

Senate Bill 879

Sponsored by Senator PROZANSKI (at the request of Dean Kaufman)

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**.

Exempts attorneys and real estate licensees from requirement to obtain mortgage loan originator's license in order to perform activities of mortgage loan originator. Specifies that residential mortgage loan is loan for personal, family or household purposes that is secured by mortgage, trust deed or equivalent consensual security interest on dwelling or residential real property upon which dwelling is or is intended to be constructed.

A BILL FOR AN ACT

1
2 Relating to mortgage loan origination; amending ORS 86A.200 and 86A.203.

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

4 **SECTION 1.** ORS 86A.200 is amended to read:

5 86A.200. As used in ORS 86A.200 to 86A.239:

6 (1) "Depository institution" means a depository institution, as defined in 12 U.S.C. 1813(c), and
7 a credit union, as defined in ORS 723.008.

8 (2) "Federal banking agency" means:

9 (a) The Board of Governors of the Federal Reserve System;

10 (b) The Comptroller of the Currency;

11 (c) The Director of the Office of Thrift Supervision in the United States Department of the
12 Treasury;

13 (d) The National Credit Union Administration Board; and

14 (e) The Board of Directors of the Federal Deposit Insurance Corporation.

15 (3)(a) "Loan processor or underwriter" means an individual who, after receiving an application,
16 performs clerical or support duties that include:

17 (A) Receiving, collecting, distributing and analyzing information commonly used in processing
18 or underwriting a residential mortgage loan; or

19 (B) Communicating with a consumer to obtain information necessary to process or underwrite
20 a residential mortgage loan.

21 (b) "Loan processor or underwriter" does not include an individual who communicates with a
22 consumer for the purpose of offering or negotiating residential mortgage loan terms with the con-
23 sumer or offering counsel or consultation to the consumer concerning residential mortgage loan
24 terms or rates.

25 (4)(a) "Mortgage loan originator" means an individual who, for compensation or gain:

26 (A) Takes an application for a residential mortgage loan; or

27 (B) Offers or negotiates terms for a residential mortgage loan.

28 (b) "Mortgage loan originator" does not include:

29 (A) An individual who, as an employee or independent contractor, works solely as a loan
30 processor or underwriter **under the supervision of a licensed mortgage loan originator or 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 **person that is not subject to a requirement to obtain a license under ORS 86A.212;**

2 (B) A person that performs professional real estate activities, as defined in ORS 696.010, unless
3 the person is compensated by a mortgage banker, mortgage broker, mortgage loan originator or
4 lender or an agent of a mortgage banker, mortgage broker, mortgage loan originator or lender;

5 (C) An individual that extends credit solely in connection with a timeshare plan, as defined in
6 11 U.S.C. 101(53D); or

7 (D) An individual who:

8 (i) Is employed by a person that is licensed by the Director of the Department of Consumer and
9 Business Services; and

10 (ii) Collects or receives payments on behalf of a person that holds a residential mortgage, in-
11 cluding payments of principal, interest, escrow amounts and other amounts due on obligations that
12 under the terms of the note are due and owed to the person that holds the residential mortgage.

13 (5) “Nationwide Mortgage Licensing System and Registry” means a system that the Conference
14 of State Bank Supervisors and the American Association of Residential Mortgage Regulators main-
15 tain to register and license mortgage loan originators.

16 (6) “Nontraditional mortgage” means a mortgage other than a 30-year fixed-rate mortgage or a
17 mortgage that the director by rule defines as a nontraditional mortgage.

18 (7) “Registered mortgage loan originator” means an individual who:

19 (a) Is employed by:

20 (A) A depository institution;

21 (B) A subsidiary of a depository institution that is regulated by a federal banking agency; or

22 (C) An institution that is regulated by the Farm Credit Administration;

23 (b) Performs the duties of a mortgage loan originator; and

24 (c) Complies with the registration requirements set forth in 12 U.S.C. 5106.

25 (8) “Residential mortgage loan” means a loan, **the proceeds of which a borrower uses pri-**
26 **marily for personal, family or household use, not for business or investment purposes, and**
27 that is secured by a mortgage, deed of trust or equivalent consensual security interest on [*four or*
28 *fewer residential dwelling units, including but not limited to individual dwelling units, mobile homes,*
29 *condominiums or cooperatives that are planned for or situated on real property in this state*] **residen-**
30 **tial real property that:**

31 (a) **Has or is intended to have an improvement that is designed for one family to occupy;**
32 **and**

33 (b) **Is not part of a structure with more than four residential units or more than four**
34 **individual condominium or cooperative units.**

35 (9) “Unique identifier” means a number or other means of identification that is assigned by or
36 under protocols established by the Nationwide Mortgage Licensing System and Registry.

37 **SECTION 2.** ORS 86A.203 is amended to read:

38 86A.203. (1) Except as provided in subsection (2) of this section, an individual may not engage
39 in business as a mortgage loan originator in this state without first:

40 (a) Obtaining and maintaining a mortgage loan originator’s license under ORS 86A.212 or re-
41 newing a mortgage loan originator’s license under ORS 86A.218; and

42 (b) Obtaining a unique identifier from the Nationwide Mortgage Licensing System and Registry.

43 (2) Subsection (1) of this section does not apply to:

44 (a) A registered mortgage loan originator who acts within the scope of the registered mortgage
45 loan originator’s employment;

1 (b) An individual who offers or negotiates terms of a residential mortgage loan with or on behalf
 2 of the individual's spouse, child, sibling, parent, grandparent, grandchild or a relative in a similar
 3 relationship with the individual that is created by law, marriage or adoption;

4 (c) An individual who offers or negotiates terms of a residential mortgage loan that is secured
 5 by a dwelling that served as the individual's residence;

6 (d) An individual who, as a seller during any 12-month period, offers or negotiates terms for not
 7 more than three residential mortgage loans that are secured by a dwelling unit that did not serve
 8 as the individual's residence, unless the United States Consumer Financial Protection Bureau ex-
 9 pressly determines, on or after June 4, 2013, that the definition of loan originator in section 1503
 10 of Title V of the Housing and Economic Recovery Act of 2008, P.L. 110-289, includes an individual
 11 whose activities are described in this paragraph; *[or]*

12 (e) An attorney **who is** licensed or otherwise authorized to practice law in this state *[if the at-*
 13 *torney:] and who engages in business as a mortgage loan originator if:*

14 **(A) The Supreme Court or the Oregon State Bar considers mortgage loan origination as**
 15 **part of the authorized practice of law in this state;**

16 **(B) The attorney engages in business as a mortgage loan originator within an attorney-**
 17 **client relationship; and**

18 **(C) The attorney complies with all applicable laws, rules, ethics and standards;**

19 *[(A) Negotiates the terms of a residential mortgage loan as an ancillary matter in the attorney's*
 20 *representation of a client; and]*

21 *[(B) Does not receive compensation from a mortgage banker, mortgage broker, mortgage loan*
 22 *originator or lender or an agent of the mortgage banker, mortgage broker, mortgage loan originator*
 23 *or lender];*

24 **(f) A real estate licensee, as defined in ORS 696.010, who performs real estate brokerage**
 25 **activities, unless a lender, mortgage broker or loan originator, or an agent of a lender,**
 26 **mortgage broker or loan originator, compensates the real estate licensee directly or indi-**
 27 **rectly;**

28 *[(f)] (g) An individual who is licensed as a manufactured structure dealer under ORS 446.691 and*
 29 *who:*

30 (A) Offers or negotiates terms of a residential mortgage loan related to a sale for occupancy of
 31 a previously owned manufactured dwelling in a manufactured dwelling park three or fewer times in
 32 any 12-month period; and

33 (B) Uses a written sale agreement form with the purchaser that complies with the requirements
 34 of ORS 646A.050, 646A.052 and 646A.054, with any rules adopted under ORS 646A.050, 646A.052 and
 35 646A.054 and with any other applicable requirements for residential mortgages for manufactured
 36 dwellings; or

37 *[(g)] (h) An individual who is licensed as a limited manufactured structure dealer under ORS*
 38 *446.706 and who:*

39 (A) Has an ownership interest in a manufactured dwelling park;

40 (B) Offers or negotiates terms of a residential mortgage loan related to a sale for occupancy of
 41 a previously owned manufactured dwelling in any manufactured dwelling park in which the indi-
 42 vidual has an ownership interest, five or fewer times in any 12-month period; and

43 (C) Uses a written sale agreement form with the purchaser that complies with the requirements
 44 of ORS 646A.050, 646A.052 and 646A.054, with any rules adopted under ORS 646A.050, 646A.052 and
 45 646A.054 and with any other applicable requirements for residential mortgages for manufactured

1 dwellings.

2 (3) An individual who offers or negotiates terms for a residential mortgage loan, and who claims
3 an exemption under subsection (2)(c), (d) or [(f)] **(g)** of this section from the requirements set forth
4 in subsection (1) of this section, may not at any time hold more than eight residential mortgage
5 loans without meeting the requirements set forth in subsection (1) of this section.

6 (4) An individual who offers or negotiates terms for a residential mortgage loan, and who claims
7 an exemption under subsection [(2)(g)] **(2)(h)** of this section from the requirements set forth in sub-
8 section (1) of this section, may not at any time hold more than 12 residential mortgage loans without
9 meeting the requirements set forth in subsection (1) of this section.

10 (5) The Director of the Department of Consumer and Business Services by rule may exempt an
11 individual from the requirement to obtain a mortgage loan originator's license under ORS 86A.200
12 to 86A.239 if the United States Consumer Financial Protection Bureau requires or permits the ex-
13 emption under 12 U.S.C. 5101 et seq.

14 (6) Notwithstanding the exemption from licensing for an individual described in subsection [(2)(f)
15 or (g)] **(2)(g) or (h)** of this section, subsection (1) of this section applies to the individual if the
16 United States Consumer Financial Protection Bureau determines, in a guideline, rule, regulation or
17 interpretive letter, that the exemption is inconsistent with requirements set forth in 12 U.S.C. 5101
18 et seq.

19 (7)(a) Except as provided in paragraph (b) of this subsection, an employee of a manufactured
20 structure dealer licensed under ORS 446.691 is not subject to the provisions of ORS 86A.200 to
21 86A.239 if the employee:

22 (A) Performs only administrative or clerical tasks; and

23 (B) Receives in connection with a sale or other transaction related to a manufactured structure,
24 as defined in ORS 446.003, only a salary or commission that is customary among dealers and em-
25 ployees of dealers.

26 (b) An employee of a dealer is subject to the provisions of ORS 86A.200 to 86A.239 if the United
27 States Consumer Financial Protection Bureau determines, in a guideline, rule, regulation or inter-
28 pretive letter, that the exemption granted in paragraph (a) of this subsection is inconsistent with
29 requirements set forth in 12 U.S.C. 5101 et seq.

30
