

## CHAPTER 58

### MORTGAGE ORIGINATOR AND SERVICE LICENSING

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#### 58.01 CITATION.

This chapter shall be cited as the "Minnesota Residential Mortgage Originator and Servicer Licensing Act."

**History:** 1998 c 343 art 1 s 1

#### 58.02 DEFINITIONS.

Subdivision 1. **Scope.** For purposes of this chapter, the terms defined in this section have the meanings given to them.

Subd. 2. **Act.** "Act" means the Minnesota Residential Mortgage Originator and Servicer Licensing Act.

Subd. 3. **Advance fee.** "Advance fee" means a commission, fee, charge, or compensation of any kind paid to a residential mortgage originator before the closing of a loan, that is intended in whole or in part as payment for the originator's services in finding or attempting to find a loan for a borrower. Advance fee does not include pass-through fees or commitment or extended lock fees or other fees as determined by the commissioner.

Subd. 3a. **Advertisement.** "Advertisement" includes, but is not limited to, any illustration, circular, or statement that presents information to the public in either a paper, electronic, or other medium that is intended to attract clients, generate interest, or otherwise make known the existence of the licensee and which addresses services, fees, or products provided by or available

through the licensee, including, but not limited to, interest rates, loan origination fees, types of available loans, discount points, closing costs, or sample mortgage terms.

Subd. 4. **Borrower.** "Borrower" means a person or persons applying for a residential mortgage loan, a mortgagor, or the person or persons on whose behalf the activities in subdivisions 12, 14, 22, and 23 are conducted.

Subd. 5. **Closing.** "Closing" means either or both of the following: (1) the process whereby the real estate contract between a buyer and a seller is consummated; or (2) the process whereby the documents creating a security interest in real property become effective between the borrower and the lender.

Subd. 6. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 7. **Employee.** "Employee" means an individual who is treated as an employee by the residential mortgage originator or servicer for purposes of compliance with federal income tax laws.

Subd. 8. **Escrow account.** "Escrow account" means a trust account that is established and maintained to hold funds received from a borrower, such as real estate taxes and insurance premiums, incurred in connection with the servicing of the mortgage.

Subd. 9. **Exempt person.** "Exempt person" means a person exempt from residential mortgage originator licensing requirements, and a person exempt from residential mortgage service licensing requirements.

Subd. 10. **Financial institution.** "Financial institution" means a bank, bank and trust, trust company with banking powers, savings bank, savings association, or credit union, organized under the laws of this state, any other state, or the United States; an industrial loan and thrift under chapter 53; or a regulated lender under chapter 56. The term "financial institution" also includes a subsidiary or operating subsidiary of a financial institution or of a bank holding company as defined in the federal Bank Holding Company Act, United States Code, title 12, section 1841 et seq., if the subsidiary or operating subsidiary can demonstrate to the satisfaction of the commissioner that it is regulated and subject to active and ongoing oversight and supervision by a federal banking agency, as defined in the Federal Deposit Insurance Act, United States Code, title 12, section 1811 et seq., or the commissioner.

Subd. 11. **Lender.** "Lender" means a person who makes residential mortgage loans including a person who provides table funding.

Subd. 12. **Making a residential mortgage loan.** "Making a residential mortgage loan" means for compensation or gain, or the expectation of compensation or gain, to advance funds or make a commitment to advance funds in connection with a residential mortgage.

Subd. 13. **Mortgage broker; broker.** "Mortgage broker" or "broker" means a person who performs the activities described in subdivisions 14 and 23.

Subd. 14. **Mortgage brokering; brokering.** "Mortgage brokering" or "brokering" means helping to obtain from another person, for a borrower, a residential mortgage loan or assisting a borrower in obtaining a residential mortgage loan in return for consideration to be paid by the borrower or lender or both. Mortgage brokering or brokering includes, but is not limited to, soliciting, placing, or negotiating a residential mortgage loan.

Subd. 15. [Repealed, 2000 c 427 s 21]

Subd. 16. **Person.** "Person" means a natural person, firm, partnership, limited liability partnership, corporation, association, limited liability company, or other form of business organization and the officers, directors, employees, or agents of that person.

Subd. 17. **Person in control.** "Person in control" means any member of senior management, including owners or officers, and other persons who possess, directly or indirectly, the power to direct or cause the direction of the management policies of an applicant or licensee under this chapter, regardless of whether the person has any ownership interest in the applicant or licensee. Control is presumed to exist if a person, directly or indirectly, owns, controls, or holds with power to vote ten percent or more of the voting stock of an applicant or licensee or of a person who owns, controls, or holds with power to vote ten percent or more of the voting stock of an applicant or licensee.

Subd. 18. **Residential mortgage loan.** "Residential mortgage loan" means a loan secured primarily by either: (1) a mortgage on residential real property; or (2) certificates of stock or other evidence of ownership interest in and proprietary lease from corporations, partnerships, or other forms of business organizations formed for the purpose of cooperative ownership of residential real property.

Subd. 19. **Residential mortgage originator.** "Residential mortgage originator" means a person who, directly or indirectly, for compensation or gain or in expectation of compensation or gain, solicits or offers to solicit, or accepts or offers to accept an application for a residential mortgage loan through any medium or mode of communication from a borrower, or makes a residential mortgage loan. "Residential mortgage originator" includes a lender as defined in subdivision 11 and a broker as defined in subdivision 13.

Subd. 20. **Residential mortgage servicer; servicer.** "Residential mortgage servicer" or "servicer" means a person who engages in the activity of servicing a residential mortgage as defined in subdivision 22.

Subd. 21. **Residential real property; residential real estate.** "Residential real property" or "residential real estate" means real property improved or intended to be improved by a structure

designed principally for the occupancy of from one to four families, whether or not the owner occupies the real property.

Subd. 22. **Servicing; servicing a residential mortgage loan.** "Servicing" or "servicing a residential mortgage loan" means through any medium or mode of communication the collection or remittance of, or the right or obligation to collect or remit for a lender, mortgagee, note owner, noteholder, or for a person's own account, payments, interest, principal, and escrow items such as insurance and taxes for property subject to a residential mortgage loan.

Subd. 23. **Soliciting, placing, or negotiating a residential mortgage loan.** "Soliciting, placing, or negotiating a residential mortgage loan" means for compensation or gain or expectation of compensation or gain, whether directly or indirectly, accepting or offering to accept an application for a residential mortgage loan, assisting, or offering to assist a borrower in applying for a residential mortgage loan, or negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with a lender on behalf of a borrower.

Subd. 24. [Repealed, 2004 c 203 art 1 s 11]

Subd. 25. **Trust account.** "Trust account" means a negotiable order of withdrawal account, demand deposit, or checking account maintained for the purpose of segregating trust funds from other funds. A "trust account" must not allow the financial institution a right of set-off against the money owed it by the account holder.

Subd. 26. **Trust funds.** "Trust funds" means funds received by a residential mortgage originator or servicer in a fiduciary capacity for later distribution, such as appraisal or credit report fees, taxes, or insurance premiums. Trust funds includes commitment, lock, extended lock, and advance fees.

Subd. 27. **Subprime loan.** "Subprime loan" means, in the case of an adjustable rate loan secured by a first lien on a dwelling that can increase in interest rate but not decrease in interest rate below the fully indexed rate at the time of origination, a loan for which the annual percentage rate (APR) is greater than two percentage points above the yield on United States Treasury securities having comparable periods of maturity, as of the 15th day of the preceding month if the rate is set between the first and the 14th day of the month and as of the 15th day of the current month if the rate is set on or after the 15th day.

For all other loans secured by a first lien on a dwelling, the term means a loan for which the APR is greater than three percentage points above the yield on United States Treasury securities having comparable periods of maturity, as of the 15th day of the preceding month if the rate is set between the first and the 14th day of the month and as of the 15th day of the current month if the rate is set on or after the 15th day.

For loans secured by a subordinate lien on a dwelling, the term means a loan for which the APR is greater than five percentage points above the yield on United States Treasury securities having comparable periods of maturity, as of the 15th day of the preceding month if the rate is set between the first and the 14th day of the month and as of the 15th day of the current month if the rate is set on or after the 15th day.

For purposes of this section, the annual percentage rate has the meaning given in Code of Federal Regulations, title 12, part 226.

Subd. 28. **Negative amortization.** "Negative amortization" occurs when the borrower's compliance with any repayment option offered pursuant to the terms of the residential mortgage loan is insufficient to satisfy the interest accruing on the loan, resulting in an increase in the loan balance. Negative amortization does not occur when a residential mortgage loan is originated, subsidized, or guaranteed by or through a state, tribal, or local government, or nonprofit organization, and bears one or more of the following nonstandard payment terms that substantially benefit the borrower: payments vary with income; payments of principal and interest are deferred until the maturity date of the loan or the sale of the residence; principal or interest is forgivable under specified conditions; or where no interest or an annual interest rate of two percent or less is charged in connection with the loan.

Subd. 29. **Fully indexed rate.** "Fully indexed rate" equals the index rate prevailing at the time a residential mortgage loan is originated, plus the margin that will apply after the expiration of an introductory interest rate.

Subd. 30. **Transaction agent.** A "transaction agent" is the person identified in a mortgage recorded with the county recorder or registrar of titles as the nominee or agent for a third party also identified in the mortgage.

**History:** 1998 c 343 art 1 s 2; 1999 c 86 art 1 s 14; 2000 c 427 s 10; 2001 c 56 s 8; 2007 c 18 s 1; 2007 c 74 s 1,2; 2008 c 238 art 1 s 1; 2008 c 240 s 1,2; 2009 c 178 art 1 s 3

### 58.03 CLASSES OF LICENSE.

The commissioner may issue the following classes of license under this chapter:

- (1) a residential mortgage originator license; and
- (2) a residential mortgage servicer license.

**History:** 1998 c 343 art 1 s 3

### 58.04 LICENSING REQUIREMENT.

Subdivision 1. **Residential mortgage originator licensing requirements.** (a) No person shall act as a residential mortgage originator, or make residential mortgage loans without first obtaining a license from the commissioner according to the licensing procedures provided

in this chapter.

(b) A licensee must be either a partnership, limited liability partnership, association, limited liability company, corporation, or other form of business organization, and must have and maintain at all times one of the following: approval as a mortgagee by either the federal Department of Housing and Urban Development or the Federal National Mortgage Association; a minimum net worth, net of intangibles, of at least \$250,000; or a surety bond or irrevocable letter of credit in the amount of \$50,000. Net worth, net of intangibles, must be calculated in accordance with generally accepted accounting principles.

(c) The following persons are exempt from the residential mortgage originator licensing requirements:

(1) a person who is not in the business of making residential mortgage loans and who makes no more than three such loans, with its own funds, during any 12-month period;

(2) a financial institution as defined in section 58.02, subdivision 10;

(3) an agency of the federal government, or of a state or municipal government;

(4) an employee or employer pension plan making loans only to its participants;

(5) a person acting in a fiduciary capacity, such as a trustee or receiver, as a result of a specific order issued by a court of competent jurisdiction; or

(6) a person exempted by order of the commissioner.

Subd. 2. **Residential mortgage servicer licensing requirements.** (a) Beginning August 1, 1999, no person shall engage in activities or practices that fall within the definition of "servicing a residential mortgage loan" under section 58.02, subdivision 22, without first obtaining a license from the commissioner according to the licensing procedures provided in this chapter.

(b) The following persons are exempt from the residential mortgage servicer licensing requirements:

(1) a person licensed as a residential mortgage originator;

(2) an employee of one licensee or one person holding a certificate of exemption based on an exemption under this subdivision;

(3) a person servicing loans made with its own funds, if no more than three such loans are made in any 12-month period;

(4) a financial institution as defined in section 58.02, subdivision 10;

(5) an agency of the federal government, or of a state or municipal government;

(6) an employee or employer pension plan making loans only to its participants;

(7) a person acting in a fiduciary capacity, such as a trustee or receiver, as a result of a specific order issued by a court of competent jurisdiction; or

(8) a person exempted by order of the commissioner.

Subd. 3. **Conducting business under license.** No person required to be licensed under this chapter may, without a license, do business under a name or title or circulate or use advertising or make representations or give information to a person, that indicates or reasonably implies activity within the scope of this chapter.

No person licensed under this chapter may do business under more than one name or title.

Subd. 4. **Applicability to banks and credit unions.** Except for sections 58.13 and 58.137, subdivisions 2 and 3, this chapter does not apply to a bank, savings bank, savings association, or credit union, or to any subsidiary of any of them, that is subject to supervision by either a federal regulatory agency or the commissioner.

**History:** 1998 c 343 art 1 s 4; 1999 c 151 s 34; 2000 c 427 s 11-13; 2002 c 342 s 7; 2007 c 57 art 3 s 13

#### **58.05 EXEMPTIONS FROM LICENSE.**

Subdivision 1. **Exempt person.** An exempt person as defined by section 58.04, subdivision 1, paragraph (c), and subdivision 2, paragraph (b), is exempt from the licensing requirements of this chapter, but is subject to all other provisions of this chapter.

Subd. 2. [Repealed, 2000 c 427 s 21]

Subd. 3. **Certificate of exemption.** A person must obtain a certificate of exemption from the commissioner to qualify as an exempt person under section 58.04, subdivision 1, paragraph (c), a financial institution under clause (2), or by order of the commissioner under clause (6); or under section 58.04, subdivision 2, paragraph (b), as a financial institution under clause (4), or by order of the commissioner under clause (8).

**History:** 1998 c 343 art 1 s 5; 2000 c 427 s 14; 2007 c 57 art 3 s 14; 2009 c 37 art 3 s 6; 2009 c 86 art 1 s 9

#### **58.06 APPLICATION REQUIREMENTS FOR RESIDENTIAL MORTGAGE ORIGINATORS AND SERVICERS.**

Subdivision 1. **License application form.** Application for a residential mortgage originator or a residential mortgage servicer license must be in writing, under oath, and on a form obtained from and prescribed by the commissioner.

Subd. 2. **Application contents.** (a) The application must contain the name and complete business address or addresses of the license applicant. The license applicant must be a partnership,

limited liability partnership, association, limited liability company, corporation, or other form of business organization, and the application must contain the names and complete business addresses of each partner, member, director, and principal officer. The application must also include a description of the activities of the license applicant, in the detail and for the periods the commissioner may require.

(b) A residential mortgage originator applicant must submit one of the following:

(1) evidence which shows, to the commissioner's satisfaction, that either the federal Department of Housing and Urban Development or the Federal National Mortgage Association has approved the residential mortgage originator applicant as a mortgagee;

(2) a surety bond or irrevocable letter of credit in the amount of not less than \$50,000 in a form approved by the commissioner, issued by an insurance company or bank authorized to do so in this state. The bond or irrevocable letter of credit must be available for the recovery of expenses, fines, and fees levied by the commissioner under this chapter and for losses incurred by borrowers. The bond or letter of credit must be submitted with the license application, and evidence of continued coverage must be submitted with each renewal. Any change in the bond or letter of credit must be submitted for approval by the commissioner within ten days of its execution; or

(3) a copy of the residential mortgage originator applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statements of changes in shareholder equity, and statement of changes in financial position. Financial statements must be as of a date within 12 months of the date of application.

(c) The application must also include all of the following:

(1) an affirmation under oath that the applicant:

(i) is in compliance with the requirements of section 58.125;

(ii) will maintain a perpetual roster of individuals employed as residential mortgage originators, including employees and independent contractors, which includes the dates that mandatory testing, initial education, and continuing education were completed. In addition, the roster must be made available to the commissioner on demand, within three business days of the commissioner's request;

(iii) will advise the commissioner of any material changes to the information submitted in the most recent application within ten days of the change;

(iv) will advise the commissioner in writing immediately of any bankruptcy petitions filed against or by the applicant or licensee;

(v) will maintain at all times either a net worth, net of intangibles, of at least \$250,000 or a surety bond or irrevocable letter of credit in the amount of at least \$50,000;

(vi) complies with federal and state tax laws; and



(vii) complies with sections 345.31 to 345.60, the Minnesota unclaimed property law;

(2) information as to the mortgage lending, servicing, or brokering experience of the applicant and persons in control of the applicant;

(3) information as to criminal convictions, excluding traffic violations, of persons in control of the license applicant;

(4) whether a court of competent jurisdiction has found that the applicant or persons in control of the applicant have engaged in conduct evidencing gross negligence, fraud, misrepresentation, or deceit in performing an act for which a license is required under this chapter;

(5) whether the applicant or persons in control of the applicant have been the subject of: an order of suspension or revocation, cease and desist order, or injunctive order, or order barring involvement in an industry or profession issued by this or another state or federal regulatory agency or by the Secretary of Housing and Urban Development within the ten-year period immediately preceding submission of the application; and

(6) other information required by the commissioner.

Subd. 3. **Waiver.** The commissioner may, for good cause shown, waive any requirement of this section with respect to an initial license application or to permit a license applicant to submit substituted information in its license application in lieu of the information required by this section.

**History:** 1998 c 343 art 1 s 6; 1999 c 151 s 35; 2007 c 57 art 3 s 15,16; 2009 c 37 art 3 s 7

**58.07** [Repealed, 1999 c 151 s 49]

## **58.08 BONDS; LETTERS OF CREDIT.**

Subdivision 1. [Repealed, 2007 c 57 art 3 s 64]

Subd. 2. **Residential mortgage servicers.** A residential mortgage servicer licensee shall continuously maintain a surety bond or irrevocable letter of credit in an amount not less than \$100,000 in a form approved by the commissioner, issued by an insurance company or bank authorized to do so in this state. The bond or irrevocable letter of credit must be available for the recovery of expenses, fines, and fees levied by the commissioner under this chapter, and for losses or damages incurred by borrowers or other aggrieved parties as the result of a licensee's noncompliance with the requirements of this chapter, sections 325D.43 to 325D.48, and 325F.67 to 325F.69, or breach of contract relating to activities regulated by this chapter.

The bond or irrevocable letter of credit must be submitted with the servicer's license application and evidence of continued coverage must be submitted with each renewal. Any change in the bond or letter of credit must be submitted for approval by the commissioner, within ten days of its execution.

Subd. 3. **Exemption.** Subdivision 2 does not apply to mortgage originators or mortgage servicers who are approved as seller/servicers by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

Subd. 4. **Irrevocable letter of credit.** As used in this chapter, an irrevocable letter of credit must be accepted only if it is clean, irrevocable, and contains an evergreen clause.

(a) "Clean" means a letter of credit that is not conditioned on the delivery of any other documents or materials.

(b) "Irrevocable" means a letter of credit that cannot be modified or revoked without the consent of the beneficiary once the beneficiary is established.

(c) "Evergreen clause" means one that specifically states the expiration of a letter of credit will not take place without a 60-day notice by the issuer and one that allows the issuer to conduct an annual review of the account party's financial condition. If prior notice of expiration is not given by the issuer, the letter of credit is automatically extended for one year.

A clean irrevocable letter of credit must be accepted only if it is issued by a financial institution that is authorized to engage in banking in any of the 50 states or under the laws of the United States, and whose business is substantially confined to banking and supervised by the state commissioner of commerce or similar official, and that has a long-term debt rating by a recognized national rating agency of investment grade or better. If no long-term debt rating is available, the financial institution must have the equivalent investment grade financial characteristics.

**History:** 1998 c 343 art 1 s 8; 1999 c 151 s 36; 2000 c 427 s 15; 2007 c 57 art 3 s 17

#### **58.09 TERM OF LICENSE.**

Initial licenses for residential mortgage originators and residential mortgage servicers issued under this chapter expire on July 31, 2001, and are renewable on August 1, 2001, and on August 1 of each odd-numbered year after that date. A new licensee whose license expires less than 12 months from the date of issuance shall pay a fee equal to one-half the applicable initial license fee set forth in section 58.10, subdivision 1, clause (1) or (3).

**History:** 1998 c 343 art 1 s 9

#### **58.10 FEES.**

Subdivision 1. **Amounts.** The following fees must be paid to the commissioner:

(1) for an initial residential mortgage originator license, \$2,125, \$50 of which is credited to the consumer education account in the special revenue fund;

(2) for a renewal license, \$1,125, \$50 of which is credited to the consumer education account in the special revenue fund;

- (3) for an initial residential mortgage servicer's license, \$1,000;
- (4) for a renewal license, \$500; and
- (5) for a certificate of exemption, \$100.

Subd. 2. **Forfeiture.** All fees are nonrefundable except that an overpayment of a fee must be refunded upon proper application.

Subd. 3. **Consumer education account; money credited and appropriated.** (a) The consumer education account is created in the special revenue fund. Money credited to this account may be appropriated to the commissioner for the purpose of making grants to programs and campaigns designed to help consumers avoid being victimized by unscrupulous lenders and mortgage brokers. Preference shall be given to programs and campaigns designed by coalitions of public sector, private sector, and nonprofit agencies, institutions, companies, and organizations.

(b) A sum sufficient is appropriated annually from the consumer education account to the commissioner to make the grants described in paragraph (a).

**History:** 1998 c 343 art 1 s 10; 2000 c 427 s 16; 2001 c 208 s 3,4; 2007 c 57 art 3 s 18

## 58.11 LICENSE RENEWAL.

Subdivision 1. **Term.** Licenses are renewable on August 1, 2001, and on August 1 of each odd-numbered year after that date.

Subd. 2. **Timely renewal.** (a) A person whose application is properly and timely filed who has not received notice of denial of renewal is considered approved for renewal and the person may continue to transact business as a residential mortgage originator or servicer whether or not the renewed license has been received on or before August 1 of the renewal year. Application for renewal of a license is considered timely filed if received by the commissioner by, or mailed with proper postage and postmarked by, July 15 of the renewal year. An application for renewal is considered properly filed if made upon forms duly executed and sworn to, accompanied by fees prescribed by this chapter, and containing any information that the commissioner requires.

(b) A person who fails to make a timely application for renewal of a license and who has not received the renewal license as of August 1 of the renewal year is unlicensed until the renewal license has been issued by the commissioner and is received by the person.

Subd. 3. **Contents of renewal application.** Application for the renewal of an existing license must contain the information specified in section 58.06, subdivision 2; however, only the requested information having changed from the most recent prior application need be submitted.

Subd. 4. **Cancellation.** A licensee ceasing an activity or activities regulated by this chapter and desiring to no longer be licensed shall so inform the commissioner in writing and, at the same time, surrender the license and all other symbols or indicia of licensure. The licensee shall include

a plan for the withdrawal from regulated business, including a timetable for the disposition of the business.

**History:** 1998 c 343 art 1 s 11

### **58.115 EXAMINATIONS.**

The commissioner has under this chapter the same powers with respect to examinations that the commissioner has under section 46.04, including the authority to charge for the direct costs of the examination, including travel and per diem expenses.

**History:** 2007 c 57 art 3 s 19

### **58.12 DENIAL, SUSPENSION, REVOCATION OF LICENSES.**

Subdivision 1. **Powers of commissioner.** (a) The commissioner may by order take any or all of the following actions:

- (1) bar a person from engaging in residential mortgage origination or servicing;
- (2) deny, suspend, or revoke a residential mortgage originator or a servicer license;
- (3) censure a licensee;
- (4) impose a civil penalty as provided for in section 45.027, subdivision 6; or
- (5) revoke an exemption or certificate of exemption.

(b) In order to take the action in paragraph (a), the commissioner must find:

- (1) that the order is in the public interest; and
- (2) that the residential mortgage originator, servicer, applicant, or other person, an officer, director, partner, employee, or agent or any person occupying a similar status or performing similar functions, or a person in control of the originator, servicer, applicant, or other person has:

- (i) violated any provision of this chapter or rule or order under this chapter;
- (ii) filed an application for a license that is incomplete in any material respect or contains a statement that, in light of the circumstances under which it is made, is false or misleading with respect to a material fact;
- (iii) failed to maintain compliance with the affirmations made under section 58.06, subdivision 2;
- (iv) violated a standard of conduct or engaged in a fraudulent, coercive, deceptive, or dishonest act or practice, whether or not the act or practice involves the residential mortgage lending business;

(v) engaged in an act or practice, whether or not the act or practice involves the business of making a residential mortgage loan, that demonstrates untrustworthiness, financial irresponsibility, or incompetence;

(vi) pled guilty, with or without explicitly admitting guilt, pled nolo contendere, or been convicted of a felony, gross misdemeanor, or a misdemeanor involving moral turpitude;

(vii) paid a civil penalty or been the subject of disciplinary action by the commissioner, or an order of suspension or revocation, cease and desist order or injunction order or order barring involvement in an industry or profession issued by this or any other state or federal regulatory agency or by the Secretary of Housing and Urban Development;

(viii) been found by a court of competent jurisdiction to have engaged in conduct evidencing gross negligence, fraud, misrepresentation, or deceit;

(ix) refused to cooperate with an investigation or examination by the commissioner;

(x) failed to pay any fee or assessment imposed by the commissioner; or

(xi) failed to comply with state and federal tax obligations.

**Subd. 2. Orders of the commissioner.** To begin a proceeding under this section, the commissioner shall issue an order requiring the subject of the proceeding to show cause why action should not be taken against the person according to this section. The order must be calculated to give reasonable notice of the time and place for the hearing and must state the reasons for entry of the order. The commissioner may by order summarily suspend a license or exemption or summarily bar a person from engaging in residential mortgage origination or servicing, pending a final determination of an order to show cause. If a license or exemption is summarily suspended or if the person is summarily barred from any involvement in the residential mortgage loan business, pending final determination of an order to show cause, a hearing on the merits must be held within 30 days of the issuance of the order of summary suspension or bar. All hearings must be conducted under chapter 14. After the hearing, the commissioner shall enter an order disposing of the matter as the facts require. If the subject of the order fails to appear at a hearing after having been duly notified of it, the person is considered in default, and the proceeding may be determined against the subject of the order upon consideration of the order to show cause, the allegations of which may be considered to be true.

**Subd. 3. Actions against lapsed license.** If a license or certificate of exemption lapses, is surrendered, withdrawn, terminated, or otherwise becomes ineffective, the commissioner may institute a proceeding under this subdivision within two years after the license or certificate of exemption was last effective and enter a revocation or suspension order as of the last date on which the license or certificate of exemption was in effect, and may impose a civil penalty as

provided for in this section or section 45.027, subdivision 6.

**History:** 1998 c 343 art 1 s 12

### **58.125 PROHIBITION ON SERVICE AS A RESIDENTIAL MORTGAGE ORIGINATOR.**

Subdivision 1. **Definitions.** (a) "Dishonesty" means directly or indirectly to cheat or defraud; to cheat or defraud for monetary gain or its equivalent; or to wrongfully take property belonging to another in violation of any criminal statute. 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.

(b) "Breach of trust" means a wrongful act, use, misappropriation, or omission with respect to any property or fund which has been committed to a person in a fiduciary or official capacity, or the misuse of one's official or fiduciary position to engage in a wrongful act, use, misappropriation, or omission.

Subd. 2. **Generally.** Except with the prior written consent of the commissioner under subdivision 4, any individual, who has been convicted of a criminal offense involving dishonesty or a breach of trust or money laundering, or has agreed to or entered into a pretrial diversion or similar program in connection with a prosecution for such offense, may not serve as a residential mortgage originator or be employed in that capacity by a person licensed as a mortgage originator.

Subd. 3. **De minimis offenses.** Approval is automatically granted and an application will not be required if the covered offense is considered de minimis because it meets all of the following criteria:

- (1) there is only one conviction or program entry of record for a covered offense;
- (2) the offense was punishable by imprisonment for a term of less than one year and/or a fine of less than \$1,000, and the individual did not serve time in jail;
- (3) the conviction or program was entered at least five years before the date an application would otherwise be required; and
- (4) the offense did not involve a financial institution or residential mortgage loans.

Subd. 4. **Prior consent.** (a) An application for prior consent of the commissioner under this section must be in writing, under oath, and on a form obtained from and prescribed by the commissioner. The following factors must be considered by the commissioner when reviewing an application:

- (1) the specific nature of the offense and the circumstances surrounding the offense;
- (2) evidence of rehabilitation since the offense;
- (3) the age of the person at the time of conviction; and

(4) whether or not restitution has been made.

(b) The receipt by an individual of prior consent of the commissioner under this section must not be construed as imposing upon an employer an affirmative obligation to employ that individual in any capacity. Nothing in this section precludes an employer from denying employment based upon the existence of a criminal offense specified in subdivision 2 or for any other lawful reason.

**History:** 2005 c 118 s 8

#### **58.126 EDUCATION AND TESTING REQUIREMENT.**

(a) No individual shall engage in residential mortgage origination or make residential mortgage loans, whether as an employee or independent contractor, before the completion of 20 hours of educational training which has been approved by the commissioner, and covering state and federal laws concerning residential mortgage lending.

(b) In addition to the initial education requirements in paragraph (a), each individual must also complete eight hours of continuing education annually. The education must include:

- (1) three hours of federal law and regulations;
- (2) two hours of ethics, which must include fraud, consumer protection, and fair lending; and
- (3) two hours of standards governing nontraditional mortgage lending.

(c) The commissioner may by rule establish testing requirements for individuals subject to the requirements of paragraphs (a) and (b). An individual must satisfy the testing requirements established by the commissioner before engaging in residential mortgage loan origination or making residential mortgage loans.

**History:** 2007 c 57 art 3 s 20; 2009 c 37 art 3 s 8

#### **58.13 STANDARDS OF CONDUCT.**

Subdivision 1. **Generally.** (a) No person acting as a residential mortgage originator or servicer, including a person required to be licensed under this chapter, and no person exempt from the licensing requirements of this chapter under section 58.04, except as otherwise provided in paragraph (b), shall:

- (1) fail to maintain a trust account to hold trust funds received in connection with a residential mortgage loan;
- (2) fail to deposit all trust funds into a trust account within three business days of receipt; commingle trust funds with funds belonging to the licensee or exempt person; or use trust account funds for any purpose other than that for which they are received;

(3) unreasonably delay the processing of a residential mortgage loan application, or the closing of a residential mortgage loan. For purposes of this clause, evidence of unreasonable delay includes but is not limited to those factors identified in section 47.206, subdivision 7, clause (d);

(4) fail to disburse funds according to its contractual or statutory obligations;

(5) fail to perform in conformance with its written agreements with borrowers, investors, other licensees, or exempt persons;

(6) charge a fee for a product or service where the product or service is not actually provided, or misrepresent the amount charged by or paid to a third party for a product or service;

(7) fail to comply with sections 345.31 to 345.60, the Minnesota unclaimed property law;

(8) violate any provision of any other applicable state or federal law regulating residential mortgage loans including, without limitation, sections 47.20 to 47.208 and 47.58;

(9) make or cause to be made, directly or indirectly, any false, deceptive, or misleading statement or representation in connection with a residential loan transaction including, without limitation, a false, deceptive, or misleading statement or representation regarding the borrower's ability to qualify for any mortgage product;

(10) conduct residential mortgage loan business under any name other than that under which the license or certificate of exemption was issued;

(11) compensate, whether directly or indirectly, coerce or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by a residential mortgage or is being offered as security according to an application for a residential mortgage loan;

(12) issue any document indicating conditional qualification or conditional approval for a residential mortgage loan, unless the document also clearly indicates that final qualification or approval is not guaranteed, and may be subject to additional review;

(13) make or assist in making any residential mortgage loan with the intent that the loan will not be repaid and that the residential mortgage originator will obtain title to the property through foreclosure;

(14) provide or offer to provide for a borrower, any brokering or lending services under an arrangement with a person other than a licensee or exempt person, provided that a person may rely upon a written representation by the residential mortgage originator that it is in compliance with the licensing requirements of this chapter;

(15) claim to represent a licensee or exempt person, unless the person is an employee of the licensee or exempt person or unless the person has entered into a written agency agreement with the licensee or exempt person;



(16) fail to comply with the record keeping and notification requirements identified in section 58.14 or fail to abide by the affirmations made on the application for licensure;

(17) represent that the licensee or exempt person is acting as the borrower's agent after providing the nonagency disclosure required by section 58.15, unless the disclosure is retracted and the licensee or exempt person complies with all of the requirements of section 58.16;

(18) make, provide, or arrange for a residential mortgage loan that is of a lower investment grade if the borrower's credit score or, if the originator does not utilize credit scoring or if a credit score is unavailable, then comparable underwriting data, indicates that the borrower may qualify for a residential mortgage loan, available from or through the originator, that is of a higher investment grade, unless the borrower is informed that the borrower may qualify for a higher investment grade loan with a lower interest rate and/or lower discount points, and consents in writing to receipt of the lower investment grade loan;

For purposes of this section, "investment grade" refers to a system of categorizing residential mortgage loans in which the loans are: (i) commonly referred to as "prime" or "subprime"; (ii) commonly designated by an alphabetical character with "A" being the highest investment grade; and (iii) are distinguished by interest rate or discount points or both charged to the borrower, which vary according to the degree of perceived risk of default based on factors such as the borrower's credit, including credit score and credit patterns, income and employment history, debt ratio, loan-to-value ratio, and prior bankruptcy or foreclosure;

(19) make, publish, disseminate, circulate, place before the public, or cause to be made, directly or indirectly, any advertisement or marketing materials of any type, or any statement or representation relating to the business of residential mortgage loans that is false, deceptive, or misleading;

(20) advertise loan types or terms that are not available from or through the licensee or exempt person on the date advertised, or on the date specified in the advertisement. For purposes of this clause, advertisement includes, but is not limited to, a list of sample mortgage terms, including interest rates, discount points, and closing costs provided by licensees or exempt persons to a print or electronic medium that presents the information to the public;

(21) use or employ phrases, pictures, return addresses, geographic designations, or other means that create the impression, directly or indirectly, that a licensee or other person is a governmental agency, or is associated with, sponsored by, or in any manner connected to, related to, or endorsed by a governmental agency, if that is not the case;

(22) violate section 82.49, relating to table funding;

(23) make, provide, or arrange for a residential mortgage loan all or a portion of the proceeds of which are used to fully or partially pay off a "special mortgage" unless the borrower has

obtained a written certification from an authorized independent loan counselor that the borrower has received counseling on the advisability of the loan transaction. For purposes of this section, "special mortgage" means a residential mortgage loan originated, subsidized, or guaranteed by or through a state, tribal, or local government, or nonprofit organization, that bears one or more of the following nonstandard payment terms which substantially benefit the borrower: (i) payments vary with income; (ii) payments of principal or interest are not required or can be deferred under specified conditions; (iii) principal or interest is forgivable under specified conditions; or (iv) where no interest or an annual interest rate of two percent or less is charged in connection with the loan. For purposes of this section, "authorized independent loan counselor" means a nonprofit, third-party individual or organization providing homebuyer education programs, foreclosure prevention services, mortgage loan counseling, or credit counseling certified by the United States Department of Housing and Urban Development, the Minnesota Home Ownership Center, the Minnesota Mortgage Foreclosure Prevention Association, AARP, or NeighborWorks America;

(24) make, provide, or arrange for a residential mortgage loan without verifying the borrower's reasonable ability to pay the scheduled payments of the following, as applicable: principal; interest; real estate taxes; homeowner's insurance, assessments, and mortgage insurance premiums. For loans in which the interest rate may vary, the reasonable ability to pay shall be determined based on a fully indexed rate and a repayment schedule which achieves full amortization over the life of the loan. For all residential mortgage loans, the borrower's income and financial resources must be verified by tax returns, payroll receipts, bank records, or other similarly reliable documents.

Nothing in this section shall be construed to limit a mortgage originator's or exempt person's ability to rely on criteria other than the borrower's income and financial resources to establish the borrower's reasonable ability to repay the residential mortgage loan, including criteria established by the United States Department of Veterans Affairs or the United States Department of Housing and Urban Development for interest rate reduction refinancing loans or streamline loans, or criteria authorized or promulgated by the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; however, such other criteria must be verified through reasonably reliable methods and documentation. The mortgage originator's analysis of the borrower's reasonable ability to repay may include, but is not limited to, consideration of the following items, if verified: (1) the borrower's current and expected income; (2) current and expected cash flow; (3) net worth and other financial resources other than the consumer's equity in the dwelling that secures the loan; (4) current financial obligations; (5) property taxes and insurance; (6) assessments on the property; (7) employment status; (8) credit history; (9) debt-to-income ratio; (10) credit scores; (11) tax returns; (12) pension statements; and (13) employment payment records, provided that no mortgage originator shall disregard facts and circumstances that indicate that the financial or other information submitted by the consumer is inaccurate or incomplete. A statement by the borrower

to the residential mortgage originator or exempt person of the borrower's income and resources or sole reliance on any single item listed above is not sufficient to establish the existence of the income or resources when verifying the reasonable ability to pay.

(25) engage in "churning." As used in this section, "churning" means knowingly or intentionally making, providing, or arranging for a residential mortgage loan when the new residential mortgage loan does not provide a reasonable, tangible net benefit to the borrower considering all of the circumstances including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances;

(26) the first time a residential mortgage originator orally informs a borrower of the anticipated or actual periodic payment amount for a first-lien residential mortgage loan which does not include an amount for payment of property taxes and hazard insurance, the residential mortgage originator must inform the borrower that an additional amount will be due for taxes and insurance and, if known, disclose to the borrower the amount of the anticipated or actual periodic payments for property taxes and hazard insurance. This same oral disclosure must be made each time the residential mortgage originator orally informs the borrower of a different anticipated or actual periodic payment amount change from the amount previously disclosed. A residential mortgage originator need not make this disclosure concerning a refinancing loan if the residential mortgage originator knows that the borrower's existing loan that is anticipated to be refinanced does not have an escrow account; or

(27) make, provide, or arrange for a residential mortgage loan, other than a reverse mortgage pursuant to United States Code, title 15, chapter 41, if the borrower's compliance with any repayment option offered pursuant to the terms of the loan will result in negative amortization during any six-month period.

(b) Paragraph (a), clauses (24) through (27), do not apply to a state or federally chartered bank, savings bank, or credit union, an institution chartered by Congress under the Farm Credit Act, or to a person making, providing, or arranging a residential mortgage loan originated or purchased by a state agency or a tribal or local unit of government. This paragraph supersedes any inconsistent provision of this chapter.

**Subd. 2. Statements, representations, or advertising.** A statement, representation, or advertisement is deceptive or misleading if it has the capacity or tendency to deceive or mislead a borrower or potential borrower. The commissioner shall consider the following factors in deciding whether a statement, representation, or advertisement is deceptive or misleading: the overall impression that the statement, representation, or advertisement reasonably creates; the particular type of audience to which it is directed; and whether it may be reasonably comprehended by the

segment of the public to which it is directed.

**History:** *1998 c 343 art 1 s 13; 2004 c 203 art 1 s 1; art 2 s 61; 2007 c 18 s 2; 2007 c 74 s 3; 2008 c 241 s 1; 2008 c 276 s 2; 2009 c 37 art 3 s 9*

**58.135** [Repealed, 2001 c 56 s 12]

### **58.136 RATES AND CHARGES.**

Notwithstanding any other law to the contrary, a residential mortgage originator making a residential mortgage loan to a borrower located in this state must comply with any applicable limits on the rate and amount of interest, discount points, finance charges, fees, and other charges as found in the laws of this state.

Nothing in this section authorizes a residential mortgage originator to make loans on terms and conditions that would not be available to it in the absence of this section.

This section applies to residential mortgage originators located in this state and residential mortgage originators located outside this state.

**History:** *2001 c 56 s 9*

### **58.137 INTEREST, POINTS, FINANCE CHARGES, FEES, AND OTHER CHARGES.**

Subdivision 1. **Financed interest, points, finance charges, fees, and other charges.** A residential mortgage originator making or modifying a residential mortgage loan to a borrower located in this state must not include in the principal amount of any residential mortgage loan all or any portion of any lender fee in an aggregate amount exceeding five percent of the loan amount. This subdivision shall not apply to residential mortgage loans which are insured or guaranteed by the secretary of housing and urban development or the administrator of veterans affairs or the administrator of the Farmers Home Administration or any successor.

"Lender fee" means interest, points, finance charges, fees, and other charges payable in connection with the residential mortgage loan: (1) by the borrower to any residential mortgage originator or to any assignee of any residential mortgage originator; or (2) by the lender to a mortgage broker. Lender fee does not include recording fees, mortgage registration taxes, passthroughs, or other amounts that are paid by any person to any government entity, filing office, or other third party that is not a residential mortgage originator or an assignee of a residential mortgage originator. Lender fee also does not include any amount that is set aside to pay taxes or insurance on any property securing the residential mortgage loan.

"Loan amount" means: (1) for a line of credit, the maximum principal amount of the line of credit; and (2) for any other residential mortgage loan, the principal amount of the residential mortgage loan excluding all interest, points, finance charges, fees, and other charges. A residential mortgage originator shall not charge, receive, or collect any excess financed interest, points,

finance charges, fees, or other charges described in this subdivision, or any interest, points, finance charges, fees, or other charges with respect to this excess.

Subd. 2. **Prepayment penalties.** (a) A residential mortgage originator making a residential mortgage loan that is a prime loan to a borrower located in this state shall not charge, receive, or collect any prepayment penalty, fee, premium, or other charge:

(1) for any partial prepayment of the residential mortgage loan; or

(2) for any prepayment of the residential mortgage loan upon the sale of any residential real property, or the sale of any stock, interest, or lease relating to cooperative ownership of residential real property, securing the loan; or

(3) for any prepayment of the residential mortgage loan if the prepayment is made more than 42 months after the date of the note or other agreement for the residential mortgage loan; or

(4) for any prepayment of the residential mortgage loan if the aggregate amount of all prepayment penalties, fees, premiums, and other charges exceeds the lesser of (i) an amount equal to two percent of the unpaid principal balance of the residential mortgage loan at the time of prepayment, or (ii) an amount equal to 60 days' interest, at the interest rate in effect on the residential mortgage loan at the time of prepayment, on the unpaid principal balance of the residential mortgage loan at the time of prepayment.

(b) If a residential mortgage originator offers or makes residential mortgage loans to any borrowers located in this state with prepayment penalties, fees, premiums, or other charges exceeding the maximum amount under paragraph (a), clause (4), then the residential mortgage originator shall provide the following disclosure to each prospective borrower located in this state that requests a residential mortgage loan from the residential mortgage originator, whether or not the prospective borrower receives a residential mortgage loan:

THIS IS VERY IMPORTANT

THIS LENDER CHARGES YOU A SUBSTANTIAL PENALTY IF YOU PAY OFF OR REFINANCE YOUR LOAN BEFORE MATURITY. ASK THE LENDER HOW MUCH THE PENALTY WILL BE FOR YOUR LOAN.

The residential mortgage originator shall read the disclosure to the prospective borrower when the prospective borrower requests a residential mortgage loan, and again within three days before the borrower signs the note or other agreement for the residential mortgage loan. The residential mortgage originator also shall provide the disclosure to the prospective borrower in writing so that it is received by the prospective borrower within five days after the residential mortgage originator receives the prospective borrower's request for a residential mortgage loan, and again within three days before the prospective borrower signs the note or other agreement for the residential mortgage loan. The written disclosure must be stated in at least 16-point capitalized

boldface type on a single sheet of paper that contains only the disclosure, the date on which the disclosure form is sent or provided, the name, address, and telephone number of the residential mortgage originator, the name and address of the prospective borrower, and, at the option of the residential mortgage originator, the prospective borrower's dated and signed acknowledgment of receipt of the disclosure form. The provisions of the disclosure form, other than the disclosure in this subdivision, are not required to be in at least 16-point capitalized boldface type. The prospective borrower shall be permitted to keep a copy of each written disclosure form. When a prospective borrower asks a residential mortgage originator for information about a prepayment penalty, the residential mortgage originator shall give the prospective borrower the requested information, and shall tell the borrower the highest aggregate amount of the prepayment penalties, fees, premiums, and other charges that the residential mortgage originator would charge to the prospective borrower for prepayment of the residential mortgage loan one year after it is funded, based on a hypothetical unpaid principal balance of \$100,000 and also based on the highest interest rate that the residential mortgage originator would charge to the prospective borrower. A mortgage originator responding to requests for residential mortgage loans via the Internet may make the disclosure in a manner acceptable to the commissioner.

(c) A residential mortgage originator shall not enter into a subprime loan that contains a provision requiring or permitting the imposition of a penalty, fee, premium, or other charge in the event the residential mortgage loan is prepaid in whole or in part. This prohibition does not apply to any loan with a principal amount that, or, in the case of an open-end credit plan, in which the borrower's initial maximum credit limit, exceeds the conforming loan size limit for a single-family dwelling as established from time to time by Fannie Mae.

Subd. 3. **Application.** This section applies to residential mortgage originators located in this state and residential mortgage originators located outside this state.

**History:** 2002 c 342 s 8; 2007 c 18 s 3; 2007 c 74 s 4

## 58.14 RECORD-KEEPING AND NOTIFICATION REQUIREMENTS.

Subdivision 1. **Change in licensing data.** A licensee must advise the commissioner of any material changes to the information submitted in the most recent license application within ten days of the change.

Subd. 2. **Notice of bankruptcy petitions.** A licensee or person who has been issued a certificate of exemption must advise the commissioner in writing immediately of any bankruptcy petitions filed against or by the licensee.

Subd. 3. **Documentation and resolution of complaints.** A licensee or exempt person must investigate and attempt to resolve complaints made regarding acts or practices subject to the provisions of this chapter. If a complaint is received in writing, the licensee or exempt person

must maintain a file containing all materials relating to the complaint and subsequent investigation for a period of 60 months.

Subd. 4. **Trust account records for mortgage originators.** A residential mortgage originator shall keep and maintain for 60 months a record of all trust funds, sufficient to identify the transaction, date and source of receipt, and date and identification of disbursement.

Subd. 5. **Record retention.** A licensee or exempt person must keep and maintain for 60 months the business records, including advertisements, regarding residential mortgage loans applied for, originated, or serviced in the course of its business.

**History:** 1998 c 343 art 1 s 14; 2001 c 56 s 10; 2008 c 240 s 3-5

## **58.15 DISCLOSURE REQUIREMENTS FOR CERTAIN RESIDENTIAL MORTGAGE ORIGINATORS.**

Subdivision 1. **Nonagency disclosure.** If a residential mortgage originator or exempt person other than a mortgage broker does not contract or offer to contract to act as an agent of a borrower, or accept an advance fee, it must, within three business days of accepting an application for a residential mortgage loan, provide the borrower with a written disclosure as provided in subdivision 2.

Subd. 2. **Form and content requirements.** The disclosure must be a separate document, 8-1/2 inches by 11 inches, must be signed by the borrower and must contain the following statement in 14-point boldface print:

**Originator IS NOT ACTING AS YOUR AGENT IN CONNECTION WITH OBTAINING A RESIDENTIAL MORTGAGE LOAN. WHILE WE SEEK TO ASSIST YOU IN MEETING YOUR FINANCIAL NEEDS, WE CANNOT GUARANTEE THE LOWEST OR BEST TERMS AVAILABLE IN THE MARKET.**

Subd. 3. **Electronic application disclosure requirement.** In case of an electronic residential mortgage application, the disclosure requirements of this section may be satisfied by providing the disclosure statement as a separate screen if the disclosure must be acknowledged by the borrower before an application is accepted.

Subd. 4. **Exemption from disclosure requirement.** If the Department of Housing and Urban Development adopts and implements a disclosure requirement that the commissioner determines to be substantially similar to the disclosure required in subdivision 2, compliance with the HUD disclosure shall be considered sufficient to satisfy the requirements of subdivision 2.

**History:** 1998 c 343 art 1 s 15; 2001 c 56 s 11; 2007 c 18 s 4

**58.16 RESIDENTIAL MORTGAGE ORIGINATORS; STANDARDS OF CONDUCT FOR AGENCY OR ADVANCE FEE TRANSACTIONS.**

Subdivision 1. **Compliance.** Residential mortgage originators who solicit or receive an advance fee in exchange for assisting a borrower located in this state in obtaining a loan secured by a lien on residential real estate, or who offer to act as an agent of the borrower located in this state in obtaining a loan secured by a lien on residential real estate shall be considered to have created a fiduciary relationship with the borrower and shall comply with the requirements of subdivisions 2 to 7. This section does not apply to mortgage brokers who do not solicit or receive an advance fee.

Subd. 2. **Contract provisions.** (a) A residential mortgage originator who engages in the activities described in subdivision 1 shall enter into a written contract with each borrower and shall provide a copy of the written contract to each borrower at or before the time of receipt of any fee or valuable consideration paid for mortgage origination services. The written contract must:

(1) specifically describe the services to be provided by the residential mortgage originator and if the originator collects an advance fee, the dates by which the services will be performed;

(2) specifically identify whether the residential mortgage originator may receive compensation from sources other than the borrower in connection with the loan transaction;

(3) state the total amount of commission or compensation that the borrower agrees to pay for the residential mortgage originator's services, or the basis on which the compensation will be computed;

(4) state the maximum rate of interest to be charged on any residential mortgage loan obtained;

(5) contain a statement that notifies the borrower of the right to cancel the contract according to subdivision 3 and disclose the cancellation rights and procedures provided in subdivision 3; and

(6) disclose, with respect to the 12-month period ending ten business days before the date of the contract in question, the percentage of the mortgage originator's customers for whom loans have actually been funded as a result of the residential mortgage originator's services.

(b) If an advance fee is solicited or received the contract must also:

(1) identify the trust account into which the fees or consideration will be deposited;

(2) set forth the circumstances under which the residential mortgage originator will be entitled to disbursement from the trust account; and

(3) set forth the circumstances under which the borrower will be entitled to a refund of all or part of the fee.

Subd. 3. **Cancellation.** A borrower who pays an advance fee, or who enters into a contract for residential mortgage services as set forth in subdivisions 1 and 2, has an unconditional right to



rescind the contract for residential mortgage origination services at any time until midnight of the third business day after the day on which the contract is signed. Cancellation is evidenced by the borrower giving written notice of cancellation to the residential mortgage originator at the address stated in the contract. Notice of cancellation, if given by mail, is effective upon deposit in a mailbox properly addressed to the originator with postage prepaid. Notice of cancellation need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the borrower not be bound by the contract. No act of a borrower or a residential mortgage originator is effective to waive the right to rescind as provided in this subdivision.

Subd. 4. **Trust account.** The residential mortgage originator shall deposit in a trust account within three business days all fees received before the time a loan is actually funded. The trust account must be in a financial institution located within the state of Minnesota, and, with respect to advance fees, the account must be controlled by an unaffiliated accountant, attorney, or bank.

Subd. 5. **Records.** The residential mortgage originator shall maintain a separate record of all fees received for services performed or to be performed as a residential mortgage originator. Each record must set forth the date the funds are received; the person from whom the funds are received; the amount received; the date of deposit in the escrow account, the account number, the date the funds are disbursed and the check number of the disbursement, and a description of each disbursement and the justification for the disbursement.

Subd. 6. **Monthly statement.** The residential mortgage originator shall provide to each borrower at least monthly a detailed written accounting of all disbursements of the borrower's funds from the trust account.

Subd. 7. **Disclosure of lenders.** The residential mortgage originator shall provide to each borrower at the expiration of the contract a list of the lenders or loan sources to whom loan applications were submitted on behalf of the borrower.

**History:** 1998 c 343 art 1 s 16; 2004 c 203 art 1 s 2,3; 2005 c 118 s 9; 2007 c 18 s 5

## **58.161 MORTGAGE BROKER DUTIES OF AGENCY.**

Subdivision 1. **Generally.** A mortgage broker shall be considered to have created an agency relationship with the borrower in all cases and shall comply with the following duties:

(1) mortgage brokers shall act in the borrower's best interest and in the utmost good faith toward borrowers, and shall not compromise a borrower's right or interest in favor of another's right or interest, including a right or interest of the mortgage broker. A mortgage broker shall not accept, give, or charge any undisclosed compensation or realize any undisclosed remuneration, either through direct or indirect means, that inures to the benefit of the mortgage broker on an expenditure made for the borrower;

(2) mortgage brokers will carry out all lawful instructions given by borrowers;

(3) mortgage brokers will disclose to borrowers all material facts of which the mortgage broker has knowledge which might reasonably affect the borrower's rights, interests, and/or ability to receive the borrower's intended benefit from the residential mortgage loan, but not facts which are reasonably susceptible to the knowledge of the borrower;

(4) mortgage brokers will use reasonable care in performing duties; and

(5) mortgage brokers will account to a borrower for all the borrower's money and property received as agent.

Subd. 2. **Scope.** (a) The duty of agency between mortgage broker and borrower applies when the mortgage broker is acting in the capacity of mortgage broker as described in section 58.02, subdivision 14 or 23.

(b) Nothing in this section prohibits a mortgage broker from contracting for or collecting a fee for services rendered and which had been disclosed to the borrower in advance of the provision of such services.

(c) Nothing in this section requires a mortgage broker to obtain a loan containing terms or conditions not available to the mortgage broker in the mortgage broker's usual course of business, or to obtain a loan for the borrower from a mortgage lender with whom the mortgage broker does not have a business relationship.

**History:** 2007 c 18 s 6

### 58.17 SCOPE OF CHAPTER.

Subdivision 1. **Residential mortgage originator services.** This chapter applies when an offer of residential mortgage origination services is made to a borrower in this state or when the residential mortgage originator is located in this state.

Subd. 2. **Residential mortgage servicing.** The provisions of this chapter regarding residential mortgage servicing apply when the borrower is a resident of this state.

Subd. 3. **Offer.** For purposes of this section, an "offer" means any advertisement or solicitation of any type, including an advertisement or solicitation in newspapers and magazines, by mail, by telephone, on television, on radio, or via the Internet or any other electronic medium of any kind, for residential mortgage originator services. The term "offer" excludes an advertisement or solicitation that specifically states that the services are not available to Minnesota residents.

**History:** 1998 c 343 art 1 s 17

### 58.18 PRIVATE RIGHT OF ACTION.

Subdivision 1. **Remedies.** A borrower injured by a violation of the standards, duties,

prohibitions, or requirements of sections 58.13, 58.136, 58.137, 58.16, and 58.161 shall have a private right of action and the court shall award:

- (1) actual, incidental, and consequential damages;
- (2) statutory damages equal to the amount of all lender fees included in the amount of the principal of the residential mortgage loan as defined in section 58.137;
- (3) punitive damages if appropriate, and as provided in sections 549.191 and 549.20; and
- (4) court costs and reasonable attorney fees.

Subd. 2. **Private attorney general statute.** A borrower injured by a violation of the standards, duties, prohibitions, or requirements of sections 58.13, 58.136, 58.137, 58.16, and 58.161 also may bring an action under section 8.31. A private right of action by a borrower under this chapter is in the public interest.

Subd. 3. **Remedies cumulative.** The remedies provided in this section are cumulative and do not restrict any other right or remedy otherwise available to the borrower.

Subd. 4. **Exemption.** This section does not apply to a residential mortgage loan originated by a federal or state chartered bank, savings bank, or credit union.

**History:** 2007 c 74 s 5; 2008 c 276 s 3,4