Chapter 86A

2009 EDITION

Mortgage Lending

MORTGAGE BANKERS; MORTGAGE BROKERS; LOAN ORIGINATORS

(Generally)

86A.095 Short title

86A.100 Definitions

86A.103 License required to engage in residential mortgage transactions as mortgage banker or mortgage broker

86A.106 Procedures for licensing; experience required; certification; surety bond or letter of credit; fees; rules

86A.109 Expiration of license; renewal; duration of renewed license; change in personnel; rules

86A.112 Licensees to keep records; inspection; filing financial reports

86A.115 Grounds for denying, suspending, conditioning or revoking license

86A.118 Action against applicant or licensee for act or omission of associate; exception

86A.121 Cancellation of license or application; application for withdrawal

86A.124 Supervisory authority of director over mortgage bankers, mortgage brokers and loan originators

86A.127 Investigations; publicity with respect to violations; cease and desist order

86A.130 Enjoining violations; fine; appointment of receiver; attorney fees; damages to private parties

86A.133 Procedures where assets or capital of mortgage banker or mortgage broker found impaired; involuntary liquidation

86A.136 Rules; financial statements

86A.139 Notice of orders; hearings on orders

86A.142 Judicial review of orders

86A.145 Oaths and subpoenas in proceedings before director

86A.148 Copies of documents; fees; rules; effect of certification

86A.151 Liability of mortgage banker or mortgage broker; recovery of damages; limitations on proceeding; action against bond or letter of credit; attorney fees

86A.154 Fraud and deceit with respect to mortgage banker or mortgage broker business

86A.157 Clients′ Trust Account; examination; deposit of funds; interest; rules

86A.160 Notice to bank regarding Clients′ Trust Account

86A.163 Prohibited advertisements

86A.166 Designation of principal place of business; other offices; change of personnel; registered agent

86A.169 Disclosure required before closing mortgage loan or mortgage banking loan

86A.172 Consultation with licensees before rules adopted

86A.175 Servicing or collecting mortgage banking loan or mortgage loan by mortgage banker or mortgage broker

86A.178 Legislative findings regarding loan originators; prohibited practice

86A.179 List of loan originators; qualifications; voluntary reporting; records; waiver; rules

86A.180 Qualifications for insurance licensees acting as loan originators

86A.183 Prohibited conduct for loan originators; effect of criminal conviction; rules

86A.186 Loan originator criminal records checks; rules

86A.187 Complaints against loan originators; investigation; hearing; rules; action by director

86A.188 Continuing education requirements for loan originators; rules

86A.189 Certification of organizations to provide training for loan originators; rules

(Regulation of Lending Activity)

86A.195 Restrictions on negative amortization loans; verification of borrower income; prepayment penalties

86A.198 Materials in languages other than English; requirements

MORTGAGE LOAN ORIGINATORS

86A.200 Definitions

86A.203 License and unique identifier for mortgage loan originator; requirements; exemptions; rules

86A.206 Application for license; information and materials required for application; rules

86A.209 Interim license; findings required

86A.212 Findings required for issuing license; basis for denial; rules

86A.215 Education and testing requirements for license; education and test providers

86A.218 License renewal; expiration; reinstatement; rules

86A.221 Continuing education requirements for mortgage loan originator; credit allowed

86A.224 Denying, suspending, conditioning, revoking or declining to renew license; findings required; order; civil penalty; prohibited activity; criminal liability

86A.227 Corporate surety bond required; right of action; rules

86A.230 Contracts or agreements with Nationwide Mortgage Licensing System and Registry and other agencies; information sharing; confidentiality; reports of violations; rules

86A.233 Production of records; investigations, examinations and subpoenas; possession of records; access to records; powers of director; prohibited activities

86A.236 Prohibited activities

86A.239 Display of license and unique identifier; rules; report of condition

86A.242 Rules

PENALTIES

86A.990 Criminal penalties for violations of ORS 86A.095 to 86A.198

86A.992 Civil penalties for violations of ORS 86A.095 to 86A.198

MORTGAGE BANKERS; MORTGAGE BROKERS; LOAN ORIGINATORS

(Generally)

86A.095 Short title. ORS 86A.095 to 86A.198 may be cited as the "Oregon Mortgage Lender Law." [Formerly 59.980]

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

(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 86A.095 to 86A.198.

(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 86A.095 to 86A.198, 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 86A.095 to 86A.198.

(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 86A.095 to 86A.198.

(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. [Formerly 59.840]

Note: The amendments to 86A.100 (formerly 59.840) by section 14, chapter 863, Oregon Laws 2009, become operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009. The text that is operative on and after July 31, 2010, is set forth for the user's convenience.

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

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

(2) "License" means a license issued to a mortgage banker or mortgage broker under ORS 86A.095 to 86A.198.

(3)(a) "Mortgage banker" means a person that 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) "Mortgage banker" 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 12 U.S.C. 1467a(a)(1)(D), 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 86A.095 to 86A.198.

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

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

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

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

(E) A person that, 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 a state or of the United States.

(G) A person that 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 the real property or a lien created without the consent of the owner of the real property.

(H) A person that funds a mortgage banking loan or mortgage loan that a licensee or exempt person originated and processed and that 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 negotiating mortgage banking loans or mortgage loans. For the purpose of this subparagraph, "negotiating 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 that a licensee or exempt person originated.

(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) A person designated by rule or order of the Director of the Department of Consumer and Business Services.

(4) "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, that is directly or indirectly secured by a mortgage or deed of trust or any lien interest on real estate and that 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 the mortgage banker's 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 control, are controlled by or are under common control with the entity specified.

(5)(a) "Mortgage broker" means a person that:

(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) "Mortgage broker" does not include:

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

(B)(i) 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;

(ii) A savings and loan holding company as defined in 12 U.S.C. 1467a(a)(1)(D), holding an association described in subparagraph (A) of this paragraph;

(iii) The subsidiaries and affiliates of the financial holding company, bank holding company or savings and loan holding company; or

(iv) 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 the persons' mortgage brokering activities in accordance with the purposes of ORS 86A.095 to 86A.198.

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

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

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

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

lender or an agent of the mortgage banker, mortgage broker, mortgage loan originator or lender.

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

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

(J) A person that 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 the real property or a lien created without the consent of the owner of the real property.

(K) A person that funds a mortgage loan that a licensee or exempt person originated and processed and that 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 negotiating mortgage loans. For the purpose of this subparagraph, "negotiating mortgage loans" does not include setting the terms under which a person may buy or fund a mortgage loan that a licensee or exempt person originated.

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

(6) "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 a lien interest on real estate that is created with the consent of the owner of the real estate.

(7) "Mortgage loan originator" has the meaning given that term in ORS 86A.200.

(8) "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.

86A.103 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 86A.095 to 86A.198. A person who is a mortgage banker or mortgage broker under ORS 86A.100, but who does not engage in residential mortgage transactions in this state, is not required to obtain a license under ORS 86A.095 to 86A.198.

(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. [Formerly 59.845]

86A.106 Procedures for licensing; experience required; certification; 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 86A.115, 86A.118 or 86A.121, 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 86A.095 to 86A.198, 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. [Formerly 59.850]

Note: The amendments to 86A.106 (formerly 59.850) by section 15, chapter 863, Oregon Laws 2009, become operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009. The text that is operative on and after July 31, 2010, is set forth for the user's convenience.

86A.106. (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 the Nationwide Mortgage Licensing System and Registry.

(2) An applicant for a license, or a managing partner, director, executive officer or other individual that occupies a similar position or performs 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 is issued to a person other than an individual, at least one managing partner, director, executive officer or other individual that occupies a similar position or performs 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) An applicant for a license that is not subject to the requirement set forth in ORS 86A.227 shall file with the director a corporate surety bond or irrevocable letter of credit that is approved by the director in an amount the director specifies by rule, that runs to the State of Oregon and that is issued by an insured institution as defined in ORS 706.008.

(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 $50,000. The director by rule shall require the sum of the corporate surety bond or irrevocable letter of credit to reflect the dollar amount of the loans that the mortgage banker or mortgage broker originates.

(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 86A.115, 86A.118 or 86A.121, 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 described in subsection (5) of this section when there are material changes in the information contained in the original application.

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

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

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

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

(9) The director shall:

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

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

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

(10) The fees under this section are not refundable except for fees that the director determines by rule are refundable.

86A.109 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. [Formerly 59.855]

Note: The amendments to 86A.109 (formerly 59.855) by section 16, chapter 863, Oregon Laws 2009, become operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009. The text that is operative on and after July 31, 2010, is set forth for the user's convenience.

86A.109. (1) An initial license expires one year after the date of issuance unless the Director of the Department of Consumer and Business Services establishes a different expiration date to coordinate with the Nationwide Mortgage Licensing System and Registry.

(2) The director by rule shall establish procedures to renew a license. The rule shall specify the duration of a renewed license.

(3) If there is a change in the partners, directors, officers or persons that occupy similar positions or perform similar functions, or persons that directly or indirectly control a mortgage banker or mortgage broker, written notification of the change must be filed promptly with the director. No fee is required for the notification.

86A.112 Licensees to keep records; inspection; filing 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.

(3) On or before May 1 of each year or on a date the director establishes by rule, every mortgage banker and mortgage broker shall file a report with the director in a form prescribed by the director. The report shall contain information the director requires concerning the mortgage banker's or mortgage broker's business and operations related to residential mortgage lending during the preceding calendar year. The information shall include the number and nature of loans originated by loan originators that the mortgage banker or mortgage broker employed.

(4) The report and any records submitted to the director under this section are exempt from disclosure or production and are confidential as provided under ORS 705.137.

(5) Notwithstanding the exemption and confidentiality provisions of subsection (4) of this section, the director may abstract information contained in reports submitted under subsection (3) of this section and may make the abstracted information available for public inspection provided that the abstracted information does not identify a particular mortgage banker or mortgage broker as a source of the information. [Formerly 59.860]

Note: The amendments to 86A.112 (formerly 59.860) by section 17, chapter 863, Oregon Laws 2009, become operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009. The text that is operative on and after July 31, 2010, is set forth for the user's convenience.

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

(2) A mortgage banker or mortgage broker shall file financial reports or other information that the director by rule or order requires and shall promptly correct a document filed with the director that is or becomes incomplete or inaccurate in any material respect.

(3) On or before May 1 of each year or on a date the director establishes by rule, a mortgage banker or mortgage broker shall file a report with the director in a form prescribed by the director. The report shall contain information the director requires concerning the mortgage banker's or mortgage broker's business and operations related to residential mortgage lending during the preceding calendar year. The information shall include the number and nature of loans originated by mortgage loan originators that the mortgage banker or mortgage broker employed.

(4) The report and any records submitted to the director under this section are exempt from disclosure or production and are confidential as provided under ORS 705.137.

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

86A.115 Grounds for denying, suspending, conditioning or revoking license. Except as provided in ORS 86A.118, 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 86A.095 to 86A.198 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 86A.106 (2) or (3).

(11) Has failed to comply with the requirements of ORS 86A.112 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. [Formerly 59.865]

Note: The amendments to 86A.115 (formerly 59.865) by section 18, chapter 863, Oregon Laws 2009, become operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009. The text that is operative on and after July 31, 2010, is set forth for the user's convenience.

86A.115. Except as provided in ORS 86A.118, the Director of the Department of Consumer and Business Services may by order deny, suspend, condition or revoke a license 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 that the applicant or licensee 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) 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) Willfully or repeatedly violated or failed to comply with a provision of ORS 86A.095 to 86A.198 or a rule or order of the director.

(4) Failed, in conducting business as a mortgage banker or mortgage broker, to comply with the provisions of:

(a) The Truth in Lending Act, 15 U.S.C. 1601 et seq. and Regulation Z, 12 C.F.R. part 226, as in effect on October 1, 2009;

(b) The Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq. and Regulation X, 24 C.F.R. part 3500, as in effect on January 1, 2010;

(c) The Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq. and Regulation B, 12 C.F.R. 202.9, 202.11, 202.12 and 202.14, as in effect on July 30, 2009; or

(d) 12 U.S.C. 5101 et seq. and regulations adopted under 12 U.S.C. 5101 et seq.

(5) Was convicted of a misdemeanor, an essential element of which is fraud, or of a felony.

(6) Filed an application for a license that, as of the date the license was issued, or as of the date of an order that denied, suspended, conditioned or revoked a license, was incomplete in any material respect or contained a statement that was, in light of the circumstances under which the statement was made, false or misleading with respect to a material fact.

(7) Failed to account to persons interested for money or property received in connection with a mortgage loan.

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

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

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

(11) Does not have the experience required by ORS 86A.106 (2) or (3).

(12) Failed to comply with the requirements of ORS 86A.112 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.

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

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

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

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

(17) Knowingly misrepresented to the director the training of, examination of or continuing education time earned by a mortgage loan originator the licensee employs.

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

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

86A.118 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 86A.115 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 86A.115 (1). [Formerly 59.870]

86A.121 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 86A.106 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. [Formerly 59.875]

Note: The amendments to 86A.121 (formerly 59.875) by section 19, chapter 863, Oregon Laws 2009, become operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009. The text that is operative on and after July 31, 2010, is set forth for the user's convenience.

86A.121. (1) The Director of the Department of Consumer and Business Services may cancel an application or license if the director finds that the applicant or licensee:

(a) Has ceased to do business as a mortgage banker or mortgage broker;

(b) Has failed to maintain a corporate surety bond or irrevocable letter of credit required under ORS 86A.106 or 86A.227; or

(c) Cannot be located after a reasonable search.

(2) A mortgage banker or mortgage broker may surrender a license by filing an application to surrender the license. Unless the director determines that the license should be suspended or revoked, the director shall allow the surrender subject to any conditions, limitations and restrictions the director may impose.

86A.124 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 86A.095 to 86A.198. 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 86A.095 to 86A.198 relating to examinations shall extend to any person who should have been reported as a loan originator under ORS 86A.179 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. [Formerly 59.880]

Note: The amendments to 86A.124 (formerly 59.880) by section 20, chapter 863, Oregon Laws 2009, become operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009. The text that is operative on and after July 31, 2010, is set forth for the user's convenience.

86A.124. The Director of the Department of Consumer and Business Services has general supervision and control over mortgage loan originators, mortgage bankers and mortgage brokers residing or doing business in this state and engaged in an activity that is subject to the provisions of ORS 86A.095 to 86A.198. Mortgage bankers and mortgage brokers and the records and activities connected with mortgage bankers, mortgage brokers and mortgage loan originators are subject to examination by the director at any time. The provisions of this section and of any other section of ORS 86A.095 to 86A.198 relating to examinations extend to a person that is or should have been licensed as a mortgage loan originator under ORS 86A.200 to 86A.239 or licensed as a mortgage banker or mortgage broker, a person exempted by rule from the definitions of mortgage banker, mortgage broker or mortgage loan originator or a person whose license has expired or has been withdrawn, canceled, suspended, conditioned or revoked. The director may collect from the person the actual expenses incurred in the examination.

86A.127 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 86A.095 to 86A.198 or any rule or order of the director, or to aid in the enforcement of ORS 86A.095 to 86A.198 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 86A.130, 86A.990 or 86A.992 or any rule or order of the director after an action taken under this section or ORS 86A.130, 86A.990 or 86A.992; 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 86A.095 to 86A.198, may issue an order, subject to ORS 86A.139, 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. [Formerly 59.885]

86A.130 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 86A.095 to 86A.198 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 86A.095 to 86A.198 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 86A.095 to 86A.198 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 86A.151 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. [Formerly 59.890]

86A.133 Procedures where assets or capital of mortgage banker or mortgage 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 mortgage 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. [Formerly 59.895]

86A.136 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 86A.095 to 86A.198, 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 86A.095 to 86A.198 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 86A.095 to 86A.198;

(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. [Formerly 59.900]

Note: The amendments to 86A.136 (formerly 59.900) by section 21, chapter 863, Oregon Laws 2009, become operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009. The text that is operative on and after July 31, 2010, is set forth for the user's convenience.

86A.136. (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 86A.095 to 86A.198, including but not limited to rules governing the activities of mortgage 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 under the applicable provisions.

(2) A financial statement required under ORS 86A.095 to 86A.198 must 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 86A.095 to 86A.198;

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

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

86A.139 Notice of orders; hearings on orders. (1) Except as provided in ORS 183.745, upon the entry of an order under ORS 86A.095 to 86A.198, 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 86A.115;

(b) The loan originator and the licensee employing the loan originator with respect to orders entered pursuant to ORS 86A.187; or

(c) All interested persons with respect to orders entered pursuant to any other provision of ORS 86A.095 to 86A.198.

(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. [Formerly 59.905]

Note: The amendments to 86A.139 (formerly 59.905) by section 22, chapter 863, Oregon Laws 2009, become operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009. The text that is operative on and after July 31, 2010, is set forth for the user's convenience.

86A.139. (1) Except as provided in ORS 183.745, upon the entry of an order under ORS 86A.095 to 86A.198, 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 86A.115; or

(b) An interested person, with respect to orders entered pursuant to any other provision of ORS 86A.095 to 86A.198.

(2) If a person entitled to notice of the order files a timely demand for a hearing, 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 before the license or registration expired.

86A.142 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. [Formerly 59.910]

86A.145 Oaths and subpoenas in proceedings before director. (1) For the purpose of an investigation or proceeding under ORS 86A.095 to 86A.198, 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. [Formerly 59.915]

86A.148 Copies of documents; fees; rules; 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 86A.095 to 86A.198, 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 86A.095 to 86A.198 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. [Formerly 59.920]

86A.151 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 86A.095 to 86A.198.

(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 86A.095 to 86A.198; 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 86A.154 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 86A.106 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. [Formerly 59.925]

Note: The amendments to 86A.151 (formerly 59.925) by section 23, chapter 863, Oregon Laws 2009, become operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009. The text that is operative on and after July 31, 2010, is set forth for the user's convenience.

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

(a) Violates a provision of ORS 86A.200 to 86A.239, except ORS 86A.236 (11), or ORS 86A.095 to 86A.198, except ORS 86A.115 (4); or

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

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

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

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

(3) A person whose sole function in connection with a residential mortgage 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 residential mortgage 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 the facts was the result of the person's recklessness or gross negligence.

(4) Except as otherwise provided in this subsection, an action or suit may not be commenced under this section more than three years after the residential mortgage transaction. An action under this section for a violation under subsection (2)(b) of this section or ORS 86A.154 may be commenced within three years after the residential mortgage 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 not later than five years after the date of the residential mortgage transaction. Failure to commence an action on a timely basis is an affirmative defense.

(5) A person has a right of action under the corporate surety bond or irrevocable letter of credit required under ORS 86A.106 or 86A.227 if the person:

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

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

(6) Subsection (3) of this section does not limit a person's liability:

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

(b) Under any other law.

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

(8) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (7) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

86A.154 Fraud and deceit with respect to mortgage banker or mortgage 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. [Formerly 59.930]

86A.157 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. [Formerly 59.935]

86A.160 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 86A.157, shall provide the bank in which the

account is opened with a notice in substantially the following form:

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 86A.157, 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)

---

(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 86A.157 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. [Formerly 59.940]

86A.163 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. [Formerly 59.945]

86A.166 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. [Formerly 59.950]

86A.169 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. [Formerly 59.955]

86A.172 Consultation with licensees before rules adopted. Before adopting any rules under ORS 86A.095 to 86A.198, the Di-

rector 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 86A.095 to 86A.198. [Formerly 59.960]

86A.175 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 86A.095 to 86A.198, 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 86A.100 (5)(a) but also includes those persons exempted from the definition of mortgage banker in ORS 86A.100 (5)(b).

(b) "Mortgage banking loan" has the meaning given that term in ORS 86A.100.

(c) "Mortgage broker" has the meaning given that term in ORS 86A.100.

(d) "Mortgage loan" has the meaning given that term in ORS 86A.100.

(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. [Formerly 59.962]

Note: The amendments to 86A.175 (formerly 59.962) by section 24, chapter 863, Oregon Laws 2009, become operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009. The text that is operative on and after July 31, 2010, is set forth for the user's convenience.

86A.175. (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 a mortgage banking loan or mortgage loan in the name of the mortgage banker or mortgage broker or in the name of the lender, note owner, note holder or other holder of an interest in the note.

(2) Except as provided in ORS 86A.095 to 86A.198, nothing in subsection (1) of this section grants the Director of the Department of Consumer and Business Services the authority to regulate the servicing or collection of a 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 86A.100 (3)(a) but also includes a person exempted from the definition of mortgage banker in ORS 86A.100 (3)(b).

(b) "Mortgage banking loan" has the meaning given that term in ORS 86A.100.

(c) "Mortgage broker" has the meaning given that term in ORS 86A.100.

(d) "Mortgage loan" has the meaning given that term in ORS 86A.100.

(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 a 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 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 a suit or action to collect amounts owed on a mortgage banking loan or mortgage loan, including but not limited to exercising contractual, statutory or common law remedies such as injunction, specific performance, judicial or nonjudicial foreclosure or receivership.

Note: 86A.175 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 86A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

86A.178 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. [Formerly 59.967]

Note: The amendments to 86A.178 (formerly 59.967) by section 25, chapter 863, Oregon Laws 2009, become operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009. The text that is operative on and after July 31, 2010, is set forth for the user's convenience.

86A.178. (1) The Legislative Assembly finds and declares that:

(a) The public interest is served by identifying a mortgage 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 mortgage loan originator is employed by more than one mortgage lender.

(2) A mortgage 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.

86A.179 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) A person that applies for a license to conduct business as a mortgage banker or mortgage broker under ORS 86A.106 or that applies to renew a license under ORS 86A.109 shall include with the application evidence acceptable to the director that each individual the person 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 86A.189; and

(B) Passed an examination, approved or provided by an organization described in ORS 86A.189, 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 86A.188.

(3) A person that applies for a license to conduct business as a mortgage banker or mortgage broker under ORS 86A.106 or that applies to renew a license under ORS 86A.109 shall include with the application evidence acceptable to the director that each individual the person 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 86A.180 has:

(a)(A) Successfully completed an entry-level training course approved or provided by an organization certified by the director as described in ORS 86A.189; and

(B) Passed an examination, approved or provided by an organization described in ORS 86A.189, 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 86A.188.

(4) An applicant under subsection (2) or (3) of this section shall, at the time of application, certify that the applicant has conducted criminal records checks required under ORS 86A.180 and 86A.186 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 86A.178 (2) or 86A.183; 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.

(5) Except as provided in subsection (3) 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 86A.100 (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.

(6) The director shall keep for not less than 10 years, and shall maintain a registry of loan originators with information derived from, records of:

(a) Notifications filed under subsection (1) of this section;

(b) Exceptions to certifications under subsection (4)(b) of this section;

(c) Complaints the director has determined are justified under ORS 86A.187; and

(d) Actions taken in accordance with the provisions of ORS 86A.187.

(7) Notwithstanding subsections (1) to (3) of this section and ORS 86A.115 (17), 86A.180, 86A.183 (1)(d) and 86A.188, 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. [Formerly 59.969]

Note: 86A.179 (formerly 59.969) is repealed July 31, 2010. See sections 36 and 37, chapter 863, Oregon Laws 2009.

86A.180 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 86A.100 (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 86A.189;

(b) Pass an examination, approved or provided by an organization described in ORS 86A.189, 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 86A.188; and

(d) Undergo a criminal records check as required in ORS 86A.186. [Formerly 59.970]

Note: 86A.180 (formerly 59.970) is repealed July 31, 2010. See sections 36 and 37, chapter 863, Oregon Laws 2009.

86A.183 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 86A.095 to 86A.198 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.

(e) Perform an act as a loan originator in a negligent or incompetent manner.

(2) A person may not be employed by a mortgage banker or mortgage broker as a loan originator as defined in ORS 86A.100 or 86A.180 if:

(a) The person has been convicted of any crime or category of crime specified by the director by rule;

(b) The person is suspended or has been prohibited from employment as a loan originator under ORS 86A.187 (5)(c);

(c) The employment violates any conditions imposed under ORS 86A.187 (5)(c); or

(d) The employment violates an order issued by the director, a state or federal agency or a court of competent jurisdiction. [Formerly 59.971]

Note: The amendments to 86A.183 (formerly 59.971) by section 26, chapter 863, Oregon Laws 2009, become operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009. The text that is operative on and after July 31, 2010, is set forth for the user's convenience.

86A.183. (1) A mortgage banker, mortgage broker or mortgage loan originator may not:

(a) Engage in dishonest, fraudulent or illegal practices or conduct in a 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 86A.095 to 86A.198 or 86A.200 to 86A.239 or a rule or order of the Director of the Department of Consumer and Business Services.

(c) Fail to account to persons interested for money or property received in connection with a mortgage loan.

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

(e) Perform an act as a mortgage loan originator in a negligent or incompetent manner.

(2) An individual may not be employed by a mortgage banker or mortgage broker as a mortgage loan originator if:

(a) The individual was convicted of a crime or category of crime specified by the director by rule;

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

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

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

86A.186 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 86A.180; and

(b) Specifying categories of criminal convictions that will prevent a person from acting as a loan originator under ORS 86A.183. [Formerly 59.972]

Note: The amendments to 86A.186 (formerly 59.972) by section 27, chapter 863, Oregon Laws 2009, become operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009. The text that is operative on and after July 31, 2010, is set forth for the user's convenience.

86A.186. (1) A person that employs or intends to employ an individual as a mortgage loan originator shall conduct a state criminal records check of the individual.

(2) A person that employs or intends to employ an individual as a mortgage loan originator shall report to the Director of the Department of Consumer and Business Services the results of each state criminal records check conducted under subsection (1) of this section.

(3) The director shall adopt rules to:

(a) Implement and administer state criminal records checks required under this section; and

(b) Specify crimes and categories of crimes for which a conviction will prevent a person from acting as a mortgage loan originator under ORS 86A.183.

86A.187 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 86A.095 to 86A.198, 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 and any action taken in the records kept pursuant to ORS 86A.179 (6).

(5) The director, after finding that a loan originator has violated a provision of ORS 86A.095 to 86A.198 or a rule or order of the director, may:

(a) Impose requirements for supervision and remedial education of the loan originator;

(b) Assess civil penalties against the loan originator as provided in ORS 86A.992;

(c) Suspend or permanently prohibit the loan originator from employment as a loan originator or place conditions on the loan originator's employment; or

(d) Refer the matter for criminal prosecution pursuant to ORS 86A.990. [Formerly 59.973]

Note: 86A.187 (formerly 59.973) is repealed July 31, 2010. See sections 36 and 37, chapter 863, Oregon Laws 2009.

86A.188 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 86A.189. [Formerly 59.975]

Note: 86A.188 (formerly 59.975) is repealed July 31, 2010. See sections 36 and 37, chapter 863, Oregon Laws 2009.

86A.189 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 86A.095 to 86A.198. [Formerly 59.977]

Note: 86A.189 (formerly 59.977) is repealed July 31, 2010. See sections 36 and 37, chapter 863, Oregon Laws 2009.

(Regulation of Lending Activity)

86A.195 Restrictions on negative amortization loans; verification of borrower income; prepayment penalties. (1)(a) As used in this section, "negative amortization loan" means a mortgage loan or mortgage banking loan that is structured in such a way that a borrower in any period may make a scheduled loan payment that is insufficient to pay accruing interest.

(b) "Negative amortization loan" does not include:

(A) A loan commonly known as a bridge loan, the terms of which specify that:

(i) The maturity period for the loan is less than 18 months; and

(ii) The borrower may pay only interest until a time when the entire unpaid loan balance is due and payable.

(B) A mortgage loan in which:

(i) The principal amount is not more than $50,000; and

(ii) The combined loan to value ratio between all mortgage loans that are secured by the same property and the value of the securing property is not more than 50 percent.

(C) A loan commonly known as a reverse mortgage, the terms of which specify that the loan:

(i) Is a non-recourse loan secured by real property;

(ii) Provides cash advances to the borrower based on the equity or value in the borrower's owner-occupied principal residence;

(iii) Requires no payment of principal or interest until the entire loan becomes due and payable; and

(iv) Is made by a mortgage lender licensed in this state or licensed under the laws of the United States.

(D) A loan commonly known as a home equity line of credit, in which:

(i) The amounts borrowed and the interest and other charges are debited to an account that is secured by an interest in real estate;

(ii) Interest on the account is computed periodically;

(iii) The borrower has the right to pay in full at any time without penalty or to pay in installments that are specified in the loan agreement; and

(iv) The lender agrees to permit a borrower from time to time to borrow money, with the maximum limit on the amount of each borrowing established by the loan agreement.

(2) A mortgage banker, mortgage broker or mortgage loan originator may not negotiate or make, or offer to negotiate or make, a negative amortization loan without regard to the borrower's repayment ability at the time the loan is made, including the borrower's current and reasonably expected income, employment, assets other than the collateral, current obligations and mortgage related obligations. The mortgage banker, mortgage broker or mortgage loan originator shall verify the income and assets of the borrower that will be relied on to evaluate the borrower's repayment ability. The borrower's repayment ability must be evaluated and the borrower's income and assets must be verified in a manner that is consistent with the requirements of 12 C.F.R. 226.34, as promulgated on January 1, 2010.

(3) A negative amortization loan may not contain a prepayment penalty beyond the first 24 months after the date on which the loan is made.

(4) A creditor may not collect a prepayment penalty on an existing negative amortization loan in return for or as a consequence of refinancing or providing funds to refinance the negative amortization loan. [2009 c.603 §2; 2009 c.863 §38]

86A.198 Materials in languages other than English; requirements. (1) A mortgage banker, a mortgage broker or a mortgage loan originator shall provide in writing the materials identified in subsection (2) of this section to a borrower if the mortgage banker, mortgage broker or mortgage loan originator:

(a) Communicates or causes to be communicated an advertisement in a language other than English or otherwise solicits business in a language other than English; and

(b) Offers to negotiate or make, or negotiates or makes, a residential mortgage transaction in the course of which a substantial portion of the communication with the borrower that is related to the transaction takes place in the language other than English that was used to communicate the advertisement or make the solicitation.

(2) A mortgage banker, mortgage broker or mortgage loan originator that takes an action described in subsection (1) of this section shall provide the following materials to the borrower in English and in the language other than English in which a sub-

stantial portion of the communication that is related to the transaction takes place:

(a) A good faith estimate required under the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq., and under Regulation X, 24 C.F.R. part 3500, as enacted or promulgated on January 1, 2010;

(b) The disclosures related to the transaction that are required under the Truth in Lending Act, 15 U.S.C. 1601 et seq., and under Regulation Z, 12 C.F.R. part 226, as enacted or promulgated on January 1, 2010; and

(c) A statement notifying the borrower that loan documents associated with the transaction will be in English and advising the borrower to obtain appropriate assistance with any necessary translations.

(3) The Director of the Department of Consumer and Business Services shall develop and distribute translated versions of the materials identified in subsection (2) of this section in the three languages other than English that are most commonly spoken in this state. [2009 c.603 §3; 2009 c.863 §39]

MORTGAGE LOAN ORIGINATORS

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

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

(2) "Federal banking agency" means:

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

(b) The Comptroller of the Currency;

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

(d) The National Credit Union Administration Board; and

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

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

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

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

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

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

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

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

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

(A) An individual who, as an employee or independent contractor, works solely as a loan processor or underwriter;

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

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

(D) An individual who:

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

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

(5) "Nationwide Mortgage Licensing System and Registry" means a system that the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators maintain to register and license mortgage loan originators.

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

(7) "Registered mortgage loan originator" means an individual who:

(a) Is employed by:

(A) A depository institution;

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

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

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

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

(8) "Residential mortgage loan" means a loan that is secured by a mortgage, deed of trust or equivalent consensual security interest on four or fewer residential dwelling units, including but not limited to individual dwelling units, mobile homes, condominiums or cooperatives that are planned for or situated on real property in this state.

(9) "Unique identifier" means a number or other means of identification that is assigned by or under protocols established by the Nationwide Mortgage Licensing System and Registry. [2009 c.863 §1]

Note: 86A.200 becomes operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009.

86A.203 License and unique identifier for mortgage loan originator; requirements; exemptions; rules. (1) Except as provided in subsection (2) of this section, an individual may not engage in business as a mortgage loan originator in this state without first:

(a) Obtaining and maintaining a mortgage loan originator's license under ORS 86A.212 or renewing a mortgage loan originator's license under ORS 86A.218; and

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

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

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

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

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

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

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

(B) Does not receive compensation from a mortgage banker, mortgage broker, mortgage loan originator or lender or an agent of the mortgage banker, mortgage broker, mortgage loan originator or lender.

(3) The director by rule may exempt a person from the requirement to obtain a mortgage loan originator's license under ORS 86A.200 to 86A.239 if the United States Department of Housing and Urban Development requires or permits the exemption under 12 U.S.C. 5101 et seq.

(4)(a) Except as provided in paragraph (b) of this subsection, an employee of a dealer, as defined in ORS 446.003, is not subject to the provisions of ORS 86A.200 to 86A.239 if the employee:

(A) Performs only administrative or clerical tasks; and

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

(b) An employee of a dealer is subject to the provisions of ORS 86A.200 to 86A.239 if the United States Department of Housing and Urban Development in a guideline, rule, regulation or interpretive letter determines that the exemption granted in paragraph (a) of this subsection is inconsistent with requirements set forth in 12 U.S.C. 5101 et seq. [2009 c.863 §2]

Note: 86A.203 becomes operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009.

86A.206 Application for license; information and materials required for application; rules. (1) The Director of the Department of Consumer and Business Services by rule shall determine the manner in which an applicant must apply and the form and contents of an application for a license to conduct business as a mortgage loan originator.

(2) In connection with an application under this section, an applicant shall apply for and receive a unique identifier from the Nationwide Mortgage Licensing System and Registry. As part of the application, the director by rule shall require the applicant to submit to the director or directly to the Nationwide Mortgage Licensing System and Registry:

(a) Fingerprints that the Federal Bureau of Investigation, or another government agency that is authorized to receive fingerprints, can use to perform a state, national and international criminal background check;

(b) A summary of the applicant's personal history and experience on a form prescribed by the Nationwide Mortgage Licensing System and Registry;

(c) A document that authorizes the Nationwide Mortgage Licensing System and Registry to obtain, with reference to the applicant:

(A) A credit report from a consumer reporting agency, as defined in 15 U.S.C. 1681a(f), or a consumer reporting agency that compiles and maintains files on consumers

on a nationwide basis, as defined in 15 U.S.C. 1681a(p); and

(B) Information about administrative, civil or criminal proceedings and findings concerning the applicant in any governmental jurisdiction; and

(d) Other information the director or the Nationwide Mortgage Licensing System and Registry may require. [2009 c.863 §3]

Note: 86A.206 becomes operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009.

86A.209 Interim license; findings required. The Director of the Department of Consumer and Business Services may issue an interim mortgage loan originator's license to a person that is not licensed under ORS 86A.212 if the director finds that issuing the interim license will facilitate the business of licensed mortgage loan originators or prevent an undue delay in issuing a mortgage loan originator's license. The director may specify the term of the interim mortgage loan originator's license and may issue the interim license to an applicant for a mortgage loan originator's license only if the director finds that the applicant:

(1) Is employed by a person that has a valid license or registration from the Department of Consumer and Business Services;

(2) Substantially meets the requirements of ORS 86A.206, 86A.212 and 86A.215 as of July 31, 2010; and

(3) Has not committed an act prohibited under ORS 86A.236. [2009 c.863 §3a]

Note: 86A.209 becomes operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009.

86A.212 Findings required for issuing license; basis for denial; rules. (1) The Director of the Department of Consumer and Business Services may not issue a mortgage loan originator's license to an applicant unless the director finds, at a minimum, that the applicant:

(a) Has obtained a unique identifier from the Nationwide Mortgage Licensing System and Registry.

(b) Has not had a mortgage loan originator's license revoked in another jurisdiction. For purposes of this paragraph, an applicant's mortgage loan originator's license was not revoked if an order or decision to revoke the license was later rescinded or vacated.

(c) Has not been convicted of or pleaded guilty or no contest in a state, federal, foreign or military court to a felony or to a misdemeanor if an essential element of the misdemeanor involved false statements or dishonesty:

(A) During a period of seven years before the date the applicant submits an application under ORS 86A.206; or

(B) At any time before the date the applicant submits an application under ORS 86A.206, if the conviction or plea involved a felony and an element of the felony was an act of fraud, dishonesty, a breach of trust or laundering a monetary instrument. For purposes of this paragraph, a conviction that was later pardoned is not a conviction.

(d) Has demonstrated financial responsibility sufficient to command the confidence of the community and warrant the determination that the applicant will operate honestly, fairly and efficiently within the purposes of ORS 86A.200 to 86A.239.

(e) Has completed the education requirement set forth in ORS 86A.215 and passed a test that meets the standards set forth in ORS 86A.215.

(f) Is covered by a surety bond in accordance with the provisions of ORS 86A.227.

(2) The director may not:

(a) Deny a mortgage loan originator's license to an applicant because of the applicant's credit score; or

(b) Use information in a credit report as the sole basis for denying the mortgage loan originator's license.

(3) The director shall issue a mortgage loan originator's license to an applicant if:

(a) The director is satisfied that the information contained in the application for a mortgage loan originator's license is accurate and complete; and

(b) No reason exists under subsection (1) of this section to deny the applicant a mortgage loan originator's license.

(4) The director by rule may specify criteria for determining financial responsibility under subsection (1)(d) of this section. [2009 c.863 §4]

Note: 86A.212 becomes operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009.

86A.215 Education and testing requirements for license; education and test providers. (1) An applicant for a mortgage loan originator's license shall:

(a) Complete, at a minimum, 20 hours of an approved course of prelicensing education that, at a minimum, must include:

(A) Three hours devoted to federal laws and regulations;

(B) Three hours devoted to ethics, with instruction concerning fraud, consumer protection and fair lending; and

(C) Two hours devoted to lending standards applicable to nontraditional mortgages; and

(b) Pass a qualified written test with a score of 75 percent correct or better. The

test must measure the applicant's knowledge of:

(A) Ethics; and

(B) Federal and state laws, regulations and rules that apply to residential mortgage loan origination, including laws, regulations and rules that concern fraud, consumer protection, fair lending and nontraditional mortgages.

(2) For purposes of this section:

(a) An approved course of prelicensing education is a course that the Nationwide Mortgage Licensing System and Registry has reviewed and for which the Nationwide Mortgage Licensing System and Registry has approved the contents, provider, instructional standards and means and methods of delivery, using reasonable standards.

(b) A qualified written test is a test that the Nationwide Mortgage Licensing System and Registry develops and for which the Nationwide Mortgage Licensing System and Registry approves the test provider and method of test administration, using reasonable standards.

(3) The director shall accept for the purposes of the requirements set forth in subsection (1) of this section an approved course of prelicensing education that an applicant completed in another state.

(4) This section does not preclude:

(a) An applicant's employer or a subsidiary, agent or affiliate of the employer from providing an approved course of prelicensing education; or

(b) An approved test provider from administering a qualified test at the business location of the applicant's employer or an affiliate, subsidiary or agent of the employer or at the business location of a person with which the employer has an exclusive contractual arrangement related to mortgage loan origination.

(5) An applicant may take a qualified test four consecutive times, provided that each test administration occurs 30 days after a previous test administration. If the applicant fails the approved test four consecutive times, the applicant must wait at least six months before retaking the test. [2009 c.863 §5]

Note: 86A.215 becomes operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009.

86A.218 License renewal; expiration; reinstatement; rules. (1) The Director of the Department of Consumer and Business Services shall renew a mortgage loan originator's license if the director finds that:

(a) The licensed mortgage loan originator continues to meet the requirements set forth under ORS 86A.212;

(b) The licensed mortgage loan originator paid the fee required to renew the mortgage loan originator's license; and

(c) The licensed mortgage loan originator satisfied the continuing education requirements set forth in ORS 86A.221. If the licensed mortgage loan originator did not satisfy the requirements under ORS 86A.221, instead of declining to renew the mortgage loan originator's license, the director by rule or order may permit or require the licensed mortgage loan originator to make up the deficiency in continuing education.

(2)(a) A mortgage loan originator's license expires if:

(A) The licensed mortgage loan originator does not apply to renew the mortgage loan originator's license;

(B) The director declines to renew the mortgage loan originator's license; or

(C) The licensed mortgage loan originator does not otherwise maintain eligibility under the requirements set forth in ORS 86A.200 to 86A.239.

(b) The director by rule may establish a procedure and requirements for reinstating a license that has expired. The procedure and requirements the director establishes must be consistent with standards established by the Nationwide Mortgage Licensing System and Registry and must at a minimum provide that an applicant for reinstatement who has allowed the applicant's mortgage loan originator's license to lapse for a period of five or more years, whether or not the applicant was employed or continued to engage in business as a mortgage loan originator during the period of the lapse, shall:

(A) Demonstrate to the director that the applicant completed the continuing education requirements set forth in ORS 86A.221 that were required in the year in which the applicant last held a mortgage loan originator's license; and

(B) Pass the qualified written test as provided in ORS 86A.215. [2009 c.863 §6]

Note: 86A.218 becomes operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009.

86A.221 Continuing education requirements for mortgage loan originator; credit allowed. (1) A licensed mortgage loan originator each year shall complete at least eight hours of an approved course of continuing education that, at a minimum, must include:

(a) Three hours devoted to federal laws and regulations;

(b) Two hours devoted to ethics, with instruction concerning fraud, consumer protection and fair lending; and

(c) Two hours devoted to lending standards applicable to nontraditional mortgages.

(2) For purposes of this section, an approved course of continuing education is a course that the Nationwide Mortgage Licensing System and Registry has reviewed and for which the Nationwide Mortgage Licensing System and Registry has approved the contents, provider, instructional standards and means and methods of delivery, using reasonable standards.

(3) This section does not preclude a licensed mortgage loan originator's employer or a subsidiary, agent or affiliate of the employer from providing an approved course of continuing education.

(4) The Director of the Department of Consumer and Business Services shall accept for the purposes of the requirement set forth in subsection (1) of this section an approved course of continuing education that a licensed mortgage loan originator completed in another state.

(5) A licensed mortgage loan originator:

(a) May receive credit for a continuing education course only in the year in which the licensed mortgage loan originator takes the course, unless the director under ORS 86A.218 permits or requires the mortgage loan originator to make up a deficiency in continuing education; and

(b) May not for the purposes of meeting the requirement set forth in subsection (1) of this section take the same approved course of continuing education in the same year or in any two successive years.

(6) A licensed mortgage loan originator who is also approved as an instructor for an approved course of continuing education may receive two hours of credit toward the licensed mortgage loan originator's own continuing education requirement for each hour of the approved course of continuing education that the licensed mortgage loan originator teaches. [2009 c.863 §7]

Note: 86A.221 becomes operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009.

86A.224 Denying, suspending, conditioning, revoking or declining to renew license; findings required; order; civil penalty; prohibited activity; criminal liability. (1) In addition to authority the Director of the Department of Consumer and Business Services has under ORS 86A.095 to 86A.198, the director under this section has the authority, subject to ORS chapter 183, to deny, suspend, place conditions upon, revoke or decline to renew a mortgage loan originator's license or permanently prohibit a person from conducting business as a mortgage loan originator if:

(a) A licensed mortgage loan originator violates a provision of ORS 86A.200 to 86A.239 or a rule or order the director issues under ORS 86A.200 to 86A.239;

(b) The director makes a finding under ORS 86A.212 or 86A.218 that the director believes justifies a decision to deny or decline to renew a mortgage loan originator's license;

(c) An applicant makes a false statement or a material misstatement of fact on an application for a mortgage loan originator's license or a licensed mortgage loan originator makes a false statement or a material misstatement of fact on an application to renew a mortgage loan originator's license; or

(d) A person who is not exempted from the requirement to obtain a mortgage loan originator's license under ORS 86A.203 (2) conducts business as a mortgage loan originator without applying for and receiving a mortgage loan originator's license under ORS 86A.206 and 86A.212.

(2) The director, subject to ORS chapter 183, may order a person that is subject to regulation under ORS 86A.200 to 86A.239 to:

(a) Cease and desist immediately or permanently from violating a provision of ORS 86A.200 to 86A.239 or from an act or practice related to mortgage loan origination that the director deems harmful to a consumer or to the public;

(b) Stop or suspend business related to mortgage loan origination;

(c) Pay restitution to a consumer or another person that the director finds suffered harm from the person's acts, omissions, practices or operations or as a result of the person's violation of a provision of ORS 86A.200 to 86A.239; or

(d) Take or refrain from taking an action the director deems necessary to comply with ORS 86A.200 to 86A.239.

(3)(a) The director, in accordance with ORS 183.745, may impose a civil penalty in an amount not to exceed $5,000 for each separate instance of a violation of or failure to comply with the provisions of ORS 86A.200 to 86A.239 or a rule or order the director adopted or issued under ORS 86A.200 to 86A.239.

(b) Every violation described in paragraph (a) of this subsection is a separate offense that is subject to a separate penalty. Each day in which the same violation occurs is a separate violation. A violation that continues for more than one day is a continuing violation that is subject to a maximum penalty of $20,000.

(4)(a) A person may not knowingly:

(A) Violate a provision of ORS 86A.203;

(B) Fail to comply with an order the director issues under this section;

(C) Fail to produce records at the director's request under ORS 86A.233;

(D) Employ a device, scheme or artifice to defraud or engage in an act, practice or course of business that operates or would operate as a fraud or deceit;

(E) Make an untrue statement of a material fact or omit from a statement a material fact that would make the statement not misleading in light of the circumstances under which the person makes the statement; or

(F) Make or file or cause to be made or filed with the director a statement, report or document that the person knows is false in a material respect or matter.

(b) A person who takes an action described in paragraph (a) of this subsection commits a Class C felony. [2009 c.863 §8]

Note: 86A.224 becomes operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009.

86A.227 Corporate surety bond required; right of action; rules. (1) A person that employs a mortgage loan originator shall file with the Director of the Department of Consumer and Business Services a corporate surety bond that runs to the State of Oregon and that covers each mortgage loan originator the person employs. The corporate surety bond must be issued by a corporate surety or an insured institution, as defined in ORS 706.008, that is authorized to transact business in this state.

(2) The director by rule shall:

(a) Prescribe the form of the corporate surety bond;

(b) Require the person to maintain the corporate surety bond in an amount that reflects the dollar amount of the loans the person originated or in a minimum amount the director specifies; and

(c) Prescribe other requirements for the corporate surety bond as are necessary to accomplish the purposes of ORS 86A.200 to 86A.239.

(3) A right of action against the corporate surety bond required under this section exists to the same extent that a right of action exists under ORS 86A.151.

(4) The director may require the person to file a new corporate surety bond if an action is commenced against the corporate surety bond on file with the director. The person shall file a new corporate surety bond immediately if a recovery is obtained against the bond. [2009 c.863 §9]

Note: 86A.227 becomes operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009.

86A.230 Contracts or agreements with Nationwide Mortgage Licensing System and Registry and other agencies; information sharing; confidentiality; reports of violations; rules. (1) The Director of the Department of Consumer and Business Services may contract with or otherwise agree with the Nationwide Mortgage Licensing System and Registry, or a person the Nationwide Mortgage Licensing System and Registry designates, to:

(a) Collect and maintain records in connection with an application under ORS 86A.212 or 86A.218;

(b) Collect and process application fees or other fees that are authorized under ORS 86A.200 to 86A.239 and imposed by a government agency or association of government agencies;

(c) Serve as a point of contact the director may use to request information from and provide information to the United States Department of Justice, the Federal Bureau of Investigation or other government agencies;

(d) Apply, abide by and implement standards the Nationwide Mortgage Licensing System and Registry establishes for:

(A) Setting or resetting dates for reporting information or renewing a mortgage loan originator's license; and

(B) Amending or surrendering a mortgage loan originator's license; and

(e) Otherwise participate in the Nationwide Mortgage Licensing System and Registry.

(2) The director may agree with the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators or other government agencies or associations of government agencies to share and to maintain under subsection (4) of this section the confidentiality or privilege applicable to information or material that:

(a) An applicant provides under ORS 86A.206;

(b) A mortgage loan originator provides under ORS 86A.218; or

(c) The director obtains from investigations, inquiries, proceedings, submissions or other sources under the authority of ORS 86A.200 to 86A.239.

(3) The director shall provide copies of information and material that the director supplies to or receives from the Nationwide Mortgage Licensing System and Registry to an applicant for a mortgage loan originator's license under ORS 86A.212 or to a licensed mortgage loan originator who applies to renew a license under ORS 86A.218. The director by rule shall establish a procedure for

challenging the accuracy or completeness of the information and materials.

(4)(a) Except as provided in subsections (5) and (6) of this section and 12 U.S.C. 5111, information or material that an applicant, a mortgage loan originator or the director provides or discloses to the Nationwide Mortgage Licensing System and Registry retains the confidentiality or privilege from public disclosure that applies to the information under ORS 192.410 to 192.505 or under other applicable state or federal law, including court rules. The confidentiality or privilege applies to the information or material despite disclosure to state or federal agencies with regulatory authority over persons, businesses or activities related to mortgage lending.

(b) Information that is subject to a privilege described in paragraph (a) of this subsection is not subject to:

(A) Disclosure under state or federal law that governs disclosure of information in the possession of a public official; or

(B) Subpoena, discovery or admission into evidence in an administrative proceeding or private civil action, unless the person whose information is protected by the confidentiality or privilege waives the confidentiality or privilege in whole or in part.

(c) To the extent that the provisions of ORS 192.410 to 192.505 conflict with the provisions of this section, the provisions of this section control.

(5) Subsection (4) of this section does not apply to information or material concerning an applicant's or a mortgage loan originator's employment history or records of discipline and enforcement actions that appear in and are open to public access in the Nationwide Mortgage Licensing System and Registry. The director may publish on the Internet information that the director receives from the Nationwide Mortgage Licensing System and Registry that is not subject to a privilege described in subsection (4) of this section.

(6) The director shall regularly report to the Nationwide Mortgage Lending System and Registry violations of the provisions of ORS 86A.200 to 86A.239, enforcement actions against a person subject to ORS 86A.200 to 86A.239 and other information the director deems necessary to meet the director's obligations under agreements with the Nationwide Mortgage Licensing System and Registry.

(7) To the extent reasonably necessary to participate in the Nationwide Mortgage Licensing System and Registry, the director by rule or order may waive or modify, in whole or in part, the requirements set forth in ORS 86A.200 to 86A.239 or establish new requirements consistent with the provisions of ORS 86A.200 to 86A.239. [2009 c.863 §10]

Note: 86A.230 becomes operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009.

86A.233 Production of records; investigations, examinations and subpoenas; possession of records; access to records; powers of director; prohibited activities. (1) The Director of the Department of Consumer and Business Services, as often as the director deems necessary to carry out the purposes of ORS 86A.200 to 86A.239, may:

(a) Request or require a person that employs a mortgage loan originator or that under the provisions of ORS 86A.200 to 86A.239 should employ a mortgage loan originator to produce, for the director's examination and use, books, accounts, records, files, documents or other information or evidence;

(b) Investigate or examine an applicant or a licensed mortgage loan originator and review the applicant's or licensed mortgage loan originator's:

(A) History of criminal, civil and administrative proceedings, enforcement actions, arrests or other information related to the applicant's or licensed mortgage loan originator's compliance with state and federal law, rules or regulations; and

(B) Personal history and experience, including information obtained from credit reports from a consumer reporting agency, as defined in 15 U.S.C. 1681a(f) or from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in 15 U.S.C. 1681a(p);

(c) Direct, subpoena, examine, compel the attendance of, administer oaths and affirmations to, and request production of books, accounts, records, files, documents or other information or evidence from witnesses and persons that are subject to regulation under ORS 86A.200 to 86A.239; and

(d) Interview and take and preserve testimony concerning business practices and operations from the applicant's or licensed mortgage loan originator's officers, principals, mortgage loan originators, employees, agents and customers or independent contractors associated with the applicant or licensed mortgage loan originator.

(2)(a) The director may, with reference to documents, materials or records described in subsection (1) of this section:

(A) Take possession of, sequester, control or restrict access to the documents, materials or records; or

(B) Designate a person to take exclusive charge of the documents, materials or records in the location in which the documents, materials or records are usually kept.

(b) At a time in which the director has taken an action described in paragraph (a) of this subsection, a person may not, without the director's permission or a court order, remove or attempt to remove the documents, materials or records from the director's possession or control or from the location in which the documents, materials or records are kept under the exclusive charge of the person the director designates.

(c) A person who owns or has a right to possess or control the documents, materials or records may have access necessary to conduct the person's ordinary business, unless the director reasonably believes that the documents, materials or records have been or are at risk of alteration or destruction for the purposes of concealing a violation of ORS 86A.200 to 86A.239.

(3) In carrying out the purposes of this section, the director may:

(a) Retain attorneys, accountants or other professionals or specialists to conduct investigations, audits or examinations or assist in conducting investigations, audits or examinations;

(b) Agree with other government agencies or officials to share resources, information, methods, procedures, documents, records, materials and information obtained in the course of investigations, audits, examinations and related activities;

(c) Purchase, share, use or employ analytical systems, methods or software available from public or private sources;

(d) Accept and rely upon the results of or reports concerning investigations, audits, examinations or proceedings conducted by other government agencies or officials in this state or in other states; and

(e) Accept, use and incorporate in the director's findings, reports, orders or other actions audit reports from an independent certified public accountant.

(4) The director's authority under this section applies to a person who is subject to regulation under ORS 86A.200 to 86A.239, whether or not the person is licensed as a mortgage loan originator.

(5) An applicant or licensed mortgage loan originator shall:

(a) Make available to the director at the director's request books, accounts, records, files and other documents relating to the applicant's or licensed mortgage loan originator's business operations and practices; and

(b) Prepare, compile and deliver to the director reports, accounting compilations, lists and data concerning loan transactions and other information the director requires to carry out the purposes of ORS 86A.200 to 86A.239.

(6) A person subject to investigation, audit or examination under this section may not knowingly withhold, abstract, remove, mutilate, destroy or conceal books, accounts, records, computer records, files, documents or other information or evidence that is subject to the director's authority under this section. [2009 c.863 §11]

Note: 86A.233 becomes operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009.

86A.236 Prohibited activities. A person who is subject to regulation under ORS 86A.200 to 86A.239 in connection with the person's activities as a mortgage loan originator may not:

(1) Perform an act as a mortgage loan originator in a negligent or incompetent manner;

(2) Employ a device, scheme or artifice to defraud or engage in an act, practice or course of business that operates or would operate as a fraud or deceit;

(3) Knowingly make an untrue statement of a material fact or omit from a statement a material fact that would make the statement not misleading in light of the circumstances under which the person makes the statement;

(4) Make or file or cause to be made or filed with the Director of the Department of Consumer and Business Services a statement, report or document that the person knows is false in a material respect or matter;

(5) Engage in an unfair or deceptive practice toward another person;

(6) Obtain property by fraud or misrepresentation;

(7) Solicit or enter into a contract with a borrower, the terms of which provide that the person may earn a fee or commission for using the person's best efforts to obtain a residential mortgage loan even if the person does not obtain a residential mortgage loan for the borrower, except that the terms of the contract may provide that the person may earn an advance fee or recover actual expenses that the person incurs;

(8) Solicit, advertise or enter into a contract, the terms of which specify an interest rate, points or other financing terms unless the interest rate, points or other financing terms are available to a prospective borrower at the time the person makes the solicitation or advertisement or enters into the contract;

(9) Conduct or operate a business that requires a mortgage loan originator's license without holding a license issued under ORS 86A.212 or 86A.218 or assist or enable an-

other person who does not have a mortgage loan originator's license to conduct or operate a business that requires a mortgage loan originator's license;

(10) Fail to disclose or provide information required under ORS 86A.200 to 86A.239 or by state or federal laws, rules or regulations;

(11) Fail to comply with a provision of ORS 86A.200 to 86A.239, a rule adopted by the Director of the Department of Consumer and Business Services or state or federal laws, rules or regulations that apply to a business that is subject to regulation under ORS 86A.200 to 86A.239;

(12) Fail to conduct business as a mortgage loan originator in compliance with the provisions of:

(a) The Truth in Lending Act, 15 U.S.C. 1601 et seq. and Regulation Z, 12 C.F.R. part 226, as in effect on October 1, 2009;

(b) The Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq. and Regulation X, 24 C.F.R. part 3500, as in effect on January 1, 2010;

(c) The Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq. and Regulation B, 12 C.F.R. 202.9, 202.11, 202.12 and 202.14, as in effect on July 30, 2009; or

(d) 12 U.S.C. 5101 et seq. and regulations adopted under 12 U.S.C. 5101 et seq.;

(13) Make, negligently or intentionally, a false or deceptive statement or representation in any manner concerning the rates, points or other financing terms or conditions for a residential mortgage loan;

(14) Make a false statement negligently in, or omit knowingly or willfully a material fact from, a report or information the person submits to a government agency or the Nationwide Mortgage Licensing System and Registry or in connection with an investigation or examination conducted by the director or a government agency;

(15) Make a payment, threat or promise, directly or indirectly, to another person for the purpose of influencing the other person's independent judgment concerning a residential mortgage loan or to an appraiser for the purpose of influencing the appraiser's independent judgment concerning the value of property;

(16) Charge or collect, attempt to charge or collect or propose or enter into an agreement in which the person charges or collects a fee that is prohibited under ORS 86A.200 to 86A.239;

(17) Cause or require a borrower to obtain property insurance in an amount that exceeds the replacement cost of the property subject to the residential mortgage loan; or

(18) Fail to account truthfully for moneys that belong to a party to a residential mortgage loan transaction. [2009 c.863 §12]

Note: 86A.236 becomes operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009.

86A.239 Display of license and unique identifier; rules; report of condition. (1)(a) A licensed mortgage loan originator shall clearly display the licensed mortgage loan originator's unique identifier on a residential mortgage loan application form, solicitation, advertisement, promotional material or website the licensed mortgage loan originator uses in connection with the licensed mortgage loan originator's business.

(b) The Director of the Department of Consumer and Business Services by rule may specify the location, size or other characteristics of the unique identifier that must appear on the materials described in paragraph (a) of this subsection and the materials on which the unique identifier must appear.

(2) A person that employs a licensed mortgage loan originator shall submit a report of condition to the Nationwide Mortgage Licensing System and Registry. The form and contents of the report and the times at which the licensed mortgage loan originator submits the report shall comply with the specifications of the Nationwide Mortgage Licensing System and Registry.

(3) A loan processor or underwriter may not represent to the public by means of advertising, business cards, stationery, brochures, signs, rate lists or other communications, promotional items or methods that the loan processor or underwriter can, will or is authorized to perform the duties of a mortgage loan originator unless the loan processor or underwriter obtains a mortgage loan originator's license under ORS 86A.212. [2009 c.863 §13]

Note: 86A.239 becomes operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009.

86A.242 Rules. The Director of the Department of Consumer and Business Services may adopt, amend and repeal rules that are necessary to carry out the provisions of ORS 86A.200 to 86A.239. [2009 c.863 §13a]

PENALTIES

86A.990 Criminal penalties for violations of ORS 86A.095 to 86A.198. (1) Violation of any provision of ORS 86A.095 to 86A.198 or any rule adopted by the Director of the Department of Consumer and Business Services under ORS 86A.095 to 86A.198, except ORS 86A.145 (2) and 86A.188, is a Class C felony.

(2) Violation of ORS 86A.145 (2) is a Class A misdemeanor. [Formerly 59.992]

Note: The amendments to 86A.990 (formerly 59.992) by section 28, chapter 863, Oregon Laws 2009, become operative July 31, 2010. See section 37, chapter 863, Oregon Laws 2009. The text that is operative on and after July 31, 2010, is set forth for the user's convenience.

86A.990. (1) A person that knowingly violates a provision of ORS 86A.095 to 86A.198 or a rule adopted by the Director of the Department of Consumer and Business Services under ORS 86A.095 to 86A.198, except ORS 86A.145 (2), commits a Class C felony.

(2) Violation of ORS 86A.145 (2) is a Class A misdemeanor.

86A.992 Civil penalties for violations of ORS 86A.095 to 86A.198. (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 86A.095 to 86A.198 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) Notwithstanding subsection (1) of this section, a person who fails to submit a report required under ORS 86A.112 (3) on the date specified is subject to a penalty of not more than $100 per day for each day after the specified date during which the failure continues.

(3) 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.

(4) Civil penalties under this section shall be imposed as provided in ORS 183.745. [Formerly 59.996]