

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PROPOSED
2.59.310, 2.59.318, 2.59.705,)	AMENDMENT
2.59.1701, 2.59.1738, and 2.59.1748)	
pertaining to annual reporting for)	NO PUBLIC HEARING
consumer loan licensees, escrow)	CONTEMPLATED
business reference updates, mortgage)	
definitions, mortgage renewal fees, and)	
escrow funds held by mortgage)	
companies)	

TO: All Concerned Persons

1. On March 30, 2018, the Department of Administration proposes to 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 March 16, 2018, to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.59.310 ADOPTION OF STANDARDIZED FORMS AND PROCEDURES OF THE NATIONWIDE MULTISTATE LICENSING SYSTEM (NMLS) (1) remains the same.

(2) The following standardized NMLS forms relating to consumer loan licensing are approved and adopted by reference:

(a) NMLS company form dated ~~March 31, 2014~~ September 12, 2015;

(b) remains the same.

(c) NMLS individual form dated ~~July 30, 2014~~ September 12, 2016.

(3) The following state-specific forms on the NMLS are approved and adopted by reference:

(a) Montana consumer loan license new application checklist dated ~~August 31, 2015~~ October 7, 2016;

(b) remains the same.

(c) Montana consumer loan license surrender checklist dated ~~August 31, 2015~~ September 8, 2016;

(d) through (f) remain the same.

(4) For renewal, companies, branches, and individuals must go to the NMLS home page (<http://mortgage.nationwidelicencingsystem.org>) and select the "Annual Renewal" link under the State Licensing tab and follow the instructions.

(5) remains the same.

AUTH: ~~32-5-201~~, ~~32-5-209~~, 32-5-401, MCA

IMP: ~~32-5-201~~, ~~32-5-209~~, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: As part of its required biennial review of rules, the department has identified necessary changes identified in these proposed amendments.

STATEMENT OF REASONABLE NECESSITY: The rule amendment is necessary to clarify that the rule pertains specifically to consumer loan licensing and to update the current NMLS forms and current division checklists. The division is proposing removal of the communication protocol HTTP from the URL because it is not necessary to access the webpage. The department is also correcting the authority citations. The department's authority to make rules implementing 32-5-201 and 32-5-209, MCA, is found in 32-5-209 and 32-5-401, MCA. The department does not have rulemaking authority in 32-5-201, MCA.

2.59.318 ADOPTION OF ANNUAL REPORT FORM AND DUE DATE

(1) An entity holding a consumer loan license for any period ~~of time~~ during a calendar year reporting period shall complete and file with the department by ~~April~~ February 15 of the following calendar year a Consumer Loan Annual Report of Licensee (annual report). The annual report must be filed whether ~~or not~~ any loans were originated during the reporting period and whether ~~or not~~ the licensee renewed its license at the end of the reporting period or held a license when the report came due the following ~~April~~ February 15.

(2) A completed annual report ~~may~~ must be mailed to the ~~Division of Banking and Financial Institutions, 301 S. Park Ave., Suite 316, P.O. Box 200546, Helena, MT 59620-0546; faxed to (406) 841-2930; or e-mailed to banking@mt.gov~~ mortgagelicensing@mt.gov.

(3) The ~~Consumer Loan Annual Report of Licensee form~~ annual report, July 1, 2016 January 25, 2018, edition, is adopted and incorporated by reference and available on the division's website at banking.mt.gov.

(4) ~~Copies of the annual report form and instructions for completion are available on the division's web site, <http://banking.mt.gov/Home/Forms#164912244-consumer-loan>.~~

AUTH: ~~32-5-308~~, ~~32-5-209~~, 32-5-401, MCA

IMP: ~~32-5-308~~, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to update the catchphrase to use consistent terminology to refer to the annual report. The proposed rule amendment is necessary to modify the annual report due date to more evenly distribute division staff workload throughout the year. Also, the division

prefers to receive materials electronically to improve security and recordkeeping, reduce costs, and eliminate waste. Additional amendments are to make the rule language more concise. The department is also correcting the authority citations. The department's authority to make rules implementing 32-5-308, MCA, is found in 32-5-209 and 32-5-401, MCA. The department does not have rulemaking authority in 32-5-308, MCA.

2.59.705 ADOPTION OF STANDARDIZED FORMS AND PROCEDURES OF THE NATIONWIDE MULTISTATE LICENSING SYSTEM (NMLS) (1) The

NMLS Policy Guidebook dated July 23, 2012, is approved and adopted by reference. It can be found at

<http://mortgage.nationwidelicensingsystem.org/licensees/resources/LicenseeResources/NMLS%20Guidebook%20for%20Licensees.pdf>.

(2) The following standardized NMLS forms relating to escrow business licensing are approved and adopted by reference:

(a) NMLS company form dated ~~March 31, 2014~~ September 12, 2015;

(b) remains the same.

(c) NMLS individual form dated ~~July 30, 2014~~ September 12, 2016.

(3) The following state-specific forms on the NMLS are approved and adopted by reference:

(a) Montana escrow business company new application checklist dated ~~September 1, 2015~~ January 23, 2017;

(b) Montana escrow business company amendment checklist dated ~~July 20, 2015~~ January 23, 2017; and

(c) remains the same.

(4) For renewal, companies, branches, and individuals must go to the NMLS home page (<http://mortgage.nationwidelicensingsystem.org>) and select the "Annual Renewal" link under the State Licensing tab and follow the instructions.

(5) ~~Copies of the~~ The standardized NMLS forms are available on the NMLS web site at

http://mortgage.nationwidelicensingsystem.org/slr/PublishedStateDocuments/MT-Consumer_Loan_License-Company-New-App-Checklist.pdf. All standardized forms ~~to be~~ submitted to the department must be accessed through NMLS and submitted electronically.

AUTH: ~~32-7-109~~, 32-7-108, 32-7-112, MCA

IMP: 32-7-109, 32-7-112, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed rule amendment is necessary to clarify that the rule pertains specifically to escrow licensing and to refer to the current NMLS forms and current division checklists. The division is proposing removal of the communication protocol HTTP from the URL because it is not necessary to access the webpage. The department is also correcting the authority citations. The department's authority to make rules implementing 32-7-109 and 32-7-112, MCA, is found in 32-7-108 and 32-7-112, MCA. The department was not granted rulemaking authority in 32-7-109, MCA.

2.59.1701 DEFINITIONS For purposes of the Montana Mortgage Act and this subchapter, the following definitions apply:

(1) "Breach of trust" means:

(a) a wrongful act, use, misappropriation, or omission with respect to any property or fund that has been committed to a person in a fiduciary or official capacity; or

(b) the misuse of a person's official or fiduciary position to engage in a wrongful act, use, misappropriation, or omission.

(2) "Dishonesty" means:

(a) to cheat or defraud directly or indirectly;

(b) to cheat or defraud for monetary gain or its equivalent; or

(c) to wrongfully take property belonging to another in violation of any criminal statute.

(d) Dishonesty includes acts involving want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state, or local laws define as dishonest.

(1) through (10) remain the same, but are renumbered (3) through (12).

AUTH: 32-9-109, 32-9-121, 32-9-130, MCA

IMP: 32-9-109, 32-9-116, 32-9-120, 32-9-121, 32-9-122, 32-9-123, 32-9-133, 32-9-166, MCA

STATEMENT OF REASONABLE NECESSITY: This proposed rule amendment is necessary to include definitions of "breach of trust" and "dishonesty." These terms are used in 32-9-120, MCA, but are not defined in statute. Because a person's license may be denied under 32-9-120, MCA, for crimes involving dishonesty or breach of trust, it is important for applicants, the public, and division staff to have a clear understanding of the terms. The division has referred to the FDIC's definitions of "breach of trust" and "dishonesty" in the FDIC Statement of Policy for Section 19 of the Federal Deposit Insurance Act, December 11, 2012, for guidance since the enactment of the Secure and Fair Enforcement for Mortgage Licensing Act in 2008. Use of terminology that is consistent with federal guidance, as opposed to the division creating its own definitions, will aid applicants' understanding of and compliance with the rules, as many applicants are licensed in multiple states. The department has added an implementation citation because the terms "breach of trust" and "dishonesty" are referenced in 32-9-120, MCA.

2.59.1738 RENEWAL FEES (1) remains the same.

(a) Mortgage Broker Entity, \$500.00, (except as provided in 32-9-117(1)(b), MCA);

(b) Mortgage Broker Branch, \$250.00;

(c) Mortgage Lender Entity, \$750.00;

(d) Mortgage Lender Branch, \$250.00;

(e) Mortgage Loan Originator, \$400.00;

(f) Mortgage Servicer Entity, \$750.00;

(g) Mortgage Servicer Branch, \$250.00.

(2) The renewal fees listed in (1) are reduced by ~~50~~ 75 percent for ~~2017~~ 2019. This section sunsets on March 1, ~~2017~~ 2019.

AUTH: 32-9-117, 32-9-134, MCA

IMP: 32-9-117, 32-9-130, 32-9-134, MCA

STATEMENT OF REASONABLE NECESSITY: The department is adding "(except as provided in 32-9-117(1)(b), MCA)" to this rule because this provision existed prior to the insertion of (2), which sunset on March 1, 2017. This rule was proposed for amendment in MAR Notice No. 2-59-567, but rather than adopting those amendments, the rule was further amended to include a renewal fee reduction.

The intent of the amendment is to make the renewal fees consistent with the initial license application fees that exist in statute. In addition, the department is earmarking the individual fees in (1) to provide additional clarity.

This amendment pertains to a mortgage broker who is both an individual mortgage loan originator licensee and the owner of a mortgage broker entity. The department does not believe it would be fair to charge separate renewal fees to an individual who is licensed as a mortgage loan originator as well as an owner of a mortgage broker entity.

Under this amendment, a person who owns a mortgage broker entity and is also individually licensed as a mortgage loan originator will pay a single license renewal fee of \$500. This represents a \$400 decrease in renewal fees for licensees that meet these criteria. There are 128 mortgage broker entities currently licensed in Montana. The division has determined 34 mortgage broker entities have an owner who is also individually licensed as a mortgage loan originator. The department predicts that all affected licensees will renew their licenses. This proposed change to the rule will reduce department revenues by approximately \$13,600.

The amendment of (2) is proposed to reduce mortgage licensee renewal fees by 75 percent for 2019. The division is self-funded through its licensing fees and strives to keep its licensing fees consistent with each licensing program's expenditures. The mortgage program is currently generating more revenue than it is spending due to a rapid increase in the number of individual licensees. The revenue generated significantly exceeded our estimate. A 75 percent reduction will approximate needed expenditures for the year.

The division 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 75 percent for 2019 only. The division will continue to monitor its revenue and expenses and, if necessary, revise the licensing and/or renewal fees up or down to keep revenues in line with expenses.

Currently licensed in Montana, there are:

- 126 mortgage broker entities;
- 118 mortgage broker branches;
- 177 mortgage lender entities;
- 335 mortgage lender branches;

- 141 mortgage servicer entities;
- 117 mortgage servicer branches; and
- 2806 mortgage loan originators.

The division expects that not all current licensees will renew their licenses for 2019. However, based on prior years' renewals, the division predicts that approximately 79 percent of its mortgage loan originators and 99 percent of mortgage company and mortgage company branch licensees will renew their licenses for 2019. This proposed change to the rule will reduce division revenues by approximately \$1,174,800.

In addition, the department is updating the authority citations for the rule to include a reference to 32-9-134, MCA, which allows the department to create rules regarding renewal requirements.

2.59.1748 MONTANA-SPECIFIC ESCROW FUND (1) A mortgage servicer or lender shall:

(a) and (b) remain the same.

AUTH: 32-9-130, MCA

IMP: 32-9-145, MCA

STATEMENT OF REASONABLE NECESSITY: The department is amending this rule to correct an oversight. Because 32-9-145, MCA, addresses both mortgage lenders and mortgage servicers, the requirements of this rule should apply to both. Mortgage lenders were inadvertently left out of the rule when it was originally adopted.

4. 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., March 23, 2018.

5. 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 4 above no later than 5:00 p.m., March 23, 2018.

6. 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 342 persons based on the 3,419 existing consumer loan, escrow, and mortgage licensees.

7. 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 its online version of the notice conform to the official published version, but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official 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.

8. 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 Heather Hardman, 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.

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

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

By: /s/ John Lewis
John Lewis, Director
Department of Administration

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

Certified to the Secretary of State February 13, 2018.