

SENATE BILL NO. 92
INTRODUCED BY D. STEINBEISSER
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA MORTGAGE BROKER AND LOAN ORIGINATOR LICENSING ACT; ELIMINATING EXCEPTIONS TO THE EXPERIENCE AND EXAMINATION REQUIREMENTS FOR LICENSING; PROVIDING THAT AN INDIVIDUALLY LICENSED MORTGAGE BROKER MAY ONLY WORK FOR ONE EMPLOYING ENTITY; PROVIDING GUIDELINES IN CASES OF TERMINATION OF EMPLOYMENT OF INDIVIDUALLY LICENSED MORTGAGE BROKERS; REVISING RECORDKEEPING REQUIREMENTS; PROVIDING FOR INVESTIGATIONS BY THE DEPARTMENT OF ADMINISTRATION; ESTABLISHING REQUIREMENTS FOR CEASE AND DESIST ORDERS; REVISING LICENSE REVOCATION AND SUSPENSION PROVISIONS AND PENALTY PROVISIONS; AMENDING SECTIONS 32-9-103, 32-9-108, 32-9-109, 32-9-110, 32-9-115, 32-9-117, 32-9-121, 32-9-122, 32-9-123, 32-9-124, 32-9-126, 32-9-130, AND 32-9-133, MCA; AND REPEALING SECTIONS 32-9-111 AND 32-9-131, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 32-9-103, MCA, is amended to read:

"32-9-103. Definitions. As used in this part, the following definitions apply:

(1) "Bona fide third party" means a person or entity that provides services relative to residential mortgage loan transactions. The term includes but is not limited to real estate appraisers and credit reporting agencies.

(2) "Borrower" means an individual who is solicited to purchase or who purchases the services of a mortgage broker for other than commercial mortgage lending.

(3) "Branch office" means a location other than a licensee's principal place of business.

~~(3)~~(4) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

~~(4)~~(5) "Designated manager" means a person located in this state employed by a mortgage broker entity, other than a sole proprietorship, as the person responsible for operating the business at the location where the person is employed. A designated manager must be licensed as a mortgage broker.

~~(5)~~(6) "Entity" means a business organization, other than a sole proprietorship or an individual person,

that provides mortgage broker services.

~~(6)~~(7) "Lender" means an entity that funds or services a residential mortgage loan.

~~(7)~~(8) "Loan originator" means a licensed individual employed by a mortgage broker to assist borrowers by originating a residential loan.

~~(8)~~(9) "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

~~(9)~~(10) "Mortgage banker" means a person or entity that makes, services, or buys and sells mortgage loans and that may be required to submit audited financial statements to the United States department of housing and urban development, the United States department of veterans affairs, the federal national mortgage association, the federal home loan mortgage corporation, or the government national mortgage association.

~~(10)~~(11) "Mortgage broker" means a person or entity that provides services for a fee as an intermediary between a borrower and a lender in obtaining financing for the borrower that is to be secured by a residential dwelling for between one and four families.

~~(11)~~(12) "Originate" means:

(a) to negotiate or arrange or to offer to negotiate or arrange a mortgage loan between a borrower and a person or entity that makes or funds mortgage loans;

(b) to issue a commitment for a mortgage loan to a borrower; or

(c) to place, assist in placing, or find a mortgage loan for a borrower.

~~(12)~~(13) "Trust account" means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker and that is maintained solely for the holding and payment of bona fide third-party fees."

Section 2. Section 32-9-108, MCA, is amended to read:

"32-9-108. Overall licensing requirements. All persons and entities desiring to conduct business as a mortgage broker or to work as a loan originator shall apply to the department for a license and pay a license fee under the provisions of this part ~~on or after July 1, 2004. Except as provided in 32-9-111, applicants~~ Applicants shall comply with all requirements of this part, including but not limited to requisite work experience, successful completion of an examination, and completion of an application approved by the department. All licenses issued under this section are nontransferable and nonassignable."

Section 3. Section 32-9-109, MCA, is amended to read:

"32-9-109. Experience requirements. (1) ~~Except as provided in 32-9-111:~~

(a) ~~an~~ An individual applying for a license as a mortgage broker must have a minimum of 3 years of experience working as a loan originator, as a mortgage banker, or in a related field; ~~and~~

(b) ~~an~~ An individual applying for a license as a loan originator must have a minimum of 6 months of experience working in a related field.

(2) The department shall by rule establish what constitutes work in a related field."

Section 4. Section 32-9-110, MCA, is amended to read:

"32-9-110. Examination requirements. (1) ~~Except as provided in 32-9-111, all individuals~~ Individuals seeking a mortgage broker's license and individuals seeking a loan originator's license shall submit to an examination provided for by the department. The department may use a third party to perform examination and grading services.

(2) The examination must be designed to demonstrate that the applicant possesses competency to originate loans. The test may cover subject matter areas including but not limited to:

(a) knowledge of this part;

(b) knowledge of disclosures and protections that borrowers are entitled to by state and federal law;

(c) the ability to read, understand, and explain appraisal basics, credit reports, and title commitments;

and

(d) the ability to evaluate credit, calculate a basic debt-to-income ratio, calculate loan-to-value ratios, and complete a basic loan application."

Section 5. Section 32-9-115, MCA, is amended to read:

"32-9-115. Application for mortgage broker license. (1) An application for a mortgage broker license must include:

(a) the proposed principal location of the business, with a photograph of ~~each~~ the principal location and each branch office at which business will be transacted. If the business is to be conducted out of a residence, verification must be supplied concerning compliance with all zoning laws and regulations. The application for an individual mortgage broker intending to work as an employee of another mortgage broker must contain the name and principal address of the licensed employing mortgage broker.

(b) (i) the name and address of the sole proprietor;

- (ii) the name and address of each partner; or
 - (iii) the name and address of any person that owns 10% or more of a mortgage broker entity that is other than a sole proprietorship or partnership;
 - (c) evidence of an irrevocable letter of credit or surety bond required by 32-9-123;
 - (d) a statement as to whether the applicant or, to the best of the applicant's knowledge, any shareholder, member, partner, designated manager, or employee of the applicant is currently under investigation, has been convicted of or has pleaded guilty to any felony or criminal offense involving fraud or dishonesty, or has been subject to any adverse civil judgment for any conduct involving fraudulent or dishonest dealing; and
 - (e) evidence that the designated manager meets the requirements for licensure as a mortgage broker.
- (2) The department shall investigate each individual applicant. The investigation shall include a criminal records check based on the fingerprints of each individual applicant and a civil records check. The department shall require each individual applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency, and any other information necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of investigation for federal processing. All costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential, and the department may use the records only to determine if the applicant is eligible for licensure. If an investigation outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the actual expenses of the investigation. The department may deny the application if the applicant's criminal history demonstrates any felony criminal convictions or other convictions involving fraud or dishonesty or if the applicant has had any adverse civil judgments involving fraudulent or dishonest dealings."

Section 6. Section 32-9-117, MCA, is amended to read:

"32-9-117. Fees -- license renewal -- disposition of fees. (1) (a) Except as provided in subsection (1)(b), an individual mortgage broker or an entity seeking licensure as a mortgage broker shall pay an initial nonrefundable license application fee of \$500. A loan originator shall pay an initial nonrefundable license application fee of \$400. An applicant shall pay one-half of these initial nonrefundable license application fees for any license period of less than 6 months.

(b) An individual who is seeking licensure as a mortgage broker and who is the sole owner of an entity that is seeking licensure as a mortgage broker shall pay a single initial nonrefundable license application fee of \$500.

(2) The license of a mortgage broker or loan originator is valid for a 1-year period and expires on June 30. Every licensee shall, on or before May 31 of the year, submit a renewal application and pay to the department a renewal fee in an amount set by the department by rule. The department shall establish by rule the requirements for renewal applications. The department shall establish a single renewal fee for individuals and entities described in subsection (1)(b) that are licensed as mortgage brokers. An individual described in subsection (1)(b) may act as a designated manager under 32-9-122 and is not subject to any additional license fees for acting in the capacity of a designated manager. The fees set by the department must be commensurate with the costs of the program. Failure to submit required information or fees within the time prescribed automatically revokes the license.

(3) An application for renewal must be accompanied by evidence that the continuing education requirements provided for in 32-9-118 have been met and that there has not been a material change in the status of the licensee in the preceding 12 months.

(4) All fees collected under this section must be deposited in the department's state special revenue fund to be used by the department in administering the provisions of this part."

Section 7. Section 32-9-121, MCA, is amended to read:

"32-9-121. In-state office requirement -- records maintenance -- advertising requirement. (1) Except for an individual mortgage broker working as an employee of a licensed mortgage broker, a ~~A~~ person or entity licensed as a mortgage broker shall maintain at least one physical office located in this state either on its own accord or in conjunction with another licensed mortgage broker or regulated lender located in this state. Licensees, including individual mortgage brokers working as employees, shall maintain books, accounts, records, and copies of residential mortgage loan files and trust account records that are necessary to enable the department to determine whether a licensee is in compliance with the applicable laws and rules. The required materials must be maintained at the Montana office location where services are provided and the materials must be maintained in accordance with generally accepted accounting principles and good business practices. Each office location must have at least one phone line. Licensees shall pay state income tax on all income earned in Montana.

(2) A mortgage broker shall maintain a residential mortgage file for a minimum of 5 years from the date of the last activity pertaining to the file. A mortgage broker shall maintain trust account records for a minimum of 5 years.

(3) (a) In any printed, published, televised, e-mail, or internet advertisement for the provision of services,

the following information must be included:

(i) a name, address, and license number for each mortgage broker or loan originator advertising as an individual; or

(ii) the name, address, and license number only of the licensed entity when the licensed entity is advertising on its own behalf or as an entity with one or more mortgage brokers or loan originators also listed.

(b) For the purposes of this subsection (3), advertising does not include stationery or business forms but does include business cards. A business card must include a mortgage broker's or loan originator's license number but is not required to list the entity's license number if the entity's name is listed."

Section 8. Section 32-9-122, MCA, is amended to read:

"32-9-122. Requirement for designated manager. (1) A mortgage broker that is not a sole proprietorship shall designate to the department an individual within its organization who is located in this state and is licensed as a mortgage broker ~~within its organization~~ as the designated manager of the organization.

(2) If the designated manager ceases to act in that capacity, within 15 days the mortgage broker shall designate another individual licensed as a mortgage broker as designated manager and shall submit information in writing to the department establishing that the subsequent designated manager is in compliance with the provisions of this part."

Section 9. Section 32-9-123, MCA, is amended to read:

"32-9-123. Irrevocable letter of credit or surety bond -- notice of legal action. (1) Each ~~licensee other than a loan originator~~ mortgage broker other than an individual mortgage broker working as an employee of a mortgage broker shall maintain at all times an irrevocable letter of credit or surety bond, naming the department as a beneficiary, in the amount of \$25,000 for each principal location and branch office identified in the application for licensure. The department shall use the proceeds of the letters of credit or surety bonds to reimburse borrowers or bona fide third parties who successfully demonstrate a financial loss because of an act of a licensee that violates the provisions of this part.

(2) A mortgage broker or loan originator shall give notice to the department by certified mail within 15 days of the mortgage broker's or loan originator's knowledge of the initiation of an investigation or the entry of a judgment in a criminal or civil action. The notice must be given if the investigation or the legal action is in any state and involves a mortgage broker, anyone having an ownership interest in a mortgage broker entity, or a loan originator. In the case of a legal action, the notice must include a copy of the criminal or civil judgment."

NEW SECTION. Section 10. Limitations on individual mortgage brokers -- license display -- termination. (1) An individual mortgage broker working as an employee may not transact business for more than one employing mortgage broker.

(2) The original license issued to an individual mortgage broker working as an employee must be provided to the employing mortgage broker and maintained at the employing mortgage broker's main office. A copy of the individual mortgage broker's license must be displayed at the office where the individual mortgage broker principally transacts business.

(3) (a) If the employment of an individual mortgage broker that is not a designated manager is terminated, the employing mortgage broker shall return the individual mortgage broker's license to the department within 5 business days after the termination.

(b) For a period of 6 months after the termination of employment, the individual mortgage broker may request the transfer of the license to another employing mortgage broker by submitting to the department a relocation application containing any information the department requires by rule, along with a fee established by the department by rule.

(c) The license of any individual mortgage broker that is not transferred to another mortgage broker within the 6-month period is terminated, and the individual may not engage in any residential mortgage loan origination activity until the individual complies with department procedures to reinstate the individual's license.

Section 11. Section 32-9-124, MCA, is amended to read:

"32-9-124. Prohibitions -- required disclosure. (1) A mortgage broker or loan originator may not do any of the following:

(a) retain original documents owned by the borrower and submitted in connection with the loan application;

(b) directly or indirectly employ any scheme to defraud or mislead a borrower, a lender, or any other person;

(c) make any misrepresentation or deceptive statement in connection with a residential mortgage loan, including but not limited to interest rates, points, costs at closing, or other financing terms or conditions; or

(d) fail to pay a bona fide third party later than 30 days after recording of the loan closing documents or 90 days after completion of the bona fide third-party service, whichever is earlier, unless otherwise agreed by the parties;

(e) accept any fees or compensation at closing that were not disclosed as required by state or federal

law;

(f) accept any fees or compensation in excess of those allowed by state or federal law; or

(g) sign a borrower's application or related documents on behalf of or in lieu of another mortgage broker or loan originator.

(2) Prior to providing mortgage broker services to a borrower, the licensee, in addition to other disclosures required by this part, subsections (3) and (4) of this section, and other state and federal laws, shall provide to the borrower at the time of application a written disclosure containing substantially the following language, which must be signed by the borrower:

"MORTGAGE LOAN ORIGINATION DISCLOSURE

(Name of licensee) is a licensed mortgage broker in Montana authorized to provide mortgage brokerage services to you in connection with your real estate loan. Lenders whose loan products we distribute generally provide their loan products to us at a wholesale rate. The rate you pay may be higher.

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

(1) (name of licensee) is acting as an independent contractor and not as your agent;

(2) (name of licensee) enters into separate independent contractor agreements with various lenders; and

(3) while (name of licensee) seeks to assist you in meeting your financial needs, (name of licensee) does not distribute products of all lenders or investors in the market and cannot guarantee the lowest price or best terms available.

SECTION 2. OUR COMPENSATION.

(1) The retail price (name of licensee) offers you, including the interest rate, total points, and fees, will include (name of licensee's) compensation.

(2) In some cases, (name of licensee) may be paid all of (name of licensee's) compensation by either you or the lender.

(3) Alternatively, (name of licensee) may be paid a portion of (name of licensee's) compensation by both you and the lender. For example, in some cases, if you would rather pay a lower interest rate, you may pay more money in upfront points and fees. Also, in some cases, if you would rather pay less money up front, you may be able to pay some or all of our compensation indirectly through a higher interest rate, in which case (name of licensee) will be paid directly by the lender.

(4) (Name of licensee) may also be paid by the lender based on the value of the mortgage loan or related servicing rights in the market place or based on other services, goods, or facilities performed or provided by (name of licensee) to the lender.

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

(3) The disclosure must include the address of the department's division of banking and financial institutions, the division's phone number and website, and a statement informing borrowers that the division can provide information about whether a mortgage broker or loan originator is licensed as well as other legally available information.

(4) The disclosure must contain a statement informing borrowers of their right to choose the appraiser and, in the case of a refinanced loan, the title company. The statement must contain the names of at least three providers of appraisal services and title services from which to choose. The borrower shall acknowledge the choice of providers in writing."

NEW SECTION. Section 12. Investigations by department -- subpoenas -- oaths -- examination of witnesses and evidence. (1) For the purposes of this part, the department or the department's authorized representatives must be given free access to the offices and places of business and files of all licensees. The department may investigate any matter, upon complaint or otherwise, if it appears that a person has engaged in or offered to engage in any act or practice that is in violation of any provision this part or any rule adopted or order issued by the department pursuant to this part.

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this part. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by the subpoena, a judge of the district court of Lewis and Clark County or the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in the subpoena.

(4) If a person served with a subpoena refuses to obey the subpoena or to give testimony or produce evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3, chapter 1, part 5.

(5) Failure to comply with the requirements of a court-ordered subpoena is punishable pursuant to 45-7-309.

NEW SECTION. Section 13. Cease and desist orders. (1) If it appears to the department that a person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this part or any rule adopted or order issued by the department pursuant to this part, the department may issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The department may issue a temporary order pending the hearing that:

(a) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(b) becomes final if the person to whom notice is addressed does not request a hearing within 10 days after receipt of the notice.

(2) A violation of an order issued pursuant to this section is subject to the penalty provisions of this part.

Section 14. Section 32-9-126, MCA, is amended to read:

"32-9-126. Revocation, suspension, and reinstatement of licenses. (1) The department, upon giving the licensee 10 days' written notice, which includes a statement of the grounds for the proposed suspension or revocation, and informing the licensee that the licensee has the right to be heard at an administrative hearing if requested by the licensee, may suspend or revoke a license if it finds that the licensee has violated any provision of this part.

(2) All notices, hearing schedules, and orders must be mailed to the licensee by certified mail to the address for which the license was issued.

(3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(2)(4) The department may reinstate any suspended or revoked license upon a showing that the licensee has corrected all deficiencies if there is not a fact or condition existing at the time of reinstatement that would have justified the department's refusing to originally issue the license. If a license has been suspended or revoked for cause, an application may not be made for the issuance of a new license or the reinstatement of a suspended or revoked license for a period of 6 months from the date of suspension or revocation."

Section 15. Section 32-9-130, MCA, is amended to read:

"32-9-130. Department authority -- rulemaking. (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable through the power of suspension or revocation of licenses.

(2) The rules must address:

(a) revocation or suspension of licenses for cause;

(b) investigation of applicants, ~~and~~ licensees, and unlicensed persons alleged to have violated a provision of this part and handling of complaints made by any person in connection with any business transacted by a licensee;

(c) holding contested case hearings pursuant to the Montana Administrative Procedure Act and issuing cease and desist orders, orders of restitution, and orders for the recovery of administrative costs;

~~(e)~~(d) prescribing forms for applications;

~~(d)~~(e) developing or approving tests to be given as a prerequisite for licensure;

~~(e)~~(f) approval of programs for continuing education; and

~~(f)~~(g) establishing fees for testing, continuing education programs, and license renewals.

(3) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part.

(4) (a) The department may at any time examine any mortgage broker transaction and may examine the residential mortgage loan files, trust account records, and other information related to mortgage loan transactions of a licensee.

(b) When conducting a financial examination or an audit of a licensee, the department may require the licensee to pay a fee of \$300 per day for each examiner performing the financial examination or audit.

(c) If any examination fees are not paid within 30 days of the department's mailing of an invoice, the license of the mortgage broker or designated manager for the mortgage broker entity may be suspended or revoked.

(5) (a) The department may:

(i) exchange information with federal and state regulatory agencies, the attorney general, the consumer protection office of the department, and the legislative auditor; ~~and~~

(ii) exchange information other than confidential information with the mortgage asset research institute, inc., and other similar organizations; and

(iii) refer any matter to the appropriate law enforcement agency for prosecution of a violation of this part.

(b) Except as provided in subsection (5)(a)(i), the department shall treat all confidential criminal justice information as confidential unless otherwise required by law.

(6) The department shall prepare, at least once each calendar year, a roster listing the name and locations for each mortgage broker and a roster of all loan originators and designated managers and the name

of their employing brokers. The roster must be available to interested persons and to the general public."

Section 16. Section 32-9-133, MCA, is amended to read:

"32-9-133. Penalties -- restitution. (1) ~~A person who acts or offers to act in any capacity as a mortgage broker or loan originator without a license in this state or while a license is suspended or revoked is subject to the penalty provisions of subsections (3) and (5).~~

~~— (2) Any person who violates a provision of this part or a rule adopted under this part is subject to the penalty provisions of subsection (3). If the department finds, after providing a 10-day written notice that includes a statement of alleged violations and a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer, agent, employee, or representative of the person or licensee, whether licensed or unlicensed, has violated any of the provisions of this part, has failed to comply with the rules, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a required license, the department may impose a civil penalty not to exceed \$5,000 for the first violation and not to exceed \$10,000 for each subsequent violation.~~

(2) The department may issue an order requiring restitution to borrowers and reimbursement of the department's cost in bringing the administrative action. In addition, the department may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee or to engage in the mortgage broker business.

(3) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed business to the last-known address of record.

~~(3) For a first violation of subsection (1) or (2), the department may impose a fine of not less than \$5,000 or more than \$10,000. For a second or subsequent violation, the department may impose a fine of not less than \$10,000 or more than \$20,000. Each violation of the provisions of subsection (1) or (2) constitutes a separate offense.~~

(4) The fines must be deposited in the state general fund.

(5) A person practicing as a mortgage broker or loan originator without being licensed as required under subsection (1) is guilty of a misdemeanor and may be punished by a fine of not less than \$250 or more than \$1,000, by imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of subsection (1) constitutes a separate offense."

NEW SECTION. **Section 17. Repealer.** Sections 32-9-111 and 32-9-131, MCA, are repealed.

NEW SECTION. **Section 18. Codification instruction.** [Sections 10, 12, and 13] are intended to be codified as an integral part of Title 32, chapter 9, part 1, and the provisions of Title 32, chapter 9, part 1, apply to [sections 10, 12, and 13].

- END -

