

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PROPOSED
2.59.1710, 2.59.1724, and 2.59.1743)	AMENDMENT
pertaining to records to be maintained)	
by mortgage brokers, records to be)	
maintained by mortgage lenders, and)	NO PUBLIC HEARING
reporting forms for mortgage servicers)	CONTEMPLATED

TO: All Concerned Persons

1. On November 30, 2015, 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 November 16, 2015, 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 rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.59.1710 RECORDS TO BE MAINTAINED BY MORTGAGE BROKERS

(1) through (1)(b) remain the same.

(c) copies of the loan estimate and closing disclosures required by the Truth in Lending Act – Real Estate Settlement Practices Act (TILA-RESPA) Integrated Disclosure (TRID) rule, which must be signed and dated by the borrowers;

(c) through (m) remain the same, but are renumbered (d) through (n).

~~(2) A mortgage broker shall maintain a trust account records file showing a sequential listing of checks written for each bank account relating to the licensee's business as a mortgage broker, showing at a minimum, check number, the payee, amount, date, and purpose of payment or deposit, including identification of the loan to which it relates, if any. The licensee shall reconcile the bank accounts monthly.~~

(3) through (3)(h) remain the same, but are renumbered (2) through (2)(h).

(i) the total yield spread premium adjusted origination charges received by the mortgage broker at the closing of the loan; ~~and~~

(j) the name of the individual mortgage loan originator who originated the loan; ~~and-~~

(k) the names of all individuals who received compensation for originating or assisting in the origination of the loan.

AUTH: 32-9-130, MCA

IMP: 32-9-121, 32-9-124, ~~32-9-125~~, MCA

STATEMENT OF REASONABLE NECESSITY: The department is updating this rule because the TILA-RESPA Integrated Disclosure (TRID) rule becomes effective October 3, 2015. This federal rule creates two new mortgage disclosures called the loan estimate and closing disclosure. Mortgage companies must maintain copies of these disclosures to demonstrate compliance with the federal rule and to allow the department to conduct an examination to determine whether the loan was originated in compliance with the federal rules.

The department's rule requires that the borrower(s) sign and date both disclosures, proving the borrower(s), in fact, received the disclosures. In the past, department examiners have found documents in files that the borrowers did not receive. The signature requirement protects the broker from allegations that the disclosures were not properly made, and the borrower from the possibility of not having actually received the disclosures.

Section (2) is no longer applicable to mortgage brokers because the trust account requirements were repealed from the Montana Mortgage Act in 2013. Brokers no longer are allowed to receive front-end payments from borrowers so there is no longer a need for trust accounts.

The proposed amendments to (3) are necessary because, under the TRID rules, a yield spread premium is no longer a permissible charge on a residential mortgage loan. The fee that a mortgage broker may collect on residential mortgage loans is now called an origination charge.

The information in new (2)(k) is necessary to allow the department to verify that unlicensed mortgage loan origination has not occurred. During an examination of the mortgage broker, the department examiners identify all the individuals who were paid for originating the loan and verify that each of those persons is properly licensed in Montana. The department is proposing to delete 32-9-125, MCA, as an implemented statute because this statute was repealed in 2013. This statute required mortgage brokers to maintain trust accounts in order to accept borrower funds for third-party fees. Borrowers no longer remit funds to mortgage brokers for third-party fees. The cost for an appraisal was the common third-party fee that borrowers used to pay to mortgage brokers. Changes in the manner by which appraisals are now ordered no longer permit mortgage brokers to collect this fee directly from borrowers.

2.59.1724 RECORDS TO BE MAINTAINED BY MORTGAGE LENDERS

(1) through (7)(n) remain the same.

(o) a copy of all appraisals; ~~and~~

(p) a copy of all disclosures, handbooks, and pamphlets required by federal law; and

(q) copies of the loan estimate and closing disclosures required by the TILA-RESPA Integrated Disclosure rule, which must be signed and dated by the borrowers (12 CFR 1024 and 1026).

(8) through (14)(c) remain the same.

AUTH: 32-9-130, MCA

IMP: 32-9-121, ~~32-9-125~~, 32-9-145, MCA

STATEMENT OF REASONABLE NECESSITY: The department is updating this rule to reflect the implementation of the TRID rule as stated in the statement of reasonable necessity above. The department is proposing to delete 32-9-125, MCA, as an implemented statute because this statute was repealed in 2013. This statute required mortgage lenders to maintain trust accounts in order to accept borrower funds for third-party fees. The statute was not necessary because it was addressed by an amendment to the Montana Mortgage Act in 2011, which requires mortgage lenders to maintain an escrow fund. The escrow fund requirement is contained within 32-9-145, MCA.

2.59.1743 REPORTING FORMS FOR MORTGAGE SERVICERS

(1) remains the same.

(2) At the servicer's election, ~~the~~ each servicer ~~may~~ shall submit either the expanded mortgage call report (MCR) through the NMLS or the Quarterly Statement for Mortgage Servicing Activity dated ~~December 23, 2014~~ September 3, 2015. ~~Each servicer shall submit either an expanded MCR through the NMLS or the Quarterly Statement for Mortgage Servicing Activity dated December 23, 2014 for each and every quarter during which it held a license.~~

(3) The Quarterly Statement for Mortgage Servicing Activity dated ~~December 23, 2014~~ September 3, 2015, which is adopted and incorporated by reference, is available on the ~~department's~~ division's web site at http://banking.mt.gov/Portals/58/Servicer_Quarterly_Report.pdf <http://banking.mt.gov/Home/Forms#164912243-loan-servicers>.

AUTH: 32-9-130, MCA

IMP: 32-9-170, MCA

STATEMENT OF REASONABLE NECESSITY: The department has revised the Quarterly Statement of Mortgage Servicing Activity form (servicing form) to better reflect the most recent changes to the expanded mortgage call report (MCR), which is available to mortgage servicer licensees on the Nationwide Multi-State Licensing System. The edition date of the servicing form and the current location on the division's web site have also been updated, necessitating this amendment.

The servicing form now provides greater detail to distinguish servicing activities identified as wholly owned loans serviced, loans serviced under mortgage servicing rights, subservicing for others, and subservicing by others. Wholly owned loans serviced are loans serviced by a servicer that also has ownership rights to the loan. Loans serviced under mortgage servicing rights (MSR) are loans serviced by a servicer that only owns the servicing rights to the loan. Subservicing for others are loans that a servicer is subservicing on behalf of another company. Subservicing by others are loans that are wholly owned or for which a servicer owns the MSR and has contracted with a third party to service on its behalf. The servicing form has also been made consistent with the MCR in the categories of types of first lien residential mortgages and other mortgages made.

The majority of the mortgage servicer licensees utilize the MCR to fulfill the reporting requirement. The department has given its servicer licensees the option to use whichever form they prefer, but they must file one form or the other. Only about 19 of the current 135 mortgage servicer licensees use the servicing form.

4. Concerned persons may present their data, views, or arguments concerning the proposed action in writing 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., November 23, 2015.

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., November 16, 2015.

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 281 persons based on the 2,813 existing licensed mortgage entities, branches, and mortgage loan originators.

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 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.

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 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.

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 rule amendments 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 October 5, 2015.