

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 examination fees)	AND AMENDMENT
and the amendment of ARM)	
2.59.1707, 2.59.1709, 2.59.1730,)	NO PUBLIC HEARING
2.59.1731, 2.59.1737, 2.59.1751, and)	CONTEMPLATED
2.59.1753 pertaining to revocation and)	
suspension of mortgage licenses,)	
consumer complaints, confidentiality)	
agreements and sharing)	
arrangements, reinstatement of expired)	
or suspended licenses, mortgage loan)	
origination disclosure form, bona fide)	
not-for-profit certification, and)	
applications for initial licenses near)	
year end)	

TO: All Concerned Persons

1. On May 29, 2021, 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 April 28, 2021, 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 rule proposed to be adopted provides as follows:

NEW RULE I EXAMINATION FEES (1) A mortgage lender, broker, or servicer shall pay to the department the actual cost of any examination or investigation which must include expenses for necessary travel for the purposes of conducting the examination or investigation.

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

STATEMENT OF REASONABLE NECESSITY: Section 32-9-130(8)(a), MCA, requires the department to adopt rules to set fees commensurate with the cost of the examination or investigation which may include expenses for necessary travel outside the state. The current practice of the department has been to collect these

fees at the time of examination as described in statute. This proposal reflects current practice and is intended to formally incorporate it into rule. Currently, there are 211 mortgage broker entities, 236 mortgage lender entities, and 186 mortgage servicer entities licensed in Montana. Because the department has already been collecting these fees for examination expenses as described in statute, the department does not anticipate any fiscal impact to the department or licensees as a result of adopting this rule.

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

2.59.1707 REVOCATION, SUSPENSION, OR SURRENDER OF LICENSE

(1) The department may suspend or revoke a license for a violation of the Montana Mortgage Act, this subchapter, or for any other violation of state or federal law pertaining to licensees or residential mortgage loans.

(1) through (3) remain the same but are renumbered (2) through (4).

AUTH: 32-9-130, MCA

IMP: 32-9-126, 32-9-130, 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. Some of the proposed amendments are technical in nature, such as amending punctuation or updating authority and implementation citations to accurately reflect all statutes implemented through the rules and to provide the complete sources of the department's rulemaking authority. The department is changing references to the Division of Banking and Financial Institutions of the Department of Administration from "division" to "department" for consistency with other rules in ARM Title 2, chapter 59. The department proposes updating website references to remove "www" and "http" as these prefixes are not generally necessary to successfully navigate to the department's website. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule.

STATEMENT OF REASONABLE NECESSITY: The department proposes to insert (1) to clarify that licenses may be suspended or revoked for any violation of the Montana Mortgage Act and related requirements. Under 32-9-130, MCA, the department is required to adopt rules regarding suspension and revocation of licenses, and this amendment describes the scope of acts or omissions that may result in suspension or revocation of a license.

2.59.1709 CONSUMER COMPLAINT PROCESS (1) ~~A complaint form is provided by the department at <http://www.banking.mt.gov>.~~ A complaint form must be submitted in writing to the department. If the basis of the complaint relates to the Montana Mortgage Act, it will be investigated by the department ~~or designated party~~.

(2) The Complaint Form dated January 23, 2020, is adopted and incorporated by reference and available on the department's website at banking.mt.gov.

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

STATEMENT OF REASONABLE NECESSITY: To avoid confusion, the department proposes amending the catchphrase to clarify that the process described in the rule applies to all complaints against mortgage licensees, not just those submitted by consumers.

The department proposes to amend (1) to move the website address for the complaint form to (2) and clarify that the department investigates complaints related to the Montana Mortgage Act. When this rule was adopted in 2004, other agencies may have addressed mortgage complaints, but now they are the responsibility of the department.

The department proposes to add (2) to formally adopt the complaint form, which has been used for years but not been formally adopted into rule. Complaints must be submitted on the complaint form because the form provides complainants important information about the complaint process and ensures the department and complaint respondent have sufficient information to investigate and respond to the complaint.

2.59.1730 CONFIDENTIALITY – AGREEMENTS AND SHARING ARRANGEMENTS (1) In addition to the trade associations specifically named in 32-9-160(23), MCA, the department may enter into agreements or sharing arrangements allowing the sharing of information and material with the following governmental agencies and associations representing governmental agencies:

(a) through (g) remain the same.

AUTH: 32-9-130, 32-9-160, MCA
IMP: 32-9-160, MCA

STATEMENT OF REASONABLE NECESSITY: During the 2019 legislative session, House Bill 107 included a new section to 32-9-160, MCA, resulting in section (2) becoming section (3). Section (3) grants authority to the department to "enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or associations representing governmental agencies as established by rule of the department."

2.59.1731 REINSTATEMENT OF EXPIRED OR SUSPENDED LICENSES
(1) through (2) remain the same.

(3) If a "Terminated-Expired" status of the license of a military member or reservist was the result of the licensee being on active duty status at the time of renewal, the license may be reinstated, if within 30 days of the licensee's discharge from active duty status, the department receives through NMLS an acceptable

sponsorship request from the licensee's employing mortgage broker or mortgage lender and it receives outside of the NMLS renewal process within that 30-day period, the following:

(a) a properly completed ~~paper renewal application~~ Mortgage Loan Originator License Renewal or Reinstatement Form available on the department's website at banking.mt.gov;

(b) remains the same.

~~(c) the NMLS fee;~~

(d) through (f) remain the same but are renumbered (c) through (e).

(4) remains the same.

AUTH: 32-9-130, ~~32-9-134~~, MCA

IMP: 32-9-120, 32-9-126, 32-9-134, MCA

STATEMENT OF REASONABLE NECESSITY: All mortgage licenses expire on December 31 if they are not renewed by that date. The last day a licensee is able to reinstate a license that was not renewed by December 31 is the last day of February. Beginning March 1, a person holding a lapsed license is directed to reapply for licensure. However, the department allows a military member or reservist on active duty status at the time of renewal to reinstate their license within 30 days of their discharge date. Since the NMLS cannot accommodate this situation, the department must process the reinstatement outside of the NMLS. The department proposes to amend (3) to properly identify the name of the form and formally adopt it into rule. Furthermore, since the reinstatement is not being processed through the NMLS, an NMLS fee is not applicable.

Currently, there are 4,569 mortgage loan originators licensed in Montana. Since the removal of (3)(c) pertains to a separate NMLS fee that is no longer assessed, the department does not anticipate any fiscal impact to the department or licensees as a result of amending this rule.

2.59.1737 MONTANA MORTGAGE LOAN ORIGINATION DISCLOSURE FORM (1) Licensees shall use a form that is substantially similar to ~~this and the Mortgage Loan Origination Disclosure form dated September 23, 2011, which is available on the department's website at banking.mt.gov~~. Licensees may customize the form to meet their individual needs.

MORTGAGE LOAN ORIGINATION DISCLOSURE

~~(Name of mortgage loan originator) is a Montana-licensed mortgage loan originator employed by a Montana-licensed entity who is authorized to provide mortgage loan origination services to (borrower and co-borrower(s) name—printed) in connection with your Montana residential mortgage loan. Lender(s) whose loan products (name of entity) distributes generally provide their loan products to (name of entity) at a wholesale rate.~~

~~SECTION 1. NATURE OF RELATIONSHIP. In connection with this mortgage loan:~~

- 1. ~~(name of entity) is acting as an independent contractor and not as your agent;~~
- 2. ~~(name of entity) enters into separate independent contractor agreement(s) with one or more lender(s); and~~
- 3. ~~while (name of entity) seeks to assist you in meeting your financial needs, (name of entity) does not distribute products of every lender(s) or investor(s) in the market and cannot guarantee the lowest price or best terms available in the market.~~

~~SECTION 2. OUR COMPENSATION.~~

- 1. ~~The retail price (name of entity) offers you may include (name of licensee's) compensation.~~
- 2. ~~If you would rather pay a lower interest rate, you may pay higher up-front costs.~~
- 3. ~~If you would rather pay less up front, you may pay all of (name of entity's) compensation indirectly through a higher interest rate in which case (name of entity) will be paid by the lender.~~
- 4. ~~If you compensate (name of entity) directly, (name of entity) cannot be compensated by any other person for the same transaction.~~

~~By signing below, you acknowledge that you have received a copy of this disclosure.~~

~~BORROWER _____ DATE _____~~

~~CO-BORROWER _____ DATE _____~~

~~MORTGAGE LOAN ORIGINATOR _____ NMLS # _____ DATE _____~~

~~Employing Entity _____ NMLS # _____~~

~~The State of Montana, Department of Administration, Division of Banking and Financial Institutions (Division), is the licensing agency of mortgage lenders, mortgage brokers, mortgage servicers, and mortgage loan originators. Any consumer with a comment, question, or concern should contact the division by the means listed within this disclosure.~~

~~(2) The disclosure must include the address, phone number, facsimile number, e-mail address, and web-site website of the division department.~~

~~(3) The disclosure must include the unique identifier issued by the Nationwide Mortgage Licensing System and Registry NMLS for the mortgage broker employing entity and mortgage loan originator.~~

~~(4) remains the same.~~

AUTH: 32-9-124, 32-9-130, MCA

IMP: 32-9-124, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend this rule to formally adopt the disclosure form and make it available on the department's website rather than include the language in the rule itself.

The department is amending (3) to reflect the current name of the licensing system which was changed from Nationwide Mortgage Licensing System to Nationwide Multistate Licensing System (NMLS). It is not necessary to include the full name in (3) as NMLS is included in the definition in 32-9-103(34), MCA. In addition, mortgage brokers are no longer the only entity employing MLOs; the language has been amended to encompass any employing entity.

2.59.1751 CERTIFICATE OF BONA FIDE NOT-FOR-PROFIT ENTITY

(1) A bona fide not-for-profit entity shall certify that it meets the exemption in 32-9-104(1)(f), MCA, and shall file with the department ~~It shall use the "Montana Bona Fide Not-For-Profit "BNFP" Certification" form dated August 13, 2013, to make its certification both initially and annually. The "Montana Bona Fide Not-For-Profit Certification" dated August 13, 2013, is adopted and incorporated by this reference. A copy of the "Montana Bona Fide Not-For-Profit Certification" dated August 13, 2013, is available at the Montana Division of Banking and Financial Institutions, 301 S. Park Ave., Suite 301, Helena, Montana, during regular business hours or on the department's web site at~~
<http://banking.mt.gov/Portals/58/Mortgage/BFNP%20Certification%20Final.pdf>.

(2) The Bona Fide Not-For-Profit "BNFP" Certification form dated December 4, 2020, is adopted and incorporated by reference and available on the department's website at banking.mt.gov.

AUTH: 32-9-104, MCA

IMP: 32-9-103(6), 32-9-104(1), ~~32-9-104(2)~~, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend (1) to require submission of the Bona Fide Not-For-Profit "BNFP" Certification form both initially and annually for certification and create (2) to adopt the updated version of the form into rule and provide the website address where the form is located. This form has been used for years but never formally adopted into rule.

2.59.1753 APPLICATIONS FOR INITIAL LICENSE NEAR YEAR-END;
WHEN APPLICATION FOR INITIAL LICENSE MAY BE DEEMED ABANDONED

(1) remains the same.

(2) If an applicant is approved for licensure during the license renewal period of November 1 through December 31 and requests issuance of a license immediately, the applicant must submit the following renewal application, as appropriate:

(a) Mortgage Loan Originator License Renewal or Reinstatement Application dated December 9, 2020; or

(b) Mortgage Company/Branch Renewal Form dated December 9, 2020.

(2) through (5) remain the same but are renumbered (3) through (6).

AUTH: 32-9-120, MCA

IMP: 32-9-120, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend this rule to address the expedited processing of an initial license application for mortgage loan originators, mortgage lenders, mortgage brokers, and mortgage servicers and formally adopt the renewal application forms.

The licensing renewal period for all mortgage licensees is November 1 through December 31. An application for initial license received during the renewal period is deemed an application for licensure for the next calendar year. Department staff will review and process applications during the renewal period as time allows, and if the application is complete, the start date for licensure is the first business day of the subsequent year.

Some applicants request expedited processing of their initial application to have their license issued for the current calendar year. Once approved, the applicants are then due for renewal prior to December 31 of the year of issuance. The NMLS is not designed to accommodate this uncommon licensing situation; therefore, the licensee must renew their license outside of the NMLS by using a renewal form provided by the department. The licensee shall remit payment through the invoicing system in the NMLS.

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., May 14, 2021.

6. If persons who are directly affected by the proposed actions 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., April 28, 2021.

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 612 persons based on the combined total of 191 mortgage servicers, 5407 mortgage loan originators, 276 mortgage lenders, and 244 mortgage brokers licensed in this state.

8. An electronic copy of this proposal notice is available through the department's website 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 website accessible at all times, concerned persons should be aware that the website 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 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.

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 impact small businesses.

By: /s/ Misty Ann Giles
Misty Ann Giles, Director
Department of Administration

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State April 6, 2021.