

Senate Bill 98

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires certain persons that service residential mortgage loans in this state to obtain or renew license. Specifies license application and renewal procedures and required fees.

Prescribes duties of licensee and prohibits certain activities relating to negotiating or offering to negotiate modification of terms of residential mortgage loan. Requires licensee to maintain specified liquidity, operating reserves and net worth.

Prescribes civil penalties against persons that engage in business as residential mortgage loan servicer without license. Permits Director of Department of Consumer and Business Services to remove member of licensee's governing body or licensee's officer under certain circumstances.

Permits director to participate in multistate mortgage examinations under specified circumstances.

Becomes operative January 1, 2018.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to residential mortgage loan servicers; creating new provisions; repealing ORS 86A.175; and
3 declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 to 11 of this 2017 Act may be cited as the Mortgage Loan Servicer**
6 **Practices Act.**

7 **SECTION 2. As used in sections 2 to 11 of this 2017 Act:**

8 (1) **"Applicant" means a person that applies for a license to engage in business as a res-**
9 **idential mortgage loan servicer in this state.**

10 (2) **"Borrower" means a person that incurs an obligation to repay a residential mortgage**
11 **loan.**

12 (3) **"Licensee" means a residential mortgage loan servicer that has applied for and ob-**
13 **tained a license from the Department of Consumer and Business Services to engage in**
14 **business as a residential mortgage loan servicer in this state.**

15 (4) **"Residential mortgage loan" means a loan that is secured by a mortgage, deed of trust**
16 **or an equivalent consensual security interest in real property on which four or fewer im-**
17 **provements designed for residential occupancy are planned or situated, including but not**
18 **limited to individual units, condominiums and cooperatives.**

19 (5) **"Residential mortgage loan servicer" means an individual, partnership, corporation,**
20 **association or other entity, however organized or wherever located, that services a residen-**
21 **tial mortgage loan.**

22 (6) **"Service a residential mortgage loan" means to:**

23 (a) **Hold the servicing rights to a residential mortgage loan on a person's own behalf or**
24 **on behalf of another person or to record payments on the residential mortgage loan on the**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 person's books; or

2 (b) Perform administrative functions that are necessary to carry out the obligations of
 3 a mortgagee under a residential mortgage loan agreement, including but not limited to re-
 4 ceiving funds from a mortgagor, holding the funds in escrow and paying property taxes and
 5 insurance premiums from the funds in escrow.

6 **SECTION 3.** (1) Except as provided in subsection (2) of this section, a person that makes
 7 a federally related mortgage loan, as defined in 12 U.S.C. 2602, may not service a residential
 8 mortgage loan in this state, directly or indirectly, unless the person obtains or renews a li-
 9 cense under section 4 of this 2017 Act to engage in business as a residential mortgage loan
 10 servicer.

11 (2) A person need not obtain or renew a license under subsection (1) of this section if the
 12 person:

13 (a) Services fewer than 500 residential mortgage loans during any calendar year;

14 (b) Is specifically excluded from the definition of mortgage banker under ORS 86A.100
 15 (3)(b) or from the definition of mortgage broker under ORS 86A.100 (5)(b); or

16 (c) Is an individual who makes a residential mortgage loan with the individual's own
 17 funds or who secures with the individual's own funds all or a portion of the purchase price
 18 of residential real property that the individual sells.

19 (3) Subsection (2) of this section does not permit a person to engage in business as a
 20 mortgage loan originator, as defined in ORS 86A.200, if the person is not exempt from the
 21 requirement under ORS 86A.200 to 86A.239 to obtain or renew a license.

22 **SECTION 4.** (1)(a) A person that is subject to the requirement to obtain or renew a li-
 23 cense under section 3 (1) of this 2017 Act shall apply for a license or apply to renew a license
 24 by submitting an application to the Director of the Department of Consumer and Business
 25 Services in the manner the director specifies by rule. The director by rule shall specify the
 26 format and contents of the application form.

27 (b) As part of an application under paragraph (a) of this subsection, an applicant shall
 28 apply for and receive a unique identifier from the Nationwide Mortgage Licensing System and
 29 Registry. A licensee shall include the licensee's unique identifier on an application to renew
 30 a license.

31 (2)(a) Except as provided in paragraph (b) of this subsection, an applicant or licensee
 32 shall pay, at the time of application to obtain or renew a license, a fee in an amount that the
 33 director specifies by rule. The amount of the fee may not exceed \$500.

34 (b) An applicant or licensee need not pay a fee under paragraph (a) of this subsection if
 35 the applicant or licensee:

36 (A) Collects delinquent consumer debts owed on residential mortgage loans;

37 (B) Does not own the residential mortgage loans that the applicant or licensee services;
 38 or

39 (C) Is a collection agency as defined in ORS 697.005.

40 (3) In addition to the requirements set forth in subsections (1) and (2) of this section, an
 41 applicant or licensee shall file and maintain a corporate surety bond or irrevocable letter of
 42 credit that the director approves in an amount the director specifies by rule. The corporate
 43 surety bond or irrevocable letter of credit must run to the State of Oregon and be issued by
 44 an insured institution, as defined in ORS 706.008.

45 (4) The director shall issue or renew a license under this section if the director finds that

1 the application is complete and accurate, that the applicant or licensee paid any fees required
2 under this section and filed or maintains a corporate surety bond or irrevocable letter of
3 credit with the director, and that:

4 (a) The licensee complied with any orders the director issued and paid any penalties the
5 director assessed against the licensee under sections 2 to 11 of this 2017 Act;

6 (b) The applicant or licensee has not filed for bankruptcy;

7 (c) The applicant or licensee, or a member, director or officer of the applicant or licensee,
8 has not been indicted for or convicted of a criminal offense; and

9 (d) The applicant or licensee, or a member, director or officer of the applicant or
10 licensee, has not been subject to or, if applicable, has cooperated or complied with:

11 (A) A final order to cease and desist from a violation of any law, regulation, rule or order
12 that governs a residential mortgage loan servicer in this state or another state;

13 (B) A suspension or revocation of a license, registration or other authorization to engage
14 in business as a residential mortgage loan servicer in this state or another state; or

15 (C) Any other formal or informal enforcement action in this state or another state in
16 which the governing body found that the applicant or licensee violated an applicable law,
17 regulation, rule or order.

18 (5)(a) An applicant or licensee shall notify the director not later than 30 calendar days
19 after submitting an application under this section of any change to the information the ap-
20 plicant or licensee submitted on or with the application.

21 (b) In addition to meeting the obligation specified in paragraph (a) of this subsection, an
22 applicant or licensee shall provide the director with notice of and relevant details concerning
23 any of the following events within 10 calendar days after the event occurs:

24 (A) The applicant or licensee reorganized or filed for bankruptcy;

25 (B) The applicant or licensee, or a member, director or officer of the applicant or
26 licensee, was indicted for or convicted of a criminal offense; or

27 (C) The applicant or licensee, or a member, director or officer of the applicant or
28 licensee, was subject to:

29 (i) A final order to cease and desist from a violation of any law, regulation, rule or order
30 that governs a residential mortgage loan servicer in this state or another state;

31 (ii) A suspension or revocation of a license, registration or other authorization to engage
32 in business as a residential mortgage loan servicer in this state or another state; or

33 (iii) Any other formal or informal enforcement action in this state or another state in
34 which the governing body found that the applicant or licensee violated an applicable law,
35 regulation, rule or order.

36 (6) A license issued under this section expires on December 31 of the calendar year in
37 which the director issues the license. If a licensee intends to engage in business as a resi-
38 dential mortgage loan servicer on or after January 1 of the succeeding calendar year, the
39 licensee shall renew the license before the expiration date.

40 (7) The director may suspend or revoke a license issued under this section if the director
41 finds after a hearing in accordance with ORS chapter 183 that:

42 (a) The licensee failed or refused to comply with the director's written request to respond
43 to a complaint that the licensee violated a provision of sections 2 to 11 of this 2017 Act;

44 (b) The licensee engaged in an intentional course of conduct to violate state or federal
45 law or a course of conduct that constitutes fraudulent, deceptive or dishonest dealings; or

1 (c) The licensee failed or refused to comply with a final order the director issued.

2 **SECTION 5. (1) A licensee shall:**

3 (a) Assess any fee that the licensee may assess against a borrower within 45 days after
4 the borrower incurs the fee.

5 (b) Explain to a borrower in clear language and conspicuous text the reason for any fee
6 the licensee assesses against the borrower in a written statement that the licensee mails to
7 the borrower at the borrower's last-known address not more than 30 days after the licensee
8 assesses the fee.

9 (c) Accept and credit, or treat as credited, to the borrower's account all amounts the
10 licensee receives at the address to which the borrower has been instructed to send payments
11 on the borrower's residential mortgage loan. The licensee must credit the payment, or treat
12 the payment as credited, within one business day after receiving the payment. If the licensee
13 uses the scheduled method of accounting and the licensee receives a payment before the
14 scheduled due date, the licensee shall credit the payment to the borrower's account not later
15 than the scheduled due date.

16 (d) Mail a written notice to a borrower at the borrower's last-known address within 10
17 days after receiving a payment if the licensee did not credit the payment to the borrower's
18 account. In the notice, the licensee shall clearly explain the reason why the licensee did not
19 credit the payment and identify any action the borrower must take to properly credit a
20 payment or otherwise make current the borrower's account.

21 (e) Collect funds into an escrow account and make from the escrow account any pay-
22 ments that are due for property taxes, insurance and all other charges related to the real
23 property that is subject to a residential mortgage loan, if the residential mortgage loan
24 agreement requires the licensee to establish an escrow account and make payments from the
25 escrow account. The licensee shall perform the licensee's duties under this paragraph in a
26 manner that ensures that the borrower is not subject to late fees, penalties or other negative
27 consequences of a failure to make required payments on time.

28 (f) Make reasonable efforts to respond to a borrower's request concerning the borrower's
29 residential mortgage loan account and to any dispute the borrower has with the licensee or
30 that is related to the borrower's residential mortgage loan account. For the purpose of this
31 paragraph, a reasonable effort to respond to a borrower means, at a minimum, responding
32 within 15 business days after receiving the borrower's request by mailing a written state-
33 ment that meets the standards set forth in paragraph (g) of this subsection.

34 (g) Provide to a borrower, in response to a borrower's request that includes the
35 borrower's name and account number, a statement that the borrower's account is or might
36 be in error and any other necessary details, a written statement that specifies:

37 (A) Whether the account is current and, if the account is not current, the reasons why
38 the account is not current, including the date on which any default occurred;

39 (B) The current balance due on the borrower's residential mortgage loan, including the
40 amount of the principal due, the amount of funds the licensee holds in a suspense account,
41 the balance in any escrow account the licensee maintains for the borrower and the amount
42 of any deficiency in the escrow account of which the licensee is aware;

43 (C) The name, address and other contact information for the person that owns or holds
44 the borrower's residential mortgage loan, or an assignee of the person; and

45 (D) The name, address, telephone number and any other contact information for a rep-

1 representative of the licensee from which the borrower can request information or to which the
 2 borrower can direct complaints or disputes. The licensee's representative must have suffi-
 3 cient information and authority to respond to the borrower's requests, answer the
 4 borrower's questions and resolve the borrower's disputes with the licensee.

5 (h) Correct promptly any of the licensee's errors and refund any fees, assessments or
 6 charges that the licensee imposed on the borrower in error.

7 (i) Provide to the borrower, at the borrower's request, one complete account history each
 8 year at no charge to the borrower.

9 (j) Provide to the borrower each year a statement that summarizes the material terms
 10 that govern the services that the licensee provides to the borrower and lists the fees the
 11 licensee will charge the borrower for the services. The Director of the Department of Con-
 12 sumer and Business Services shall adopt by rule a model form for the statement.

13 (2) If a borrower requests further information about the borrower's residential mortgage
 14 loan account from a licensee that is more detailed than the information the licensee provides
 15 in a statement under subsection (1) of this section, the licensee shall respond to the bor-
 16 rower within 15 business days after receiving the borrower's request. The licensee may re-
 17 quire the borrower to provide the borrower's name, account number, a statement that
 18 identifies the information the borrower seeks and sufficient detail about the information to
 19 permit the licensee to respond. The licensee shall respond to a request for more detailed
 20 information about the borrower's account with a written statement that:

21 (a) Includes a copy of the original note for the residential mortgage loan or, if the ori-
 22 ginal note is unavailable, an affidavit that states that the original note is not available and
 23 explains why the original note is not available;

24 (b) Identifies and itemizes for the two-year period before the date of the borrower's re-
 25 quest, or as much of the two-year period for which the licensee serviced the borrower's
 26 residential mortgage loan, all fees and charges the borrower incurred under the residential
 27 mortgage loan, along with a full payment history that lists in conspicuous text all of the
 28 credits and debits to the account, all payments received from the borrower and the dates of
 29 the payments, all credits to and disbursements from any escrow or suspense account the
 30 licensee maintains for the borrower and any other activity in the borrower's residential
 31 mortgage loan account; and

32 (c) Identifies any previous residential mortgage loan servicer for the borrower's resi-
 33 dential mortgage loan.

34 (3) If a licensee claims that a borrower owes any delinquent or outstanding amount on
 35 a borrower's residential mortgage loan from a period before the licensee began servicing the
 36 residential mortgage loan or from more than the preceding two years, the licensee shall
 37 provide the borrower with a complete account history that begins in the month during which
 38 the licensee claims that the borrower owes the delinquent or outstanding amount and that
 39 ends on the date on which the licensee makes the claim.

40 **SECTION 6.** (1) A licensee that negotiates or offers to negotiate a modification in the
 41 terms of a residential mortgage loan, or that otherwise provides services related to modify-
 42 ing the terms of a residential mortgage loan, may not:

43 (a) Charge a fee before providing the service for which the licensee charges the fee;

44 (b) Charge a fee that is not reasonable or that exceeds the usual and customary fees for
 45 the service the licensee provides;

1 (c) Require or encourage a borrower to waive the borrower's:

2 (A) Legal defenses, available counterclaims or other legal rights;

3 (B) Right to contest a foreclosure; or

4 (C) Right to receive notice before a foreclosure proceeding begins;

5 (d) Require a borrower to pay a fee, charge or assessment for which the residential
6 mortgage loan agreement, a servicing agreement or a related agreement does not provide;
7 or

8 (e) Require or encourage a borrower to cease communications with the licensee, the
9 trustee or beneficiary in a trust deed, the owner or a servicer of the borrower's residential
10 mortgage loan or any other person with which the borrower has the right or duty to com-
11 municate concerning the residential mortgage loan.

12 (2) A licensee that negotiates or offers to negotiate a modification in the terms of a
13 borrower's residential mortgage loan in response to a request from the borrower shall:

14 (a) Comply with all applicable state and federal law;

15 (b) Provide the borrower with a summary of the material terms of any agreement under
16 which the licensee provides services related to a modification of the borrower's residential
17 mortgage loan; and

18 (c) Inform the borrower that:

19 (A) The owner of the residential mortgage loan needs additional information to process
20 or consider the request. The licensee shall inform the borrower immediately after the owner
21 indicates the need to the licensee.

22 (B) The owner of the residential mortgage loan will not consider a modification of the
23 terms. The licensee shall notify the borrower immediately after the owner indicates to the
24 licensee that the owner will not modify the terms.

25 SECTION 7. (1) A licensee shall maintain liquidity and operating reserves and an overall
26 net worth that meets any requirements set forth for residential mortgage loan servicers of
27 the licensee's type in applicable and generally accepted accounting principles and in rules the
28 director adopts.

29 (2) A licensee that the Federal National Mortgage Association, the Government National
30 Mortgage Association or a similar or successor government-sponsored enterprise has ap-
31 proved to engage in business as a residential mortgage loan servicer shall meet the standards
32 that the approving government-sponsored enterprise prescribes with respect to liquidity,
33 operating reserves and net worth.

34 (3) If a licensee falls below the standards set forth in subsections (1) and (2) of this sec-
35 tion, the Director of the Department of Consumer and Business Services may issue an order
36 to require the licensee to comply with the standards and, if the licensee fails to comply by
37 the date the director specifies in the order, may revoke the licensee's license.

38 (4) If the director determines that a licensee is unable to maintain liquidity, operating
39 reserves or a net worth in accordance with this section and that the licensee's inability poses
40 a risk of harm to the licensee's creditors or to borrowers for which the licensee services
41 residential mortgage loans, the director may petition a circuit court in this state to appoint
42 a receiver to take over, operate or liquidate the licensee.

43 SECTION 8. (1)(a) If the Director of the Department of Consumer and Business Services
44 has reasonable cause to believe that a person that is subject to and not exempt from the
45 requirement to obtain or renew a license under section 3 of this 2017 Act is engaging or is

1 about to engage in an act or practice that constitutes servicing a residential mortgage loan
2 and the person does not have a license, the director may issue an order to cease and desist
3 from the action or to take an affirmative action.

4 (b) The director shall state in reasonable detail the facts that are the basis for an order
5 under paragraph (a) of this subsection.

6 (2) If a person that is subject to an order under subsection (1) of this section requests a
7 hearing, the director shall schedule and give notice of a hearing in accordance with ORS
8 chapter 183. If the person does not request a hearing, the order becomes final 30 days after
9 the date of the order.

10 (3) The director may impose a civil penalty that does not exceed \$2,500 for each day in
11 which a person violates a cease and desist order issued under this section. The director shall
12 impose the civil penalty in accordance with ORS 183.745. In addition to imposing the civil
13 penalty, the director may bring an action in a circuit court of this state to enjoin the person
14 from an act or practice that constitutes servicing a residential mortgage loan without a li-
15 cense.

16 **SECTION 9.** (1) The Director of the Department of Consumer and Business Services may
17 order the governing body of a licensee that is a business entity to remove a member of the
18 governing body, or an officer, of the licensee from the member's or officer's position if the
19 member or officer:

20 (a) Fails to comply with a provision of sections 2 to 11 of this 2017 Act; or

21 (b) Refuses to comply with written requirements or instructions set forth in a previous
22 order that applies to the member of the governing body or the officer.

23 (2) The director shall issue an order under subsection (1) of this section in writing and
24 may issue the order without a hearing. The director shall cause the order to be served on
25 the member of the governing body or the officer personally or by certified mail.

26 (3) The governing body shall suspend the member or the officer who is the subject of an
27 order under subsection (1) of this section immediately after receiving the order.

28 (4) A member of the governing body or an officer who is subject to an order under sub-
29 section (1) of this section may appeal the order as provided in ORS 183.415 to 183.500.

30 (5) If the member of the governing body or the officer does not appeal the order or if the
31 order is affirmed on appeal, the governing body shall remove the member or the officer from
32 the member's or officer's position and declare the position vacant.

33 (6) A member of the governing body or an officer who is suspended or removed under this
34 section may not:

35 (a) Act in any official capacity for the licensee;

36 (b) Conduct any of the licensee's business or affairs; or

37 (c) Have any access to the licensee's books, records or assets unless the member or of-
38 ficer has permission from the director.

39 **SECTION 10.** The Director of the Department of Consumer and Business Services, or the
40 director's designee, may participate in multistate mortgage examinations that the Confer-
41 ence of State Bank Supervisors or the Consumer Financial Protection Bureau schedules.
42 The director, in participating in an examination, shall follow the protocol that the conference
43 or the bureau establishes for the examination.

44 **SECTION 11.** (1) The Director of the Department of Consumer and Business Services
45 may adopt rules necessary to implement the provisions of sections 2 to 11 of this 2017 Act.

1 **(2) The director may assess the costs of an administrative proceeding under sections 2**
2 **to 11 of this 2017 Act as a civil penalty against the person that was the subject of the ad-**
3 **ministrative proceeding if at the conclusion of the proceeding a final order finds that the**
4 **person violated a provision of sections 2 to 11 of this 2017 Act.**

5 **(3) Except as provided in section 8 (3) of this 2017 Act, the director may assess a civil**
6 **penalty that does not exceed \$5,000 for each violation of a provision of sections 2 to 11 of this**
7 **2017 Act. The director shall assess the civil penalty as provided in ORS 183.745.**

8 **SECTION 12.** **ORS 86A.175 is repealed.**

9 **SECTION 13.** **Sections 2 to 11 of this 2017 Act and the repeal of ORS 86A.175 apply to**
10 **service transactions for residential mortgage loans that occur on and after the operative**
11 **date specified in section 14 of this 2017 Act.**

12 **SECTION 14.** **(1) Sections 2 to 11 of this 2017 Act and the repeal of ORS 86A.175 by section**
13 **12 of this 2017 Act become operative on January 1, 2018.**

14 **(2) The Director of the Department of Consumer and Business Services may adopt rules**
15 **and take any other action before the operative date specified in subsection (1) of this section**
16 **that is necessary to enable the director, on and after the operative date specified in sub-**
17 **section (1) of this section, to exercise all of the duties, functions and powers conferred on**
18 **the director by sections 2 to 11 of this 2017 Act.**

19 **SECTION 15.** **This 2017 Act being necessary for the immediate preservation of the public**
20 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
21 **on its passage.**

22