

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PROPOSED ADOPTION
Rule I pertaining to the definition of)	AND AMENDMENT
"regularly engage" and the amendment)	
of ARM 2.59.1738 pertaining to renewal)	NO PUBLIC HEARING
fees for mortgage brokers, lenders,)	CONTEMPLATED
servicers, and originators)	

TO: All Concerned Persons

1. On September 12, 2016, the Department of Administration proposes to adopt and amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on August 29, 2016, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I CLARIFICATION OF DEFINITION OF "REGULARLY ENGAGE" (1) A person who advertises in any manner is holding themselves out to the public as being able to act as a mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer in Montana. By so doing, the person expects to engage in the business of a mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer in Montana within the meaning of 32-9-103(39), MCA.

(2) If a person licensed through the NMLS as a mortgage loan originator, mortgage broker, mortgage lender, mortgage servicer, or similar person in another state acts as a mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer in Montana, they are regularly engaging in business in Montana within the meaning of 32-9-103(39), MCA.

AUTH: 32-9-130, MCA
IMP: 32-9-103(39), MCA

STATEMENT OF REASONABLE NECESSITY: The department is adding this new rule to clarify the license exemption for mortgage loan originators, mortgage brokers, mortgage lenders, and mortgage servicers conducting business in Montana. The term "regularly engage" applies to persons who engage in the business of a mortgage broker, lender, servicer, or mortgage loan originator on more

than five residential mortgage loans in a calendar year or expect to engage in business on more than five residential mortgage loans in a calendar year.

The department has received inquiries from persons not licensed in Montana, who claim to be exempt from licensure under 32-9-103(39), MCA, because they have not originated, brokered, acted as a lender, or serviced more than five residential mortgage loans in a calendar year in Montana. However, these persons have advertisements on the internet or other media that indicate the persons are actively seeking to engage in these business activities in Montana.

Each of the definitions of mortgage loan originator, mortgage broker, mortgage lender, and mortgage servicer contains a provision that requires licensure if the person represents or holds themselves out to the public as a mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer in Montana. See 32-9-103(32)(b), 32-9-103(31), 32-9-103(30)(a), and 32-9-103(33)(c), MCA, respectively. A person who is not licensed and has not yet originated, brokered, loaned, or serviced any loans in the state of Montana, but is advertising those services on the internet or other media is, in fact, representing themselves to the public as being ready, willing, and able to perform those services in Montana and does not fall under the exemption from licensure. Given the fact that the person is advertising to the world that they can perform these services, it is disingenuous to claim that they do not expect to engage in more than five transactions in Montana.

The department does not want to create a situation that allows unlicensed entities to advertise that they are able to do business in Montana, and then claim they are exempt from licensure because they didn't do enough business in Montana.

New Rule I(2) is being added to address the situation in which an entity is licensed as a mortgage loan originator, mortgage broker, mortgage lender, mortgage servicer, or similar person in another state and engages in a mortgage-related transaction in Montana. It cannot be argued that a person licensed in another state is not regularly engaged in business. Clearly, they are. Therefore, the person cannot avail themselves of the exemption for persons who are not regularly engaged in business. The language "or similar person" is intended to cover the fact that states have different terminology for what Montana calls mortgage loan originators, mortgage brokers, mortgage lenders, and mortgage servicers. In some states mortgage loan originators are called mortgage bankers, and mortgage lenders are called residential first mortgage lenders or residential second mortgage lenders. There are many individual state variations in terminology. The rule is intended to cover any person who performs the acts covered by the Montana definitions of mortgage loan originator, mortgage broker, mortgage lender, and mortgage servicer.

4. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

2.59.1738 RENEWAL FEES (1) Licenses issued under Title 32, chapter 9, part 1, MCA, expire December 31. Licensees shall submit their renewal applications by December 1 of each year to ensure issuance of the license to qualified renewal applicants by January 1 of the following year. The renewal fees for the license period January 1 through December 31 are:

Mortgage Broker Entity	\$500.00
Mortgage Broker Branch	\$250.00
Mortgage Lender Entity	\$750.00
Mortgage Lender Branch	\$250.00
Mortgage Loan Originator	\$400.00
Mortgage Servicer <u>Entity</u>	\$750.00
Mortgage Servicer Branch	\$250.00

(2) The renewal fees listed in (1) are reduced by 50 percent for ~~2016~~ 2017.
This section sunsets on March ~~17, 2016~~ 1, 2017.

AUTH: 32-9-117, MCA
IMP: 32-9-117, 32-9-130, MCA

STATEMENT OF REASONABLE NECESSITY: The department is adding the word, "Entity" to the name of the Mortgage Servicer license listed above for consistency in the names of the mortgage license types. The department is proposing to reduce by 50 percent the renewal fees charged to mortgage licensees for 2017. The department's Division of Banking and Financial Institutions is self-funded through its licensing fees and endeavors to keep its licensing fees consistent with the expenditures of each licensing program. The mortgage program is currently generating more revenue than it is spending. The department believes this excess revenue is largely due to Montana's recent adoption of the Uniform State Test, which has resulted in an increased number of mortgage loan originators applying for a Montana license. A 50 percent reduction will approximate needed expenditures for the year.

The department does not intend to permanently decrease renewal fees for the mortgage program because it does not know whether this trend will continue, and has elected to reduce the renewal fees by 50 percent for 2017 only. The department will continue to monitor its revenue and expenses in the future and may, if necessary, revise the licensing and/or renewal fees up or down as necessary to keep mortgage program revenues in line with expenses.

Currently licensed in Montana, there are:

- 95 mortgage broker entities, 151 mortgage lender entities, and 135 mortgage servicer entities;
- 73 mortgage broker branches, 224 mortgage lender branches, and 119 mortgage servicer branches; and
- 2,370 mortgage loan originators.

The department expects that not all the current licensees will renew their licenses for 2017. However, based on prior years' renewals, the department predicts that approximately 85 percent of its mortgage loan originators, 98 percent of mortgage companies, and 93 percent of mortgage company branch licensees will renew their licenses for 2017. This proposed change to the rule will reduce department revenues by approximately \$579,156.

5. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546;

faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., September 6, 2016.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 5 above no later than 5:00 p.m., September 6, 2016.

7. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 317 persons based on the 3,167 existing licensed mortgage entities, branches, and mortgage loan originators.

8. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods due to system maintenance or technical problems.

9. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. The department has determined that under 2-4-111, MCA, the proposed adoption and amendment of the above-stated rules will not significantly and directly affect small businesses.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State July 25, 2016