



## MEMORANDUM

### DIVISION OF FINANCE AND CORPORATE SECURITIES

January 20, 2004

**To:** All Applicants and Licensees

**From:** Dale W. Laswell *DW*  
Chief of Licensing and Registration

**Subject:** New Mortgage Lending Laws and Administrative Rules

Enclosed please find copies of the new administrative rules related to loan originators and mortgage lending license fees. These rules became effective on January 1, 2004.

#### **Criminal Records Check**

The Oregon legislature enacted a law [Chapter 526, 2003 Laws] that requires a mortgage broker or banker to conduct a criminal records check of each individual who the banker or broker employs or intends to employ as a loan originator.

A criminal records check for a loan originator employed by a licensee on January 1, 2004, must be completed by April 30, 2004. A loan originator applicant may not be hired and currently employed loan originator's employment must be immediately terminated if the criminal records check discloses a disqualifying conviction.

The law also requires insurance agents and consultants who are employed full time as loan originators to comply with the training, examination, and continuing education requirements set forth in the Oregon Mortgage Lending Law.

#### **Fees**

The fees for a mortgage lending license were decreased in October 2000 because we had surplus revenue. That surplus is now depleted. The fees are being restored to the previous level to adequately fund the administration of the program.

Effective January 1, 2004, initial principal office fees will go from \$250 to \$500 and initial branch office fees will go from \$50 to \$100 per location. The two-year principal renewal fee will go from \$250 to \$500 and the two-year branch renewal fee will go from \$50 to \$100. A fee of \$150 is required for each branch added after the mortgage banker or mortgage broker license is issued.

If you have any questions regarding this memorandum, please contact me at 503-947-7484, or [dale.w.laswell@state.or.us](mailto:dale.w.laswell@state.or.us).

For more information, please visit or Web Site at [www.oregondfcs.org](http://www.oregondfcs.org).

## **441-860-0020**

### **Application Procedure**

Each person desiring to obtain a mortgage banker or mortgage broker license shall apply to the Director by submitting the following:

- (1) A completed application on a form approved by the Director;
  - (2) A surety bond or letter of credit pursuant to ORS 59.850(4) and OAR 441-860-0090;
  - (3) Financial statements prepared in accordance with generally accepted accounting principles, consisting of a balance sheet and a statement of income or operations which is dated not more than six months prior to submission of the application:
    - (a) The financial statements may be prepared by the licensee, except that if the Director finds it in the public interest, the Director may require that a licensee submit financial statements prepared by an independent accountant;
    - (b) If the financial statements are more than six months old, interim period financial statements prepared by the licensee for the period ending the last full month prior to the date of application shall also be submitted.
  - (4) Written Authorization to examine the applicant's Clients' Trust Account pursuant to ORS 59.935(3) or, in the case of a neutral escrow depository, a copy of the escrow agreement pursuant to OAR 441-875-0040(3);
  - (5) A copy of the written Notice to Financial Institution of Establishment of Clients' Trust Accounts pursuant to ORS 59.940. In the event the applicant does not receive client funds except at the time of closing, an Affidavit and Undertaking in the form and on terms approved by the Director;
  - (6) The name of the registered agent of the mortgage banker or mortgage broker as filed with the Corporations Division of the Secretary of State for the State of Oregon;
  - (7)(a) Each of the following persons shall submit the information required under the provisions of subsections (b) and (c) of this section:
    - (A) Any director, officer, and shareholder with ownership of greater than or equal to 10 percent of outstanding shares of a corporate applicant;
    - (B) Owner, if the applicant is an unincorporated sole proprietorship; and
    - (C) Each managing partner of a limited or general partnership.
  - (b) A biographical statement including name, address, social security number, date of birth, and a description of any material litigation for the preceding ten years. If more than one name or social security number has been used by any of the persons submitting the biographical statement, all names and social security numbers must be submitted; and
  - (c) An employment history for the ten years prior to the date of the application which shall include the name of each employer, job position and title, date each employment began and date each employment ended.
  - (d) Each branch supervisor shall submit an employment history for the ten years prior to the date of the application, or the date of employment as a supervisor. The employment history shall include the name of each employer, job position and title, date each employment began and date each employment ended.
- (8) The information required pursuant to OAR 441-880-0030 for loan originators.
- (9) The information required pursuant to OAR 441-860-0030 for each branch office.
- (10) An initial application fee in the amount of \$500 plus a fee of \$100 for each initial branch office operated by a licensee, plus a fee of \$150 for each branch office added after the mortgage banker or mortgage broker license is issued:

(a) In the event the Director determines that the amount of licensing fees assessed pursuant to this rule, combined with other fees assessed pursuant to ORS 59.840 through 59.960 and OAR 441-850-0005 through 441-885-0010 is insufficient to fund the administration of ORS 59.840 through 59.960, the Director shall amend this rule to increase the fees to an amount necessary to fund the administration of ORS 59.840 through 59.960 plus a reasonable emergency fund;

(b) In the event the Director determines that the amount of licensing fees assessed pursuant to this rule, combined with other fees assessed pursuant to ORS 59.840 through 59.960 and OAR 441-850-0005 through 441-885-0010, exceeds the amount necessary to fund the administration of ORS 59.840 through 59.960, the Director shall amend this rule to decrease the fees to an amount necessary to administer ORS 59.840 through 59.960 plus a reasonable emergency fund;

(c) If licensees have paid the licensing fees pursuant to this rule and the Director finds that the total fees collected exceed the amount necessary to administer ORS 59.840 through 59.960 and provide a reasonable emergency fund, the Director may adjust the licensee's next renewal fee, following the making of such a finding, downward to provide for an equitable assessment of fees.

(11) If an applicant for a license submits an application which is incomplete in any respect, the Director will contact the applicant to request the missing information. The applicant will have 30 days to respond to the request for information from the Director. If the applicant fails to respond, the application will be withdrawn.

Stat. Auth.: ORS 59.850(1), ORS 59.855(1) & ORS 59.900

Stats.: Implemented: ORS 59.845, 59.969

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 1-1996, f. 11-20-96, cert. ef. 12-1-96; Administrative correction 8-4-97; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2000, f. & cert. ef. 9-13-00; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02

#### **441-860-0050**

##### **Renewal of Mortgage Banker and Mortgage Broker License**

Except as provided in section (6) of this rule, licensees shall renew for a 24-month period from the date of original licensing or last renewal. At least 30 days prior to the expiration of a mortgage banker or mortgage broker license, an application for renewal of the license shall be submitted to the Director and shall include the following:

(1) A completed license renewal form approved by the Director.

(2) Financial statements on a compiled basis, consisting of a balance sheet and a statement of income or operations, prepared in accordance with generally accepted accounting principles, which is dated not more than six months prior to submission of the application. If the financial statements are more than six months old, interim period financial statements prepared by the licensee for the period ending the last full month prior to the date of the application must also be submitted.

(3) A license renewal fee in the amount of \$500 (\$250 per year) plus a fee of \$100 (\$50 per year) for each branch office license which is renewed.

(4) Current information on officers, directors, or persons who own ten percent or more of the outstanding shares of a corporate applicant, or every owner if the applicant is unincorporated.

(5) The information required pursuant to OAR 441-880-0030 for loan originators.

(6) A licensee may renew their license, one time only, for less than the full 24 months but more than 12 months for the purpose of changing the anniversary date of license renewal. The licensee

shall pay a prorated renewal fee equal to \$20.84 for each month of renewal for the principal office plus \$4.16 for each month of renewal for each branch office.

(7) If a licensee submits an application which is incomplete in any respect, the Director will contact the licensee to request the required information. The licensee shall have 10 days to respond to the request for additional information. If the licensee fails to respond to the request, the renewal application will not be processed, and the license shall be canceled on the expiration date.

(8) If a licensee's license is canceled pursuant to section (7) of this rule, and the licensee remedies the incomplete application before the scheduled license expiration date, the license will be renewed for a two-year period.

Stat. Auth.: ORS 59.850(7), ORS 59.855(2) & ORS 59.900

Stats. Implemented: ORS 59.855, 59.969

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1995, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2000, f. & cert. ef. 9-13-00; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02

## **441-880-0050**

### **Criminal Records Check**

(1) Prior to employing a loan originator as defined in ORS 59.840(4), a licensee must conduct a criminal records check of the person, using the person's full legal name, date of birth, place of birth and social security number, searching federal records and all state records where the person has resided in the past 10 years. The licensee must use the services of law enforcement agencies or an independent private company that complies with the federal Fair Credit Reporting Act to conduct the criminal records check. A criminal records check conducted for any other employer within the previous six months will fulfill this requirement, provided that the scope of the previous check is within the parameters of this section and the licensee obtains a copy of the records check for his files.

(2) A criminal records check for a loan originator employed by a licensee on the effective date of this rule must be completed within 120 days.

(3) A loan originator applicant may not be hired and a currently employed loan originator's employment must be immediately terminated if the criminal records check discloses a disqualifying conviction as described in section (4) of this rule, provided that a licensee may retain a current employee in a capacity other than as a loan originator during the no-action letter process described in section (6) of this rule.

(4) The categories of criminal convictions that will prevent a person from acting as a loan originator are:

(a) Crimes punishable by death or imprisonment in excess of one year under the law under which the person was convicted, or

(b) Crimes involving false statement or dishonesty, including, but not limited to:

(A) Theft, misappropriation, or misapplication, of monies, services or goods in any amount;

(B) Falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

(C) Taking of bribes, kickbacks, or other illegal compensation; or

(D) Deceiving the public or any person by means of swindling, false advertising or like acts.

(5) Within three business days of receiving the criminal records check report, the licensee shall notify the Director of the identity of any person for whom a criminal records check discloses a disqualifying conviction, using the Loan Originator Notification Form [Form 440-2772, available online and from the Department].

(6) (a) Within 20 business days of notification to the Director as described in section (5) of this rule, a licensee who desires to hire or retain a loan originator for whom a criminal records check discloses a disqualifying conviction may make a written request for a letter from the Director that no enforcement action will be taken against the licensee with respect to the employment of such person. The request must contain the following information:

(A) The name of the person;

(B) A description of the disqualifying conviction from the criminal records check; and

(C) Supporting documents or other information demonstrating that this conviction is erroneously entered on this person's record or should otherwise not be deemed to be a disqualifying conviction.

(b) The Director in determining whether to grant the requested no-action letter and in determining whether conditions should be imposed if the no-action letter is granted may consider, but is not limited to considering:

(A) The licensing and consumer complaint history of the licensee;

(B) Input from any mortgage professional association; and

(C) The interests of consumers.

(c) A licensee who hires or retains a loan originator who has a disqualifying conviction after a requested no-action letter is denied, or without requesting a no-action letter, is subject to penalties as provided by ORS 59.992 and 59.996.

(7) Criminal records check documents, including any no action letter or denial of a no action letter request, received by the licensee shall be maintained in a secure location separate from personnel records, and shall be made available to the Director or an authorized representative of the Department for examination upon reasonable notice. These records shall be preserved by the licensee for three years after termination of employment. When the person who is subject to the check is not employed, the records shall be preserved by the licensee for two years from the date of receipt. After the retention period, the records shall be destroyed in a secure manner such as by shredding.

Stat. Auth.: Chapter 526, 2003 Oregon Laws

Stats. Implemented: Chapter 526, 2003 Oregon Laws