mortgage banker or mortgage broker shall be displayed in each place*
35 *of business of the licensee*] **in each of the licensee's or endorsee's places of business.**

36 (3) If [*there is any*] a change **occurs** among the members, officers, partners or directors of any
37 licensee **or endorsee**, the licensee **or endorsee** shall notify the director within 30 days [*of*] **after**
38 **the change occurs of** the name, address and occupation of each new member, officer, partner or
39 director, and **shall** provide any other information the director may require.

40 (4) A mortgage banker, [*or*] mortgage broker **or mortgage loan servicer** [*whose*] **with a** prin-
41 cipal place of business **that** is not in this state shall continuously maintain a registered agent in this
42 state. The **mortgage banker, mortgage broker or mortgage loan servicer shall include the**
43 name and address of the agent [*shall be included in the*] **in an** application for a license **or**
44 **endorsement.** A mortgage banker, [*or*] mortgage broker **or mortgage loan servicer** shall notify the
45 director immediately of any change in the name or address of the registered agent.

1 (5) The registered agent of a mortgage banker, [or] a mortgage broker **or a mortgage loan**
2 **servicer** [shall] **must** be an agent upon whom any process, notice or demand required or permitted
3 by law to be served upon the mortgage banker, [or] mortgage broker **or mortgage loan servicer**
4 may be served. The director [shall be] **is** an agent of a mortgage banker, a [or] mortgage broker **or**
5 **a mortgage loan servicer** [if the mortgage banker or mortgage broker] **that** fails to appoint or
6 maintain a registered agent in this state or **if** the registered agent cannot with reasonable diligence
7 be found.

8 **SECTION 24.** ORS 86A.169 is amended to read:

9 86A.169. [Prior to the] **Before** closing [of] any mortgage loan or any mortgage banking loan,
10 [the] a mortgage banker or mortgage broker shall supply the borrower with a disclosure as required
11 by the real estate lending provisions of 15 U.S.C. 1601 et seq. and Regulation Z, 12 C.F.R. Part
12 [226] **1024, as in effect on the operative date specified in section 31 of this 2015 Act.**

13 **SECTION 25.** ORS 86A.183 is amended to read:

14 86A.183. (1)(a) A mortgage banker, mortgage broker, **mortgage loan servicer** or mortgage loan
15 originator may not:

16 [(a)] **(A)** Engage in dishonest, fraudulent or illegal practices or conduct in a business or pro-
17 fession or engage in unfair or unethical practices or conduct in connection with the mortgage
18 business[.];

19 [(b)] **(B)** Willfully or repeatedly violate or fail to comply with a provision of ORS 86A.095 to
20 86A.198 or 86A.200 to 86A.239 or a rule or order of the Director of the Department of Consumer
21 and Business Services[.]; **or**

22 [(c)] **(C)** Fail to account to persons interested for money or property **the mortgage banker,**
23 **mortgage broker, mortgage loan servicer or mortgage loan originator** received in connection
24 with a mortgage loan.

25 **(b) A mortgage loan originator may not:**

26 [(d)] **(A)** Fail to meet the training, education or continuing education requirements for mortgage
27 loan originators set forth in ORS 86A.215 or 86A.221[.]; **or**

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

29 (2) [An individual may not be employed by] A mortgage banker, a [or] mortgage broker **or a**
30 **mortgage loan servicer may not employ an individual** as a mortgage loan originator if:

31 (a) The individual was convicted of a crime or category of crime [specified by] the director
32 **specifies** by rule;

33 (b) The individual is suspended or has been prohibited from employment as a mortgage loan
34 originator under ORS 86A.224;

35 (c) The employment violates any conditions imposed under ORS 86A.224; or

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

38 **SECTION 26.** Section 27 of this 2015 Act is added to and made a part of ORS 86A.095 to
39 **86A.198.**

40 **SECTION 27. A mortgage loan servicer may not:**

41 **(1) Engage in any unfair or deceptive practice toward any person or misrepresent or omit**
42 **any material information in connection with servicing a residential mortgage loan, including**
43 **but not limited to misrepresenting the amount, nature or terms of any fee or payment due**
44 **or claimed to be due on a residential mortgage loan, the terms and conditions of the servic-**
45 **ing agreement or the mortgagor's obligations under the residential mortgage loan;**

1 (2) **Fail to comply with the mortgage loan servicing transfer, escrow account adminis-**
2 **tration, or borrower inquiry response requirements imposed by the Real Estate Settlement**
3 **Procedures Act, 12 U.S.C. 2601 et seq. and Regulation X, 12 C.F.R. Part 1024, as in effect on**
4 **the operative date specified in section 31 of this 2015 Act;**

5 (3)(a) **Fail to provide written notice to a borrower before placing hazard, homeowner or**
6 **flood insurance on mortgaged property; or**

7 (b) **Place hazard, homeowner or flood insurance on a mortgaged property if the mortgage**
8 **loan servicer knows or has reason to know that there is insurance in effect;**

9 (4) **Place hazard insurance, homeowner insurance or flood insurance on a mortgaged**
10 **property for an amount that exceeds either the value of the insurable improvements or the**
11 **last-known coverage amount of insurance;**

12 (5) **Fail to refund to the borrower unearned premiums the borrower paid or that the**
13 **mortgage loan servicer charged to the borrower for hazard insurance, homeowner insurance**
14 **or flood insurance that a lender or mortgage loan servicer placed, if the borrower provides**
15 **reasonable proof that the borrower has obtained coverage so that the mortgaged property**
16 **is insured and the insurance the lender or mortgage loan servicer placed is no longer nec-**
17 **essary;**

18 (6) **Fail to refund the entire premium the borrower paid for or that the mortgage loan**
19 **servicer charged to the borrower for hazard insurance, homeowner insurance or flood in-**
20 **surance a lender or the mortgage loan servicer placed on the mortgaged property, if the**
21 **borrower provides reasonable proof within 12 months after the placement that no lapse in**
22 **insurance coverage occurred so that the insurance the lender or mortgage loan servicer**
23 **placed was not necessary;**

24 (7) **Obtain property by fraud or misrepresentation;**

25 (8) **Knowingly misapply or recklessly apply residential mortgage loan payments to the**
26 **outstanding balance of a residential mortgage loan; or**

27 (9) **Fail to make payments for insurance, taxes and other charges with respect to the**
28 **property in a timely manner from any escrow account the mortgage loan servicer holds for**
29 **the borrower, whether the loan is delinquent or not, so as to prevent late penalties or other**
30 **negative consequences, unless the escrow account does not have sufficient funds to cover the**
31 **payments and the mortgage loan servicer has a reasonable basis to believe that the mortgage**
32 **loan servicer will not recover any moneys the mortgage loan servicer pays.**

33 **SECTION 28.** ORS 646.633 is amended to read:

34 646.633. (1) For purposes of this section, "state regulated lender" means:

35 (a) A banking institution as defined in ORS 706.008;

36 (b) A credit union as defined in ORS 723.006;

37 (c) A person that is required to be licensed under ORS 725.045;

38 (d) A pawnbroker, as defined in ORS 726.010, that is required to be licensed under ORS chapter
39 726; or

40 (e) A mortgage banker, mortgage broker, **mortgage loan servicer** or **mortgage** loan originator,
41 as those terms are defined in ORS 86A.100 or **86A.200**, that is required to [*be licensed*] **obtain a li-**
42 **cense or endorsement** under ORS 86A.095 to 86A.198 or **86A.200 to 86A.239**.

43 (2) A prosecuting attorney may not take action under ORS 646.618 or 646.632 with respect to
44 an alleged unlawful practice under ORS 646.607 or 646.608 [*when*] **if a state regulated lender en-**
45 **gaged in the conduct and** the conduct involves loans or extensions of credit, [*and was engaged in*

1 *by a state regulated lender*] unless [*requested to do so by*] the Director of the Department of Con-
 2 sumer and Business Services **requests the action**. In any action [*requested to be taken by*] the di-
 3 rector **requests the prosecuting attorney to take** under this subsection, the director may elect
 4 to be named as a party to the proceeding or suit.

5 (3) The Attorney General may not adopt rules under ORS 646.608 (4) with respect to conduct
 6 [*involving*] **that a state regulated lender engages in and that involves** loans or extensions of
 7 credit [*that is engaged in by a state regulated lender except with the prior review and approval of the*
 8 *proposed rules by the director*] **unless the director first reviews and approves the proposed**
 9 **rules**. The Attorney General may not adopt rules under ORS 646.608 (4) with respect to conduct
 10 **that a state regulated lender engages in and that involves** [*involving*] loans or extensions of
 11 credit [*that is engaged in by a state regulated lender*] except as provided in this subsection.

12 (4) As soon as practicable upon receipt, the Attorney General shall provide the director with
 13 copies of any complaint or other initial pleading or any judgment received under ORS 646.638
 14 [*when*] **if** the action involves the conduct of a state regulated lender.

15 **SECTION 29. ORS 86A.175 is repealed.**

16 **SECTION 30. Sections 6, 7, 15, 16, 21 and 27 of this 2015 Act, the amendments to ORS**
 17 **86A.095, 86A.100, 86A.103, 86A.106, 86A.109, 86A.112, 86A.115, 86A.118, 86A.121, 86A.124,**
 18 **86A.136, 86A.151, 86A.154, 86A.163, 86A.166, 86A.169, 86A.183 and 646.633 by sections 1 to 4, 8**
 19 **to 13, 17 to 19, 22 to 25 and 28 of this 2015 Act and the repeal of ORS 86A.175 by section 29**
 20 **of this 2015 Act apply to mortgage loan transactions that occur on and after the operative**
 21 **date specified in section 31 of this 2015 Act.**

22 **SECTION 31. (1) Sections 6, 7, 15, 16, 21 and 27 of this 2015 Act, the amendments to ORS**
 23 **86A.095, 86A.100, 86A.103, 86A.106, 86A.109, 86A.112, 86A.115, 86A.118, 86A.121, 86A.124,**
 24 **86A.136, 86A.151, 86A.154, 86A.163, 86A.166, 86A.169, 86A.183 and 646.633 by sections 1 to 4, 8**
 25 **to 13, 17 to 19, 22 to 25 and 28 of this 2015 Act and the repeal of ORS 86A.175 by section 29**
 26 **of this 2015 Act become operative on January 1, 2016.**

27 (2) The Director of the Department of Consumer and Business Services, before the op-
 28 erative date specified in subsection (1) of this section, may adopt rules and take any other
 29 action that is necessary to enable the director to exercise, on and after the operative date
 30 specified in subsection (1) of this section, all of the duties, functions and powers conferred
 31 on the director by sections 6, 7, 15, 16, 21 and 27 of this 2015 Act and the amendments to
 32 ORS 86A.095, 86A.100, 86A.103, 86A.106, 86A.109, 86A.112, 86A.115, 86A.118, 86A.121, 86A.124,
 33 86A.136, 86A.151, 86A.154, 86A.163, 86A.166, 86A.169, 86A.183 and 646.633 by sections 1 to 4, 8
 34 to 13, 17 to 19, 22 to 25 and 28 of this 2015 Act.

35 **SECTION 32. This 2015 Act being necessary for the immediate preservation of the public**
 36 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
 37 **on its passage.**