

B-Engrossed
Senate Bill 98

Ordered by the Senate June 19
Including Senate Amendments dated April 12 and June 19

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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 certain persons that service residential mortgage loans in this state to obtain or renew license. Specifies license application and renewal procedures and required fees.

Prescribes duties of licensee and prohibits certain activities relating to negotiating or offering to negotiate modification of terms of residential mortgage loan. Requires licensee to maintain specified liquidity, operating reserves and net worth.

Prescribes civil penalties against persons that engage in business as residential mortgage loan servicer without license. Permits Director of Department of Consumer and Business Services to remove member of licensee's governing body or licensee's officer under certain circumstances.

Permits director to participate in multistate mortgage examinations under specified circumstances.

Becomes operative January 1, 2018.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to residential mortgage loan servicers; and declaring an emergency.

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

4 **SECTION 1. Sections 2 to 14 of this 2017 Act may be cited as the Mortgage Loan Servicer**
5 **Practices Act.**

6 **SECTION 2. As used in sections 2 to 14 of this 2017 Act:**

7 (1) "Affiliate" means a person who controls, is controlled by or is under common control
8 with another person.

9 (2) "Applicant" means a person that applies for a license to engage in business as a res-
10 idential mortgage loan servicer in this state.

11 (3) "Borrower" means a person that incurs an obligation to repay a residential mortgage
12 loan.

13 (4) "Branch office" means a location at which a business entity services a residential
14 mortgage loan other than the business entity's headquarters or principal place of business.

15 (5) "Business entity" means a corporation, limited liability company, partnership, limited
16 partnership, business trust, joint venture or other form of business organization the con-
17 stituent parts of which share a common economic interest.

18 (6) "Controller" means:

19 (a) A director, officer or general partner of a business entity;

20 (b) A managing member of a limited liability company;

21 (c) A person that has a direct or indirect right to vote 10 percent or more of the secu-

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 rities of a business entity that have voting rights or the power to sell or cause the sale of
2 10 percent or more of any class of a business entity's securities;

3 (d) A person that has contributed 10 percent or more to a partnership's capital or has
4 the right to receive a distribution of 10 percent or more of a partnership's capital or assets
5 upon dissolution; or

6 (e) A person that, under the terms of a contract or because the person has an ownership
7 interest in another person, has the power to manage or set policies for the other person, or
8 otherwise direct the other person's operations or affairs.

9 (7) "Licensee" means a person that has applied for and obtained or renewed a license
10 from the Director of the Department of Consumer and Business Services to engage in busi-
11 ness as a residential mortgage loan servicer in this state.

12 (8) "Manager" means an individual who has supervisory authority over employees and
13 operations at a business entity's branch office or other business location.

14 (9) "Person" means an individual or a business entity.

15 (10) "Residential mortgage loan" means a loan secured by a mortgage, deed of trust or
16 an equivalent consensual security interest in real property on which four or fewer improve-
17 ments designed for residential occupancy are planned or situated, including but not limited
18 to individual units, condominiums and cooperatives.

19 (11) "Residential mortgage loan modification service" means:

20 (a) A negotiation or arrangement, or an offer or attempt to negotiate or arrange, a
21 change in the repayment obligations for or the terms and conditions of a borrower's resi-
22 dential mortgage loan, including but not limited to:

23 (A) A forbearance in collecting one or more payments due;

24 (B) A change in the interest rate;

25 (C) A change in the payment or repayment schedule;

26 (D) A substitution of different loan terms and conditions;

27 (E) A substitution of a different classification of loan;

28 (F) A capitalization of any arrearages; or

29 (G) A reduction in principal.

30 (b) Collecting or attempting to collect data to submit to a person that performs a resi-
31 dential mortgage loan modification service.

32 (12) "Service a residential mortgage loan" means to:

33 (a) Receive a scheduled periodic payment from a borrower under the terms of a resi-
34 dential mortgage loan, including any amounts for deposit into an escrow account the lender
35 establishes in accordance with the Real Estate Settlement Procedures Act, 12 U.S.C. 2609;

36 (b) Pay to the lender or another person principal, interest and other amounts associated
37 with a residential mortgage loan in accordance with the terms of any contract or agreement
38 for servicing the residential mortgage loan; or

39 (c) Pay an amount to a borrower, if the residential mortgage loan is a home equity con-
40 version mortgage or a reverse mortgage.

41 **SECTION 3.** (1) A person may not directly or indirectly service a residential mortgage
42 loan in this state unless the person obtains or renews a license under section 4 of this 2017
43 Act.

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

45 (a) A person, or an affiliate of the person, that in all operations within the United States

1 during the calendar year services fewer than 5,000 residential mortgage loans, excluding
2 loans that the person or the person's affiliate originates or owns.

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

4 (c) A person that has obtained a license under ORS 725.140.

5 (d) A financial holding company or bank holding company, both as defined in ORS 706.008,
6 if the financial holding company or bank holding company does not do more than control an
7 affiliate or a subsidiary, as defined in 12 U.S.C. 1841(d), and does not engage in business as
8 a residential mortgage loan servicer.

9 (e) An attorney who is licensed or otherwise authorized to practice law in this state if
10 the attorney:

11 (A) Services a residential mortgage loan as an ancillary matter while representing a cli-
12 ent; and

13 (B) Does not receive compensation from a residential mortgage loan servicer.

14 (f) An agency or instrumentality of this state or the United States.

15 (g) A housing finance agency, as defined in 24 C.F.R. 266.5.

16 (h) An institution that the Farm Credit Administration regulates.

17 (i) A person that the Director of the Department of Consumer and Business Services
18 designates by rule or order as exempt, including but not limited to a nonprofit organization
19 that promotes affordable housing or financing.

20 (3) Notwithstanding subsection (2) of this section, the director may require any person
21 to obtain a license under section 4 of this 2017 Act before servicing a residential mortgage
22 loan if the director determines that the person has violated state or federal law or has en-
23 gaged in a course of dealing that is fraudulent, deceptive or dishonest.

24 (4)(a) If the director reasonably believes that a person is subject to sections 2 to 14 of
25 this 2017 Act or is engaging in or is about to engage in an act or practice that constitutes
26 servicing a residential mortgage loan in this state without first obtaining a license as pro-
27 vided in subsection (1) of this section, the director may:

28 (A) Order the person to:

29 (i) Cease and desist from the act or practice; or

30 (ii) Affirmatively perform an act; or

31 (B) Apply to a circuit court of this state to enjoin the person from engaging in the act
32 or practice.

33 (b) The director shall state in reasonable detail the facts on which the director bases an
34 order under paragraph (a)(A) of this subsection.

35 (c) If a person that is subject to an order under paragraph (a)(A) of this subsection re-
36 quests a hearing, the director shall schedule and give notice of a hearing in accordance with
37 ORS chapter 183. If the person does not request a hearing, the director's order becomes final
38 30 days after the date of the order.

39 (5) Notwithstanding ORS 86A.175 (2), the director shall regulate mortgage servicers under
40 sections 2 to 14 of this 2017 Act, including mortgage servicers that hold other licenses the
41 director issued.

42 **SECTION 4.** (1)(a) A person that is subject to the requirement to obtain or renew a li-
43 cense under section 3 (1) or (3) of this 2017 Act shall submit an application to the Director
44 of the Department of Consumer and Business Services in the manner, on a form and with
45 the contents the director specifies by rule.

1 **(b) The director by rule may require an applicant to submit the application described in**
2 **paragraph (a) of this subsection to the Nationwide Mortgage Licensing System and Registry**
3 **instead of, or in addition to, submitting the application to the director.**

4 **(2)(a) An applicant shall submit with or as part of an application under subsection (1) of**
5 **this section:**

6 **(A) Fingerprints from all of the applicant's controllers, registered agents and managers;**

7 **(B) A unique identifier that the applicant applies for and receives from the Nationwide**
8 **Mortgage Licensing System and Registry;**

9 **(C) The name and address of the applicant's registered agent in this state;**

10 **(D) The street address of the applicant's principal place of business and of each branch**
11 **office in this state at or from which the applicant will service a residential mortgage loan;**

12 **(E) The name of the manager of any branch office the applicant maintains in this state;**

13 **(F) The assumed business name, if any, that the applicant intends to use or under which**
14 **the applicant intends to operate; and**

15 **(G) Other information the director requires to conduct a background check and evaluate**
16 **the application.**

17 **(b) The director by rule may modify or waive, for an application to renew a license, any**
18 **requirement under paragraph (a) of this subsection that the director determines is not nec-**
19 **essary for evaluating or approving the application for renewal.**

20 **(3) At the time an applicant submits an application under subsection (1) of this section,**
21 **the applicant shall also:**

22 **(a) Pay to the director a fee in an amount that the director specifies by rule. The director**
23 **shall specify the fee in an amount that is sufficient, when aggregated with fees from other**
24 **applicants, to meet the director's cost of administering sections 2 to 14 of this 2017 Act.**

25 **(b) Submit to the director a corporate surety bond or irrevocable letter of credit issued**
26 **by an insured institution, as defined in ORS 706.008, that runs to the State of Oregon in an**
27 **amount the director specifies by rule. If the applicant seeks to renew a license and submitted**
28 **a corporate surety bond or irrevocable letter of credit previously, the applicant shall show**
29 **that the corporate surety bond or irrevocable letter of credit remains effective in the amount**
30 **the director specifies.**

31 **(4)(a) The director may not issue or renew a license under this section unless the direc-**
32 **tor finds that:**

33 **(A) The applicant submitted a complete application that does not contain a material**
34 **misstatement;**

35 **(B) The application identifies a registered agent in this state;**

36 **(C) The application names a manager for each of the applicant's branch offices in this**
37 **state;**

38 **(D) The applicant and the applicant's controllers, registered agents and managers have**
39 **not pleaded guilty or no contest in, or been convicted by, a state, federal, foreign or military**
40 **court:**

41 **(i) In the seven years before the date of the application, if the plea or conviction was for**
42 **a felony, or for a misdemeanor an essential element of which involved a false statement or**
43 **dishonesty; or**

44 **(ii) At any time before the date of the application if the plea or conviction was for a fel-**
45 **ony an element of which was fraud, dishonesty, a breach of trust or laundering a monetary**

1 instrument;

2 (E) The applicant and the applicant's controllers, registered agents and managers have
3 demonstrated adequate financial responsibility, character and general fitness to command
4 the confidence of the community and warrant a determination that the applicant will operate
5 honestly, fairly and efficiently under the provisions of sections 2 to 14 of this 2017 Act;

6 (F) The applicant has paid the fee and submitted the corporate surety bond or irrevocable
7 letter of credit required under subsection (3) of this section; and

8 (G) The applicant has satisfied any other criteria for evaluating the applicant's financial
9 responsibility and fitness the director specifies by rule.

10 (b) An applicant need not report a conviction on an application under this section if the
11 conviction was later pardoned.

12 (5)(a) The director may deny, revoke or decline to renew a license if an applicant, a
13 licensee or a person that services a residential mortgage loan:

14 (A) Does not meet criteria set forth in subsection (4) of this section that the director
15 has not waived under subsection (2)(b) of this section;

16 (B) Engages in a course of conduct that violates state or federal law or that constitutes
17 fraudulent, deceptive or dishonest dealing;

18 (C) Fails or refuses to comply with the director's written request under section 10 of this
19 2017 Act to respond to a complaint against the applicant or licensee; or

20 (D) Fails or refuses to comply with a final order the director issued.

21 (b) The director shall provide a licensee with notice and an opportunity for a hearing
22 under ORS chapter 183 before revoking or declining to renew a license.

23 (6)(a) A license that the director issues or renews under this section expires on Decem-
24 ber 31 of the calendar year in which the director issued or renewed the license. A licensee
25 shall display a copy of the license at the licensee's principal place of business and at each
26 branch office in this state at or from which the licensee services a residential mortgage loan.

27 (b) An applicant that intends to renew a license shall apply for the renewal before the
28 license expires.

29 (c) A licensee may reinstate a license that has expired only if the licensee applies to re-
30 new the license under this section within the time permitted by the Nationwide Mortgage
31 Licensing System and Registry.

32 (d) A licensee may not service a residential mortgage loan during a period in which the
33 licensee has applied to reinstate a license unless the director has given conditional approval
34 to the licensee. The conditional approval may specify which accounts the licensee may ser-
35 vice and which services the licensee may provide during the period in which the licensee's
36 application for reinstatement is pending.

37 **SECTION 5.** (1) A licensee shall designate and maintain a principal place of business at
38 or from which the licensee services residential mortgage loans in this state and shall desig-
39 nate a registered agent in this state.

40 (2)(a) If a licensee does not maintain a principal place of business in this state the
41 licensee shall nevertheless designate a registered agent in this state. The registered agent
42 must be available to receive on the licensee's behalf any notice, demand or service of process
43 permitted by law to be given, made or delivered to, or served upon, the licensee.

44 (b) If the licensee does not designate a registered agent in this state, or if the licensee's
45 registered agent cannot with reasonable diligence be located, the Director of the Department

1 of Consumer and Business Services is the licensee's registered agent.

2 (3) A licensee may not use or operate under an assumed business name unless the
3 licensee first registers the assumed business name under ORS chapter 648 and lists the name
4 on an application under section 4 of this 2017 Act or in a notice to the director under section
5 7 of this 2017 Act.

6 **SECTION 6.** (1)(a) A licensee shall maintain in accordance with generally accepted ac-
7 counting principles sufficient liquidity, operating reserves and tangible net worth to permit
8 the licensee to adequately meet all costs, expenses and other financial requirements related
9 to servicing residential mortgage loans in this state. The Director of the Department of
10 Consumer and Business Services may specify by rule the standards a licensee must meet to
11 comply with the requirements set forth in this subsection.

12 (b) A licensee that the Federal National Mortgage Association, the Federal Home Loan
13 Mortgage Corporation or the Government National Mortgage Association has approved to
14 service a residential mortgage loan complies with the requirements set forth in paragraph
15 (a) of this subsection if the licensee meets the standards for liquidity, operating reserves and
16 tangible net worth established by the association or corporation that approved the licensee.
17 If the applicable association's or corporation's standards do not apply to a particular resi-
18 dential mortgage loan, the licensee in servicing the residential mortgage loan shall meet the
19 highest standards the association or corporation has established for liquidity, operat-
20 ing reserves and tangible net worth.

21 (2)(a) If a licensee fails to meet the applicable standards for liquidity, operating reserves
22 and tangible net worth set forth in subsection (1) of this section, the director may take and
23 retain possession of the licensee's property, business and assets located in this state until
24 the licensee returns, under the director's supervision or oversight, to compliance with the
25 applicable standards.

26 (b) In taking and retaining possession of the licensee's property, business and assets
27 under paragraph (a) of this subsection, the director shall conduct an inventory appropriate
28 for establishing a receivership for the licensee and file a copy of the inventory with:

29 (A) The Department of Consumer and Business Services;

30 (B) The clerk of the circuit court in the county in which the licensee's principal place
31 of business in this state, or any branch office in this state, is located; and

32 (C) Each of the licensee's controllers, at the last address for each controller that the
33 director has in the director's records.

34 (c) A circuit court that receives a copy of an inventory under paragraph (b)(B) of this
35 subsection shall file the inventory, list the filing in the court's docket as a pending proceed-
36 ing and assign a case number to the proceeding.

37 (3) If a licensee refuses to permit the director to take and retain possession of the
38 licensee's property, business and assets under subsection (2) of this section or if the director
39 can show that the interests of the licensee's borrowers or creditors require the appointment
40 of a receiver, the director may apply to the circuit court in the county in which the
41 licensee's principal place of business in this state is located for an order to appoint a receiver
42 to take and retain possession of, operate or liquidate the property, business and assets. The
43 court may appoint the director as the receiver.

44 (4) If, 60 days after the date on which the director took possession of a licensee's prop-
45 erty, business and assets under subsection (2) of this section, the licensee has not returned

1 to compliance with the applicable standards described in subsection (1) of this section, the
2 director shall liquidate the property, business and assets. If the director is not the receiver
3 for the licensee's property, business and assets, the director shall apply to the court with
4 which the director filed an inventory under subsection (2)(b)(B) of this section for an order
5 to appoint the director or another person as receiver.

6 **SECTION 7.** (1)(a) A licensee shall notify the Director of the Department of Consumer
7 and Business Services in writing at least 30 days before the licensee:

8 (A) Relocates or closes the licensee's principal place of business or a branch office in this
9 state; or

10 (B) Opens a branch office that the licensee did not list in an application under section 4
11 of this 2017 Act.

12 (b) In a notice under paragraph (a) of this subsection the licensee shall list, as applicable:

13 (A) The new address to which the licensee relocates the licensee's principal place of
14 business or any branch office; and

15 (B) The address for any new branch office the licensee opens.

16 (2)(a) A licensee shall notify the director in writing not later than 30 days after:

17 (A) Any appointment, resignation or other change occurs in the licensee's controllers,
18 registered agents or managers; or

19 (B) Any material change occurs in the information that the licensee submitted in an
20 application under section 4 of this 2017 Act.

21 (b) The licensee shall provide in a notice under paragraph (a)(A) of this subsection the
22 name, address and title of any new controller, registered agent or manager the licensee ap-
23 points.

24 (3)(a) A licensee shall notify the director in writing not later than 10 days after:

25 (A) Filing for bankruptcy or reorganization;

26 (B) A controller, registered agent or manager of the licensee becomes subject to an
27 indictment that is related in any manner to the licensee's activities;

28 (C) The licensee receives notice of a final order issued in this or another state that:

29 (i) Demands that the licensee cease and desist from any act;

30 (ii) Suspends or revokes a license or registration; or

31 (iii) Constitutes any other formal or informal regulatory action against the licensee;

32 (D) The licensee registers or changes and uses or operates under an assumed business
33 name; or

34 (E) Another change in the licensee's operations or governance occurs in a manner or
35 with an effect that the director determines by rule is significant enough to warrant the
36 licensee notifying the director.

37 (b) A licensee shall specify in a notice under paragraph (a)(C) of this subsection the
38 reasons for taking a regulatory action against the licensee that are set forth in any final
39 order.

40 (4) A licensee shall notify the director immediately if the licensee changes registered
41 agents or if the name or address for the licensee's registered agent in this state changes. In
42 the notice the licensee shall update the name and address for the registered agent.

43 **SECTION 8.** (1) The Director of the Department of Consumer and Business Services has
44 general supervisory authority over:

45 (a) Each licensee in this state;

1 **(b) Any person that services a residential mortgage loan in this state, if the person is**
2 **subject to sections 2 to 14 of this 2017 Act or if the director required the person to obtain a**
3 **license under section 3 (3) of this 2017 Act; and**

4 **(c) Any person that had a license that the director withdrew, cancelled, suspended, con-**
5 **ditioned or revoked, if the person continues to service a residential mortgage loan.**

6 **(2)(a) The authority described in subsection (1) of this section includes the authority to**
7 **examine a licensee or a person described in subsection (1) of this section at any time.**

8 **(b) The director may charge and collect from a licensee or a person the director exam-**
9 **ines under this section the costs the director incurs in conducting the examination.**

10 **(3) In order to carry out an examination under this section, the director may:**

11 **(a) Retain attorneys, accountants or other professionals and specialists as examiners,**
12 **auditor or investigators.**

13 **(b) Enter into agreements or relationships with other government officials or regulatory**
14 **associations to share resources, use and create standardized methods, procedures, docu-**
15 **ments, databases, records, information or evidence or to reduce the director's regulatory**
16 **burden or improve efficiency.**

17 **(c) Participate in multistate examinations that the Conference of State Bank Supervisors**
18 **or the federal Consumer Financial Protection Bureau schedules and conducts. In conducting**
19 **an examination under this paragraph, the director shall follow the protocol that the confer-**
20 **ence or bureau establishes for the examination.**

21 **(d) Accept and rely on examination or investigation reports from other government offi-**
22 **cial in this or another state.**

23 **(4) Books, accounts, papers, records, files, correspondence, contracts and agreements,**
24 **disclosures, documentation and other information, material or evidence the director obtains**
25 **in an examination under this section is confidential and subject to the provisions of ORS**
26 **705.137, except that a borrower may request to inspect material related to the borrower's**
27 **residential mortgage loan that the director by rule specifies is available for inspection. The**
28 **director shall authenticate the borrower's identity before disclosing any material to the**
29 **borrower.**

30 **SECTION 9.** **(1) A person that services a residential mortgage loan shall:**

31 **(a) Assess any fee that the person may assess against a borrower within 45 days after**
32 **the borrower incurs the fee.**

33 **(b) Explain to a borrower in clear language and conspicuous text the reason for any fee**
34 **the person assesses against the borrower in a written statement that the person mails to the**
35 **borrower at the borrower's last-known address not more than 30 days after the person as-**
36 **sesses the fee.**

37 **(c) Accept and credit, or treat as credited, to the borrower's account all amounts the**
38 **person receives at the address to which the borrower has been instructed to send payments**
39 **on the borrower's residential mortgage loan. The person must credit the payment, or treat**
40 **the payment as credited, within one business day after receiving the payment if the borrower**
41 **has provided sufficient information to credit the account. If the person uses the scheduled**
42 **method of accounting and the person receives a regularly scheduled payment before the**
43 **scheduled due date, the person shall credit the payment to the borrower's account not later**
44 **than the scheduled due date.**

45 **(d) Mail a written notice to a borrower at the borrower's last-known address within 10**

1 days after receiving a payment if the person did not credit the payment, or treat the pay-
2 ment as credited, to the borrower's account. In the notice, the licensee shall clearly explain
3 the reason why the licensee did not credit the payment and identify any action the borrower
4 must take to properly credit the payment or otherwise make current the borrower's account.

5 (e) Collect funds into an escrow account and make from the escrow account any pay-
6 ments that are due for property taxes, insurance and all other charges related to the real
7 property that secures a residential mortgage loan, if the residential mortgage loan agree-
8 ment requires the licensee to establish an escrow account and make payments from the
9 escrow account. The person shall perform the person's duties under this paragraph in a
10 manner that ensures that the borrower is not subject to late fees, penalties or other negative
11 consequences of a failure to make required payments on time. A person complies with the
12 requirements of this section if the person complies with the Real Estate Settlement Proce-
13 dures Act, 12 U.S.C. 2609.

14 (f) Make reasonable efforts to respond to a borrower's request concerning the borrower's
15 residential mortgage loan account and to any dispute the borrower has with the person or
16 that is related to the borrower's residential mortgage loan account.

17 (g) Correct promptly any errors the person makes and refund promptly any fees the
18 person assesses against the borrower in error.

19 (h) Provide to a borrower each year a written statement that specifies:

20 (A) Whether the account is current and, if the account is not current, the reasons why
21 the account is not current, including the date on which any default occurred;

22 (B) The current balance due on the borrower's residential mortgage loan, including the
23 amount of the principal due, the amount of funds the person holds in a suspense account,
24 the balance in any escrow account the person maintains for the borrower and the amount
25 of any deficiency in the escrow account of which the person is aware;

26 (C) The name, address and other contact information for the individual or business entity
27 that owns or holds the borrower's residential mortgage loan, or an assignee of the individual
28 or business entity; and

29 (D) The name, address, telephone number and any other contact information for a rep-
30 resentative of the person from which the borrower can request information or to which the
31 borrower can direct complaints or disputes. The person's representative must have sufficient
32 information and authority to respond to the borrower's requests, answer the borrower's
33 questions and resolve the borrower's disputes with the person.

34 (i) Include in each statement or notice the person mails or sends to the borrower under
35 this subsection text that the Director of the Department of Consumer and Business Services
36 prescribes by rule. The text must include contact information for the Department of Con-
37 sumer and Business Services and must state clearly that, and how, the borrower may submit
38 a complaint to the department concerning any conduct of the person that is unlawful.

39 (2) A person that services a residential mortgage loan may not, directly or indirectly:

40 (a) Employ any device, scheme or artifice to defraud another person;

41 (b) Knowingly make an untrue statement of a material fact or omit a material fact that
42 is necessary to make the person's statement true in light of the circumstances in which the
43 person makes the statement;

44 (c) Engage in an act, practice or course of business that operates or that the person in-
45 tends to operate as a fraud or deceit upon another person; or

1 (d) Make or file with the department, or cause to be made or filed with the department,
2 a statement, report or document that the person knows is false in any material respect or
3 manner.

4 **SECTION 10.** (1) If the Director of the Department of Consumer and Business Services
5 receives a complaint concerning a person that services a residential mortgage loan, the di-
6 rector:

7 (a) Shall notify the person of the complaint, provide a copy of the complaint in the notice
8 and require the person to respond to the complaint and to the director within 30 days after
9 the date of the notice;

10 (b) May investigate the complaint and require the person to provide books, accounts,
11 papers, records, files, correspondence, contracts and agreements, disclosures, documentation
12 and other information, material or evidence necessary for the director's investigation; and

13 (c) May investigate the person and the person's policies and practices with respect to
14 servicing a residential mortgage loan and require the person to provide books, accounts,
15 papers, records, files, documentation and other information, material or evidence necessary
16 for the director's investigation.

17 (2)(a) Except as provided in paragraph (b) of this subsection, books, accounts, papers,
18 records, files, correspondence, contracts and agreements, disclosures, documentation and
19 other information, material or evidence the director receives or possesses as a consequence
20 of an investigation under subsection (1) of this section are confidential unless state or federal
21 law or a court order permits or requires disclosure.

22 (b) The director may share any item listed in paragraph (a) of this subsection with any
23 state or federal agency.

24 (3) The director may charge and collect from a person the director investigates under
25 this section the costs the director incurs in conducting the investigation.

26 **SECTION 11.** (1) If after conducting an investigation, the Director of the Department of
27 Consumer and Business Services determines that a person that services a residential mort-
28 gage loan has violated sections 2 to 14 of this 2017 Act, a rule the director adopted or an
29 order the director issued under sections 2 to 14 of this 2017 Act or another applicable law,
30 the director may order the person to:

31 (a) Cease and desist from any act that constitutes a violation of sections 2 to 14 of this
32 2017 Act.

33 (b) Resolve any complaint the director received under section 10 of this 2017 Act and pay
34 the borrower that submitted the complaint any damages to which the borrower would be
35 entitled under law.

36 (c) Pay a borrower any amount the person received from the borrower as compensation
37 while engaging in any action that constituted a violation of sections 2 to 14 of this 2017 Act.

38 (2)(a) In addition to and not in lieu of any other penalty provided by law, the director
39 may impose a civil penalty under ORS 183.745 in an amount of not more than \$5,000 for each
40 instance in which a person violates, aids or abets another person in violating or procures a
41 violation of sections 2 to 14 of this 2017 Act or an order the director issues under sections
42 2 to 14 of this 2017 Act.

43 (b) Each instance described in paragraph (a) of this subsection is a separate violation and
44 each day in which a person engages in a continuous violation is a separate violation. The
45 director may not impose a penalty that exceeds \$20,000 for a continuous violation.

1 (3) The director may assess the costs of conducting an administrative proceeding under
2 this section against the person that is the subject of the administrative proceeding or may
3 include the costs of the administrative proceeding in any civil penalty the director imposes
4 under this section.

5 (4) A person that is subject to a civil penalty under this section may appeal the penalty
6 as provided in ORS chapter 183.

7 (5) The director shall deposit any amount the director receives under this section to the
8 General Fund of the State Treasury.

9 **SECTION 12.** (1) A licensee shall:

10 (a) Maintain, until a borrower repays or otherwise satisfies the borrower's residential
11 mortgage loan or until the licensee sells the residential mortgage loan, written or electronic
12 records of each written request the borrower submits for information concerning a dispute
13 or error in relation to the borrower's account.

14 (b) Respond in writing not more than 15 days after receiving a written request for in-
15 formation from a borrower, if the borrower's request includes the borrower's name and ac-
16 count number, states that the account is or might be in error and describes the information
17 the borrower seeks in sufficient detail to enable the licensee to comply with the request. In
18 the response, the licensee, at a minimum, shall:

19 (A) State whether the account is current and, if the account is not current, the reasons
20 why the account is not current, including the date on which any default occurred;

21 (B) State the current balance due on the borrower's residential mortgage loan, including
22 the amount of the principal due, the amount of funds the licensee holds in a suspense ac-
23 count, the balance in any escrow account the licensee maintains for the borrower and the
24 amount of any deficiency in the escrow account of which the licensee is aware;

25 (C) List the name, address, telephone number and other contact information for the
26 person that owns or holds the borrower's residential mortgage loan, or an assignee of the
27 person; and

28 (D) List the name, address, telephone number and any other contact information for a
29 representative of the licensee from which the borrower can request further information or
30 to which the borrower can direct complaints or disputes. The licensee's representative must
31 have sufficient information and authority to respond to the borrower's requests, answer the
32 borrower's questions and resolve the borrower's disputes with the licensee.

33 (c) Provide to the borrower, at the borrower's request, one complete account history
34 each year at no charge to the borrower.

35 (2) If a borrower requests further information about the borrower's residential mortgage
36 loan account from a licensee that is more detailed than the information the licensee provides
37 in a statement under subsection (1) of this section, the licensee shall respond to the bor-
38 rower not more than 15 business days after receiving the borrower's request. The licensee
39 may require the borrower to provide the borrower's name and account number, state that
40 the borrower's account is or might be in error and describe the information the borrower
41 seeks in sufficient detail to enable the licensee to respond. The licensee shall respond to a
42 request for more detailed information about the borrower's account with a written state-
43 ment that:

44 (a) Identifies and itemizes for the two-year period before the date of the borrower's re-
45 quest, or as much of the two-year period for which the licensee serviced the borrower's

1 residential mortgage loan, all fees and charges the licensee assessed for the residential
2 mortgage loan, along with a full payment history that lists in conspicuous text all of the
3 credits and debits to the account, all payments received from the borrower and the dates of
4 the payments, all credits to and disbursements from any escrow or suspense account the
5 licensee maintains for the borrower and any other activity in the borrower's residential
6 mortgage loan account; and

7 (b) Identifies any previous residential mortgage loan servicer for the borrower's resi-
8 dential mortgage loan, if the licensee has serviced the residential mortgage loan for less than
9 two years.

10 (3) If a licensee claims that a borrower owes any delinquent or outstanding amount on
11 a borrower's residential mortgage loan from a period before the licensee began servicing the
12 residential mortgage loan or from more than the preceding two years, the licensee shall
13 provide the borrower with a complete account history for the period beginning in the month
14 during which the licensee claims that the borrower owes the delinquent or outstanding
15 amount and ending on the date on which the licensee makes the claim.

16 **SECTION 13.** (1)(a) If the Director of the Department of Consumer and Business Services
17 determines that a director or officer of a licensee has violated sections 2 to 14 of this 2017
18 Act, a rule the Director of the Department of Consumer and Business Services adopted or
19 an order the director issued under sections 2 to 14 of this 2017 Act, directives or instructions
20 the director included in an order or another applicable law, the Director of the Department
21 of Consumer and Business Services may order the licensee's board of directors or controller
22 to suspend or remove the licensee's director or officer.

23 (b) A director or officer that the Director of the Department of Consumer and Business
24 Services has ordered a licensee's board of directors or controller to remove may not, without
25 the Director of the Department of Consumer and Business Services' permission, act in any
26 official capacity or conduct any business for the licensee and may not in the capacity of a
27 director, officer, controller or stockholder have access to the licensee's assets, books, ac-
28 counts, papers, records, files, correspondence, contracts and agreements, disclosures, doc-
29 umentation and other information or material the licensee uses in conducting business.

30 (2) The Director of the Department of Consumer and Business Services shall issue an
31 order under this section in writing and cause the order to be served personally or by certified
32 mail on the licensee and the director or officer that is the subject of the order. The Director
33 of the Department of Consumer and Business Services may issue the order without an ad-
34 ministrative hearing.

35 (3)(a) The board of directors or controller of a licensee that receives an order under this
36 section shall immediately suspend from office the director or officer that is the subject of
37 the order.

38 (b) The director or officer that is the subject of an order under this section may appeal
39 the order as a contested case under ORS 183.415 to 183.500.

40 (4) The board of directors or the controller for a licensee by resolution shall remove a
41 director or officer that is the subject of an order under this section and declare the
42 director's or officer's office vacant if:

43 (a) The director or officer does not appeal the order by the date on which the period for
44 an appeal under ORS 183.415 to 183.500 expires; or

45 (b) The order of the Director of the Department of Consumer and Business Services is

1 affirmed on appeal.

2 **SECTION 14.** (1) A person that performs a residential mortgage loan modification service
3 for compensation or gain shall:

4 (a) Comply with all applicable state and federal laws;

5 (b) Provide the borrower with a summary of the material terms of any agreement under
6 which the licensee provides services related to a modification of the borrower's residential
7 mortgage loan; and

8 (c) Inform the borrower immediately in writing if:

9 (A) The owner of the residential mortgage loan needs additional information to process
10 or consider the request; or

11 (B) The owner of the residential mortgage loan will not consider a modification of the
12 terms.

13 (2) A person that performs a residential mortgage loan modification service for compen-
14 sation or gain may not:

15 (a) Charge a fee before providing the service for which the person charges the fee;

16 (b) Charge a fee that is not reasonable or that exceeds the usual and customary fees for
17 the service the person provides; or

18 (c) Require or encourage a borrower, as a condition of modifying the terms of a resi-
19 dential mortgage loan or providing a service related to modifying the terms of a residential
20 mortgage loan, to:

21 (A) Waive the borrower's:

22 (i) Legal defenses, available counterclaims or other legal rights against the person;

23 (ii) Right to contest a foreclosure; or

24 (iii) Right to receive notice before a foreclosure proceeding begins;

25 (B) Pay a fee, charge or assessment for which the residential mortgage loan agreement,
26 a servicing agreement or a related agreement does not provide; or

27 (C) Cease communications with the person, the trustee or beneficiary in a trust deed, the
28 owner or a servicer of the borrower's residential mortgage loan or any other person with
29 which the borrower has the right or duty to communicate concerning the residential mort-
30 gage loan.

31 (3) A person that does not comply with subsection (1) of this section or that engages in
32 conduct that is prohibited under subsection (2)(a) or (b) of this section violates ORS 86A.154.

33 **SECTION 15.** Sections 2 to 14 of this 2017 Act apply to service transactions for residential
34 mortgage loans that occur on or after the operative date specified in section 16 of this 2017
35 Act.

36 **SECTION 16.** (1) Sections 2 to 14 of this 2017 Act become operative on January 1, 2018.

37 (2) The Director of the Department of Consumer and Business Services may adopt rules
38 and take any other action before the operative date specified in subsection (1) of this section
39 that is necessary to enable the director, on or after the operative date specified in subsection
40 (1) of this section, to exercise all of the duties, functions and powers conferred on the di-
41 rector by sections 2 to 14 of this 2017 Act.

42 **SECTION 17.** Notwithstanding any other law limiting expenditures, the limitation on
43 expenditures established by section 1 (5), chapter _____, Oregon Laws 2017 (Enrolled Sen-
44 ate Bill 5512), for the biennium beginning July 1, 2017, as the maximum limit for payment
45 of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but ex-

1 **cluding lottery funds and federal funds, collected or received by the Department of Consumer**
2 **and Business Services, is increased by \$166,018 for the purpose of paying the expenses of the**
3 **program described in sections 2 to 14 of this 2017 Act.**

4 **SECTION 18. This 2017 Act being necessary for the immediate preservation of the public**
5 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
6 **on its passage.**

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