# CHAPTER 58

# MORTGAGE ORIGINATOR AND SERVICER 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. 15a. **Nationwide Multistate Licensing System and Registry.** "Nationwide Multistate Licensing System and Registry" has the meaning given in section 58A.02, subdivision 8.

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, deed of trust, or other equivalent security interest on residential real estate; 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 estate.

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 estate.** "Residential real estate" means real property located in Minnesota upon which a dwelling, as defined in United States Code, title 15, section 1602(w), is constructed or is intended to be constructed, 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 setoff 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. MS 2018 [Repealed, 2019 c 19 s 3]

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; 2020 c 80 art 1 s 9; 2024 c 114 art 2 s 16-18*

**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 a surety bond in the amounts prescribed under section 58.08.

(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;

(6) a person who is a bona fide nonprofit organization that meets all the criteria required by the federal Secure and Fair Enforcement Licensing Act in Regulation H, adopted pursuant to Code of Federal Regulations, title 12, part 1008, subpart B, section 1008.103 (e)(7)(ii);

(7) a person exempted by order of the commissioner; or

(8) a manufactured home dealer, as defined in section 327B.01, subdivision 7 or 11b, or a manufactured home salesperson, as defined in section 327B.01, subdivision 19, that:

(i) performs only clerical or support duties in connection with assisting a consumer in filling out a residential mortgage loan application but does not in any way offer or negotiate loan terms, or hold themselves out as a housing counselor;

(ii) does not receive any direct or indirect compensation or gain from any individual or company for assisting consumers with a residential mortgage loan application, in excess of the customary salary or commission from the employer in connection with the sales transaction; and

(iii) discloses to the borrower in writing:

(A) if a corporate affiliation with a lender exists;

(B) if a corporate affiliation with a lender exists, that the lender cannot guarantee the lowest or best terms available and the consumer has the right to choose their lender; and

(C) if a corporate affiliation with a lender exists, the name of at least one unaffiliated lender.

(d) For the purposes of this subdivision, "housing counselor" means an individual who provides assistance and guidance about residential mortgage loan terms including rates, fees, or other costs.

(e) The disclosures required under paragraph (c), clause (8), item (iii), must be made on a one-page form prescribed by the commissioner and developed in consultation with the Manufactured and Modular Home Association. The form must be posted on the department's website.

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;

(8) a person who is a bona fide nonprofit organization that meets all the criteria required by the federal Secure and Fair Enforcement Licensing Act in Regulation H, Code of Federal Regulations, title 12, part 1008, subpart B, section 1008.103 (e)(7)(ii); or

(9) 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; 2010 c 347 art 5 s 1; 2019 c 58 s 1; 2024 c 114 art 2 s 19,20*

**58.05 EXEMPTIONS FROM LICENSE.**

Subdivision 1. **Exempt person.** (a) 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.

(b) Paragraph (a) does not apply to an institution covered under section 58.04, subdivision 4, even if the institution is otherwise an exempt person.

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

Subd. 3. **Certificate of exemption.** (a) The following persons must obtain a certificate of exemption from the commissioner to qualify as an exempt person under section 58.04, subdivision 1, paragraph (c):

(1) a bona fide nonprofit organization under section 58.04, subdivision 1, paragraph (c), clause (6); or

(2) a person exempted by order of the commissioner under section 58.04, subdivision 1, paragraph (c), clause (7).

(b) The following persons must obtain a certificate of exemption from the commissioner to qualify as an exempt person under section 58.04, subdivision 2, paragraph (b):

(1) a bona fide nonprofit organization under section 58.04, subdivision 2, paragraph (b), clause (8); or

(2) a person exempted by order of the commissioner under section 58.04, subdivision 2, paragraph (b), clause (9).

**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; 2024 c 114 art 2 s 21,22*

## 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 a surety bond that meets the requirements of section 58.08, subdivision 1a.

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

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

(iv) will maintain at all times a surety bond in the amount of at least $100,000;

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

(vi) 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.

Subd. 4. **Records and fees; maintenance and processing.** Section 58A.04, subdivisions 2 and 3, apply to this section.

Subd. 5. **Background checks.** In connection with an application for a residential mortgage loan originator or servicer license, any person in control of an applicant must, at a minimum, provide the Nationwide Multistate Licensing System and Registry information concerning the person's identity, including:

(1) fingerprints for submission to the Federal Bureau of Investigation and a governmental agency or entity authorized to receive the information for a state, national, and international criminal history background check; and

(2) personal history and experience in a form prescribed by the Nationwide Multistate Licensing System and Registry, including the submission of authorization for the Nationwide Multistate Licensing System and Registry and the commissioner to obtain:

(i) an independent credit report obtained from a consumer reporting agency described in United States Code, title 15, section 1681a(p); and

(ii) information related to administrative, civil, or criminal findings by a governmental jurisdiction.

Subd. 6. **Requesting and distributing criminal information; agency.** For the purposes of this section and in order to reduce the points of contact the Federal Bureau of Investigation may have to maintain for purposes of subdivision 5, clauses (1) and (2), the commissioner may use the Nationwide Multistate Licensing System and Registry as a channeling agent to request information from and distribute information to the United States Department of Justice or any governmental agency.

Subd. 7. **Requesting and distributing noncriminal information; agency.** For the purposes of this section and in order to reduce the points of contact the commissioner may have to maintain for purposes of subdivision 5, clause (2), the commissioner may use the Nationwide Multistate Licensing System and Registry as a channeling agent to request and distribute information from and to any source, as directed by the commissioner.

**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; 2010 c 347 art 5 s 2; 2020 c 80 art 1 s 10; 2024 c 114 art 2 s 23-25*

**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. 1a. **Residential mortgage originators.** (a) An applicant for a residential mortgage originator license must file with the department a surety bond in the amount of $125,000, issued by an insurance company authorized to do so in this state. The bond must cover all mortgage loan originators who are

employees or independent agents of the applicant. The bond must be available for the recovery of expenses, fines, and fees levied by the commissioner under this chapter and for losses incurred by borrowers as a 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.

(b) The bond must be submitted with the originator's license application and evidence of continued coverage must be submitted with each renewal. Any change in the bond must be submitted for approval by the commissioner, within ten days of its execution. The bond or a substitute bond shall remain in effect during all periods of licensing.

(c) Upon filing of the mortgage call report as required by section 58.141, a licensee shall maintain or increase the licensee's surety bond to reflect the total dollar amount of the closed residential mortgage loans originated in this state in the preceding year according to the table in this paragraph. A licensee may decrease the licensee's surety bond according to the table in this paragraph if the surety bond required is less than the amount of the surety bond on file with the department.

| Dollar Amount of Closed Residential Mortgage Loans | Surety Bond Required |
|---|---|
| $0 to $10,000,000 | $125,000 |
| $10,000,000.01 to $25,000,000 | $150,000 |
| $25,000,000.01 to $100,000,000 | $200,000 |
| Over $100,000,000 | $300,000 |

For purposes of this subdivision, "mortgage loan originator" has the meaning given the term in section 58A.02, subdivision 7.

Subd. 2. **Residential mortgage servicers.** (a) A residential mortgage servicer licensee shall continuously maintain a surety bond or irrevocable letter of credit in an amount not less than $125,000 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.

(b) 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. The bond or a substitute bond must remain in effect during all periods of a license.

(c) Upon filing the mortgage call report under section 58.141, a licensee must maintain or increase the licensee's surety bond to reflect the total dollar amount of unpaid principal balance for residential mortgage loans serviced in Minnesota during the preceding quarter according to the table in this paragraph. A licensee may decrease the licensee's surety bond according to the table in this paragraph if the surety bond required is less than the amount of the surety bond on file with the department.

| Dollar Amount of Unpaid Principal Balance for Serviced Residential Mortgage Loans | Surety Bond Required |
|---|---|
| $0 to $10,000,000 | $125,000 |
| $10,000,000.01 to $50,000,000 | $200,000 |
| Over $50,000,000 | $300,000 |

Subd. 3. MS 2022 [Repealed, 2024 c 114 art 2 s 48]

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; 2010 c 347 art 5 s 3; 2024 c 114 art 2 s 26,27*

**58.09 TERM OF LICENSE.**

Licenses for residential mortgage originators and residential mortgage servicers issued under this chapter expire on December 31 and are renewable on January 1 of each year after that date.

**History:** *1998 c 343 art 1 s 9; 2010 c 347 art 5 s 4*

**58.10 FEES.**

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

(1) for a residential mortgage originator license, $1,000, $50 of which is credited to the consumer education account in the special revenue fund;

(2) for a renewal license, $500, $50 of which is credited to the consumer education account in the special revenue fund;

(3) for a residential mortgage servicer's license, $500;

(4) for a renewal license, $250; 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 to: (1) make grants to programs and campaigns designed to help consumers avoid being victimized by unscrupulous lenders and mortgage brokers; and (2) pay for expenses the commissioner incurs to provide outreach and education related to affordable housing and home ownership education. The commissioner must give preference for grants 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; 2010 c 347 art 5 s 5; 2024 c 114 art 2 s 28*

**58.11 LICENSE RENEWAL.**

Subdivision 1. **Term.** Licenses are renewable on January 1 of each year.

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 January 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, December 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 January 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; 2010 c 347 art 5 s 6*

**58.115 EXAMINATIONS.**

The commissioner has under this chapter the same powers with respect to examinations that the commissioner has under section 46.04. In addition to the powers under section 46.04, the commissioner

may accept examination reports prepared by a state agency that has comparable supervisory powers and examination procedures. The authority under section 49.411, subdivision 7, applies to examinations of institutions under this chapter.

**History:** *2007 c 57 art 3 s 19; 2014 c 222 art 1 s 9; 2024 c 114 art 2 s 29*

**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 including, but not limited to, negligently making a false statement or knowingly and willfully omitting a material fact;

(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; 2014 c 198 art 4 s 2*

**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** [Repealed, 2010 c 347 art 5 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, paragraph (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 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 82.77, 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 home buyer 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. In order to demonstrate a reasonable, tangible net benefit to the borrower, the circumstances at the time of the application must be documented in writing and must be signed by the borrower prior to the closing date;

(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.

***[See Note.]***

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; 2019 c 19 s 1; 2024 c 114 art 2 s 30*

**NOTE:** Subdivision 1, clauses (9) and (19), were found preempted for national banks by the federal National Bank Act in *Bohnhoff v. Wells Fargo Bank, N.A.*, 853 F.Supp.2d 849 (D. Minn. 2012).

**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, pass-throughs, 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 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 if the loan also contains an annual percentage rate that:

(1) for 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, is more than two percentage points above the yield on United States Treasury securities having comparable periods of maturity as of (i) the 15th day of the preceding month if the rate is set between the first and the 14th day of the month, or (ii) the 15th day of the current month if the rate is set on or after the 15th day;

(2) for all other loans secured by a first lien on a dwelling, is more than three percentage points above the yield on United States Treasury securities having comparable periods of maturity as of (i) the 15th day of the preceding month if the rate is set between the first and the 14th day of the month, or (ii) the 15th day of the current month if the rate is set on or after the 15th day; and

(3) for loans secured by a subordinate lien on a dwelling, is more than five percentage points above the yield on United States Treasury securities having comparable periods of maturity as of (i) the 15th day of the preceding month if the rate is set between the first and the 14th day of the month, or (ii) the 15th day of the current month if the rate is set on or after the 15th day.

(d) The prohibitions in this subdivision do 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 the Federal Housing Finance Administration or its successor.

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

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; 2019 c 19 s 2*

**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*

**58.141 REPORTS AND UNIQUE IDENTIFIER.**

Subdivision 1. **Mortgage call reports.** A residential mortgage originator or servicer must submit reports of condition to the Nationwide Multistate Licensing System and Registry. Reports submitted under this subdivision must be in the form and contain the information required by the Nationwide Multistate Licensing System and Registry.

Subd. 2. **Report to Nationwide Multistate Licensing System and Registry.** Subject to section 58A.14, the commissioner must regularly report violations of this chapter, as well as enforcement actions and other relevant information, to the Nationwide Multistate Licensing System and Registry.

Subd. 3. **Unique identifier; display.** The unique identifier of any person originating a residential mortgage loan must be clearly displayed on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or websites, and any other documents the commissioner establishes by rule or order.

**History:** *2024 c 114 art 2 s 31*

**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*

## 58.162 TRANSACTION AGENTS OR SERVICERS; DISCLOSURE OF NOTE OWNER INFORMATION TO MORTGAGOR.

Upon written request of a mortgagor, a transaction agent or servicer shall provide in writing to the mortgagor the identity, address, and telephone number of the current owner of the note secured by the mortgage, based on the transaction agent's or servicer's actual knowledge. A transaction agent or servicer

must provide the information within ten business days of receipt of the request. Upon request of a mortgagor, a transaction agent or servicer must provide this information about the current owner of the note without a fee once per calendar year. In lieu of complying with this section, a transaction agent or servicer may comply with the requirements of section 6(k) of the Real Estate Settlement Procedures Act, as amended by section 1463 of Public Law 111-203, regardless of whether those acts apply to the mortgage.

**History:** *2011 c 61 s 1*

**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*

**58.19 REVERSE MORTGAGE LOANS COORDINATION WITH CHAPTER 47.**

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, shall make, provide, or arrange for a reverse mortgage as defined in chapter 47 without complying with that chapter.

**History:** *2010 c 375 s 7*

**58.20 DEFINITIONS.**

Subdivision 1. **Scope.** For purposes of this section to section 58.23, the terms defined in this section have the meanings given.

Subd. 2. **Allowable assets for liquidity.** "Allowable assets for liquidity" means assets that may be used to satisfy the liquidity requirements under section 58.22, including:

(1) unrestricted cash and cash equivalents; and

(2) unencumbered investment grade assets held for sale or trade, including agency mortgage-backed securities, obligations of government-sponsored enterprises, and United States Treasury obligations.

Subd. 3. **Board of directors.** "Board of directors" means the formal body established by a covered institution that is responsible for corporate governance and compliance with sections 58.21 to 58.23.

Subd. 4. **Corporate governance.** "Corporate governance" means the structure of the covered institution and how the covered institution is managed, including the corporate rules, policies, processes, and practices used to oversee and manage the covered institution.

Subd. 5. **Covered institution.** "Covered institution" means a mortgage servicer that services or subservices for others at least 2,000 or more residential mortgage loans in the United States, excluding whole loans owned, and loans being interim serviced prior to sale as of the most recent calendar year end, reported on the NMLS mortgage call report.

Subd. 6. **External audit.** "External audit" means the formal report, prepared by an independent certified public accountant, expressing an opinion on whether the financial statements are:

(1) presented fairly, in all material aspects, in accordance with the applicable financial reporting framework; and

(2) inclusive of an evaluation of the adequacy of a company's internal control structure.

Subd. 7. **Government-sponsored enterprises.** "Government-sponsored enterprises" means the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

Subd. 8. **Interim serviced prior to sale.** "Interim serviced prior to sale" means the collection of a limited number of contractual mortgage payments immediately after origination on loans held for sale but no longer than a period of ninety days prior to the loans being sold into the secondary market.

Subd. 9. **Internal audit.** "Internal audit" means the internal activity of performing independent and objective assurance and consulting to evaluate and improve the effectiveness of company operations, risk management, internal controls, and governance processes.

Subd. 10. **Mortgage-backed security.** "Mortgage-backed security" means a financial instrument, often debt securities, collateralized by residential mortgages.

Subd. 11. **Mortgage call report.** "Mortgage call report" means the quarterly or annual report of residential real estate loan origination, servicing, and financial information completed by companies licensed in NMLS.

Subd. 12. **Mortgage servicing rights.** "Mortgage servicing rights" means the contractual right to service a residential mortgage loan on behalf of the owner of the associated mortgage in exchange for compensation specified in the servicing contract.

Subd. 13. **Mortgage servicing rights investor.** "Mortgage servicing rights investor" or "master servicer" means an entity that (1) invests in and owns mortgage servicing rights; and (2) relies on subservicers to administer the loans on the mortgage servicing rights investor's behalf.

Subd. 14. **Nationwide Multistate Licensing System.** "Nationwide Multistate Licensing System" or "NMLS" has the meaning given in section 58A.02, subdivision 8.

Subd. 15. **Operating liquidity.** "Operating liquidity" means the money necessary for an entity to perform normal business operations, including payment of rent, salaries, interest expenses, and other typical expenses associated with operating the entity.

Subd. 16. **Residential mortgage loans serviced.** "Residential mortgage loans serviced" means the specific portfolio or portfolios of residential mortgage loans for which a licensee is contractually responsible to the owner or owners of the mortgage loans for the defined servicing activities.

Subd. 17. **Reverse mortgage.** "Reverse mortgage" has the meaning given in section 47.58, subdivision 1, paragraph (a).

Subd. 18. **Risk management assessment.** "Risk management assessment" means the functional evaluations performed under the risk management program and the reports provided to the board of directors under the relevant governance protocol.

Subd. 19. **Risk management program.** "Risk management program" means the policies and procedures designed to identify, measure, monitor, and mitigate risk commensurate with the covered institution's size and complexity.

Subd. 20. **Servicer.** "Servicer" has the meaning given in section 58.02, subdivision 20.

Subd. 21. **Servicing liquidity.** "Servicing liquidity" or "liquidity" means the financial resources necessary to manage liquidity risk arising from servicing functions required in acquiring and financing mortgage servicing rights; hedging costs, including margin calls, associated with the mortgage servicing rights asset and financing facilities; and advances or costs of advance financing for principal, interest, taxes, insurance, and any other servicing related advances.

Subd. 22. **Subservicer.** "Subservicer" means the entity performing routine administration of residential mortgage loans as the agent of a servicer or mortgage servicing rights investor under the terms of a subservicing contract.

Subd. 23. **Subservicing for others.** "Subservicing for others" means the contractual activities performed by subservicers on behalf of a servicer or mortgage servicing rights investor.

Subd. 24. **Tangible net worth.** "Tangible net worth" means total equity less receivables due from related entities, less goodwill and other intangibles, less pledged assets.

Subd. 25. **Whole loans.** "Whole loans" means a loan where a mortgage and the underlying credit risk is owned and held on a balance sheet of the entity possessing all ownership rights.

**History:** *2023 c 57 art 3 s 63*

**58.21 APPLICABILITY; EXCLUSIONS.**

Subdivision 1. **Applicability.** Sections 58.20 to 58.23 apply to covered institutions. For entities within a holding company or an affiliated group of companies, sections 58.20 to 58.23 apply at the covered institution level.

Subd. 2. **Exclusions.** (a) Sections 58.20 to 58.23 do not apply to (1) persons exempt from licensing under sections 58.04 and 58.05, and (2) an institution of the Farm Credit System established and authorized in accordance with the Farm Credit Act of 1971, as amended, United States Code, title 12, section 2001 et seq.

(b) Section 58.22 does not apply to (1) servicers that solely own or conduct reverse mortgage servicing, or (2) the reverse mortgage portfolio administered by a covered institution.

**History:** *2023 c 57 art 3 s 64*

**58.22 FINANCIAL CONDITION.**

Subdivision 1. **Compliance required.** A covered institution must maintain capital and liquidity in compliance with this section.

Subd. 2. **Generally accepted accounting principles.** For the purposes of complying with the capital and liquidity requirements of this section, all financial data must be determined in accordance with generally accepted accounting principles.

Subd. 3. **Federal Housing Finance Agency eligibility requirements; policies and procedures.** (a) A covered institution that meets the Federal Housing Finance Agency eligibility requirements for enterprise single-family sellers and servicers with respect to capital, net worth ratio, and liquidity meets the requirements of subdivisions 1 and 2, regardless of whether the servicer is approved for government-sponsored enterprise servicing.

(b) A covered institution must maintain written policies and procedures that implement the capital and servicing liquidity requirements of this section. The policies and procedures implemented pursuant to this paragraph must include a sustainable written methodology to satisfy the requirements of paragraph (a) and must be made available to the commissioner upon request.

Subd. 4. **Operating liquidity.** (a) A covered institution must maintain sufficient allowable assets for liquidity, in addition to the amounts required for servicing liquidity, to cover normal business operations.

(b) Covered institutions must have sound cash management and business operating plans that (1) match the complexity of the institution; and (2) ensure normal business operations.

(c) Management must develop, establish, and implement plans, policies, and procedures to maintain operating liquidity sufficient for the ongoing needs of the covered institution. Plans, policies, and procedures implemented pursuant to this paragraph must contain sustainable, written methodologies to maintain sufficient operating liquidity and must be made available to the commissioner upon request.

**History:** *2023 c 57 art 3 s 65*

**58.23 CORPORATE GOVERNANCE.**

Subdivision 1. **Board of directors required.** A covered institution must establish and maintain a board of directors that is responsible for oversight of the covered institution.

Subd. 2. **Board of directors; alternative.** If a covered institution has not received approval to service loans by a government-sponsored enterprise or the Government National Mortgage Association, or if a government-sponsored enterprise or the Government National Mortgage Association has granted approval for a board of directors alternative, the covered institution may establish a similar body constituted to exercise oversight and fulfill the responsibilities specified under subdivision 3.

Subd. 3. **Board of directors; responsibilities.** The board of directors must:

(1) establish a written corporate governance framework, including appropriate internal controls designed to monitor corporate governance and assess compliance with the corporate governance framework, and must make the corporate governance framework available to the commissioner upon request;

(2) monitor and ensure the covered institution complies with (i) the corporate governance framework; and (ii) sections 58.20 to this section; and

(3) perform accurate and timely regulatory reporting, including filing the mortgage call report.

Subd. 4. **Internal audit.** The board of directors must establish internal audit requirements that (1) are appropriate for the size, complexity, and risk profile of the servicer; and (2) ensure appropriate independence to provide a reliable evaluation of the servicer's internal control structure, risk management, and governance. The board-established internal audit requirements and the results of internal audits must be made available to the commissioner upon request.

Subd. 5. **External audit.** (a) A covered institution must receive an external audit, including audited financial statements and audit reports, that is conducted by an independent public accountant annually. The external audit must be made available to the commissioner upon request.

(b) The external audit must include, at a minimum:

(1) annual financial statements, including (i) a balance sheet; (ii) a statement of operations and income statement; and (iii) cash flows, including notes and supplemental schedules prepared in accordance with generally accepted accounting principles;

(2) an assessment of the internal control structure;

(3) a computation of tangible net worth;

(4) validation of mortgage servicing rights valuation and reserve methodology, if applicable;

(5) verification of adequate fidelity and errors and omissions insurance; and

(6) testing of controls related to risk management activities, including compliance and stress testing, if applicable.

Subd. 6. **Risk management.** (a) Under oversight by the board of directors, a covered institution must establish a risk management program that identifies, measures, monitors, and controls risk commensurate with the covered institution's size and complexity. The risk management program must have appropriate processes and models in place to measure, monitor, and mitigate financial risks and changes to the servicer's risk profile and assets being serviced.

(b) The risk management program must be scaled to the size and complexity of the organization, including but not limited to:

(1) the potential that a borrower or counterparty fails to perform on an obligation;

(2) the potential that the servicer (i) is unable to meet the servicer's obligations as the obligations come due as a result of an inability to liquidate assets or obtain adequate funding; or (ii) cannot easily unwind or offset specific exposures;

(3) the risk resulting from (i) inadequate or failed internal processes, people, and systems; or (ii) external events;

(4) the risk to the servicer's condition resulting from adverse movements in market rates or prices;

(5) the risk of regulatory sanctions, fines, penalties, or losses resulting from the failure to comply with laws, rules, regulations, or other supervisory requirements that apply to the servicer;

(6) the potential that legal proceedings against the institution resulting in unenforceable contracts, lawsuits, legal sanctions, or adverse judgments can disrupt or otherwise negatively affect the servicer's operations or condition; and

(7) the risk to earnings and capital arising from negative publicity regarding the servicer's business practices.

Subd. 7. **Risk management assessment.** A covered institution must conduct a risk management assessment on an annual basis. The risk management assessment must conclude with a formal report to the board of directors and must be made available to the commissioner upon request. A covered institution must maintain evidence of risk management activities throughout the year and must include the evidence of risk management activities as part of the report. The risk management assessment must include issue findings and the response or action taken to address the issue findings.

**History:** *2023 c 57 art 3 s 66*