# Chapter 59

## 2007 EDITION

# Securities Regulation; Mortgage Bankers and Brokers


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## OREGON SECURITIES LAW
### (Generally)

**59.005 Short title.** ORS 59.005 to 59.451, 59.991 and 59.995 may be cited as the Oregon Securities Law. [1967 c.537 §2]

**59.010** [Repealed by 1967 c.537 §36]

**59.015 Definitions for Oregon Securities Law.** As used in the Oregon Securities Law, unless the context otherwise requires:

(1) "Broker-dealer" means a person who engages, all or part of the time, in effecting transactions in securities for the account of others or for the person's own account. "Broker-dealer" does not include:

(a) An issuer effecting sales in its own securities;

(b) The following institutions:

(A) A financial institution or trust company, as defined in ORS 706.008; or

(B) A financial holding company or a bank holding company, as defined in ORS 706.008, holding an institution described in subparagraph (A) of this paragraph; a savings and loan holding company as defined in section 408 of the National Housing Act, 12 U.S.C. section 1730a, holding an association described in subparagraph (A) of this paragraph; the subsidiaries and affiliates of the financial holding company, bank holding company or savings and loan holding company; or subsidiaries and affiliates of institutions described in subparagraph (A) of this paragraph, if the appropriate statutory regulatory authority is exercising control over, or is regulating or supervising the person in the sale of securities in accord with the purposes of the Oregon Securities Law;

(c) A person who has no place of business in this state effecting transactions in this state exclusively with broker-dealers;

(d) A person effecting sales exempted by ORS 59.035;

(e) A salesperson;

(f) A person effecting sales of securities owned by the person registered for sale pursuant to ORS 59.065;

(g) A person effecting sales of securities exempted by ORS 59.025 (7);

(h) A person licensed as a mortgage banker or a mortgage broker under ORS 59.840 to 59.980 when effecting sales of securities involving real estate paper registered for sale pursuant to ORS 59.065; or

(i) A person designated by rule or order by the director.

(2) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(3) "Director" means the Director of the Department of Consumer and Business Services.

(4) "Federal covered investment adviser" means a person who is registered as an investment adviser pursuant to section 203 of the Investment Advisers Act of 1940, as amended.

(5) "Federal covered security" means any security that is a covered security under section 18 of the Securities Act of 1933, as amended, and for which such Act provides that the director may require filing of a notice and payment of a fee.

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

(7) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

(8)(a) "Investment adviser representative" means any partner, officer, director or person occupying a similar status or performing a similar function, or other individual, except clerical or ministerial personnel, who is employed by or associated with:

(A) A state investment adviser that is licensed or required to be licensed in this state and who does any of the following:

(i) Makes any recommendations or otherwise renders advice regarding securities;

(ii) Manages accounts or portfolios of clients;

(iii) Determines which recommendation or advice regarding securities should be given;

(iv) Solicits, offers or negotiates for the sale of or sells investment advisory services; or

(v) Supervises employees acting under this subparagraph; or

(B) A federal covered investment adviser, subject to the limitations of section 203A of the Investment Advisers Act of 1940, as amended, as the director may designate by rule or order.

(b) "Investment adviser representative" does not include a person designated by rule or order of the director.

(9) "Issuer" means a person who issues, proposes to issue or has issued a security and includes an issuer to be formed. With respect to certificates of deposit, voting-trust certificates or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management or unit type, the

"issuer" is the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other instrument or agreement under which the security is issued.

(10) "License" means a license as provided under the Oregon Securities Law.

(11) "Mortgage banker" means a mortgage banker as defined in ORS 59.840.

(12) "Mortgage broker" means a mortgage broker as defined in ORS 59.840.

(13) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(14) "Person" includes an individual, a joint venture, a partnership, a cooperative, a limited liability company, an association, a joint stock company, a corporation, a trust, an unincorporated organization or a government or political subdivision of a government.

(15) "Real estate paper" means any obligation secured or purportedly secured by an interest in real property. Real estate paper includes, but is not limited to, mortgage-backed securities, collateralized mortgage obligations, and real estate mortgage investment conduits.

(16) "Registered" means registered as provided in the Oregon Securities Law.

(17)(a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing shall constitute a part of the subject of the purchase and shall have been offered and sold for value. A gift of assessable stock by or for any issuer or promoter shall constitute a sale.

(b) For purposes of the authority of the director under ORS 59.245 and 59.255, the terms "sale" and "sell" include the terms "offer" and "offer to sell."

(c) "Sale" and "sell" do not include:

(A) A bona fide pledge or loan of securities;

(B) A bona fide security dividend, whether the corporation distributing the dividend is the issuer of the security or not, if nothing of value is given by the recipients for the dividend other than payments in connection with the elimination of fractional shares; or

(C) An act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash.

(18)(a) "Salesperson" means a person, other than a broker-dealer, who represents or purports to represent a broker-dealer, issuer or owner of securities in effecting or attempting to effect in any manner transactions in securities.

(b) "Salesperson" does not include:

(A) A person who represents an issuer in effecting sales in a security exempted by ORS 59.025;

(B) A person who represents an issuer in effecting sales exempted by ORS 59.035;

(C) A person who represents an issuer in effecting sales with existing partners or directors of the issuer, if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state;

(D) An employee of an institution or organization described in subsection (1)(b) of this section to the extent the employee is not a dual employee of the institution and a broker-dealer;

(E) A person effecting transactions in this state limited to those transactions described in section 15(h)(2) and (3) of the Securities Exchange Act of 1934, as amended; or

(F) A person designated by rule or order by the director.

(c) A person who is a partner, director or officer of a broker-dealer, issuer or owner of securities, or a person who occupies a similar status or performing similar functions, is a "salesperson" only if the person otherwise comes within this definition.

(19)(a) "Security" means a note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in a pension plan or profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, variable annuity, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such title or lease, real estate paper sold by a broker-dealer, mortgage banker, mortgage broker or a person described in subsection (1)(b) of this section to persons other than persons enumerated in ORS 59.035 (4), or, in general,

any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificates for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) "Security" does not include:

(A) An insurance or endowment policy or annuity contract, other than a variable annuity contract, under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or some other specified period;

(B) A beneficial interest in a voluntary inter vivos trust unless the trust is created solely for the purpose of voting or is part of an attempt to evade the provisions of ORS 59.005 to 59.451; or

(C) A beneficial interest in a testamentary trust.

(20)(a) "State investment adviser" means a person who, for compensation:

(A) Engages all or part of the time of the person, in this state, in the business of advising others, either directly or by mail or through publication or writing, as to the value of securities or as to the advisability of investing in, purchasing or selling securities;

(B) Engages all or part of the time of the person, in this state, in the business of managing an investment or trading account in securities for other persons; or

(C) Issues or promulgates, as part of a regular business in this state, analyses or reports concerning securities.

(b) "State investment adviser" does not include:

(A) An investment adviser representative;

(B) An institution or organization described in subsection (1)(b) of this section;

(C) A licensed broker-dealer whose performance of investment advisory services is solely incidental to the conduct of business as a broker-dealer and who receives no special compensation for such services;

(D) A salesperson licensed to a broker-dealer whose performance of investment advisory services is solely incidental to that person's activities as a salesperson and who receives no special compensation for such services;

(E) A publisher of or contributor to a bona fide newspaper, newsmagazine, investment manual or service, or business or financial publication of general, regular and paid circulation;

(F) A person whose only clients are federal covered investment advisers, state investment advisers, broker-dealers, mortgage bankers, mortgage brokers, banks, savings institutions or trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, as amended, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(G) A duly licensed lawyer, engineer or accountant whose performance of investment advisory services is solely incidental to the practice of the profession;

(H) A person whose advice, analyses or reports relate only to securities exempted by ORS 59.025 (1);

(I) A federal covered investment adviser in compliance with ORS 59.165 (7);

(J) A person, advising others, that has no place of business in this state and during the preceding 12-month period has had fewer than six clients, other than those persons included in subparagraph (F) of this paragraph, who are residents of this state; or

(K) Such other persons as the director may by rule or order designate. [1967 c.537 §3; 1971 c.624 §1; 1971 c.641 §1; 1973 c.366 §1; 1975 c.491 §1; 1985 c.349 §1; 1987 c.414 §§69, 69a; 1987 c.603 §1; 1989 c.197 §1; 1991 c.5 §18; 1993 c.158 §1; 1993 c.508 §27; 1993 c.744 §13; 1995 c.93 §26; 1995 c.622 §11; 1997 c.631 §375; 1997 c.772 §1; 1999 c.53 §1; 1999 c.315 §1; 2001 c.104 §14; 2001 c.377 §39a; 2003 c.270 §1; 2007 c.393 §1]

**59.020** [Repealed by 1967 c.537 §36]

**59.025 Securities exempt from registration.** The following securities are exempt from ORS 59.049 and 59.055:

(1)(a) A security issued or guaranteed by the United States or by a state, a political subdivision of a state or an agency or other instrumentality of any of the foregoing.

(b) Any other security offered in connection with or as part of the security set forth in paragraph (a) of this subsection if the security cannot be severed and sold separately from the security in paragraph (a) of this subsection.

(2) A security issued or guaranteed by a foreign government with which the United States is at the time of the sale maintaining diplomatic relations, or by a state, province or political subdivision thereof having the power of taxation or assessment, if the security is recognized as a valid obligation by such foreign government or state, province or political subdivision thereof.

(3) A security that represents an interest in or a direct obligation of or is guaranteed by a national bank, federal savings and loan association, federal credit union or federal land bank or joint stock land bank or national farm loan association.

(4) Any of the following securities:

(a) A security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Stock Exchange or any other exchange recognized by rule of the Director of the Department of Consumer and Business Services;

(b) A security designated or approved for designation upon notice of issuance under the National Association of Securities Dealers Automated Quotation System, Inc. National Market System;

(c) Any other security of the issuer of a security listed or designated under paragraph (a) or (b) of this subsection, that is of senior or substantially equal rank to the listed or designated security;

(d) A security issuable under rights or warrants listed or approved under paragraph (a), (b) or (c) of this subsection; or

(e) A warrant or right to purchase or subscribe to any security referred to in paragraph (a), (b), (c) or (d) of this subsection.

(5) A security maintaining a rating approved by the director in a recognized securities manual.

(6) A security that represents an interest in or a direct obligation of and that has been or is to be issued by a bank, trust company, savings and loan association, or credit union, that is subject to the examination, supervision and control of a regulatory agency of this state.

(7) Commercial paper issued, given or acquired in a bona fide way in the ordinary course of legitimate business, trade or commerce, when the commercial paper is not made the subject of a public offering.

(8) A security, the issuance of which is under supervision, regulation or control by the Public Utility Commission of this state, if the Public Utility Commission is exercising control over, or is regulating or supervising, the issuer thereof.

(9) Stock or membership certificates issued by an agricultural cooperative corporation or irrigation association when the stock is issued to evidence membership in the cooperative or association or as a patronage dividend and certificates issued to members or patrons by such a cooperative or association evidencing their respective interests in reserves or as patronage dividends. This exemption shall not apply to any cooperative or association that expects to engage in or is engaged in the production, processing or marketing of forest products.

(10) Stock or membership certificates issued by a fishing cooperative corporation, when the stock or certificates are issued to members of the cooperative corporation either for the purpose of showing membership in the cooperative corporation or for the purpose of showing their respective interests in reserves or patronage dividends. For purposes of this subsection, a fishing cooperative corporation is an association of persons engaged commercially in harvesting, marketing or processing products of aquatic life from fresh and salt water, that is formed or operated under ORS chapter 62 with the purpose of commercially harvesting, marketing or processing such products or engaging in group bargaining with respect to the sale of such products.

(11) Stock or membership certificates issued by an association of consumers formed or operated under ORS chapter 62 with the purpose of providing groceries to its consumer members, when the stock or certificates are issued to members either for the purpose of showing membership in the association or for the purpose of showing their respective interests in patronage dividends or reserves. For purposes of the exemption under this subsection:

(a) The price of stock or a membership certificate may not exceed $300.

(b) The benefits shall be limited to discounts on purchases or patronage dividends, or any combination of such discounts and dividends.

(c) The association may issue only one stock or membership certificate to an individual.

(12) Any security issued in connection with an employee's stock purchase, savings, pension, profit sharing or similar employee's benefit plan, provided:

(a) That the plan meets the requirements for qualification under section 401 of the Internal Revenue Code of 1986; and

(b) That the terms of the plan are fair, just and equitable to employees under rules of the director.

(13) Any security issued by a person:

(a) Organized and operated exclusively for religious, educational, benevolent, fraternal, charitable or reformatory purpose and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual; and

(b) Designated by rule of the director.

(14) Any other security exempted by rule of the director. [1967 c.537 §4; 1969 c.688 §1; 1973 c.428 §9; 1975 c.491 §2; 1985 c.193 §1; 1985 c.349 §2a; 1987 c.603 §1a; 1987 c.677 §9; 1989 c.171 §6; 1989 c.197 §2; 1991 c.67 §10; 1993 c.18 §14; 1997 c.772 §2]

**59.030** [Repealed by 1967 c.537 §36]

**59.035 Transactions exempt from registration.** The following transactions are exempt from ORS 59.049 and 59.055 if they are not part of an attempt to evade fraudulently any provision of the Oregon Securities Law:

(1) Any transaction by a sheriff, marshal or court appointed fiduciary.

(2) An isolated nonissuer transaction in this state, whether effected through a broker-dealer or not.

(3) Any transaction by an issuer in its securities pursuant to a pro rata offering to its existing security holders, if:

(a) No commission or remuneration, other than a standby fee, is paid or given directly or indirectly in connection with the transaction; and

(b) The issuer has not had an effective registration under the Oregon Securities Law nor has used this exemption within one year prior to the date of the offering or sale.

(4) Any offer, sale, transfer or delivery of securities to a bank, savings institution, trust company, insurance company, investment company, pension or profit-sharing trust, or other financial institution or institutional buyer (including but not limited to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the United States Department of Veterans Affairs and the Government National Mortgage Association), or to a broker-dealer, mortgage broker or mortgage banker, whether the purchaser is acting for itself or in a fiduciary capacity when the purchaser has discretionary authority to make investment decisions.

(5) Any transaction by an offeror with an accredited investor as defined in section 2 (15)(i) or (ii) of the Securities Act of 1933, as amended, or rules of the Director of the Department of Consumer and Business Services, but only if there is no public advertising or general solicitation in connection with the transaction.

(6) The issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security surrendered in exchange to make the conversion without the payment of additional consideration, if the security surrendered was, when issued, convertible and registered or exempt from registration.

(7) Any transaction in a vendor′s interest in a land sale contract, or a bond or note secured by a mortgage or trust deed upon real estate, so long as the entire vendor′s interest or mortgage or trust deed, with all the bonds or notes secured thereby, are sold to a single purchaser, in a single sale.

(8) Agency or principal sales by licensed broker-dealers, executed upon customers′ orders on any exchange or on the over-the-counter market, but not the solicitation of such orders, where there is no intent to avoid the provisions of the Oregon Securities Law and a public offering is not involved. Such broker-dealers shall keep and maintain, for two years from the date of the order, a record of all the sales executed upon customers′ orders, giving the name and address of each customer, the name and identity of the security involved, the dates of the sales, the price paid or received for the security, and the commission or other expenses charged to the customer.

(9) The offer or sale by a licensed broker-dealer of any security acquired in the ordinary and usual course of business, when such security is a part of an issue which has been registered in whole or in part, if the offer or sale is made in good faith and not directly or indirectly for the benefit of the issuer or for the promotion of any scheme or enterprise effecting a violation or an evasion of any provisions of the Oregon Securities Law, unless:

(a) The registration has been revoked or suspended; or

(b) The continued sale of the security has been enjoined.

(10) The offer or sale by licensed broker-dealer, acting either as principal or agent, of securities theretofore sold and distributed to the public, if the sale meets the requirements of paragraphs (a), (b) and (c) or (a), (b) and (d) of this subsection:

(a) Such securities are sold at prices reasonably related to the current market price thereof at the time of sale, and, if such licensed broker-dealer is acting as agent, the commission collected by such licensed broker-dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics;

(b) Such securities do not constitute an unsold allotment to or subscription by such broker-dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter;

(c) The issuer is listed in any recognized securities manual approved by rule by the director, and the listing contains the names of the issuer′s officers and directors, a balance sheet of the issuer as of a date not more than 18 months prior to the date of such sale, and a profit and loss statement for either the fiscal year preceding the date of the balance sheet or the most recent year of operations; and

(d) The securities are authorized for quotation on a nationwide automated quotations system approved by rule or order of the director.

(11) An offer, but not the sale, of a security meeting either of the following descriptions:

(a) A security for which registration statements have been filed under both the Oregon Securities Law and the Securities Act of 1933, as amended, if no stop or refusal order or order under ORS 59.105 is in effect and no public proceeding or examination looking toward such an order is pending. However, an offer for such a security may not be accepted until the securities have been registered as provided in the Oregon Securities Law.

(b) A security for which a registration statement has been filed under the Oregon Securities Law and the offer is allowed by the director. However, an offer for such a security may not be accepted until the securities have been registered as provided in the Oregon Securities Law.

(12)(a) Any transactions in securities by an offeror within or without this state that meet all of the requirements of subparagraph (A) or (B) of this paragraph and all of the requirements of subparagraphs (C), (D) and (E) of this paragraph:

(A) When the offeror is an issuer, the transactions result in not more than 10 purchasers within this state of securities of the issuer during any 12 consecutive months.

(B) When the offeror is a nonissuer the securities must have been bought and held for at least 12 consecutive months and the transactions result in not more than 10 purchasers within this state of securities from the nonissuer during any 12 consecutive months.

(C) No commission or other remuneration is paid or given directly or indirectly in connection with the offer or sale of the securities.

(D) No public advertising or general solicitation is used in connection with any transaction under this exemption.

(E) At the time of any transaction under this exemption the offeror does not have under the Oregon Securities Law an application for registration or an effective registration of securities which are part of the same offering.

(b) In connection with transactions under paragraph (a) of this subsection:

(A) Purchasers of securities of the offeror registered under ORS 59.065, exempt under ORS 59.025, exempt under any other subsection of this section, or for which a notice has been filed under ORS 59.049, are not counted as purchasers under this exemption.

(B) Repeat transactions with persons who are counted as purchasers within Oregon under paragraph (a) of this subsection do not increase the number of purchasers. However, a purchaser remains a purchaser for 12 months following the month of the last sale to that purchaser.

(C) No limitations are placed on the number of transactions or purchasers without this state. No limitations are placed on the number of offers under this exemption.

(13) A transaction with security holders, pursuant to a statutory vote by such security holders on a merger, consolidation, partial or complete liquidation, reclassification of securities, plan of exchange or sale of assets, in consideration of the issuance of securities of another issuer.

(14) Capital stock issued by a professional corporation organized under ORS chapter 58.

(15) Any other transaction exempted by rule of the director. [1967 c.537 §5; 1971 c.624 §2; 1973 c.823 §§91,156; 1985 c.349 §3; 1987 c.603 §2; 1989 c.197 §3; 1991 c.67 §11; 1997 c.772 §3; 2001 c.32 §1]

**59.045 Authority of director to deny, withdraw or condition exemptions.** (1) The Director of the Department of Consumer and Business Services may by rule or order, as to any security or any type of security transaction:

(a) Deny, withdraw or condition the exemptions allowed by ORS 59.025 and 59.035 if, in the director's opinion, the further sale of the security in this state would work a fraud or imposition upon the purchaser.

(b) Waive the conditions of ORS 59.035 (3)(b) and (12)(a)(B).

(c) Provide which exemptions may or may not be used in connection with other exemptions or provide procedures for determining which offerings are or are not integrated with other offerings within the same or other exemptions.

(2) The director may by order withdraw, condition or deny the use of any exemption by a person if the director has reason to believe that the person has engaged in or is about to engage in an act or practice constituting a violation of the Oregon Securities Law or that the use of any exemption by that person would work a fraud or imposition on purchasers.

(3) No person shall be liable under the Oregon Securities Law by reason of the withdrawal of an exemption under this section if that person sustains the burden of proof that that person did not know, and in the exercise of reasonable care could not

have known of the withdrawal. [1967 c.537 §6; 1973 c.366 §3; 1985 c.349 §4]

**59.047** [1981 c.292 §2; 1985 c.349 §5; repealed by 1987 c.603 §30]

**59.049 Federal covered securities exempt from registration; notice filings; fees; rules.** Federal covered securities may be offered and sold in this state without registration, subject to the following:

(1) Unless otherwise exempt from registration under ORS 59.025 or 59.035, any federal covered security that is subject to section 18(b)(2) of the Securities Act of 1933, as amended, may be offered and sold only upon a filing of a notice with, and the payment of the required fee to, the Director of the Department of Consumer and Business Services. In lieu of the notice, an issuer may file a copy of its registration statement as filed with the Securities and Exchange Commission together with fees required under this subsection. The form of notice shall be prescribed by the director. The director shall set the amount of the fee by rule. The fee is not refundable. The effective date of the notice is the later of the date the notice is received by the director or the date specified by the filer of the notice.

(2) Unless otherwise exempt from registration under ORS 59.025 or 59.035, any federal covered security that is subject to section 18(b)(3) or (4), other than section 18(b)(4)(D), of the Securities Act of 1933, as amended, may be offered and sold only upon a filing of a notice with, and the payment of the required fee to, the director. The form of notice shall be prescribed by the director. The director shall set the fee by rule in an amount per $1,000 of the aggregate price of the securities which are to be offered in this state. The fee is not refundable. The effective date of the notice is the later of the date the notice is received by the director or the date specified by the filer of the notice.

(3) Unless otherwise exempt from registration under ORS 59.025 or 59.035, any federal covered security that is subject to section 18(b)(4)(D) of the Securities Act of 1933, as amended, may be offered and sold only upon a filing of a notice with, and the payment of the required fee to, the director, not later than 15 days after the first sale of such federal covered security in this state. The notice shall be filed on Securities and Exchange Commission Form D or on a form of notice prescribed by the director. The director shall set the fee by rule in an amount per $1,000 of the aggregate price of the securities which are to be offered in this state. The fee is not refundable. The effective date of the notice is the later of the date the notice is received by the director or the date specified by the filer of the notice.

(4)(a) The director shall set the fees described in subsections (1) to (3) of this section in an amount that the director determines is equal as nearly as possible to the national midpoint for similar fees charged by all other state regulatory agencies within the United States responsible for regulating securities.

(b) The director may adjust the amount of a fee described in subsections (1) to (3) of this section every two years to reflect changes in the national midpoint for a similar fee.

(c) In determining the national midpoint for similar fees under this section, the director may consider national midpoints determined by the North American Securities Administrators Association, the National Association of Securities Dealers or the United States Securities and Exchange Commission.

(5) The director may issue an order suspending the offer and sale of a federal covered security if the director finds that there is a failure to comply with any requirement under this section.

(6)(a) The filer of a notice under subsections (1) to (3) of this section shall amend the notice when there is a change in the name of the offering or, in the case of offerings for which notice is filed pursuant to subsection (2) or (3) of this section, when there is an increase in the aggregate price of the securities which are to be offered in this state. There is no fee required for an amendment that does not increase the aggregate offering amount. Notices amending the aggregate offering amount shall include the fee calculated in accordance with subsection (2) or (3) of this section, less amounts previously paid under the prior notice filing, but the fee may not be less than $100. The fee is not refundable.

(b) If an issuer or person sells federal covered securities in this state for a price in excess of the aggregate price for which fees were initially paid under this section, the seller shall pay a fee of three times the difference between the initial fee paid and the fee required under this section for the federal covered securities sold in this state. The additional fee may not be less than $100. The fee is not refundable.

(7) The director, by rule or otherwise, may waive any or all of the provisions of this section. [1997 c.772 §6; 2001 c.104 §15; 2003 c.270 §2; 2003 c.785 §1]

**59.050** [1981 c.292 §3; 1985 c.349 §6; repealed by 1987 c.603 §30]

**59.051 Statutory references to federal law.** References in ORS 59.005 to 59.451, 59.991 and 59.995 to federal statutes or federal regulations shall be construed to refer

to those statutes or regulations as they are in effect on April 19, 1999. [1999 c.53 §8]

**59.052** [1981 c.292 §4; 1985 c.349 §7; repealed by 1987 c.603 §30]

**(Registration of Securities)**

**59.055 Conditions of offer and sale of securities.** It is unlawful for any person to offer or sell any security in this state, unless:

(1) The security is registered and the offer or sale is not in violation of any rule or order of the Director of the Department of Consumer and Business Services or any condition, limitation or restriction imposed by the director upon such registration;

(2) The security is exempt under ORS 59.025 or the sale is exempt under ORS 59.035; or

(3) The security is a federal covered security for which a notice has been filed and fees have been paid under ORS 59.049. [1967 c.537 §7; 1997 c.772 §4]

**59.065 Registration procedures; application; fees; rules.** (1) The Director of the Department of Consumer and Business Services by rule shall establish procedures for registering securities. The director may coordinate registration in this state with any federal securities Act or national registration system.

(2) Every registration application submitted shall be accompanied by a fee. The director shall set the fee by rule in an amount per $1,000 of the aggregate price of the securities that are to be offered in this state. The fee is not refundable.

(3)(a) The director shall set the fee described in subsection (2) of this section in an amount that the director determines is equal as nearly as possible to the national midpoint for similar fees charged by all other state regulatory agencies within the United States responsible for regulating securities.

(b) The director may adjust the amount of the fee described in subsection (2) of this section every two years to reflect changes in the national midpoint for a similar fee.

(c) In determining the national midpoint for similar fees under this section, the director may consider national midpoints determined by the North American Securities Administrators Association, the National Association of Securities Dealers or the United States Securities and Exchange Commission.

(4) If a registrant sells securities in Oregon in excess of the quantity registered or for a price in excess of the aggregate price for which fees were initially paid, the registrant may obtain registration of the excess securities by paying three times the difference between the initial fee paid and the fee required under subsection (2) of this section for the securities sold in Oregon. The additional fee may not be less than $100. Registration of the excess securities shall be effective retroactively to the date of sale. [1967 c.537 §8; 1973 c.366 §4; 1985 c.349 §8; 1987 c.603 §3; 1997 c.772 §7; 2003 c.270 §3; 2003 c.785 §2]

**59.070 Amended registration application; when required; fees.** (1) A registrant under ORS 59.065 shall amend the registration application submitted under ORS 59.065 when there are material changes in the terms and conditions of the original registration. "Material changes in the terms and conditions of the original registration" includes an increase in the aggregate amount of securities to be offered in Oregon, change in the type of securities or change in the identity of the issuer or owner.

(2) Applications for an amendment to increase the aggregate amount of securities to be offered in Oregon shall include the fee calculated in accordance with ORS 59.065 (2), less amounts previously paid under the prior registration. The fee may not be less than $100.

(3) This section does not relieve a registrant from the obligation to notify the director concerning material changes in facts and circumstances concerning the offering. [1985 c.349 §10; 1987 c.603 §4; 2003 c.785 §3]

**59.075 Registration by director; expiration; renewal; fee; rules.** (1) The Director of the Department of Consumer and Business Services shall register the securities unless the director finds that registration should be denied on one or more of the grounds specified in ORS 59.105. The securities may thereafter be sold in accordance with the registration and any conditions, limitations or restrictions imposed by the director.

(2) Every registration of securities and every notice filed under ORS 59.049 shall expire one year after the date of the registration or effective date of the notice. The director may establish a different expiration date for purposes of coordination with any national registration or notice filing system. When a registration or notice filing is amended, the registration or notice filing expires one year after the date of the initial registration or effective date of the notice filing unless the amended registration or notice filing provides otherwise.

(3) The director by rule shall establish procedures for renewing registrations of securities and notice filings.

(4) Every renewal application and every renewal of a notice filing shall be accompanied by a fee computed in accordance with ORS 59.049 or ORS 59.065 (2), as applicable. The fee is not refundable.

(5) If the director finds that no ground for suspension or revocation of the registration exists under ORS 59.105, the director shall renew the registration, subject to any conditions, limitations and restrictions imposed by the director. The renewed registration or notice filing shall expire one year after the date of expiration of the original registration, or effective date of the notice filing or last renewal thereof. The director may establish a different expiration date for purposes of coordination with any national registration or notice filing system. [1967 c.537 §9; 1985 c.349 §12; 1987 c.603 §5; 1997 c.772 §8]

**59.078** [1973 c.366 §8; repealed by 1987 c.603 §30]

**59.085 Conditions imposed on registration.** The Director of the Department of Consumer and Business Services may, by rule or order, impose on a registration such conditions, limitations and restrictions as the director deems appropriate to make the issue fair, just and equitable, including the following:

(1) That a prospectus containing any designated part of the information submitted in connection with registration be sent or given to each person to whom a security is offered or sold.

(2) That the security be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed with the director or preserved for a period up to three years specified in the rule or order.

(3) That any of the following be deposited in escrow on terms approved by the director:

(a) Any security issued or to be issued for a consideration substantially different from the public offering price or for a consideration other than cash.

(b) The proceeds from the sale of the security until the issuer receives an amount specified by the director. [1967 c.537 §10]

**59.095 Approval of plan to issue securities in exchange for other securities, claims or property.** (1) The proponents of a plan pursuant to which a security is to be issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, except a security the issuance of which is under supervision, regulation or control by the Public Utility Commission of this state, may request approval of such plan by the Director of the Department of Consumer and Business Services.

(2) The request for approval shall be made by filing a registration statement, as provided in ORS 59.065, with a detailed statement of the plan. The director shall set the plan down for hearing and require the proponents of the plan to give notice of the hearing to all persons to whom securities are to be issued in such exchange. All such persons shall have the right to appear at the hearing.

(3) The director shall, after the hearing, consider the fairness of the terms and conditions of the plan, and, if the director finds that the plan is fair, just and equitable and free from fraud, shall approve it, subject to such conditions, limitations and restrictions as the director may impose. If the director finds that the plan is unfair, unjust or inequitable or not free from fraud, the director shall deny the request, and give notice of the denial, at the expense of the proponents, to all persons who were entitled to receive or received notice of the hearing. [1967 c.537 §11]

**59.105 Denial, suspension or revocation of registration.** (1) Except as provided in subsection (2) of this section, the Director of the Department of Consumer and Business Services may by order deny, suspend or revoke any registration, if the director finds that:

(a) The proposed plan of business of the issuer, the characteristics and terms of sale of the securities to be sold, or the proposed methods of sale and distribution are unfair, unjust or inequitable;

(b) The issuer is insolvent or in unsound financial condition;

(c) The applicant, registrant or issuer has violated any of the provisions of the Oregon Securities Law, or any rule or order of the director of which the applicant, registrant or issuer had notice;

(d) The applicant, registrant or issuer has been or is engaged or is about to engage in dishonest or fraudulent conduct with regard to securities;

(e) The applicant, registrant, or issuer has been convicted of a misdemeanor, an essential element of which is fraud, or of a felony;

(f) The applicant, registrant or issuer has knowingly made or caused to be made to the director any false representation of a material fact, or has suppressed or withheld from the director any material information;

(g) The applicant, registrant or issuer has refused to permit an examination to be made by the director, or has failed to file any report, including any certified financial report, or furnish any information required by the director in connection with the Oregon Securities Law; or

(h) Unreasonable amounts or kinds of commissions or other remunerations, promoter's profits or participation or unreasonable options have been or are to be given

or allowed directly or indirectly in connection with the sale or distribution of the securities.

(2) The director may enter an order against the applicant, registrant or issuer under subsection (1) of this section if any partner, officer or director of an applicant, registrant or issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, registrant or issuer has been guilty of any act or omission which would be cause for denying, suspending or revoking the registration of an individual applicant, registrant or issuer, except:

(a) This subsection shall not apply to subsection (1)(a) and (b) of this section.

(b) The director may not enter an order suspending or revoking a registration under this subsection, pursuant to subsection (1)(e) of this section, without 10 days' prior written notice to the registrant. [1967 c.537 §12; 1989 c.197 §4]

**59.110** [Amended by 1953 c.690 §3; 1955 c.201 §1; 1957 c.47 §1; 1963 c.244 §1; 1965 c.241 §2; repealed by 1967 c.537 §36]

**59.115 Liability in connection with sale or successful solicitation of sale of securities; recovery by purchaser; limitations on proceeding; attorney fees.** (1) A person is liable as provided in subsection (2) of this section to a purchaser of a security if the person:

(a) Sells or successfully solicits the sale of a security, other than a federal covered security, in violation of the Oregon Securities Law or of any condition, limitation or restriction imposed upon a registration or license under the Oregon Securities Law; or

(b) Sells or successfully solicits the sale of a security in violation of ORS 59.135 (1) or (3) or by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading (the buyer not knowing of the untruth or omission), and who does not sustain the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(2) The purchaser may recover:

(a) Upon tender of the security, the consideration paid for the security, and interest from the date of payment equal to the greater of the rate of interest specified in ORS 82.010 for judgments for the payment of money or the rate provided in the security if the security is an interest-bearing obligation, less any amount received on the security; or

(b) If the purchaser no longer owns the security, damages in the amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it and less interest on such value at the rate of interest specified in ORS 82.010 for judgments for the payment of money from the date of disposition.

(3) Every person who directly or indirectly controls a seller liable under subsection (1) of this section, every partner, limited liability company manager, including a member who is a manager, officer or director of such seller, every person occupying a similar status or performing similar functions, and every person who participates or materially aids in the sale is also liable jointly and severally with and to the same extent as the seller, unless the nonseller sustains the burden of proof that the nonseller did not know, and, in the exercise of reasonable care, could not have known, of the existence of facts on which the liability is based. Any person held liable under this section shall be entitled to contribution from those jointly and severally liable with that person.

(4) Notwithstanding the provisions of subsection (3) of this section, a person whose sole function in connection with the sale of a security is to provide ministerial functions of escrow, custody or deposit services in accordance with applicable law is liable only if the person participates or materially aids in the sale and the purchaser sustains the burden of proof that the person knew of the existence of facts on which liability is based or that the person's failure to know of the existence of such facts was the result of the person's recklessness or gross negligence.

(5) Any tender specified in this section may be made at any time before entry of judgment.

(6) Except as otherwise provided in this subsection, no action or suit may be commenced under this section more than three years after the sale. An action under this section for a violation of subsection (1)(b) of this section or ORS 59.135 may be commenced within three years after the sale or two years after the person bringing the action discovered or should have discovered the facts on which the action is based, whichever is later. Failure to commence an action on a timely basis is an affirmative defense.

(7) An action may not be commenced under this section solely because an offer was made prior to registration of the securities.

(8) Any person having a right of action against a broker-dealer, state investment adviser or against a salesperson or investment adviser representative acting within the course and scope or apparent course and scope of authority of the salesperson or in-

vestment adviser representative, under this section shall have a right of action under the bond or irrevocable letter of credit provided in ORS 59.175.

(9) Subsection (4) of this section shall not limit the liability of any person:

(a) For conduct other than in the circumstances described in subsection (4) of this section; or

(b) Under any other law, including any other provisions of the Oregon Securities Law.

(10) Except as provided in subsection (11) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(11) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (10) of this section if the action under this section is maintained as a class action pursuant to ORCP 32. [1967 c.537 §13(1), (2), (3), (4), (5), (7); 1985 c.349 §13; 1987 c.158 §10; 1987 c.603 §6; 1989 c.197 §5; 1991 c.331 §15; 1991 c.762 §1; 1993 c.508 §28; 1995 c.93 §27; 1995 c.696 §9; 1997 c.772 §9; 2003 c.576 §318; 2003 c.631 §1; 2003 c.786 §1]

**59.120** [Amended by 1955 c.196 §1; 1957 c.116 §1; 1963 c.244 §2; repealed by 1967 c.537 §36]

**59.125 Effect of notice of offer to repay purchaser; exceptions; registration of transaction.** (1) Except as provided in subsection (3) of this section, no action or suit may be commenced under ORS 59.115 if the purchaser has received before suit a written notice as outlined in subsection (2) of this section.

(2) The notice shall contain:

(a) An offer to pay the amount specified in ORS 59.115 (2)(a) upon tender of the security; and

(b) A statement of the effect on the purchaser's rights of failure to respond as required in subsection (3) of this section.

(3) An action or suit under this section may be commenced after receipt of a notice as outlined in subsection (2) of this section:

(a) If the purchaser owned the security when the notice was received, accepted the payment offer within 30 days after its receipt, and has not been paid the full amount offered; or

(b) If the purchaser did not own the security when the notice was received and, within 30 days after receipt, gave written notice of inability to tender back the security.

(4) An offer to repay the purchaser pursuant to this section involves the offer or sale of a security. The transaction must be registered under ORS 59.055 unless there is an exemption from the registration requirement or a notice is filed under ORS 59.049. [1967 c.537 §13(6); 1985 c.349 §14; 1997 c.772 §10]

**59.127 Liability in connection with purchase or successful solicitation of purchase of securities; recovery by seller; limitations on proceeding; attorney fees.** (1) A person is liable as provided in subsection (2) of this section to the person selling the security, if the person:

(a) Purchases or successfully solicits the purchase of a security, other than a federal covered security, in violation of any condition, limitation or restriction imposed upon a registration under the Oregon Securities Law; or

(b) Purchases or successfully solicits the purchase of a security in violation of ORS 59.135 (1) or (3) or by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading (the seller not knowing of the untruth or omission), and if the person does not sustain the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(2) The seller may recover:

(a) Upon a tender of the consideration paid for the security, the security plus interest from the date of purchase equal to the greater of the rate of interest specified in ORS 82.010 for judgments for the payment of money, or the rate provided in the security if the security is an interest-bearing obligation;

(b) Damages in the amount that would be recoverable upon a tender, plus any amount received on the security, less the consideration paid for the security; or

(c) If the purchaser no longer owns the security, damages equal to the value of the security when the purchaser disposed of it plus interest on such value at the rate of interest specified in ORS 82.010 for judgments for the payment of money from the date of disposition, less the consideration paid for the security.

(3) Every person who directly or indirectly controls a purchaser liable under subsection (1) of this section, every partner, limited liability company manager, including a member who is a manager, officer or director of such purchaser, every person occupying a similar status or performing similar functions, and every person who participates or materially aids in the purchase is also liable jointly and severally with and to the same extent as the purchaser, unless the nonpurchaser sustains the burden of proof that the nonpurchaser did not know, and, in

the exercise of reasonable care, could not have known, of the existence of facts on which the liability is based. Any person held liable under this section shall be entitled to contribution from those jointly and severally liable with the person.

(4) Notwithstanding the provisions of subsection (3) of this section, a person whose sole function in connection with the purchase of a security is to provide ministerial functions of escrow, custody or deposit services in accordance with applicable law is liable only if the person participates or materially aids in the purchase and the seller sustains the burden of proof that the person knew of the existence of facts on which liability is based or that the person's failure to know of the existence of such facts was the result of the person's recklessness or gross negligence.

(5) Any tender specified in this section may be made at any time before entry of judgment.

(6) Except as otherwise provided in this subsection, no action or suit may be commenced under this section more than three years after the purchase. An action under this section for a violation of subsection (1)(b) of this section or ORS 59.135 may be commenced within three years after the purchase or two years after the person bringing the action discovered or should have discovered the facts on which the action is based, whichever is later. Failure to commence an action on a timely basis is an affirmative defense.

(7) Any person having a right of action against a broker-dealer, state investment adviser or against a salesperson or investment adviser representative acting within the course and scope or apparent course and scope of the authority of the salesperson or investment adviser representative, under this section shall have a right of action under the bond or irrevocable letter of credit provided in ORS 59.175.

(8) Subsection (4) of this section shall not limit the liability of any persons:

(a) For conduct other than in the circumstances described in subsection (4) of this section; or

(b) Under any other law, including any other provisions of the Oregon Securities Law.

(9) Except as provided in subsection (10) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(10) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (9) of this section if the action under this section is maintained as a class action pursuant to ORCP 32. [1975 c.300 §2; 1985 c.349 §14a; 1987 c.158 §11; 1987 c.603 §7; 1991 c.762 §2; 1993 c.508 §29; 1995 c.93 §28; 1995 c.696 §10; 1997 c.772 §11; 2003 c.576 §319; 2003 c.631 §2; 2003 c.786 §2]

**59.130** [Amended by 1953 c.549 §138; repealed by 1967 c.537 §36]

**59.131 Effect of notice of intent to return unlawfully purchased security; contents of notice; registration of transaction.** (1) Except as provided in subsection (3) of this section, no action or suit may be commenced under ORS 59.127 if the seller has received before suit a written notice of intent to return the security as outlined in subsection (2) of this section.

(2) The notice shall contain:

(a) An offer to tender the security and interest from the date of purchase, at a rate equal to the greater of the rate of interest specified in ORS 82.010 for judgments for the payment of money or the rate provided in the security if the security is an interest-bearing obligation, less the consideration paid for the security; and

(b) A statement of the effect on the seller's rights of failure to respond as required in subsection (3) of this section.

(3) An action or suit under this section may be commenced after receipt of a notice as outlined in subsection (2) of this section:

(a) If the seller accepts the offer and gives notice of acceptance within three days after receipt of the offer and fails to receive the contents of such offer as specified in subsection (2)(a) of this section within one day from the date the notice of acceptance was sent; or

(b) If the seller elects to recover damages as specified in subsection (2)(b) of this section and gives notice of the election within 30 days after receipt of the offer.

(4) An offer to tender the security pursuant to this section involves the offer for sale of a security. The transaction must be registered under ORS 59.055 unless there is an exemption from the registration requirement or a notice is filed under ORS 59.049. [1975 c.300 §3; 1985 c.349 §15; 1987 c.603 §8; 1997 c.772 §12; 2003 c.576 §320]

**59.135 Fraud and deceit with respect to securities or securities business.** It is unlawful for any person, directly or indirectly, in connection with the purchase or sale of any security or the conduct of a securities business or for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

(1) To employ any device, scheme or artifice to defraud;

(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or

(4) To make or file, or cause to be made or filed, to or with the Director of the Department of Consumer and Business Services any statement, report or document which is known to be false in any material respect or matter. [1967 c.537 §14]

**59.137 Liability in connection with violation of ORS 59.135; damages; defense; attorney fees; limitations on proceeding.** (1) Any person who violates or materially aids in a violation of ORS 59.135 (1), (2) or (3) is liable to any purchaser or seller of the security for the actual damages caused by the violation, including the amount of any commission, fee or other remuneration paid, together with interest at the rate specified in ORS 82.010 for judgments for the payment of money, unless the person who materially aids in the violation sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of the existence of the facts on which the liability is based.

(2) Any person who directly or indirectly controls a person liable under subsection (1) of this section and every partner, limited liability company manager, including a member who is a manager, officer or director or a person occupying a status or performing functions of a person liable under subsection (1) of this section, is jointly and severally liable to the same extent as a person liable under subsection (1) of this section, unless the person who may be liable under this subsection sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of the existence of the facts on which the liability is based.

(3) Any person held liable under this section is entitled to contribution from those persons jointly and severally liable with that person.

(4) Except as provided in subsection (5) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(5) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (4) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(6) An action or suit may be commenced under this section within the later of:

(a) Three years after the date of the purchase or sale of a security to which the action or suit relates; or

(b) Two years after the person bringing the action or suit discovered or should have discovered the facts on which the action or suit is based.

(7) Failure to commence an action or suit under this section on a timely basis is an affirmative defense. [2003 c.631 §4; 2003 c.786 §3]

**59.140** [Repealed by 1967 c.537 §36]

**59.145 Effect of notice filing, registration or license.** (1) Neither the fact that a notice filing or an application for registration or a license under the Oregon Securities Law has been filed nor the fact that a person is effectively licensed or a security is effectively registered constitutes a finding by the Director of the Department of Consumer and Business Services that any document filed under the Oregon Securities Law is true, complete and not misleading. Neither such fact nor the fact that an exemption or exception is available for a security or a transaction means that the director has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security or transaction.

(2) It is unlawful to make, or cause to be made, to a prospective purchaser, customer or client a representation inconsistent with subsection (1) of this section. [1967 c.537 §15; 1989 c.197 §6; 1997 c.772 §13]

**59.150** [Amended by 1957 c.45 §1; repealed by 1967 c.537 §36]

**59.155 Director is agent for service of process; manner of service; exceptions.** (1) The Director of the Department of Consumer and Business Services shall be an agent for the following persons upon whom may be served at any time any process, notice or demand in a civil proceeding under the Oregon Securities Law, including a proceeding brought by the director:

(a) Every licensee or registrant or applicant for a license or registration of a security, every person who files a notice under ORS 59.049 or 59.175, and every person who offers or sells a security in this state, directly or indirectly, unless the security or the sale is exempt from ORS 59.055; and

(b) Every person, a resident or nonresident of this state, who has engaged in conduct prohibited or made actionable under the Oregon Securities Law.

(2) Service shall be made by:

(a) Serving the director or a clerk on duty at the Department of Consumer and

Business Services a copy of the process, notice or demand, with any papers required by law to be delivered in connection with the service, or by mailing to the department a copy of the process, notice or demand by certified or registered mail, and a $2 fee for each party being served;

(b) Transmittal by the person instituting the proceeding of notice of the service on the director and one copy of the process, notice or demand and accompanying papers to the person being served by certified mail:

(A) At such person's address, if any, as shown by the records of the director; and

(B) At such address the use of which the person initiating the proceedings knows or on the basis of reasonable inquiry has reason to believe is most likely to result in actual notice; and

(c) Filing with the appropriate court or other body, as part of the return of service, of the return receipt of mailing and an affidavit of the person initiating the proceedings that this section has been complied with.

(3) The procedure permitted by this section shall not be available when personal jurisdiction can otherwise be obtained in this state.

(4) After completion of initial service upon the director, no additional documents need be served upon the director to maintain jurisdiction in the same proceeding or to give notice of any motion or provisional process. [1967 c.537 §16; 1987 c.603 §9; 1989 c.197 §7; 1997 c.772 §14]

**59.160** [Repealed by 1967 c.537 §36]

**(Licensing of Broker-Dealers, Investment Advisers and Salespersons)**

**59.165 Licensing of broker-dealers, investment advisers and salespersons required; rules.** (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesperson unless the person is licensed under the Oregon Securities Law.

(2) A broker-dealer or state investment adviser may not be licensed in this state unless the broker-dealer or state investment adviser has at least one salesperson licensed in this state.

(3) It is unlawful for a broker-dealer or issuer or owner of securities to employ a salesperson to act in this state unless the salesperson is licensed under the Oregon Securities Law to the broker-dealer or issuer or owner of securities. Only a natural person may be licensed as a salesperson.

(4) It is unlawful for:

(a) A state investment adviser to employ an investment adviser representative in this state unless the investment adviser representative is licensed under the Oregon Securities Law to the state investment adviser;

(b) A federal covered investment adviser to employ an investment adviser representative who has a place of business in this state to act in this state unless the investment adviser representative is licensed under the Oregon Securities Law to the federal covered investment adviser; or

(c) An individual, except as otherwise provided in subsection (8) of this section, to transact business in this state as an investment adviser representative unless the individual is licensed as an investment adviser representative. Only a natural person may be licensed as an investment adviser representative.

(5) A person may not be licensed as:

(a) A salesperson or investment adviser representative for more than one broker-dealer, federal covered investment adviser, state investment adviser or issuer or owner of securities at the same time, except as may be allowed by rule or order of the Director of the Department of Consumer and Business Services.

(b) A salesperson or investment adviser representative unless the person is employed by a broker-dealer, federal covered investment adviser, state investment adviser or issuer or owner of securities.

(6) It is unlawful for any person to transact business in this state as a state investment adviser unless the person:

(a) Is licensed as such under the Oregon Securities Law; or

(b) Is licensed as a broker-dealer without the imposition of a condition under ORS 59.215 (4).

(7) Except for federal covered investment advisers whose activities are described by ORS 59.015 (20)(b) and licensed broker-dealers transacting business as federal covered investment advisers in this state, it is unlawful for any federal covered investment adviser to conduct an advisory business in this state unless such person makes notice filings with the director of such documents filed with the Securities and Exchange Commission as the director may by rule or otherwise require and pays the fee, including the notice filing fee, described in ORS 59.175. The director may issue an order suspending the conduct of an investment advisory business in this state if the director finds that there is a failure to comply with any requirement under this section.

(8) Notwithstanding any other provision of this section, an individual performing the activities of an investment adviser represen-

tative and who would otherwise be required to be licensed as an investment adviser representative is not required to be separately licensed as an investment adviser representative if:

(a) The individual is licensed to a licensed broker-dealer, the broker-dealer is transacting business as a federal covered investment adviser or a state investment adviser under the provisions of subsection (6)(b) of this section and the person is performing investment adviser activities on behalf of the broker-dealer; or

(b) The individual is licensed to a licensed broker-dealer and the broker-dealer directly receives all compensation otherwise earned by the person in connection with the investment advisory activities being transacted in this state. The broker-dealer may or may not further distribute any or all compensation received to the licensed salesperson. [1967 c.537 §17; 1973 c.366 §5; 1985 c.349 §16; 1987 c.603 §10; 1989 c.197 §8; 1993 c.508 §30; 1995 c.622 §12; 1997 c.772 §15; 1999 c.53 §2; 2003 c.270 §4; 2003 c.785 §5]

**59.170** [Amended by 1961 c.352 §1; repealed by 1967 c.537 §36]

**59.175 Procedures for notice filing and licensing; rules; examination; bond, letter of credit or other security; filing trade name or assumed business name; fees.** (1) The Director of the Department of Consumer and Business Services by rule shall establish procedures for notice filings required of federal covered investment advisers as well as procedures for licensing broker-dealers, state investment advisers, investment adviser representatives and salespersons. The director may coordinate notice filings or licensing with any national registration, licensing or notice filing system.

(2) The director may require an applicant for a license as a broker-dealer or state investment adviser, including the applicant's partners, directors, officers or any person occupying a similar status or performing similar functions, and any person directly or indirectly controlling such applicant and a person for whom application for a license as a salesperson or investment adviser representative is made, to pass an examination on such person's knowledge and understanding of the Oregon Securities Law and the securities business. The director may establish by rule a fee for the examination.

(3) The director may make such further examination of the applicant and the applicant's affairs as the director deems advisable and may require by rule or order that the applicant publish an announcement of the application in such manner as the director may specify.

(4)(a) Except as otherwise provided in paragraph (b) or (c) of this subsection, every applicant for a license as a broker-dealer or state investment adviser shall file with the director a corporate surety bond or irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 or such other security as the director may approve by rule running to the State of Oregon in a sum to be established by rule of the director, but in no event more than $100,000.

(b) Licensed broker-dealers subject to section 15 of the Securities Exchange Act of 1934, as amended, are not required to comply with paragraph (a) of this subsection, nor are such licensed broker-dealers required to comply with any net capital requirements imposed by the director by rule or otherwise.

(c) A licensed state investment adviser who has its principal place of business in a state other than this state shall be exempt from the requirements of paragraph (a) of this subsection and shall be further exempt from any net capital requirements imposed by the director by rule or otherwise, provided that any such licensed state investment adviser is registered or licensed as a state investment adviser in the state where it maintains its principal place of business and is in compliance with such state's bonding or net capital requirements.

(5)(a) Subject to paragraph (b) of this subsection, if the application, surety bond, irrevocable letter of credit or other security and fees are in order and the director is satisfied that the application should not be denied upon one or more of the grounds specified in ORS 59.205 to 59.225, the director shall license the broker-dealer, state investment adviser, salesperson or investment adviser representative.

(b) If the director determines under ORS 59.205 or 59.215 that a condition or restriction should apply to the license, the director, at the time the license is issued, shall specify in writing to the licensee the condition or restriction applicable to the license.

(6) A licensee under ORS 59.165 shall amend the license application when there are material changes in the information contained in the original application.

(7) An applicant for or a person holding a license issued under ORS 59.005 to 59.451 may file with the director a trade name, as defined in ORS 647.005, or an assumed business name, as defined in ORS 648.005. The trade name or assumed business name shall be filed in a form and manner established by rule by the director. If the application is complete and the fee described in subsection (8) of this section is paid, the director shall issue an order authorizing the licensee to operate under the trade name or assumed business name. The order shall remain in effect until canceled, suspended or revoked.

(8) The director shall charge and collect fees for:

(a) An application for a license as a broker-dealer or state investment adviser;

(b) An application to renew a license as a broker-dealer or state investment adviser;

(c) An application for a license as a salesperson;

(d) An application to renew a license as a salesperson;

(e) An application for a license as an investment adviser representative;

(f) An application to renew a license as an investment adviser representative;

(g) A notice filing for a federal covered investment adviser;

(h) A notice filing renewal for a federal covered investment adviser; and

(i) A filing for use of a trade name or an assumed business name.

(9)(a) The director shall set the fees described in subsection (8) of this section in an amount that the director determines is equal as nearly as possible to the national midpoint for similar fees charged by all other state regulatory agencies within the United States responsible for regulating securities.

(b) The director may adjust the amount of a fee described in subsection (8) of this section every two years to reflect changes in the national midpoint for a similar fee.

(c) In determining the national midpoint for similar fees under this section, the director may consider national midpoints determined by the North American Securities Administrators Association, the National Association of Securities Dealers or the United States Securities and Exchange Commission.

(10) Except as provided in this subsection, the fees under this section are not refundable. The director may provide for a method of equitably adjusting the payment of fees for broker-dealers, federal covered investment advisers, state investment advisers, salespersons and investment adviser representatives when the director determines that the changes in filing periods and expiration dates under ORS 59.185 are not equitable for the person making the payment. [1967 c.537 §18; 1969 c.137 §4; 1971 c.624 §3; 1985 c.349 §17; 1987 c.603 §11; 1989 c.197 §9; 1991 c.331 §16; 1993 c.508 §31; 1997 c.631 §376; 1997 c.772 §16; 1999 c.53 §3; 2001 c.32 §2; 2003 c.270 §5; 2003 c.785 §4]

**59.180** [Amended by 1957 c.48 §1; repealed by 1967 c.537 §36]

**59.185 Expiration of license; rules for renewal; change in personnel.** (1) Every license of a broker-dealer or state investment adviser expires one year after the date of issuance unless the Director of the Department of Consumer and Business Services establishes a different expiration date for purposes of coordination with any national registration or licensing system.

(2)(a) Every license of an issuer's or owner's salesperson expires when the securities are no longer authorized for sale or one year after the date of issuance, whichever is sooner.

(b) Unless the director establishes a different expiration date for the purposes of coordination with any national registration or licensing system, every license of a salesperson licensed to a broker-dealer and every license of an investment adviser representative licensed to a state investment adviser expires on the same date that the license of the broker-dealer or state investment adviser expires.

(c) Unless the director establishes a different expiration date for the purposes of coordination with any national registration or licensing system, every license of an investment adviser representative licensed on behalf of a federal covered investment adviser expires the earlier of one year after the date of issuance or the date the notice of the federal covered investment adviser expires.

(3) The director by rule shall establish procedures for renewing licenses of broker-dealers, state investment advisers, investment adviser representatives and salespersons, and for the annual renewal of notice filings made on behalf of federal covered investment advisers.

(4) If there is a change in the partners, directors, officers, persons occupying similar positions or performing similar functions, or persons directly or indirectly controlling a broker-dealer or state investment adviser, written notification of such change shall promptly be filed with the director. No fee shall be required for such notification. An examination may be required of any such individual who is newly connected with or interested in the licensee. [1967 c.537 §19 (1), (2), (3); 1969 c.137 §5; 1985 c.349 §18; 1987 c.603 §12; 1989 c.197 §10; 1993 c.508 §32; 1997 c.772 §17; 1999 c.59 §14; 2003 c.270 §6]

**59.190** [Repealed by 1967 c.537 §36]

**59.193** [1973 c.366 §9; 1975 c.491 §3; 1985 c.349 §19; repealed by 1987 c.603 §30]

**59.195 Licensees to keep records; inspection; filing of financial reports.** (1) Subject to the provisions of section 15 of the Securities Exchange Act of 1934, as amended, and section 222 of the Investment Advisers Act of 1940, as amended, every broker-dealer, state investment adviser, investment adviser representative and salesperson shall make and keep such accounts, correspondence, memoranda, papers, books and other records as the Director of the Department of Consumer and Business Services by rule or order

prescribes. All such records of state investment advisers or investment adviser representatives maintained in this state shall be preserved for three years unless the director by rule prescribes otherwise. The director may examine all such records within or without this state at any reasonable time or times and may, without subpoena require the production of such records at the office of the director as often as is reasonably necessary and, in any event, during consideration of any application for licensing or during any proceeding under ORS 59.205 to 59.225.

(2) Subject to the provisions of section 15 of the Securities Exchange Act of 1934, as amended, and section 222 of the Investment Advisers Act of 1940, as amended, every broker-dealer, state investment adviser, investment adviser representative and salesperson shall file with the director such financial reports or other information as the director by rule or order may require. Licensed broker-dealers, state investment advisers, investment adviser representatives and salespersons shall promptly amend any document filed with the director which is or becomes incomplete or inaccurate in any material respect. Federal covered investment advisers shall promptly amend any document otherwise required to be filed with the director when the federal covered investment adviser is required to file an amendment with the United States Securities and Exchange Commission.

(3) A state investment adviser that has its principal place of business in a state other than this state, and the investment adviser representatives of such a state investment adviser, shall be exempt from the requirements of subsection (1) of this section provided that the state investment adviser is registered as a state investment adviser in the state where it has its principal place of business and is in compliance with all such state's requirements relating to accounts and records.

(4)(a) Every broker-dealer and salesperson of such broker-dealer shall file with the director only such financial reports or other information as is otherwise required to be filed with the United States Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended.

(b) Every state investment adviser that has its principal place of business in a state other than this state, and the investment adviser representatives of the state investment adviser, shall file with the director only the financial reports or other information that is required by the state in which the state investment adviser maintains its principal place of business, provided the state investment adviser is licensed in such state and is in compliance with all of such state's reporting requirements. [1967 c.537 §19(4), (5); 1985 c.349 §20; 1987 c.603 §13; 1989 c.197 §11; 1993 c.508 §33; 1997 c.772 §18]

**59.200** [Amended by 1955 c.198 §1; 1957 c.58 §1; 1959 c.280 §1; repealed by 1967 c.537 §36]

**59.205 Grounds for denying, suspending, revoking or imposing condition or restriction on license.** Except as provided in ORS 59.215, the Director of the Department of Consumer and Business Services may by order deny, suspend or revoke, or impose conditions or restrictions on, a license of a person as a broker-dealer, state investment adviser, investment adviser representative or salesperson if the director finds that the applicant or licensee:

(1) Is insolvent, either in the sense that the liabilities of the applicant or licensee exceed the assets of the applicant or licensee or that the applicant or licensee cannot meet the obligations of the applicant or licensee as they mature, or is in such financial condition that the applicant or licensee cannot continue in business with safety to the customers of the applicant or licensee.

(2) Has engaged in dishonest, fraudulent or illegal practices or conduct in any business or profession or unfair or unethical practices or conduct in connection with the purchase or sale of any security.

(3) Has willfully or repeatedly violated or failed to comply with any provision of the Oregon Securities Law, any condition or restriction imposed on a license or any rule or order of the director.

(4) Has been convicted of a misdemeanor an essential element of which is fraud or of a felony.

(5) Is not qualified to conduct a securities business on the basis of such factors as training, experience and knowledge of the securities business.

(6) Has filed an application for a license which as of the date the license was issued, or as of the date of an order conditioning, restricting, denying, suspending or revoking a license, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

(7) Has failed to account to persons interested for all money or property received.

(8) Has not delivered after a reasonable time, to persons entitled thereto, securities held or to be delivered.

(9) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business.

(10) Is the subject of an order of the director conditioning, restricting, denying, suspending or revoking a license as a broker-dealer, state investment adviser, investment adviser representative or salesperson.

(11) Is the subject of an order of the director under:

(a) ORS chapter 645 involving a violation of any provision of the Oregon Commodity Code or any rule or order of the director adopted or entered under ORS chapter 645; or

(b) ORS 59.840 to 59.980 involving a violation of any provision of ORS 59.840 to 59.980 or any rule or order of the director adopted or entered under ORS 59.840 to 59.980.

(12) Is the subject of any of the following orders that are currently effective and were issued within the last five years:

(a) An order by the securities agency or administrator of another state or Canadian province or territory, or by the Securities and Exchange Commission, entered after notice and opportunity for hearing, denying, suspending or revoking the person's registration or license as a broker-dealer, federal covered investment adviser, state investment adviser, investment adviser representative or salesperson, or the substantial equivalent of those terms as defined in the Oregon Securities Law;

(b) A suspension or expulsion from membership in or association with a member of a self-regulatory organization registered under the Securities Exchange Act of 1934, as amended, the Commodity Exchange Act or the Investment Advisers Act of 1940, as amended;

(c) A United States Postal Service fraud order;

(d) A cease and desist order entered after notice and opportunity for hearing by the director, the securities agency or administrator of another state or a Canadian province or territory, the Securities and Exchange Commission or the Commodity Futures Trading Commission; or

(e) An order by the Commodity Futures Trading Commission denying, suspending or revoking registration under the Commodity Exchange Act.

(13) Has failed, reasonably to supervise the salespersons or investment adviser representatives of the applicant or licensee.

(14) Has failed to comply with the requirements of ORS 59.195 to make and keep records prescribed by rule or order of the director, to produce such records required by the director or to file any financial reports or other information the director by rule or order may require. [1967 c.537 §20(1); 1969 c.137 §6; 1985 c.349 §21; 1987 c.603 §14; 1989 c.197 §12; 1993 c.508 §34; 1997 c.772 §19; 2001 c.32 §3; 2003 c.270 §7]

**59.210** [Amended by 1955 c.179 §1; repealed by 1963 c.244 §3 (59.211 enacted in lieu of 59.210)]

**59.211** [1963 c.244 §4 (enacted in lieu of 59.210); repealed by 1967 c.537 §36]

**59.215 Action against applicant or licensee for act or omission of associate; exceptions.** The Director of the Department of Consumer and Business Services may enter an order against the applicant or licensee under ORS 59.205 if any partner, officer or director of a broker-dealer or state investment adviser, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or state investment adviser has been guilty of any act or omission which would be cause for conditioning, restricting, denying, suspending or revoking the license of an individual broker-dealer, state investment adviser or salesperson, except as follows:

(1) This section shall not apply to any issuer of a federal covered security, a federal covered investment adviser or to ORS 59.205 (1).

(2) The director may not enter an order against a broker-dealer or state investment adviser on the basis of the lack of qualification under ORS 59.205 (5) of any person other than:

(a) The broker-dealer or state investment adviser if the broker-dealer or state investment adviser is an individual; or

(b) A salesperson of the broker-dealer or investment adviser representative of the state investment adviser.

(3) The director may not enter an order solely on the basis of lack of experience if the applicant or licensee is qualified by training or knowledge or both.

(4) If the director finds that an applicant for an initial license or a license renewal as a broker-dealer is not qualified as a state investment adviser, the director may condition the applicant's license as a broker-dealer upon its not transacting business in this state as a state investment adviser. [1967 c.537 §20(2); 1985 c.349 §22; 1987 c.603 §15; 1989 c.197 §13; 1993 c.508 §35; 1997 c.772 §20; 2001 c.32 §4]

**59.220** [Repealed by 1967 c.537 §36]

**59.225 Cancellation of license or application; application for withdrawal; effect of suspension or revocation.** (1) If the Director of the Department of Consumer and Business Services finds that an applicant or licensee has ceased to do business as a broker-dealer, state investment adviser, investment adviser representative or salesper-

son, or has failed to maintain a bond or other security required by ORS 59.175 (4) or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the director may cancel the license or application.

(2)(a) A broker-dealer, state investment adviser, investment adviser representative or salesperson may withdraw a license by filing an application to withdraw. Unless the director determines that the license should be suspended or revoked, the director shall allow the withdrawal subject to any conditions, limitations and restrictions the director may impose.

(b) A federal covered investment adviser may terminate a notice filing pursuant to ORS 59.165 (7) by providing the director with written notice of such termination in accordance with the procedures established by the director.

(3) When an investment adviser representative of a federal covered investment adviser begins or terminates an association with such federal covered investment adviser, the federal covered investment adviser or investment adviser representative shall promptly notify the director in writing in accordance with the procedures established by the director.

(4) The suspension of a license of a broker-dealer or state investment adviser shall suspend the license of any salesperson of the broker-dealer or the license of any investment adviser representative of the state investment adviser. The revocation, cancellation, withdrawal or expiration of a license of a broker-dealer or state investment adviser shall cancel the license of any salesperson of the broker-dealer or the license of any investment adviser representative of the state investment adviser.

(5) The suspension of a registration of securities suspends the license of any salesperson licensed to the issuer or owner of the securities. The revocation, cancellation, withdrawal or expiration of the registration of securities cancels the license of any salesperson licensed to the issuer or owner of the securities. [1967 c.537 §20(3), (4), (5); 1985 c.349 §23; 1987 c.603 §16; 1989 c.197 §14; 1993 c.508 §36; 1997 c.772 §21]

**59.230** [Repealed by 1967 c.537 §36]

### (Powers of Director)

**59.235 General supervision over persons dealing in securities.** Subject to section 18 of the Securities Act of 1933, as amended, section 15 of the Securities Exchange Act of 1934, as amended, and sections 203A and 222 of the Investment Advisers Act of 1940, as amended, the Director of the Department of Consumer and Business Services shall have general supervision and control over all issuers, registrants of securities, broker-dealers, federal covered investment advisers, state investment advisers, investment adviser representatives and salespersons residing or doing business in this state and engaged in any activity with respect to securities or any aspect of the securities business. All such persons and their records and everything connected with their activities shall be subject to examination by the director at any time. The provisions of this section and of any section of the Oregon Securities Law relating to examinations shall extend to any person who should have been licensed as a broker-dealer, state investment adviser, investment adviser representative or salesperson, any person exempted by rule from those definitions or any person whose license has expired or has been withdrawn, canceled, suspended or revoked. The director may collect from each such person the actual expenses incurred in that examination. [1967 c.537 §21; 1985 c.349 §24; 1987 c.603 §17; 1989 c.197 §15; 1993 c.508 §37; 1997 c.772 §22]

**59.240** [Repealed by 1955 c.198 §2]

**59.245 Investigations; publicity with respect to violations; cease and desist order.** The Director of the Department of Consumer and Business Services:

(1) May make such public or private investigations within or outside this state as the director deems necessary to determine whether a person has violated or is about to violate any provision of the Oregon Securities Law or any rule or order of the director, or to aid in the enforcement of the Oregon Securities Law or in the formulation of rules and forms thereunder;

(2) May require or permit a person to file a statement in writing, under oath or otherwise as the director determines, as to all the facts and circumstances concerning the matter to be investigated;

(3) May publish information concerning any violation of the Oregon Securities Law or any rule or order of the director; and

(4) If the director has reason to believe that any person has engaged, is engaging or is about to engage in any violation of the Oregon Securities Law, may issue an order, subject to ORS 59.295, directed to the person to cease and desist from the violation or threatened violation. [1967 c.537 §22; 1973 c.366 §6; 1999 c.315 §2; 2007 c.71 §14]

**59.250** [Amended by 1963 c.244 §5; repealed by 1967 c.537 §36]

**59.255 Enjoining violations; fine; appointment of receiver; attorney fees; damages to private parties.** (1) Whenever it appears to the Director of the Department of Consumer and Business Services that a

person has engaged, is engaging or is about to engage in an act or practice constituting a violation of any provision of the Oregon Securities Law or any rule or order of the director, the director may bring suit in the name and on behalf of the State of Oregon in the circuit court of any county of this state to enjoin the acts or practices and to enforce compliance with the Oregon Securities Law or such rule or order. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted.

(2) The court may fine the person against whom the order is entered not more than $20,000 for each violation, which shall be entered as a judgment and paid to the General Fund of the State Treasury. Each violation is a separate offense. In the case of a continuing violation, each day's continuance is a separate violation, but the maximum penalty for any continuing violation shall not exceed $100,000. If the court finds that the defendant has violated any provision of the Oregon Securities Law or any such rule or order, the court may appoint a receiver, who may be the director, for the defendant or the defendant's assets. The court may not require the director to post a bond.

(3) The court may award reasonable attorney fees to the director if the director prevails in an action under this section. The court may award reasonable attorney fees to a defendant who prevails in an action under this section if the court determines that the director had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(4) The director may include in any action authorized by this section:

(a) A claim for restitution or damages under ORS 59.115, 59.127 or 59.137, on behalf of the persons injured by the act or practice constituting the subject matter of the action. The court shall have jurisdiction to award appropriate relief to such persons, if the court finds that enforcement of the rights of such persons by private civil action, whether by class action or otherwise, would be so burdensome or expensive as to be impractical; or

(b) A claim for disgorgement of illegal gains or profits derived. Any recovery under this paragraph shall be turned over to the General Fund of the State Treasury unless the court requires other disposition.

(5) The provisions of this section do not apply to:

(a) A failure to file a notice and pay a fee pursuant to ORS 59.049 (1), (2) or (3);

(b) A failure to file a notice and pay a fee pursuant to ORS 59.165 (7);

(c) A failure to pay a fee pursuant to ORS 59.175 (8); or

(d) A violation of any rule adopted by the director pursuant to ORS 59.049 (1), (2) or (3), 59.165 (7) or 59.175 (8). [1967 c.537 §23; 1971 c.394 §1; 1975 c.300 §4; 1981 c.897 §10; 1985 c.349 §26; 1995 c.696 §11; 1997 c.772 §23; 1999 c.53 §4; 1999 c.315 §3; 2003 c.631 §5]

**59.260** [Repealed by 1967 c.537 §36]

**59.265 Procedure when assets or capital of broker-dealer or investment adviser found impaired; involuntary liquidation.** (1) When the Director of the Department of Consumer and Business Services ascertains that the assets or capital of any broker-dealer not otherwise registered under section 15 of the Securities Exchange Act of 1934, as amended, or state investment adviser that has its principal place of business in this state are impaired, or that such person's affairs are in an unsound condition, the director may take possession of all the property, business and assets of such person located in this state and retain possession of them pending the further proceedings specified in this section. The director shall inventory the assets and liabilities of such person. The director shall file one copy of the inventory in the office of the director and one copy in the office of the clerk of the circuit court of the county in which the principal place of business of such person is located, and shall mail one copy to each shareholder or partner of such person at the last-known address of the shareholder or partner. The clerk of the court shall file the inventory as a pending proceeding and give it a case number.

(2) If any person refuses to permit the director to take such possession, the director may apply to the circuit court of the county in which the principal place of business of such person is located for an order appointing a receiver, who may be the director, to take such possession.

(3) If the deficiency in assets or capital has not been made good or the unsound condition remedied within 60 days from the date when the director or receiver took possession, the property, business and assets of such person located in this state shall be liquidated. If a receiver has not been appointed, the director shall apply for such appointment by the court in which the inventory was filed. The liquidation shall proceed as provided by law for liquidation of a private corporation in receivership.

(4) The expenses of the receiver and compensation of counsel, as well as all expenditures required in the liquidation proceedings, shall be fixed by the director,

subject to the approval of the court, and, upon certification by the director, shall be paid out of the funds in the hands of the director as such receiver. [1967 c.537 §24; 1987 c.603 §18; 1993 c.508 §38; 1997 c.772 §24; 2003 c.576 §186]

**59.275 Burden of proof.** It is not necessary to negative any of the exemptions or classifications provided in the Oregon Securities Law in a complaint, action, information, indictment or other writ or proceeding laid or brought under the Oregon Securities Law; and the burden of proof of an exemption or classification shall be upon the party claiming the benefit of such exemption or classification. [1967 c.537 §25]

**59.285 Rules; financial statements.** (1) In accordance with this section and ORS chapter 183 the Director of the Department of Consumer and Business Services may from time to time make, amend and rescind such rules as are necessary to carry out the provisions of the Oregon Securities Law. The director may classify securities, persons and matters within the jurisdiction of the director, and prescribe different requirements for different classes.

(2) No rule may be made, amended or rescinded unless the director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the provisions of the Oregon Securities Law.

(3) Except as provided in subsection (4) of this section, all financial statements required by the Oregon Securities Law shall be prepared in accordance with generally accepted accounting principles. The director may by rule prescribe:

(a) The form and content of financial statements required under the Oregon Securities Law;

(b) The circumstances under which consolidated financial statements shall be filed; and

(c) Whether any required financial statements shall be certified by independent or certified public accountants.

(4) Subsection (3) of this section does not apply to any broker-dealer that is subject to the financial reporting requirements of the Securities Exchange Act of 1934, as amended, to any federal covered investment adviser or to any state investment adviser that has its principal place of business outside this state and is registered with the state in which the state investment adviser's principal place of business is located. [1967 c.537 §28; 1987 c.603 §19; 1997 c.772 §25]

**59.295 Notice of orders; hearings on orders.** (1) Except as provided in ORS 183.745, upon the entry of an order under the Oregon Securities Law, the Director of the Department of Consumer and Business Services shall promptly give appropriate notice of the order as provided in this subsection. The notice shall state that a hearing will be held on the order if a written demand for hearing is filed with the director within 20 days after the date of service of the order. The notice shall be given to:

(a) The issuer and applicant or registrant affected thereby with respect to orders entered pursuant to ORS 59.085 and 59.105;

(b) The applicant or licensee and any investment adviser representative or salesperson affected thereby with respect to orders entered pursuant to ORS 59.205; or

(c) All interested persons with respect to orders entered pursuant to any other provision of the Oregon Securities Law, except ORS 59.095.

(2) If timely demand for a hearing is filed by a person entitled to notice of the order, the director shall hold a hearing on the order as provided by ORS chapter 183. In the absence of a timely demand for a hearing, no person shall be entitled to judicial review of the order.

(3) After the hearing, the director shall enter a final order vacating, modifying or affirming the order.

(4) The director may enter a final order revoking a license or registration notwithstanding the fact that the license or registration has expired, if the initial order of revocation was issued prior to expiration of the license or registration. [1967 c.537 §26; 1985 c.349 §27; 1987 c.603 §22; 1989 c.197 §16; 1991 c.734 §2d; 1997 c.772 §26]

**59.305 Judicial review of orders.** (1) A person aggrieved by an order of the Director of the Department of Consumer and Business Services which has been the subject of a timely application for hearing before the director shall be entitled to judicial review of the order under ORS chapter 183.

(2) A judgment of a reviewing court under ORS chapter 183 may not bar the director from thereafter vacating or modifying an order involved in the proceeding for review, or entering any new order, for a proper cause which was not decided by the reviewing court. [1967 c.537 §27; 2003 c.576 §321]

**59.310** [Amended by 1957 c.46 §1; 1961 c.352 §2; 1963 c.244 §6; repealed by 1967 c.537 §36]

**59.315 Oaths and subpoenas in proceedings before director.** (1) For the purpose of an investigation or proceeding under the Oregon Securities Law, the Director of the Department of Consumer and Business Services may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the

production of books, papers, correspondence, memoranda, agreements or other documents or records which the director deems relevant or material to the inquiry. Each witness who appears before the director under a subpoena shall receive the fees and mileage provided for witnesses in ORS 44.415 (2).

(2) If a person fails to comply with a subpoena so issued or a party or witness refuses to testify on any matters, the judge of the circuit court or of any county, on the application of the director, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1967 c.537 §29; 1989 c.980 §5a]

**59.320** [Amended by 1961 c.352 §3; repealed by 1967 c.537 §36]

**59.325 Certified copies of documents; fee; effect of certification.** (1) The Director of the Department of Consumer and Business Services shall furnish to any person, upon payment of a fee established by rule, copies (certified if requested) of any document which is a matter of public record. In a proceeding or prosecution under the Oregon Securities Law, a copy so certified shall be prima facie evidence of the contents of the entry or document certified.

(2) A certificate of the director as to compliance or noncompliance with licensing or registration provisions of the Oregon Securities Law shall be taken and received in a civil or criminal proceeding in this state as prima facie evidence of the facts stated in the certificate. [1967 c.537 §30; 1987 c.603 §23; 1989 c.197 §17]

**59.330** [Amended by 1961 c.280 §6; repealed by 1967 c.537 §36]

**(Enforcement by Attorney General)**

**59.331 Scope of Attorney General powers; consent of director; powers of circuit court; damages, restitution, disgorgement and other penalties.** (1) Subject to subsection (2) of this section and after providing notice and an opportunity to participate to the Director of the Department of Consumer and Business Services, the Attorney General may:

(a) Make public or private investigations within or outside this state as the Attorney General considers necessary to:

(A) Determine whether a person has violated or is about to violate any provision of the Oregon Securities Law or any rule or order of the director adopted or issued under the Oregon Securities Law; or

(B) Aid in the enforcement of the Oregon Securities Law or any rule or order of the director adopted or issued under the Oregon Securities Law.

(b) Require or permit a person to file a statement in writing, under oath or otherwise as the Attorney General determines, as to all the facts and circumstances concerning a matter to be investigated.

(c) Administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records that the Attorney General considers relevant or material to an investigation.

(d) Bring suit in the name and on behalf of the State of Oregon in the circuit court of any county to:

(A) Enjoin any acts or practices the Attorney General has reason to believe that a person has engaged, is engaging or is about to engage in that constitute a violation of any provision of the Oregon Securities Law or any rule or order of the director adopted or issued under the Oregon Securities Law; or

(B) Enforce compliance with the Oregon Securities Law or any rule or order of the director adopted or issued under the Oregon Securities Law.

(2) The Attorney General may take action under subsection (1) of this section only in connection with any of the following alleged violations or cases:

(a) Alleged violations involving companies whose securities are listed on the New York Stock Exchange, the American Stock Exchange or the National Association of Securities Dealers Automated Quotation System, Inc. National Market System;

(b) Cases in which the Attorney General is pursuing or intends to pursue an investigation or litigation under ORS 166.715 to 166.735;

(c) Cases in which the Attorney General is pursuing or intends to pursue an investigation or litigation under ORS 646.605 to 646.652; or

(d) Cases in which the Attorney General is pursuing or intends to pursue an investigation or litigation under ORS 646.705 to 646.805.

(3) The Attorney General may take action under subsection (1) of this section with respect to cases described in subsection (2)(b), (c) or (d) of this section only after receiving the director's consent. The director may elect to be a named party in any action the Attorney General takes.

(4) Each witness who appears before the Attorney General under a subpoena issued under this section shall receive the fees and

mileage provided for witnesses in ORS 44.415 (2). If a person fails to comply with a subpoena issued under this section or if a party or witness refuses to testify on any matters, the judge of the circuit court of any county, on the application of the Attorney General, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in the court.

(5) In an action brought under this section, a court:

(a) Shall grant a permanent or temporary injunction, restraining order or writ of mandamus upon a proper showing by the Attorney General under subsection (1)(d) of this section.

(b) May award reasonable attorney fees to:

(A) The Attorney General if the Attorney General prevails in an action under this section.

(B) A defendant if the defendant prevails in an action under this section and the court determines that the Attorney General had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(6) The Attorney General may include any of the following in an action authorized by this section:

(a) A claim for restitution or damages under ORS 59.115, 59.127 or 59.137, on behalf of the persons injured by the act or practice constituting the subject matter of the action. If the court finds that enforcement of the rights of the injured persons by private civil action, whether by class action or otherwise, would be so burdensome or expensive as to be impractical, the court has jurisdiction to award appropriate relief to the injured persons.

(b) A claim for disgorgement of illegal gains or profits derived. The Attorney General shall deposit any moneys recovered under this paragraph in the General Fund of the State Treasury unless the court requires other disposition.

(c) A claim for the appointment of a receiver of any property derived by means of any act or practice that constitutes a violation of any provision of the Oregon Securities Law or any rule or order of the director adopted or issued under the Oregon Securities Law and of any books of account and papers relating to the property. Property for which a receiver may be appointed includes other property with which the property derived by means of a violation has been commingled if the property cannot be identified in kind because of the commingling. The receiver shall take possession of the property, books and papers and shall liquidate the property for the benefit of all persons who intervene in the action and establish an interest in the property. Subject to the approval of the court, the expenses and attorney fees of the receiver and any expenditures required in the liquidation proceeding shall be paid out of the funds of the receivership. The receiver may be the Attorney General. The court may not require the Attorney General to post a bond.

(d) A claim for a fine of not more than $20,000 for each violation. The fine shall be entered as a judgment and paid to the General Fund of the State Treasury. Each violation is a separate offense. In the case of a continuing violation, each day's continuance is a separate violation, but the maximum penalty for any continuing violation may not exceed $100,000.

(7) This section does not apply to:

(a) A failure to file a notice and pay a fee under ORS 59.049 (1), (2) or (3);

(b) A failure to file a notice and pay a fee under ORS 59.165 (7);

(c) A failure to pay a fee under ORS 59.175 (8);

(d) A violation of any rule adopted by the director under ORS 59.165 (7); or

(e) A company that the director has licensed under ORS 59.165. [2007 c.481 §2]

**(Miscellaneous Provisions)**

**59.335 Application of certain sections.** (1) ORS 59.055, 59.115, 59.125, 59.145 and 59.165 (1) apply to persons who sell or offer to sell when:

(a) An offer to sell is made in this state; or

(b) An offer to buy is made and accepted in this state.

(2) ORS 59.145 and 59.165 (1) apply to persons who buy or offer to buy when:

(a) An offer to buy is made in this state; or

(b) An offer to sell is made and accepted in this state.

(3) ORS 59.135, 59.145 and 59.165, insofar as federal covered investment advisers or state investment advisers are concerned, apply when an act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state. [1967 c.537 §31(1), (2), (6); 1987 c.603 §29; 1997 c.772 §27; 2003 c.631 §6; 2005 c.22 §39]

**59.340** [Amended by 1963 c.244 §7; repealed by 1967 c.537 §36]

**59.345 When offer to sell or buy is made in this state.** (1) For the purpose of ORS 59.335, an offer to sell or to buy is made

in this state, whether or not either party is then present in this state, when the offer:

(a) Originates from this state; or

(b) Is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(2)(a) For the purpose of ORS 59.335, an offer to buy or to sell is accepted in this state when acceptance:

(A) Is communicated to the offeror in this state; and

(B) Has not previously been communicated to the offeror, orally or in writing, outside this state.

(b) Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).

(3) An offer to sell or to buy is not made in this state solely because:

(a) A publisher circulates or there is circulated on behalf of the publisher in this state any bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months; or

(b) A radio or television program originating outside this state is received in this state. [1967 c.537 §31(3), (4), (5)]

**59.350 Treatment of certain transactions.** For purposes of ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995:

(1) A transaction with a husband and wife is treated as a transaction with one person. The securities may be held jointly or individually.

(2) A transaction with an entity is treated as a transaction with one person. However, if an entity is formed substantially for the purpose of acquiring the securities that are offered, each security holder shall be counted as a separate person. [1985 c.349 §11]

**59.355 Corporations subject to other laws.** Nothing in the Oregon Securities Law relieves a corporation from making reports required by law to be made to the Director of the Department of Consumer and Business Services or to any other state officer, or from paying the fees to be paid by corporations. The Oregon Securities Law:

(1) Does not repeal any law regulating the organization of corporations in this state or the admission of any foreign corporation.

(2) Is additional to any provisions regulating the organization of a corporation under the laws of this state or the admission of a foreign corporation to do business in this state. [1967 c.537 §32]

**59.365 Common-law and statutory rights not limited.** Nothing in the Oregon Securities Law limits any statutory or common-law right of a person to bring an action in any court for an act involved in the sale of securities, or the right of the state to punish a person for a violation of any law. [1967 c.537 §33]

**59.370 Limitation on liability for good faith act or omission; reports regarding salespersons or investment adviser representatives; limitation on liability related to reports; rules.** (1) Provisions of the Oregon Securities Law imposing civil or criminal liability do not apply to an act done or omitted in good faith in conformity with a rule or order of the Director of the Department of Consumer and Business Services, notwithstanding that the rule or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(2) A broker-dealer, federal covered investment adviser or state investment adviser shall report information to the director regarding salespersons or investment adviser representatives licensed to the broker-dealer, federal covered investment adviser or state investment adviser. The director, by rule, shall establish the reporting requirements under this subsection. In adopting rules under this subsection, the director shall consider and to the greatest extent practicable adopt the applicable public reporting requirements of the National Association of Securities Dealers, Inc., and the federal Securities and Exchange Commission.

(3) A broker-dealer, federal covered investment adviser or state investment adviser is not liable in any civil action by or on behalf of a salesperson or an investment adviser representative, including counterclaims, third-party claims or cross-claims, that is related to an alleged untrue statement made in connection with a report made under subsection (2) of this section, unless the salesperson or investment adviser representative shows by clear and convincing evidence that:

(a) The broker-dealer, federal covered investment adviser or state investment adviser knew at the time the report was made that the report contained a statement regarding the salesperson or investment adviser representative that was false in any material respect; or

(b) The broker-dealer, federal covered investment adviser or state investment adviser acted in reckless disregard as to the statement's truth or falsity. [1987 c.603 §21; 2001 c.434 §1]

**59.375** [1967 c.537 §34; repealed by 1987 c.603 §30]

**59.405** [1971 c.641 §3; 1975 c.491 §4; repealed by 1987 c.603 §30]

**59.410** [Repealed by 1967 c.537 §36]

**59.415** [1971 c.641 §4; 1981 c.897 §11; repealed by 1987 c.603 §30]

**59.420** [Repealed by 1967 c.537 §36]

**59.425** [1971 c.641 §5; repealed by 1987 c.603 §30]

**59.430** [Repealed by 1967 c.537 §36]

**59.435** [1971 c.641 §6; 1981 c.897 §12; repealed by 1987 c.603 §30]

**59.440** [Repealed by 1967 c.537 §36]

**59.445** [1971 c.641 §7; repealed by 1987 c.603 §30]

**59.450** [Repealed by 1967 c.537 §36]

### (Required Reports and Statements)

**59.451 Prohibition against filing false statement by person under investigation or examination.** It is unlawful for any person who is the subject of an investigation under ORS 59.245 or examination under ORS 59.235, directly or indirectly, to make or file or cause to be made or filed with the Director of the Department of Consumer and Business Services any statement, report or document which is false in any material respect or manner. [1985 c.349 §25]

**59.510** [Repealed by 1967 c.537 §36]

**59.520** [Repealed by 1967 c.537 §36]

**59.530** [Repealed by 1967 c.537 §36]

## UNIFORM TOD SECURITY REGISTRATION ACT

**59.535 Definitions for ORS 59.535 to 59.585.** For the purposes of ORS 59.535 to 59.585, unless the context otherwise requires:

(1) "Beneficiary form" means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) "Devisee" means any person designated in a will to receive a disposition of real or personal property.

(3) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(4) "Person" means an individual, a corporation, an organization or other legal entity.

(5) "Personal representative" includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same function under the law governing their status.

(6) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(7) "Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(8) "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) "Security" means a share, participation or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security and a security account.

(10) "Security account" means:

(a) A reinvestment account associated with a security, a securities account with a broker, cash, cash equivalents, interest, earnings or dividends earned or declared on a security in an account, a reinvestment account or a brokerage account, whether or not credited to the account before the owner's death;

(b) A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death; or

(c) An investment management account, a safekeeping account or a custody account with a financial institution or trust company, as those terms are defined in ORS 706.008, including the securities in the account and cash, cash equivalents, interest, earnings or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death.

(11) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession subject to the legislative authority of the United States. [1991 c.306 §1; 2007 c.514 §1]

**59.540 Registration in beneficiary form; sole or joint tenancy ownership.** Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a

security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common. [1991 c.306 §2]

**59.545 Registration in beneficiary form; applicable law.** A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law. [1991 c.306 §3]

**59.550 Origination of registration in beneficiary form.** A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners. [1991 c.306 §4]

**59.555 Form of registration in beneficiary form.** Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD," or by the words "pay on death" or the abbreviation "POD," after the name of the registered owner and before the name of a beneficiary. [1991 c.306 §5]

**59.560 Effect of registration in beneficiary form.** The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary. [1991 c.306 §6]

**59.565 Ownership on death of owner.** On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners. [1991 c.306 §7]

**59.570 Protection of registering entity.** (1) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by ORS 59.535 to 59.585.

(2) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in ORS 59.535 to 59.585.

(3) A registering entity is discharged from all claims to a security by the estate, creditors, heirs or devisees of a deceased owner if it registers a transfer of the security in accordance with ORS 59.565 and does so in good faith reliance on the registration, on ORS 59.535 to 59.585 and on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of ORS 59.535 to 59.585 do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under ORS 59.535 to 59.585.

(4) The protection provided by ORS 59.535 to 59.585 to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds. [1991 c.306 §8]

**59.575 Nontestamentary transfer on death.** (1) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and ORS 59.535 to 59.585, and is not testamentary.

(2) ORS 59.535 to 59.585 do not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state. [1991 c.306 §9]

**59.580 Terms, conditions and forms for registration.** (1) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests for reg-

istrations in beneficiary form and for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes." This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(2) The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(a) Sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown Jr.

(b) Multiple owners-sole beneficiary: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr.

(c) Multiple owners-primary and secondary (substituted) beneficiaries: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. SUB BENE Peter Q. Brown or John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. LDPS. [1991 c.306 §10]

**59.585 Short title; rules of construction.** (1) ORS 59.535 to 59.585 shall be known as and may be cited as the Uniform TOD Security Registration Act.

(2) ORS 59.535 to 59.585 shall be liberally construed and applied to promote its underlying purposes and policy and to make uniform the laws with respect to the subject of ORS 59.535 to 59.585 among states enacting it.

(3) Unless displaced by the particular provisions of ORS 59.535 to 59.585, the principles of law and equity supplement its provisions. [1991 c.306 §11]

**59.610** [Repealed by 1967 c.537 §36]

**59.620** [Repealed by 1967 c.537 §36]

**59.660** [Repealed by 2007 c.661 §28]

**59.670** [Amended by 1981 c.897 §13; 1995 c.618 §35; repealed by 2007 c.661 §28]

**59.680** [Amended by 1971 c.200 §5; 1973 c.794 §14; repealed by 2007 c.661 §28]

**59.690** [Repealed by 2007 c.661 §28]

**59.700** [Repealed by 2007 c.661 §28]

## PROHIBITION OF CERTAIN SECURITY TRANSACTIONS

**59.710 Definitions for ORS 59.710 to 59.830.** As used in ORS 59.710 to 59.830, unless the context indicates otherwise:

(1) "Security," "securities" or "securities or commodities," mean and include all evidences of debt or property and options for their purchase, shares in any corporation or association, bonds, coupons, scrip, rights, choses in action, and other evidences of debt or property, and options for their purchase, or anything movable that is bought and sold.

(2) "Broker" means and includes every person who in this state engages, either for all or part of the person's time, in the business of selling any securities or commodities, or purchasing, or otherwise acquiring securities or commodities from another for the purpose of reselling them or offering them for sale to the public; or in the business of offering, buying or selling, or otherwise dealing or trading in securities or commodities, as agent or principal, for commission or at a profit; and every person who deals in futures or differences in market quotations of prices or values of any securities or commodities, or accepts margins on purchases or sales, or pretended purchases or sales of securities or commodities.

(3) "Bucket shop" means any building, or any room, apartment, booth, office or store therein, or any other place where any contract prohibited by ORS 59.710 to 59.830 is made or offered to be made more than once and in the course of continuing or repeated transactions.

(4) "Bonds" includes the bonds or other evidences of debt of a corporation, company or association.

**59.720 Application of ORS 59.710 to 59.830 to real estate contracts and brokers.** The provisions of ORS 59.710 to 59.830 shall not apply to any contract, agreement, sale, purchase, lease, conveyance or mortgage pertaining to real estate situated in this state, nor to the business of real estate brokers or principal real estate brokers, as defined in ORS 696.010, in so far as such business pertains to real estate located in this state. [Amended by 2001 c.300 §53]

**59.730 Making contract involving securities without intending a bona fide sale or purchase.** No person, whether acting in the person's own right, or as the officer, agent, servant, correspondent or representative of another, shall, as broker make or offer to make, assist in making or offering to make, perform or take part in any contract respecting the purchase or sale, either upon credit or margin, of any securities or commodities more than once, and in course of continuing or repeated transactions:

(1) Intending that the contract shall be terminated, closed or settled according to, or upon the basis of the public market quotations of or prices made on any board of trade or exchange or market which deals in such commodities or securities, and without intending a bona fide purchase or sale of the same; or

(2) Intending that the contract shall be deemed terminated, closed and settled when the market quotations or prices mentioned in subsection (1) of this section for the securities or commodities named in the contract reach a certain figure, without intending a bona fide purchase or sale of the same; or

(3) Not intending the actual bona fide receipt or delivery of such securities or commodities, but intending a settlement of the contract based upon the difference in the public market quotations or prices, mentioned in subsection (1) of this section, at which the securities or commodities are, or are asserted to be, bought or sold. The prosecution, conviction and punishment of a corporation for violation of this section shall not be deemed to be a prosecution, conviction or punishment of any of its officers, directors or stockholders.

**59.740 Conducting bucket shop or repeatedly making forbidden contracts.** No person shall as owner, keeper, proprietor or person in charge of, or as officer, director, stockholder, agent, servant, correspondent or representative of any person, keep, conduct or operate any bucket shop, or knowingly permit or induce any person, whether acting in the person's own right or as officer, agent, servant, correspondent or representative of another, to make, offer to make therein, or assist in making or in offering to make therein, any of the contract specified in ORS 59.730, more than once and in the course of continuing or repeated transactions.

**59.750 Receipt or communication of prices for purpose of forbidden contract.** No person shall receive, communicate, exhibit or display in any manner any statement of quotations or prices of securities or commodities with an intent to make or offer to make, or to assist in making, or offering to make any contract prohibited by ORS 59.720 to 59.810.

**59.760 Reporting false sale of securities with intent to deceive.** No person shall, with intent to deceive, report or publish, or cause to be reported or published as a purchase or sale of stocks or bonds, any transaction whereby no actual change of ownership or interest is effected.

**59.770 Manipulating market by pretended sales.** No person shall inflate, depress or cause fluctuations in, or attempt to inflate, depress or cause fluctuations in, or combine or conspire with any other person to inflate, depress or cause fluctuations in, the market prices of stocks or bonds, or of an issue or any part of an issue of such stocks or bonds, by means of pretended purchases and sales, or by any other fictitious transactions or devices, for or on account of any person, whereby either in whole or in part a simultaneous change of ownership of or interest in such stocks or bonds or of such issue or part of an issue thereof, is not effected. A pretended purchase or sale of any stocks or bonds whereby, in whole or in part, no simultaneous change of ownership or interest therein is effected, is prima facie evidence of the violation of this section by the person taking part in the pretended purchase or sale.

**59.780 Broker's trading against customer's order; violation of ORS 59.780 to 59.800 by member of broker's firm.** (1) No broker, employed by a customer to buy and carry upon margin stocks or bonds, while acting as broker for the customer in respect to such stocks or bonds, shall sell for the broker's own account the same kind or issue of stocks or bonds, with intent to trade against the customer's order.

(2) No broker, employed by a customer to sell stocks or bonds, while acting as broker for the customer in respect to the sale of such stocks or bonds, shall purchase for the broker's own account the same kind or issue of stocks or bonds, with intent to trade against the customer's order.

(3) Every member of a firm of brokers who either does, or consents or assents to the doing of, any act prohibited by this section, ORS 59.790 or 59.800 is guilty of violating the section prohibiting the act.

**59.790 Insolvent broker-dealer receiving securities from customer.** No broker-dealer engaged in the business of purchasing and selling stocks or bonds as a broker-dealer, knowing that the broker-dealer is insolvent, shall accept or receive from a customer ignorant of the insolvency, money, stocks or bonds belonging to the customer, except in liquidation or as security for an

existing indebtedness, and thereby cause the customer to lose in whole or in part such money, stocks or bonds. A broker-dealer shall be deemed insolvent within the meaning of this section whenever the aggregate of the property of the broker-dealer is not, at a fair valuation, sufficient in amount to pay the debts of the broker-dealer. [Amended by 1987 c.158 §12]

**59.800 Pledge or sale by broker-dealer of customer's securities.** No broker-dealer engaged in the business of purchasing and selling stocks or bonds as a broker-dealer shall:

(1) While having in the possession of the broker-dealer, for safekeeping or otherwise, stocks or bonds belonging to a customer, without having any lien thereon or any special property therein, pledge or dispose thereof without the customer's consent; or

(2) While having in the possession of the broker-dealer stocks or bonds belonging to a customer on which the broker-dealer has a lien for indebtedness due to the broker-dealer by the customer, pledge the same for more than the amount due to the broker-dealer thereon, or otherwise dispose thereof for the broker-dealer's own benefit, with or without the customer's consent, and without having in possession of the broker-dealer or subject to control of the broker-dealer, stocks or bonds of the kind and amount to which the customer is then entitled, for delivery to the customer upon demand of the customer therefor and tender of the amount due thereon, and thereby cause the customer to lose, in whole or in part, such stocks or bonds, or the value thereof; or

(3) Fail, on demand, to deliver to any customer, stocks or bonds owned by the customer, and in the possession of such broker-dealer, upon payment or tender of the amount the same was pledged to secure. [Amended by 1987 c.158 §13]

**59.810 Delivery to customer of true statement of purchase or sale made by broker.** No person engaged in the business of purchasing or selling stocks or bonds as a broker shall refuse to deliver to each customer on whose behalf a purchase or sale of such securities is made by the person, within five days after written demand therefor made within six months following the purchase or sale, a statement or memorandum of the purchase or sale which is true in all material respects and which contains a description of the securities purchased or sold, the name of the person from whom the securities were purchased or to whom they were sold, and the day and hours between which the transaction took place.

**59.820 Actions against corporation for second violation.** (1) If a domestic corporation is convicted of a second offense under ORS 59.730 to 59.810, the circuit court has jurisdiction over an action by the Attorney General, in the name of the people, to dissolve the corporation.

(2) If a foreign corporation is convicted of a second offense under ORS 59.730 to 59.810, the circuit court has jurisdiction in an action brought as provided in subsection (1) of this section to restrain the corporation from doing business in this state.

**59.830 Self-incrimination by witness; immunity from prosecution.** No person shall be excused from attending and testifying, or producing any book, paper or other document before any court or magistrate, upon any trial, investigation or proceeding initiated by the district attorney, grand jury or court for a violation of any of the provisions of ORS 59.730 to 59.810, upon the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to convict the person of a crime or subject the person to a penalty or forfeiture. However, no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the person may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against the person in any criminal action, suit or proceeding, investigation, inquisition or inquiry.

## MORTGAGE BANKERS; MORTGAGE BROKERS; LOAN ORIGINATORS

**59.840 Definitions for ORS 59.840 to 59.980.** As used in ORS 59.840 to 59.980:

(1) "Director" means the Director of the Department of Consumer and Business Services.

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

(3) "License" means a license issued to a mortgage banker or mortgage broker under ORS 59.840 to 59.980.

(4)(a) "Loan originator" means an individual employed by or purporting to act as an agent or independent contractor for a mortgage banker or mortgage broker that is required to be licensed under ORS 59.840 to 59.980, with the expectation by the individual of compensation or gain that is determined by the amount borrowed or the terms and conditions agreed to by the mortgage loan borrower, and having primary job responsibilities that include negotiating with a borrower or potential borrower for the purpose of establishing the terms and conditions of a mortgage loan.

(b) "Loan originator" includes a person employed at a location outside this state whose primary job responsibilities include contacting or attempting to contact a borrower or potential borrower within this state through any medium or mode of communication for purposes of providing a mortgage loan within this state.

(c) "Loan originator" does not include an individual whose responsibilities are clerical or administrative functions, including but not limited to gathering information, requesting information, word processing, soliciting general interest in mortgage loans, sending correspondence and assembling files.

(d) "Loan originator" does not include an employee of a mortgage banker that is rated as good or better under the federal rating system in effect on May 1, 2001, for seller-servicers of Federal Housing Administration, Federal Home Loan Mortgage Corporation or Federal National Mortgage Association loans and that has an office within this state at which the mortgage banker maintains complete and current copies of all employment records and other records as required by the Director of the Department of Consumer and Business Services by order or rule, in a format acceptable to the director.

(e) "Loan originator" does not include an insurance producer licensed under ORS 744.052 to 744.089 or insurance consultant licensed under ORS 744.002.

(f) "Loan originator" does not include a person or group of persons exempted by rule or order of the director.

(5) "Mortgage banker":

(a) Means any person who for compensation or in the expectation of compensation:

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

(B) Services or sells a mortgage banking loan.

(b) Does not include:

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

(B) A financial holding company or a bank holding company, as defined in ORS 706.008, holding an institution described in subparagraph (A) of this paragraph; a savings and loan holding company as defined in section 408 of the National Housing Act, 12 U.S.C. 1730a (1982), holding an association described in subparagraph (A) of this paragraph; the subsidiaries and affiliates of the financial holding company, bank holding company or savings and loan holding company; or subsidiaries and affiliates of institutions described in subparagraph (A) of this paragraph, provided that the appropriate statutory regulatory authority is exercising control over or is regulating or supervising the persons listed in this subparagraph in their mortgage banking activities in accordance with the purposes of ORS 59.840 to 59.980.

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

(D) An attorney licensed in this state who negotiates mortgage banking loans or mortgage loans in the ordinary course of business, unless the business of negotiating mortgage banking loans or mortgage loans constitutes substantially all of the attorney's professional activity.

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

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

(G) A person who receives a mortgage or deed of trust on real property as security for an obligation payable on an installment or deferred payment basis and arising out of materials furnished or services rendered in the improvement of that real property or any lien created without the consent of the owner of the real property.

(H) A person who funds a mortgage banking loan or mortgage loan which has been originated and processed by a licensee or by an exempt person and who does not maintain a place of business in this state in connection with funding mortgage banking loans or mortgage loans, does not directly or indirectly solicit borrowers in this state for the purpose of making mortgage banking loans or mortgage loans and does not participate in the negotiation of mortgage banking loans or mortgage loans. For the purpose of this subparagraph, "negotiation of mortgage banking loans or mortgage loans" does not include setting the terms under which a person may buy or fund a mortgage banking loan or a mortgage loan originated by a licensee or exempt person.

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

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

(K) A retirement or pension fund.

(L) An insurer as defined in ORS 731.106.

(M) A court appointed fiduciary.

(N) Any other person designated by rule or order of the director.

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

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

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

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

(7) "Mortgage broker":

(a) Means a person who:

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

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

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

(b) Does not include:

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

(B) A financial holding company or a bank holding company, as defined in ORS 706.008, holding an institution described in subparagraph (A) of this paragraph; a savings and loan holding company as defined in section 408 of the National Housing Act, 12 U.S.C. 1730a (1982), holding an association described in subparagraph (A) of this paragraph; the subsidiaries and affiliates of the financial holding company, bank holding company or savings and loan holding company; or subsidiaries and affiliates of institutions described in subparagraph (A) of this paragraph, provided that the appropriate statutory regulatory authority is exercising control over or is regulating or supervising the persons listed in this subparagraph in their mortgage brokering activities in accordance with the purposes of ORS 59.840 to 59.980.

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

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

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

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

(G) An attorney licensed in this state who negotiates mortgage loans in the ordinary course of business, unless the business of negotiating mortgage loans constitutes substantially all of the attorney's professional activity.

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

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

(J) A person who receives a mortgage or deed of trust on real property as security for an obligation payable on an installment or deferred payment basis and arising out of materials furnished or services rendered in the improvement of that real property or any lien created without the consent of the owner of the real property.

(K) A person who funds a mortgage loan which has been originated and processed by a licensee or by an exempt person and who does not maintain a place of business in this

state in connection with funding mortgage loans, does not directly or indirectly solicit borrowers in this state for the purpose of making mortgage loans and does not participate in the negotiation of mortgage loans. For the purpose of this subparagraph, "negotiation of mortgage loans" does not include setting the terms under which a person may buy or fund a mortgage loan originated by a licensee or exempt person.

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

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

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

(ii) For the benefit of a potential purchaser, the person completes a loan application form or other document that is part of a mortgage banking loan and completes a good faith estimate under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.);

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

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

(N) Any other person designated by rule or order of the director.

(8) "Mortgage loan" means a loan, extension of credit or retail sales contract, other than a mortgage banking loan, secured by a mortgage or deed of trust or any lien interest on real estate that is created with the consent of the owner of the real estate.

(9) "Residential mortgage transaction" means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in property upon which four or fewer residential dwelling units are planned or situated, including but not limited to individual units or condominiums and cooperatives. As used in this subsection, "residential dwelling unit" means an improvement designed for residential occupancy. [1993 c.508 §1; 1995 c.129 §1; 1995 c.622 §13; 1997 c.211 §1; 1997 c.631 §377; 1999 c.36 §1; 2001 c.377 §40; 2001 c.952 §1; 2003 c.364 §47; 2003 c.655 §48]

**59.845 License required to engage in residential mortgage transactions as mortgage banker or mortgage broker.** (1) It is unlawful for any person to engage in residential mortgage transactions in this state as a mortgage banker or mortgage broker unless the person is licensed under ORS 59.840 to 59.980. A person who is a mortgage banker or mortgage broker under ORS 59.840, but who does not engage in residential mortgage transactions in this state, is not required to obtain a license under ORS 59.840 to 59.980.

(2) For purposes of this section, a person "engages in residential mortgage transactions in this state" when any act constituting the business of a mortgage banker or mortgage broker and involving a residential mortgage transaction originates from this state or is directed to and received in this state or when the real estate that is the subject of the activities of the mortgage banker or mortgage broker is located in this state. [1993 c.508 §2; 1999 c.36 §2]

**59.850 Procedures for licensing; experience required; surety bond or letter of credit; fees; rules.** (1) The Director of the Department of Consumer and Business Services by rule shall establish procedures for licensing mortgage bankers or mortgage brokers. The director may coordinate licensing with any national registration or licensing system.

(2) An applicant for a license as a mortgage banker or mortgage broker, or a managing partner, director, executive officer or other individual occupying a similar position or performing similar functions for the applicant, shall have, during the five years immediately preceding the time of application, not less than three years' experience in the mortgage business, three years' experience negotiating loans in a related business satisfactory to the director or three years' equivalent lending experience in a related business satisfactory to the director.

(3) If a license as a mortgage banker or mortgage broker is issued to a person other than an individual, at least one managing partner, director, executive officer or other individual occupying a similar position or performing similar functions for the person shall, at all times during the term of the license, satisfy the experience requirement described in subsection (2) of this section.

(4) Every applicant for a license as a mortgage banker or mortgage broker shall file with the director a corporate surety bond or irrevocable letter of credit issued by an

insured institution as defined in ORS 706.008 as the director may approve by rule running to the State of Oregon in a sum to be determined by the director by rule.

(5) The total amount of the corporate surety bond or irrevocable letter of credit for a single applicant under subsection (4) of this section shall be not less than $25,000 but not more than $50,000, regardless of the number of offices of the applicant. If an applicant has more than one office in this state to engage in residential mortgage transactions as a mortgage banker or mortgage broker, the amount of the bond or letter of credit shall increase for each additional office in an amount determined by the director by rule. The amount of the increase in the bond or letter of credit for each additional office shall be not less than $5,000 but not more than $10,000. The director may adjust the minimum amount of the increase in the bond or letter of credit for additional offices as necessary to comply with the $50,000 limit.

(6) If the application, surety bond or irrevocable letter of credit and fees are in order and the director is satisfied that the application should not be denied upon one or more of the grounds specified in ORS 59.865, 59.870 or 59.875, the director shall license the mortgage banker or mortgage broker.

(7) A licensee shall amend the license application and, if necessary, increase the amount of the corporate surety bond or irrevocable letter of credit as described in subsection (5) of this section when there are material changes in the information contained in the original application.

(8) The director shall:

(a) Charge and collect fees for initial and renewal license applications;

(b) Set by rule all fees required under this section. Fees shall be set to reflect those amounts sufficient to meet the costs of administering ORS 59.840 to 59.980, including those amounts sufficient to establish and maintain a reasonable emergency fund; and

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

(9) The fees under this section are not refundable except for those fees that the director determines by rule may be refundable. [1993 c.508 §3; 1995 c.129 §2; 1997 c.631 §378; 1999 c.36 §3]

**59.855 Expiration of license; renewal; duration of renewed license; change in personnel; rules.** (1) The initial license of a mortgage banker or mortgage broker expires one year after the date of issuance unless the Director of the Department of Consumer and Business Services establishes a different expiration date for purposes of coordination with any national registration or licensing system.

(2) The director by rule shall establish procedures for renewing licenses of mortgage bankers and mortgage brokers. The rule shall specify the duration of renewed licenses.

(3) If there is a change in the partners, directors, officers, persons occupying similar positions or performing similar functions, or persons directly or indirectly controlling a mortgage banker or mortgage broker, written notification of the change shall promptly be filed with the director. No fee shall be required for the notification. [1993 c.508 §4; 1995 c.129 §3]

**59.860 Licensees to keep records; inspection; filing of financial reports.** (1) Every mortgage banker and mortgage broker shall make and keep such accounts, correspondence, memoranda, papers, books and other records as the Director of the Department of Consumer and Business Services by rule or order prescribes. All such records shall be preserved for five years unless the director by rule prescribes otherwise. The director may examine all such records within or without this state at any reasonable time or times and may require without subpoena the production of such records at the office of the director as often as is reasonably necessary.

(2) Every mortgage banker and mortgage broker shall file financial reports or other information as the director by rule or order may require and shall promptly correct any document filed with the director that is or becomes incomplete or inaccurate in any material respect. [1993 c.508 §5]

**59.865 Grounds for denying, suspending, conditioning or revoking license.** Except as provided in ORS 59.870, the Director of the Department of Consumer and Business Services may by order deny, suspend, condition or revoke a license of a person as a mortgage banker or mortgage broker if the director finds that the applicant or licensee:

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

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

(3) Has willfully or repeatedly violated or failed to comply with any provision of ORS 59.840 to 59.980 or any rule or order of the director.

(4) Has been convicted of a misdemeanor, an essential element of which is fraud, or of a felony.

(5) Has filed an application for a license that, as of the date the license was issued, or as of the date of an order denying, suspending, conditioning or revoking a license, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

(6) Has failed to account to persons interested for all money or property received in connection with a mortgage loan.

(7) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage business.

(8) Is the subject of an order of the director denying, suspending, conditioning or revoking a license as a mortgage banker or mortgage broker.

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

(10) Does not have the experience required by ORS 59.850 (2) or (3).

(11) Has failed to comply with the requirements of ORS 59.860 to make and keep records prescribed by rule or order of the director, to produce such records required by the director or to file any financial reports or other information the director by rule or order may require.

(12) Is the subject of an order of the director denying, suspending, conditioning or revoking a license under the provisions of any other law administered by the director.

(13) Is the subject of a cease and desist order entered after notice and opportunity for hearing and issued by the director within the last five years.

(14) Has demonstrated negligence or incompetence in performing any act for which the licensee is required to hold a license.

(15) Has failed to supervise diligently and control the mortgage-related activities of a loan originator employed by the licensee.

(16) Has knowingly misrepresented to the director the training of, examination of or continuing education time earned by a loan originator employed by the licensee.

(17) Has willfully or repeatedly employed persons as loan originators who do not meet the training, education or continuing education requirements for loan originators.

(18) Has failed to notify the director of the termination of a loan originator for failure to comply with state or federal laws, regulations or rules. [1993 c.508 §6; 2001 c.952 §10]

**59.870 Action against applicant or licensee for act or omission of associate; exception.** The Director of the Department of Consumer and Business Services may enter an order against the applicant or licensee under ORS 59.865 if any partner, officer or director of a mortgage banker or mortgage broker, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the mortgage banker or mortgage broker has been guilty of any act or omission which would be cause for denying, suspending or revoking the license of an individual mortgage banker or mortgage broker. This section shall not apply to ORS 59.865 (1). [1993 c.508 §7]

**59.875 Cancellation of license or application; application for withdrawal.** (1) If the Director of the Department of Consumer and Business Services finds that an applicant or licensee has ceased to do business as a mortgage banker or mortgage broker, or has failed to maintain a bond required by ORS 59.850 or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the director may cancel the license or application.

(2) A mortgage banker or mortgage broker may withdraw a license by filing an application to withdraw. Unless the director determines that the license should be suspended or revoked, the director shall allow the withdrawal subject to any conditions, limitations and restrictions the director may impose. [1993 c.508 §8]

**59.880 Supervisory authority of director over mortgage bankers, mortgage brokers and loan originators.** The Director of the Department of Consumer and Business Services shall have general supervision and control over all loan originators, mortgage bankers and mortgage brokers residing or doing business in this state and engaged in any activity subject to the provisions of ORS 59.840 to 59.980. All such persons and their records and everything connected with their activities shall be subject to examination by the director at any time. The provisions of this section and of any other section of ORS 59.840 to 59.980 relating to examinations shall extend to any person who should have been reported as a loan originator under

ORS 59.969 or licensed as a mortgage banker or mortgage broker, any person exempted by rule from those definitions or any person whose license has expired or has been withdrawn, canceled, suspended, conditioned or revoked. The director may collect from each such person the actual expenses incurred in that examination. [1993 c.508 §9; 2001 c.952 §11]

**59.885 Investigations; publicity with respect to violations; cease and desist order.** The Director of the Department of Consumer and Business Services:

(1) May make such public or private investigations within or outside this state as the director deems necessary to determine whether a person has violated any provision of ORS 59.840 to 59.980 or any rule or order of the director, or to aid in the enforcement of ORS 59.840 to 59.980 or in the formulation of rules and forms thereunder;

(2) May require or permit a person to file a statement in writing, under oath or otherwise as the director determines, as to all the facts and circumstances concerning the matter to be investigated;

(3) May publish information concerning any violation under this section or ORS 59.890, 59.992 or 59.996 or any rule or order of the director after an action taken under this section or ORS 59.890, 59.992 or 59.996; and

(4) If the director has reasonable cause to believe that any person has been engaged, is engaging or is about to engage in any violation of any provision of ORS 59.840 to 59.980, may issue an order, subject to ORS 59.905, directed to the person, and to any other person directly or indirectly controlling the person, to cease and desist from the violation or threatened violation. [1993 c.508 §10; 2007 c.71 §15]

**59.890 Enjoining violations; fine; appointment of receiver; attorney fees; damages to private parties.** (1) Whenever the Director of the Department of Consumer and Business Services has reasonable cause to believe that a person has been engaged or is engaging in any violation of any provision of ORS 59.840 to 59.980 or any rule or order of the director, the director may bring suit in the name and on behalf of the State of Oregon in the circuit court of any county of this state to enjoin the violation and to enforce compliance with any provision of ORS 59.840 to 59.980 or such rule or order. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted. The court may fine the person against whom the order is entered not more than $5,000 for each violation, which shall be entered as a judgment and paid to the General Fund of the State Treasury. Each violation is a separate offense. In the case of a continuing violation, each day's continuance is a separate violation, but the maximum penalty for any continuing violation shall not exceed $20,000 for each offense. If the court finds that the defendant has violated any provision of ORS 59.840 to 59.980 or any such rule or order, the court may appoint a receiver, who may be the director, for the defendant or the defendant's assets. The court may not require the director to post a bond. The court may award reasonable attorney fees to the director if the director prevails in an action under this section. The court may award reasonable attorney fees to a defendant who prevails in an action under this section if the court determines that the director had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(2) The director may include in any action authorized by subsection (1) of this section:

(a) A claim for restitution or damages under ORS 59.925 on behalf of the persons injured by the act or practice constituting the subject matter of the action. The court shall have jurisdiction to award appropriate relief to such persons, if the court finds that enforcement of the rights of such persons by private civil action, whether by class action or otherwise, would be so burdensome or expensive as to be impractical; or

(b) A claim for disgorgement of illegal gains or profits derived. Any recovery under this paragraph shall be turned over to the General Fund of the State Treasury unless the court requires other disposition. [1993 c.508 §11; 1995 c.696 §12]

**59.895 Procedures where assets or capital of mortgage banker or broker found impaired; involuntary liquidation.** (1) When the Director of the Department of Consumer and Business Services ascertains that the assets or capital of any mortgage banker or mortgage broker is impaired, or that the mortgage banker's or mortgage broker's affairs are in an unsound condition, the director may take possession of all the property, business and assets of the mortgage banker or mortgage broker located in this state and retain possession of them pending the further proceedings specified in this section. The director shall inventory the assets and liabilities of the mortgage banker or mortgage broker. The director shall file one copy of the inventory in the office of the director and one copy in the office of the clerk of the circuit court of the county in which the principal place of business of the mortgage banker or mortgage broker is located, and shall mail one copy to each shareholder or partner of the mortgage banker or mort-

gage broker at the last-known address of the shareholder or partner. The clerk of the court shall file the inventory as a pending proceeding and give it a case number.

(2) If any mortgage banker or mortgage broker refuses to permit the director to take possession under this section, the director may apply to the circuit court of the county in which the principal place of business of the mortgage banker or mortgage broker is located for an order appointing a receiver, who may be the director, to take possession.

(3) If the deficiency in assets or capital has not been made good or the unsound condition remedied within 60 days from the date when the director or receiver took possession, the property, business and assets of the mortgage banker or mortgage broker located in this state shall be liquidated. If a receiver has not been appointed, the director shall apply for such appointment by the court in which the inventory was filed. The liquidation shall proceed as provided by law for liquidation of a private corporation in receivership.

(4) The expenses of the receiver and compensation of counsel, as well as all expenditures required in the liquidation proceedings, shall be fixed by the director, subject to the approval of the court, and, upon certification by the director, shall be paid out of the funds in the hands of the director as such receiver. [1993 c.508 §12; 2003 c.576 §187]

**59.900 Rules; financial statements.** (1) In accordance with this section and ORS chapter 183, the Director of the Department of Consumer and Business Services may from time to time make, amend and rescind such rules as are necessary to carry out the provisions of ORS 59.840 to 59.980, including but not limited to rules governing the activities of loan originators, mortgage bankers and mortgage brokers and rules governing the purchase or sale of mortgage banking loans, mortgage loans or real estate paper in coordination with applicable provisions of ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995 and rules adopted thereunder.

(2) Any financial statement required under ORS 59.840 to 59.980 shall be prepared in accordance with generally accepted accounting principles. The director may by rule prescribe:

(a) The form and content of financial statements required under ORS 59.840 to 59.980;

(b) The circumstances under which consolidated financial statements shall be filed; and

(c) Whether any required financial statements shall be certified by independent or certified public accountants. [1993 c.508 §13; 2001 c.952 §12]

**59.905 Notice of orders; hearings on orders.** (1) Except as provided in ORS 183.745, upon the entry of an order under ORS 59.840 to 59.980, the Director of the Department of Consumer and Business Services shall promptly give appropriate notice of the order as provided in this subsection. The notice shall state that a hearing will be held on the order if a written demand for hearing is filed with the director within 20 days after the date of service of the order. The notice shall be given to:

(a) The applicant or licensee with respect to orders entered pursuant to ORS 59.865;

(b) The loan originator and the licensee employing the loan originator with respect to orders entered pursuant to ORS 59.973; or

(c) All interested persons with respect to orders entered pursuant to any other provision of ORS 59.840 to 59.980.

(2) If timely demand for a hearing is filed by a person entitled to notice of the order, the director shall hold a hearing on the order as provided by ORS chapter 183. In the absence of a timely demand for a hearing, a person is not entitled to judicial review of the order.

(3) After the hearing, the director shall enter a final order vacating, modifying or affirming the order.

(4) The director may enter a final order revoking a license notwithstanding the fact that the license has expired, if the initial order of revocation was issued prior to expiration of the license or registration. [1993 c.508 §14; 2001 c.952 §13]

**59.910 Judicial review of orders.** (1) A person aggrieved by an order of the Director of the Department of Consumer and Business Services which has been the subject of a timely application for hearing before the director shall be entitled to judicial review of the order under ORS chapter 183.

(2) A judgment of a reviewing court under ORS chapter 183 may not bar the director from thereafter vacating or modifying an order involved in the proceeding for review, or entering any new order, for a proper cause that was not decided by the reviewing court. [1993 c.508 §15; 2003 c.576 §322]

**59.915 Oaths and subpoenas in proceedings before director.** (1) For the purpose of an investigation or proceeding under ORS 59.840 to 59.980, the Director of the Department of Consumer and Business Services may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of books, papers, correspondence, memoranda,

agreements or other documents or records that the director deems relevant or material to the inquiry. Each witness who appears before the director under a subpoena shall receive the fees and mileage provided for witnesses in ORS 44.415 (2).

(2) If a person fails to comply with a subpoena so issued or a party or witness refuses to testify on any matters, the judge of the circuit court or of any county, on the application of the director, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1993 c.508 §16]

**59.920 Copies of documents; fees; effect of certification.** (1) The Director of the Department of Consumer and Business Services shall furnish to any person, upon payment of a fee established by rule, copies of any document which is a matter of public record. Certified copies shall be furnished upon request. In a proceeding or prosecution under ORS 59.840 to 59.980, a copy so certified shall be prima facie evidence of the contents of the entry or document certified.

(2) A certificate of the director as to compliance or noncompliance with licensing provisions of ORS 59.840 to 59.980 shall be taken and received in a civil or criminal proceeding in this state as prima facie evidence of the facts stated in the certificate. [1993 c.508 §17]

**59.925 Liability of mortgage banker or mortgage broker; recovery of damages; limitations on proceeding; action against bond or letter of credit; attorney fees.** (1) As used in this section, "mortgage banker transaction" and "mortgage broker transaction" mean a transaction in which a person, in order to engage in the transaction, is required to be licensed as a mortgage banker or a mortgage broker under ORS 59.840 to 59.980.

(2) A mortgage banker or mortgage broker is liable as provided in subsection (3) of this section to any person who suffers any ascertainable loss of money or property, real or personal, in a mortgage banker transaction or a mortgage broker transaction if the mortgage banker or mortgage broker:

(a) Transacts business as a mortgage banker or mortgage broker in violation of any provision of ORS 59.840 to 59.980; or

(b) Transacts business as a mortgage banker or mortgage broker by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, and who does not sustain the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(3) The person suffering ascertainable loss may recover damages in an amount equal to the ascertainable loss.

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

(5) Except as otherwise provided in this subsection, an action or suit may not be commenced under this section more than three years after the transaction. An action under this section for a violation under subsection (2)(b) of this section or ORS 59.930 may be commenced within three years after the transaction or two years after the person bringing the action discovered or should have discovered the facts on which the action is based, whichever is later, but in no event more than five years after the date of the transaction. Failure to commence an action on a timely basis is an affirmative defense.

(6) A person has a right of action under the bond or irrevocable letter of credit provided in ORS 59.850 if the person:

(a) Signs a mortgage banking loan or mortgage loan application; and

(b) Has a right of action against a mortgage banker or mortgage broker under this section.

(7) Subsection (4) of this section does not limit the liability of any person:

(a) For conduct other than in the circumstances described in subsection (4) of this section; or

(b) Under any other law.

(8) Except as provided in subsection (9) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(9) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (8) of this section if the action under this section is maintained as a class action pursuant to ORCP 32. [1993 c.508 §18; 1995 c.696 §13; 1999 c.1001 §1; 2005 c.97 §1]

**59.930 Fraud and deceit with respect to mortgage banker or broker business.** It is unlawful for any person, directly or indirectly, in connection with the conduct of a

mortgage banker or mortgage broker business:

(1) To employ any device, scheme or artifice to defraud;

(2) Knowingly to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or

(4) To make or file, or cause to be made or filed, to or with the Director of the Department of Consumer and Business Services any statement, report or document which is known to be false in any material respect or matter. [1993 c.508 §19]

**59.935 Clients' Trust Account; examination; deposit of funds; interest; rules.** (1) Each mortgage banker or mortgage broker shall maintain in this state one or more separate bank accounts that shall be designated a Clients' Trust Account in which all trust funds received or handled by the mortgage banker or mortgage broker shall be deposited unless, pursuant to written agreement of all parties having an interest in the trust funds, the trust funds are immediately placed in a neutral escrow depository in this state.

(2) Each mortgage banker or mortgage broker shall file with the Director of the Department of Consumer and Business Services, on forms approved by the director, a statement identifying the name of the bank or banks, account number or account numbers, and name of account or accounts for each Clients' Trust Account maintained.

(3) Each mortgage banker or mortgage broker shall authorize the director or an authorized representative of the director, on a form approved by the director, to examine any Clients' Trust Account, by a duly authorized representative of the director. The examination shall be made at such times as the director may direct.

(4) If a branch office maintains a separate Clients' Trust Account, a separate bookkeeping system shall be maintained in the branch office, provided a copy of all documents evidencing payments into and from the Clients' Trust Account is maintained in the main office of the mortgage banker or mortgage broker.

(5) Trust funds received by a mortgage banker or mortgage broker may be placed by the mortgage banker or mortgage broker in a federally insured interest-bearing bank account, designated a Clients' Trust Account, but only with the prior written approval of all parties having an interest in the trust funds. The earnings of such interest-bearing account shall not inure to the benefit of the mortgage banker or mortgage broker unless expressly approved in writing before deposit of the trust funds by all parties having an interest in the trust funds.

(6) A mortgage banker or mortgage broker is not entitled to any part of any interest earnings on trust funds deposited under subsection (5) of this section or to any part of the earnest money or other money paid to the mortgage banker or mortgage broker in connection with any real estate transaction as part or all of the mortgage banker's or mortgage broker's commission or fee until the transaction has been completed or terminated. The question of the disposition of forfeited earnest money shall be negotiated between a mortgage banker or mortgage broker and a client at the time of executing any earnest money agreement. The result of such negotiation shall be filled in on the agreement form at the time of signing by the client and either separately initialed by the client or placed immediately above the signature of the client.

(7) Clients' Trust Account funds are not subject to execution or attachment on any claim against the mortgage banker or mortgage broker.

(8) No person shall knowingly keep or cause to be kept any funds or money in any bank under the heading of Clients' Trust Account or any other name designating such funds or money as belonging to the clients of any mortgage banker or mortgage broker, except actual trust funds deposited with the banker or broker.

(9) The director may provide by rule for other records to be maintained and for the manner in which trust funds are deposited, held and disbursed. [1993 c.508 §20; 1995 c.191 §1]

**59.940 Notice to bank regarding Clients' Trust Account.** (1) Each mortgage banker or mortgage broker, at the time a Clients' Trust Account is opened under ORS 59.935, shall provide the bank in which the account is opened with a notice in substantially the following form:

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NOTICE OF CLIENTS' TRUST ACCOUNT

To: (name of bank) _____

I, _____, am the (owner, president, managing general partner or other position description) _____ of (name of mortgage banker or mortgage broker) _____ and am authorized to act on behalf of (name of mortgage banker or mortgage broker) _____.

Under the provisions of ORS 59.935, I am required to maintain in Oregon a Clients' Trust Account for the purpose of holding funds belonging to others.

With regard to the account(s) numbered _____ which is/are designated as a Clients' Trust Account, the account(s) is/are maintained with you as a depository for money belonging to persons other than myself and in my fiduciary capacity as a mortgage banker or mortgage broker established by client agreements in separate documents.

Dated: (insert date)

_____
(signature of person authorized to act on behalf of mortgage banker or mortgage broker)

ACKNOWLEDGMENT OF RECEIPT

I, _____, a duly authorized representative of (bank) _____, do hereby acknowledge receipt of the above NOTICE OF CLIENTS' TRUST ACCOUNT on (date) _____.

_____
(signature)

_____
(title)

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(2) The acknowledged copy of the notice described in subsection (1) of this section shall be retained by the mortgage banker or mortgage broker as provided in ORS 59.935 for the retention of trust account records, subject to inspection by the Director of the Department of Consumer and Business Services or the director's authorized representative. [1993 c.508 §20a; 1995 c.191 §2]

**59.945 Prohibited advertisements.** A mortgage banker or mortgage broker shall not use or cause to be published any advertisement that:

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

(2) Identifies the mortgage banker or mortgage broker by any name other than the name listed on the license issued by the Director of the Department of Consumer and Business Services or an assumed business name registered under ORS chapter 648. [1993 c.508 §21]

**59.950 Designation of principal place of business; other offices; change of personnel; registered agent.** (1) Every licensed mortgage banker and mortgage broker shall designate and maintain a principal place of business for the transaction of business.

(2) If a licensed mortgage banker or mortgage broker intends to transact business at any place other than the principal place of business, the licensee shall notify the Director of the Department of Consumer and Business Services, in writing, not later than 30 days prior to opening another office. The notice shall contain the address of any other office. A copy of the license issued to the mortgage banker or mortgage broker shall be displayed in each place of business of the licensee.

(3) If there is any change among the members, officers, partners or directors of any licensee, the licensee shall notify the director within 30 days of the name, address and occupation of each new member, officer, partner or director and provide any other information the director may require.

(4) A mortgage banker or mortgage broker whose principal place of business is not in this state shall continuously maintain a registered agent in this state. The name and address of the agent shall be included in the application for a license. A mortgage banker or mortgage broker shall notify the director immediately of any change in the name or address of the registered agent.

(5) The registered agent of a mortgage banker or mortgage broker shall be an agent upon whom any process, notice or demand required or permitted by law to be served upon the mortgage banker or mortgage broker may be served. The director shall be an agent of a mortgage banker or mortgage broker if the mortgage banker or mortgage broker fails to appoint or maintain a registered agent in this state or the registered agent cannot with reasonable diligence be found. [1993 c.508 §22]

**59.955 Disclosure required before closing mortgage loan or mortgage banking loan.** Prior to the closing of any mortgage loan or any mortgage banking loan, the mortgage banker or mortgage broker shall supply the borrower with a disclosure as required by the real estate lending provisions of 15 U.S.C. 1601 et seq. and Regulation Z, 12 C.F.R. Part 226. [1993 c.508 §23]

**59.960 Consultation with licensees before rules adopted.** Before adopting any rules under ORS 59.840 to 59.980, the Director of the Department of Consumer and Business Services shall consult with an equal number of persons required to be licensed as mortgage bankers or mortgage brokers. The director shall consider the suggestions of those persons in adopting rules under ORS 59.840 to 59.980. [1993 c.508 §24]

**59.962 Servicing or collecting mortgage banking loan or mortgage loan by mortgage banker or mortgage broker.** (1) With the permission of the lender, note owner, note holder or other holder of an interest in a note, a mortgage banker or mortgage broker may service or collect any

mortgage banking loan or mortgage loan in its own name or the name of the lender, note owner, note holder or other holder of an interest in the note.

(2) Except as provided in ORS 59.840 to 59.980, nothing in subsection (1) of this section is intended to grant the Director of the Department of Consumer and Business Services the authority to regulate the servicing or collection of any mortgage banking loan or mortgage loan by a mortgage banker or mortgage broker.

(3) As used in this section:

(a) "Mortgage banker" has the meaning given that term in ORS 59.840 (5)(a) but also includes those persons exempted from the definition of mortgage banker in ORS 59.840 (5)(b).

(b) "Mortgage banking loan" has the meaning given that term in ORS 59.840.

(c) "Mortgage broker" has the meaning given that term in ORS 59.840.

(d) "Mortgage loan" has the meaning given that term in ORS 59.840.

(e) "Service or collect any mortgage banking loan or mortgage loan" includes but is not limited to:

(A) Holding documents or written instruments and receiving and disbursing payments according to the instructions of the parties to the documents or written instruments;

(B) Collecting or remitting, or having the right or obligation to collect or remit, for any lender, note owner, note holder or other holder of an interest in a note or for a mortgage banker's or mortgage broker's own account, payments, interest, principal and trust items, including but not limited to hazard insurance and taxes, on a mortgage banking loan or mortgage loan in accordance with the terms of the loan, and includes loan payment follow-up, delinquency loan follow-up, loan analysis and any notifications to the borrower that are necessary to enable the borrower to keep the loan current and in good standing; and

(C) Bringing and maintaining any suit or action to collect any amounts owed on a mortgage banking loan or mortgage loan, including but not limited to the exercise of any contractual, statutory or common law remedies such as injunction, specific performance, judicial or nonjudicial foreclosure or receivership. [1999 c.36 §4; 2001 c.952 §14]

**Note:** 59.962 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 59 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**59.965** [1995 c.129 §5; renumbered 59.980 in 2001]

**59.967 Legislative findings regarding loan originators; prohibited practice.** (1) The Legislative Assembly finds and declares that:

(a) The public interest is served by identifying a loan originator with a specific mortgage banker or mortgage broker; and

(b) The public must be protected from the conflicts of interest created when a loan originator is employed by more than one mortgage lender.

(2) A loan originator may not originate loans for more than one mortgage banker, mortgage broker or other mortgage lender or independent mortgage agency at the same time. [2001 c.952 §3]

**59.969 List of loan originators; qualifications; voluntary reporting; records; waiver; rules.** (1) A mortgage banker or mortgage broker must provide to the Director of the Department of Consumer and Business Services, and keep current, a list of loan originators employed by the banker or broker. The banker or broker shall notify the director within 30 days of the employment or termination of employment of a loan originator.

(2) An applicant for issuance of a mortgage banker or mortgage broker license under ORS 59.850 shall include with the application evidence acceptable to the director that each individual the applicant has hired or intends to hire as a loan originator has:

(a)(A) Successfully completed an entry-level training course approved or provided by an organization certified by the director as described in ORS 59.977; and

(B) Passed an examination, approved or provided by an organization described in ORS 59.977, on laws and rules relating to mortgage lending in this state; or

(b) If the individual has been employed as a loan originator for two or more years in this state, completed continuing education as required by the director pursuant to ORS 59.975.

(3) A mortgage banker or mortgage broker that applies for renewal of a license pursuant to ORS 59.855 shall include with the application evidence acceptable to the director that each individual employed by the banker or broker as a loan originator has:

(a)(A) Successfully completed an entry-level training course approved or provided by an organization certified by the director as described in ORS 59.977; and

(B) Passed an examination, approved or provided by an organization described in ORS 59.977, on laws and rules relating to mortgage lending in this state; or

(b) If the individual has been employed as a loan originator for two or more years in this state, completed continuing education as required by the director pursuant to ORS 59.975.

(4) An applicant for issuance of a mortgage banker or mortgage broker license under ORS 59.850 shall include with the application evidence acceptable to the director that each individual the applicant has hired or intends to hire who is an insurance producer or insurance consultant licensed under ORS 744.002 and who is a full-time loan originator as defined in ORS 59.970 has:

(a)(A) Successfully completed an entry-level training course approved or provided by an organization certified by the director as described in ORS 59.977; and

(B) Passed an examination, approved or provided by an organization described in ORS 59.977, on laws and rules relating to mortgage lending in this state; or

(b) If the individual has been employed as a full-time loan originator for two or more years in this state, completed continuing education as required by the director pursuant to ORS 59.975.

(5) A mortgage banker or mortgage broker that applies for renewal of a license pursuant to ORS 59.855 shall include with the application evidence acceptable to the director that each individual employed by the mortgage banker or mortgage broker as a loan originator who is an insurance producer or insurance consultant licensed under ORS 744.002 and who is a full-time loan originator as defined in ORS 59.970 has:

(a)(A) Successfully completed an entry-level training course approved or provided by an organization certified by the director as described in ORS 59.977; and

(B) Passed an examination, approved or provided by an organization described in ORS 59.977, on laws and rules relating to mortgage lending in this state; or

(b) If the individual has been employed as a full-time loan originator for two or more years in this state, completed continuing education as required by the director pursuant to ORS 59.975.

(6) An applicant under subsection (2), (3), (4) or (5) of this section shall, at the time of application, certify that the applicant has conducted criminal records checks required under ORS 59.970 and 59.972 and:

(a) Certify that, to the best of the applicant's belief, no individual the applicant employs or intends to employ as a loan originator has engaged in conduct that would constitute a violation of ORS 59.967 (2) or 59.971; or

(b) Note any exceptions to the certification made in paragraph (a) of this subsection. An applicant is not subject to an action at law for making a notation under this paragraph in good faith.

(7) Except as provided in subsections (4) and (5) of this section, a mortgage banker or mortgage broker may voluntarily report to the director regarding employees who would qualify as loan originators if not exempted under ORS 59.840 (4). Voluntary reporting by a banker or broker under this subsection does not make the reported employees subject to training, examination or continuing education requirements or other laws governing loan originators.

(8) The director shall keep records that include notifications filed under subsection (1) of this section and exceptions to certifications under subsection (6) of this section. The director shall retain the records for a period of not less than three years. The director shall keep for 10 years a record of any complaint against a loan originator that has been determined to be justified pursuant to ORS 59.973.

(9) Notwithstanding subsections (1) to (5) of this section and ORS 59.865 (17), 59.970, 59.971 (1)(d) and 59.975, the director, by rule, may waive any training, examination or continuing education requirement for a loan originator for a period not to exceed six months after the individual begins or resumes employment as a loan originator. [2001 c.952 §4; 2003 c.526 §4; 2005 c.22 §40]

**59.970 Qualifications for insurance licensees acting as loan originators.** (1) As used in this section, "loan originator" means an individual who:

(a) Is an insurance producer or insurance consultant licensed under ORS 744.002;

(b) Has not transacted insurance as defined in ORS 731.146 for a period of 60 consecutive days; and

(c) Would qualify as a full-time loan originator if not exempted under ORS 59.840 (4).

(2) An individual who is an insurance producer or insurance consultant licensed under ORS 744.002 and who is employed full-time as a loan originator shall:

(a) Complete an entry-level training course approved or provided by an organization certified as described in ORS 59.977;

(b) Pass an examination, approved or provided by an organization described in ORS 59.977, on laws and rules relating to mortgage lending in this state;

(c) If the individual has been employed as a loan originator for two or more years in

this state, complete the continuing education requirements under ORS 59.975; and

(d) Undergo a criminal records check as required in ORS 59.972. [2003 c.526 §2; 2005 c.22 §41]

**Note:** Section 7, chapter 526, Oregon Laws 2003, provides:

**Sec. 7.** (1) The training and examination requirements described in ORS 59.969 and 59.970 do not apply to an individual who, on January 1, 2004:

(a) Is an insurance producer or insurance consultant licensed under ORS 744.002;

(b) Would qualify as a loan originator if not exempted under ORS 59.840 (4); and

(c) Has worked full-time performing the functions of a loan originator since January 1, 2002.

(2) The continuing education requirements described in ORS 59.969 and 59.970 apply to an individual who is an insurance producer or insurance consultant licensed under ORS 744.002 and who is a loan originator as defined in ORS 59.970. The two-year period allowed for the individual to complete the continuing education requirements begins on the filing date of the first application under ORS 59.969 that lists the individual. [2003 c.526 §7; 2005 c.22 §42]

**59.971 Prohibited conduct for loan originators; effect of criminal conviction; rules.** (1) A person employed by a mortgage banker or mortgage broker as a loan originator may not:

(a) Engage in dishonest, fraudulent or illegal practices or conduct in any business or profession or engage in unfair or unethical practices or conduct in connection with the mortgage business.

(b) Willfully or repeatedly violate or fail to comply with a provision of ORS 59.840 to 59.980 or a rule or order of the Director of the Department of Consumer and Business Services.

(c) Fail to account to persons interested for all money or property received in connection with a mortgage loan.

(d) Fail to meet the training, education or continuing education requirements for loan originators.

(2) A person may not be employed by a mortgage banker or mortgage broker as a loan originator as defined in ORS 59.840 or 59.970 if the person has been convicted of any crime or category of crime specified by the director by rule. [2001 c.952 §6; 2003 c.526 §6]

**59.972 Loan originator criminal records checks; rules.** (1) A mortgage banker or mortgage broker shall conduct a criminal records check of each individual who the mortgage banker or mortgage broker employs or intends to employ as a loan originator.

(2) A mortgage banker or mortgage broker shall report to the Director of the Department of Consumer and Business Services the results of each criminal records check conducted under subsection (1) of this section.

(3) The director shall adopt rules:

(a) Necessary for the implementation and administration of criminal records checks required under this section and ORS 59.970; and

(b) Specifying categories of criminal convictions that will prevent a person from acting as a loan originator under ORS 59.971. [2003 c.526 §3]

**59.973 Complaints against loan originators; investigation; hearing; rules; action by director.** (1) If the Director of the Department of Consumer and Business Services receives a complaint against a loan originator for a violation of ORS 59.967 (2) or 59.971, the director may notify the loan originator and the mortgage banker or mortgage broker employing the loan originator.

(2) The director may investigate a complaint against a loan originator. Upon the conclusion of the investigation, the director shall promptly notify the loan originator and the mortgage banker or mortgage broker employing the loan originator of the director's proposed determination regarding the complaint.

(3) Any hearing on a complaint must be conducted as provided by rules of the director and pursuant to ORS chapter 183.

(4) If the director determines, after opportunity for hearing, that a complaint is justified, the director shall note the complaint in the records kept pursuant to ORS 59.969 (8). For a violation of ORS 59.967 (2) or 59.971, the director may impose requirements for supervision and remedial education of the loan originator, assess civil penalties against the loan originator as provided in ORS 59.996 or refer the matter for criminal prosecution pursuant to ORS 59.992. [2001 c.952 §7; 2003 c.526 §5]

**59.975 Continuing education requirements for loan originators; rules.** The Director of the Department of Consumer and Business Services shall, by rule, establish continuing education requirements for persons employed by mortgage bankers or mortgage brokers as loan originators. The requirements established by the director may not be less than 10 hours every two years and not more than 20 hours every two years. The continuing education must be obtained through continuing education programs approved or provided by an organization whose continuing education curriculum and testing is certified by the director as described in ORS 59.977. [2001 c.952 §8]

**59.977 Certification of organizations to provide training for loan originators; rules.** (1) The Director of the Department of Consumer and Business Services may certify an organization as qualified to approve or provide entry-level training or continuing education curricula and testing for loan originators. The director, by rule, shall establish criteria for certifying an organization under this subsection.

(2) An organization certified by the director to approve or provide loan originator examinations must be experienced in professional test administration.

(3) All loan originator examinations shall be conducted at a secure location to protect the integrity of the testing process.

(4) The director, by rule, may provide for the acceptance or conditional acceptance of continuing education hours completed pursuant to the laws of another state that the director determines provide protection to the public that exceeds or is substantially similar to the protection provided by ORS 59.840 to 59.980. [2001 c.952 §9; 2005 c.97 §3]

**59.980 Short title.** ORS 59.840 to 59.980 may be cited as the "Oregon Mortgage Lender Law." [Formerly 59.965]

## PENALTIES

**59.990** [Amended by 1955 c.180 §1; repealed by 1967 c.537 §36]

**59.991 Criminal penalties for ORS 59.005 to 59.451 and 59.710 to 59.830; exceptions.** (1) Except as provided in subsection (3) of this section, violation of any provision of ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995 or any rule adopted by the Director of the Department of Consumer and Business Services under ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995, except ORS 59.315 (2) or 59.810, is a Class B felony.

(2) Violation of ORS 59.315 (2) or 59.810 is a Class A misdemeanor.

(3) This section does not apply to a failure to file a notice and pay a fee under ORS 59.049 (1), (2) or (3), nor to a failure to file a notice and pay a fee pursuant to ORS 59.165 (7), nor to a failure to pay a fee pursuant to ORS 59.175 (8), nor to a violation of any rule adopted by the director under ORS 59.049 (1), (2) or (3), 59.165 (7) or 59.175 (8). [1967 c.537 §35; 1981 c.292 §5; 1987 c.603 §24; 1997 c.772 §28; 1999 c.53 §5]

**59.992 Criminal penalties for ORS 59.840 to 59.980.** (1) Violation of any provision of ORS 59.840 to 59.980 or any rule adopted by the Director of the Department of Consumer and Business Services under ORS 59.840 to 59.980, except ORS 59.915 (2) and 59.975, is a Class C felony.

(2) Violation of ORS 59.915 (2) is a Class A misdemeanor. [1993 c.508 §25; 1995 c.622 §14; 2005 c.97 §2]

**59.995 Civil penalties for ORS 59.005 to 59.451 and 59.710 to 59.830; exceptions.** (1) In addition to all other penalties and enforcement provisions provided by law, any person who violates or who procures, aids or abets in the violation of ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995 or any rule or order of the Director of the Department of Consumer and Business Services shall be subject to a penalty of not more than $20,000 for every violation, which shall be paid to the General Fund of the State Treasury.

(2) Every violation is a separate offense and, in the case of a continuing violation, each day's continuance is a separate violation, but the maximum penalty for any continuing violation shall not exceed $100,000.

(3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(4) This section does not apply to a failure to file a notice and pay a fee pursuant to ORS 59.049 (1), (2) or (3), nor to a failure to file a notice and pay a fee pursuant to ORS 59.165 (7), nor to a failure to pay a fee pursuant to ORS 59.175 (8), nor to a violation of any rule adopted by the director under ORS 59.049 (1), (2) or (3), 59.165 (7) or 59.175 (8). [1973 c.366 §10; 1975 c.491 §5; 1983 c.696 §7; 1985 c.349 §28; 1989 c.197 §18; 1991 c.734 §3; 1997 c.772 §29; 1999 c.53 §6; 1999 c.315 §4]

**59.996 Civil penalties for ORS 59.840 to 59.980.** (1) In addition to all other penalties and enforcement provisions provided by law, any person who violates or who procures, aids or abets in the violation of any provision of ORS 59.840 to 59.980 or any rule or order of the Director of the Department of Consumer and Business Services shall be subject to a penalty of not more than $5,000 for every violation, which shall be paid to the General Fund of the State Treasury.

(2) Every violation is a separate offense and, in the case of a continuing violation, each day's continuance is a separate violation, but the maximum penalty for any continuing violation shall not exceed $20,000 for each offense.

(3) Civil penalties under this section shall be imposed as provided in ORS 183.745. [1993 c.508 §26]