

SAFE Act Frequently Asked Questions

Private Lender, Seller Carry, or Manufactured Structure Dealer

Why is a mortgage loan originator (MLO) license required?

When is a MLO license required?

Are there a maximum number of transactions I can do before I have to get a mortgage loan originator license?

Can I just get a temporary license?

Does the license requirement apply to a manufactured home?

If I have a manufactured structures dealer license, do I also need a MLO license to offer financing on homes in my park?

Does an employee of a licensed manufactured structure dealer have to have an MLO license when the mobile home park wants to sell abandoned or surrender structures and provide financing for the transaction?

If a manufactured home park owner does a rent-to-own transaction, is the owner required to have an MLO license to handle it?

I'm selling my residence and the buyer wants me to provide the financing. Do I need a license?

I am selling my investment property and I have been told that I need a MLO license to tell the borrower my terms for financing the sale.

Where does the SAFE Act state that I need a MLO license?

I am a licensed mortgage loan originator, and I communicated the seller's original terms to the buyer, who declined them. Can the seller and buyer then negotiate from that point on by themselves?

I want to offer a rent-to-own contract in which I agree to give the renter a credit toward the down payment. Do I need a MLO license?

I want to make a private money loan with my own funds for my own investment. In the past I did not need a MLO license, do I need a license now?

As an investor making a private money loan, can I have multiple loan originators originate the loans for me or do I always have to use the same loan originator?

If the loan is secured by the borrower's residence but the loan is for a business purpose, is a mortgage loan originator license required?

Is either the company or the MLO license required to lend on any type of property?

How do I apply for a MLO license?

What is the potential fine for unlicensed activity?

When did the licensing requirements go into effect?

Does this have to be a full doc transaction?

Does Oregon law require analysis of the borrower's ability to repay the loan?

Can a licensed mortgage originator collect the fee for originating a private money loan, or does the fee need to be paid to the company?

Yes. There is no MLO license required to sell the home, but a MLO license would be required to take the application and negotiate financing for the transaction.

If a manufactured home park owner does a rent-to-own transaction, is the owner required to have an MLO license to handle it?

No. Rent-to-own contracts that do not contain financing terms do not fall within the scope of MLO licensing requirements to have a mortgage loan originator negotiate the terms.

I'm selling my residence and the buyer wants me to provide the financing. Do I need a license?

No. ORS 86A.203(2)(c) provides an exception from the MLO licensing requirements for an individual providing financing as part of the sale of the individual's residence. Therefore, no MLO license would be required.

I am selling my investment property and I have been told that I need a MLO license to tell the borrower my terms for financing the sale. Where does the SAFE Act state that I need a MLO license?

You will not find a statute that expressly states you must tell the borrower your terms for financing the sale. The MLO licensing requirements apply expressly and by implication to loan origination activities. It is the absence of an exception that requires the seller to obtain the license to provide financing for an investment property. Specifically, ORS 86A.200(4) defines a loan originator as a person who, for compensation or gain, takes an application or negotiates terms of the loan. It does not provide an exception to the definition for those providing seller carry financing. In addition, ORS 86A.203 requires that loan originators obtain a license. While there is an exception to the license requirement for a seller providing seller-carry financing, that exception is limited to financing on a property that was the seller's residence. Because there is no exception that covers investment property, the license requirement applies to those transactions.

I am a licensed mortgage loan originator, and I communicated the seller's original terms to the buyer, who declined them. Can the seller and buyer then negotiate from that point on by themselves?

Only a licensed mortgage loan originator can negotiate or discuss the terms with the buyer in a seller-carry transaction that is not the seller's residence. This means that the licensed mortgage loan originator would have to negotiate the transaction until the negotiations are complete.

I want to offer a rent-to-own contract in which I agree to give the renter a credit toward the down payment. Do I need a MLO license?

If the contract does not provide terms for financing the purchase of the home, then a MLO license is not required. If the renter needs a loan to buy the home, and the seller made that loan, then a licensed mortgage loan

The application must be submitted through the Nationwide Mortgage Licensing System (NMLS). You can find additional information at <http://mortgage.nationwidelicencingsystem.org/Pages/default.aspx> and our frequently asked licensing questions at <http://www.oregondfcs.org/ml/faq.html>.

What is the potential fine for unlicensed activity?

The potential fine for unlicensed loan originator activity would be the same \$5,000 per occurrence that applies for all other violations of Chapter 86 of the Oregon Revised Statutes.

When did the licensing requirements go into effect?

The requirements went into effect August 1, 2010..

Does this have to be a full doc transaction?

We do not require the file to be a full doc file in the conventional sense of that term; however, we require that the file comply with the private money investor requirements of OAR 441-870-0050 and OAR 441-870-0060 as well as OAR 441-865-0060.

Does Oregon law require analysis of the borrower's ability to repay the loan?

Oregon law requires an analysis of a borrower's ability to repay the loan if the loan contains provisions for negative amortization. Oregon also enforces certain federal laws, including the Truth in Lending Act (TILA). TILA contains an ability-to-repay test for high-cost mortgage loans and higher-priced mortgage loans. Thus, Oregon will require an analysis of ability to repay for any loan that is subject to TILA and that Act's requirements to determine ability to repay.

Can a licensed mortgage originator collect the fee for originating a private money loan, or does the fee need to be paid to the company sponsoring that mortgage loan originator?

The mortgage loan originator is only authorized to do loans through the company that sponsors the MLO's license; therefore, the transaction is really done in the company's name. The company is required to supervise the MLO and is responsible for the transaction. Although Oregon law is fairly silent on the issue of collecting the fee, it is anticipated that the companies will collect the fee due to the supervision requirements.

Are there any limits on the fees that can be charged for facilitating a private money transaction?

There are no specified limits in Oregon law on the fees that can be charged.