

Requested by SENATE COMMITTEE ON BUSINESS AND TRANSPORTATION

**PROPOSED AMENDMENTS TO  
SENATE BILL 98**

1 On page 1 of the printed bill, line 2, delete “creating new provisions; re-  
2 pealing ORS 86A.175;”.

3 Delete lines 5 through 24 and delete pages 2 through 8 and insert:

4 **“SECTION 1. Sections 2 to 14 of this 2017 Act may be cited as the**  
5 **Mortgage Loan Servicer Practices Act.**

6 **“SECTION 2. As used in sections 2 to 14 of this 2017 Act:**

7 **“(1) ‘Affiliate’ means a person who controls, is controlled by or is**  
8 **under common control with another person.**

9 **“(2) ‘Applicant’ means a person that applies for a license to engage**  
10 **in business as a residential mortgage loan servicer in this state.**

11 **“(3) ‘Borrower’ means a person that incurs an obligation to repay**  
12 **a residential mortgage loan.**

13 **“(4) ‘Branch office’ means a location at which a business entity**  
14 **services a residential mortgage loan other than the business entity’s**  
15 **headquarters or principal place of business.**

16 **“(5) ‘Business entity’ means a corporation, limited liability com-**  
17 **pany, partnership, limited partnership, business trust, joint venture**  
18 **or other form of business organization the constituent parts of which**  
19 **share a common economic interest.**

20 **“(6) ‘Controller’ means:**

21 **“(a) A director, officer or general partner of a business entity;**

1       **“(b) A managing member of a limited liability company;**

2       **“(c) A person that has a direct or indirect right to vote 10 percent**  
3 **or more of the securities of a business entity that have voting rights**  
4 **or the power to sell or cause the sale of 10 percent or more of any class**  
5 **of a business entity’s securities;**

6       **“(d) A person that has contributed 10 percent or more to a**  
7 **partnership’s capital or has the right to receive a distribution of 10**  
8 **percent or more of a partnership’s capital or assets upon dissolution;**  
9 **or**

10       **“(e) A person that, under the terms of a contract or because the**  
11 **person has an ownership interest in another person, has the power to**  
12 **manage or set policies for the other person, or otherwise direct the**  
13 **other person’s operations or affairs.**

14       **“(7) ‘Licensee’ means a person that has applied for and obtained or**  
15 **renewed a license from the Director of the Department of Consumer**  
16 **and Business Services to engage in business as a residential mortgage**  
17 **loan servicer in this state.**

18       **“(8) ‘Manager’ means an individual who has supervisory authority**  
19 **over employees and operations at a business entity’s branch office or**  
20 **other business location.**

21       **“(9) ‘Person’ means an individual or a business entity.**

22       **“(10) ‘Residential mortgage loan’ means a loan secured by a mort-**  
23 **gage, deed of trust or an equivalent consensual security interest in**  
24 **real property on which four or fewer improvements designed for resi-**  
25 **dential occupancy are planned or situated, including but not limited**  
26 **to individual units, condominiums and cooperatives.**

27       **“(11) ‘Residential mortgage loan modification service’ means:**

28       **“(a) A negotiation or arrangement, or an offer or attempt to nego-**  
29 **tiate or arrange, a change in the repayment obligations for or the**  
30 **terms and conditions of a borrower’s residential mortgage loan, in-**

1 **cluding but not limited to:**

2 **“(A) A forbearance in collecting one or more payments due;**

3 **“(B) A change in the interest rate;**

4 **“(C) A change in the payment or repayment schedule;**

5 **“(D) A substitution of different loan terms and conditions;**

6 **“(E) A substitution of a different classification of loan;**

7 **“(F) A capitalization of any arrearages; or**

8 **“(G) A reduction in principal.**

9 **“(b) Collecting or attempting to collect data to submit to a person**  
10 **that performs a residential mortgage loan modification service.**

11 **“(12) ‘Service a residential mortgage loan’ means to:**

12 **“(a) Receive a scheduled periodic payment from a borrower under**  
13 **the terms of a residential mortgage loan, including any amounts for**  
14 **deposit into an escrow account the lender establishes in accordance**  
15 **with the Real Estate Settlement Procedures Act, 12 U.S.C. 2609;**

16 **“(b) Pay to the lender or another person principal, interest and**  
17 **other amounts associated with a residential mortgage loan in accord-**  
18 **ance with the terms of any contract or agreement for servicing the**  
19 **residential mortgage loan; or**

20 **“(c) Pay an amount to a borrower, if the residential mortgage loan**  
21 **is a home equity conversion mortgage or a reverse mortgage.**

22 **“SECTION 3. (1) A person may not directly or indirectly service a**  
23 **residential mortgage loan in this state unless the person obtains or**  
24 **renews a license under section 4 of this 2017 Act.**

25 **“(2) Subsection (1) of this section does not apply to:**

26 **“(a) A person, or an affiliate of the person, that in all operations**  
27 **within the United States during the calendar year services fewer than**  
28 **5,000 residential mortgage loans, excluding loans that the person or**  
29 **the person’s affiliate originates or owns.**

30 **“(b) A financial institution, as defined in ORS 706.008.**

1       “(c) A person that has obtained a license under ORS 725.140.

2       “(d) A financial holding company or bank holding company, both  
3 as defined in ORS 706.008, if the financial holding company or bank  
4 holding company does not do more than control an affiliate or a sub-  
5 sidiary, as defined in 12 U.S.C. 1841(d), and does not engage in business  
6 as a residential mortgage loan servicer.

7       “(e) An attorney who is licensed or otherwise authorized to practice  
8 law in this state if the attorney:

9       “(A) Services a residential mortgage loan as an ancillary matter  
10 while representing a client; and

11       “(B) Does not receive compensation from a residential mortgage  
12 loan servicer.

13       “(f) An agency or instrumentality of this state or the United States.

14       “(g) A housing finance agency, as defined in 24 C.F.R. 266.5.

15       “(h) An institution that the Farm Credit Administration regulates.

16       “(i) A person that the Director of the Department of Consumer and  
17 Business Services designates by rule or order as exempt, including but  
18 not limited to a nonprofit organization that promotes affordable  
19 housing or financing.

20       “(3) Notwithstanding subsection (2) of this section, the director may  
21 require any person to obtain a license under section 4 of this 2017 Act  
22 before servicing a residential mortgage loan if the director determines  
23 that the person has violated state or federal law or has engaged in a  
24 course of dealing that is fraudulent, deceptive or dishonest.

25       “(4)(a) If the director reasonably believes that a person is subject  
26 to sections 2 to 14 of this 2017 Act or is engaging in or is about to en-  
27 gage in an act or practice that constitutes servicing a residential  
28 mortgage loan in this state without first obtaining a license as pro-  
29 vided in subsection (1) of this section, the director may:

30       “(A) Order the person to:

1       “(i) Cease and desist from the act or practice; or  
2       “(ii) Affirmatively perform an act; or  
3       “(B) Apply to a circuit court of this state to enjoin the person from  
4 engaging in the act or practice.

5       “(b) The director shall state in reasonable detail the facts on which  
6 the director bases an order under paragraph (a)(A) of this subsection.

7       “(c) If a person that is subject to an order under paragraph (a)(A)  
8 of this subsection requests a hearing, the director shall schedule and  
9 give notice of a hearing in accordance with ORS chapter 183. If the  
10 person does not request a hearing, the director’s order becomes final  
11 30 days after the date of the order.

12       “(5) Notwithstanding ORS 86A.175 (2), the director shall regulate  
13 mortgage servicers under sections 2 to 14 of this 2017 Act, including  
14 mortgage servicers that hold other licenses the director issued.

15       “SECTION 4. (1)(a) A person that is subject to the requirement to  
16 obtain or renew a license under section 3 (1) or (3) of this 2017 Act shall  
17 submit an application to the Director of the Department of Consumer  
18 and Business Services in the manner, on a form and with the contents  
19 the director specifies by rule.

20       “(b) The director by rule may require an applicant to submit the  
21 application described in paragraph (a) of this subsection to the Na-  
22 tionwide Mortgage Licensing System and Registry instead of, or in  
23 addition to, submitting the application to the director.

24       “(2)(a) An applicant shall submit with or as part of an application  
25 under subsection (1) of this section:

26       “(A) Fingerprints from all of the applicant’s controllers, registered  
27 agents and managers;

28       “(B) A unique identifier that the applicant applies for and receives  
29 from the Nationwide Mortgage Licensing System and Registry;

30       “(C) The name and address of the applicant’s registered agent in

1 **this state;**

2 **“(D) The street address of the applicant’s principal place of business**  
3 **and of each branch office in this state at or from which the applicant**  
4 **will service a residential mortgage loan;**

5 **“(E) The name of the manager of any branch office the applicant**  
6 **maintains in this state;**

7 **“(F) The assumed business name, if any, that the applicant intends**  
8 **to use or under which the applicant intends to operate; and**

9 **“(G) Other information the director requires to conduct a back-**  
10 **ground check and evaluate the application.**

11 **“(b) The director by rule may modify or waive, for an application**  
12 **to renew a license, any requirement under paragraph (a) of this sub-**  
13 **section that the director determines is not necessary for evaluating**  
14 **or approving the application for renewal.**

15 **“(3) At the time an applicant submits an application under sub-**  
16 **section (1) of this section, the applicant shall also:**

17 **“(a) Pay to the director a fee in an amount that the director spec-**  
18 **ifies by rule. The director shall specify the fee in an amount that is**  
19 **sufficient, when aggregated with fees from other applicants, to meet**  
20 **the director’s cost of administering sections 2 to 14 of this 2017 Act.**

21 **“(b) Submit to the director a corporate surety bond or irrevocable**  
22 **letter of credit issued by an insured institution, as defined in ORS**  
23 **706.008, that runs to the State of Oregon in an amount the director**  
24 **specifies by rule. If the applicant seeks to renew a license and sub-**  
25 **mitted a corporate surety bond or irrevocable letter of credit previ-**  
26 **ously, the applicant shall show that the corporate surety bond or**  
27 **irrevocable letter of credit remains effective in the amount the direc-**  
28 **tor specifies.**

29 **“(4)(a) The director may not issue or renew a license under this**  
30 **section unless the director finds that:**

1       **“(A) The applicant submitted a complete application that does not**  
2 **contain a material misstatement;**

3       **“(B) The application identifies a registered agent in this state;**

4       **“(C) The application names a manager for each of the applicant’s**  
5 **branch offices in this state;**

6       **“(D) The applicant and the applicant’s controllers, registered agents**  
7 **and managers have not pleaded guilty or no contest in, or been con-**  
8 **victed by, a state, federal, foreign or military court:**

9       **“(i) In the seven years before the date of the application, if the plea**  
10 **or conviction was for a felony, or for a misdemeanor an essential ele-**  
11 **ment of which involved a false statement or dishonesty; or**

12       **“(ii) At any time before the date of the application if the plea or**  
13 **conviction was for a felony an element of which was fraud, dishonesty,**  
14 **a breach of trust or laundering a monetary instrument;**

15       **“(E) The applicant and the applicant’s controllers, registered agents**  
16 **and managers have demonstrated adequate financial responsibility,**  
17 **character and general fitness to command the confidence of the com-**  
18 **munity and warrant a determination that the applicant will operate**  
19 **honestly, fairly and efficiently under the provisions of sections 2 to 14**  
20 **of this 2017 Act;**

21       **“(F) The applicant has paid the fee and submitted the corporate**  
22 **surety bond or irrevocable letter of credit required under subsection**  
23 **(3) of this section; and**

24       **“(G) The applicant has satisfied any other criteria for evaluating**  
25 **the applicant’s financial responsibility and fitness the director speci-**  
26 **fies by rule.**

27       **“(b) An applicant need not report a conviction on an application**  
28 **under this section if the conviction was later pardoned.**

29       **“(5)(a) The director may deny, revoke or decline to renew a license**  
30 **if an applicant, a licensee or a person that services a residential**

1 mortgage loan:

2 “(A) Does not meet criteria set forth in subsection (4) of this sec-  
3 tion that the director has not waived under subsection (2)(b) of this  
4 section;

5 “(B) Engages in a course of conduct that violates state or federal  
6 law or that constitutes fraudulent, deceptive or dishonest dealing;

7 “(C) Fails or refuses to comply with the director’s written request  
8 under section 10 of this 2017 Act to respond to a complaint against the  
9 applicant or licensee; or

10 “(D) Fails or refuses to comply with a final order the director is-  
11 sued.

12 “(b) The director shall provide a licensee with notice and an op-  
13 portunity for a hearing under ORS chapter 183 before revoking or de-  
14 clining to renew a license.

15 “(6)(a) A license that the director issues or renews under this sec-  
16 tion expires on December 31 of the calendar year in which the director  
17 issued or renewed the license. A licensee shall display a copy of the  
18 license at the licensee’s principal place of business and at each branch  
19 office in this state at or from which the licensee services a residential  
20 mortgage loan.

21 “(b) An applicant that intends to renew a license shall apply for the  
22 renewal before the license expires.

23 “(c) A licensee may reinstate a license that has expired only if the  
24 licensee applies to renew the license under this section within the time  
25 permitted by the Nationwide Mortgage Licensing System and Registry.

26 “(d) A licensee may not service a residential mortgage loan during  
27 a period in which the licensee has applied to reinstate a license unless  
28 the director has given conditional approval to the licensee. The con-  
29 ditional approval may specify which accounts the licensee may service  
30 and which services the licensee may provide during the period in



1 which the licensee’s application for reinstatement is pending.

2 **“SECTION 5. (1) A licensee shall designate and maintain a principal**  
3 **place of business at or from which the licensee services residential**  
4 **mortgage loans in this state and shall designate a registered agent in**  
5 **this state.**

6 **“(2)(a) If a licensee does not maintain a principal place of business**  
7 **in this state the licensee shall nevertheless designate a registered**  
8 **agent in this state. The registered agent must be available to receive**  
9 **on the licensee’s behalf any notice, demand or service of process per-**  
10 **mitted by law to be given, made or delivered to, or served upon, the**  
11 **licensee.**

12 **“(b) If the licensee does not designate a registered agent in this**  
13 **state, or if the licensee’s registered agent cannot with reasonable**  
14 **diligence be located, the Director of the Department of Consumer and**  
15 **Business Services is the licensee’s registered agent.**

16 **“(3) A licensee may not use or operate under an assumed business**  
17 **name unless the licensee first registers the assumed business name**  
18 **under ORS chapter 648 and lists the name on an application under**  
19 **section 4 of this 2017 Act or in a notice to the director under section**  
20 **7 of this 2017 Act.**

21 **“SECTION 6. (1)(a) A licensee shall maintain in accordance with**  
22 **generally accepted accounting principles sufficient liquidity, operating**  
23 **reserves and tangible net worth to permit the licensee to adequately**  
24 **meet all costs, expenses and other financial requirements related to**  
25 **servicing residential mortgage loans in this state. The Director of the**  
26 **Department of Consumer and Business Services may specify by rule**  
27 **the standards a licensee must meet to comply with the requirements**  
28 **set forth in this subsection.**

29 **“(b) A licensee that the Federal National Mortgage Association, the**  
30 **Federal Home Loan Mortgage Corporation or the Government National**

1 Mortgage Association has approved to service a residential mortgage  
2 loan complies with the requirements set forth in paragraph (a) of this  
3 subsection if the licensee meets the standards for liquidity, operating  
4 reserves and tangible net worth established by the association or cor-  
5 poration that approved the licensee. If the applicable association's or  
6 corporation's standards do not apply to a particular residential mort-  
7 gage loan, the licensee in servicing the residential mortgage loan shall  
8 meet the highest standards the association or corporation has estab-  
9 lished for liquidity, operating reserves and tangible net worth.

10 “(2)(a) If a licensee fails to meet the applicable standards for  
11 liquidity, operating reserves and tangible net worth set forth in sub-  
12 section (1) of this section, the director may take and retain possession  
13 of the licensee's property, business and assets located in this state  
14 until the licensee returns, under the director's supervision or over-  
15 sight, to compliance with the applicable standards.

16 “(b) In taking and retaining possession of the licensee's property,  
17 business and assets under paragraph (a) of this subsection, the direc-  
18 tor shall conduct an inventory appropriate for establishing a  
19 receivership for the licensee and file a copy of the inventory with:

20 “(A) The Department of Consumer and Business Services;

21 “(B) The clerk of the circuit court in the county in which the  
22 licensee's principal place of business in this state, or any branch office  
23 in this state, is located; and

24 “(C) Each of the licensee's controllers, at the last address for each  
25 controller that the director has in the director's records.

26 “(c) A circuit court that receives a copy of an inventory under  
27 paragraph (b)(B) of this subsection shall file the inventory, list the  
28 filing in the court's docket as a pending proceeding and assign a case  
29 number to the proceeding.

30 “(3) If a licensee refuses to permit the director to take and retain

1 possession of the licensee’s property, business and assets under sub-  
2 section (2) of this section or if the director can show that the interests  
3 of the licensee’s borrowers or creditors require the appointment of a  
4 receiver, the director may apply to the circuit court in the county in  
5 which the licensee’s principal place of business in this state is located  
6 for an order to appoint a receiver to take and retain possession of,  
7 operate or liquidate the property, business and assets. The court may  
8 appoint the director as the receiver.

9 “(4) If, 60 days after the date on which the director took possession  
10 of a licensee’s property, business and assets under subsection (2) of  
11 this section, the licensee has not returned to compliance with the ap-  
12 plicable standards described in subsection (1) of this section, the di-  
13 rector shall liquidate the property, business and assets. If the director  
14 is not the receiver for the licensee’s property, business and assets, the  
15 director shall apply to the court with which the director filed an in-  
16 ventory under subsection (2)(b)(B) of this section for an order to ap-  
17 point the director or another person as receiver.

18 “SECTION 7. (1)(a) A licensee shall notify the Director of the De-  
19 partment of Consumer and Business Services in writing at least 30  
20 days before the licensee:

21 “(A) Relocates or closes the licensee’s principal place of business  
22 or a branch office in this state; or

23 “(B) Opens a branch office that the licensee did not list in an ap-  
24 plication under section 4 of this 2017 Act.

25 “(b) In a notice under paragraph (a) of this subsection the licensee  
26 shall list, as applicable:

27 “(A) The new address to which the licensee relocates the licensee’s  
28 principal place of business or any branch office; and

29 “(B) The address for any new branch office the licensee opens.

30 “(2)(a) A licensee shall notify the director in writing not later than

1 **30 days after:**

2 **“(A) Any appointment, resignation or other change occurs in the**  
3 **licensee’s controllers, registered agents or managers; or**

4 **“(B) Any material change occurs in the information that the**  
5 **licensee submitted in an application under section 4 of this 2017 Act.**

6 **“(b) The licensee shall provide in a notice under paragraph (a)(A)**  
7 **of this subsection the name, address and title of any new controller,**  
8 **registered agent or manager the licensee appoints.**

9 **“(3)(a) A licensee shall notify the director in writing not later than**  
10 **10 days after:**

11 **“(A) Filing for bankruptcy or reorganization;**

12 **“(B) A controller, registered agent or manager of the licensee be-**  
13 **comes subject to an indictment that is related in any manner to the**  
14 **licensee’s activities;**

15 **“(C) The licensee receives notice of a final order issued in this or**  
16 **another state that:**

17 **“(i) Demands that the licensee cease and desist from any act;**

18 **“(ii) Suspends or revokes a license or registration; or**

19 **“(iii) Constitutes any other formal or informal regulatory action**  
20 **against the licensee;**

21 **“(D) The licensee registers or changes and uses or operates under**  
22 **an assumed business name; or**

23 **“(E) Another change in the licensee’s operations or governance oc-**  
24 **curs in a manner or with an effect that the director determines by rule**  
25 **is significant enough to warrant the licensee notifying the director.**

26 **“(b) A licensee shall specify in a notice under paragraph (a)(C) of**  
27 **this subsection the reasons for taking a regulatory action against the**  
28 **licensee that are set forth in any final order.**

29 **“(4) A licensee shall notify the director immediately if the licensee**  
30 **changes registered agents or if the name or address for the licensee’s**

1 registered agent in this state changes. In the notice the licensee shall  
2 update the name and address for the registered agent.

3 **“SECTION 8. (1) The Director of the Department of Consumer and  
4 Business Services has general supervisory authority over:**

5 **“(a) Each licensee in this state;**

6 **“(b) Any person that services a residential mortgage loan in this  
7 state, if the person is subject to sections 2 to 14 of this 2017 Act or if  
8 the director required the person to obtain a license under section 3 (3)  
9 of this 2017 Act; and**

10 **“(c) Any person that had a license that the director withdrew,  
11 cancelled, suspended, conditioned or revoked, if the person continues  
12 to service a residential mortgage loan.**

13 **“(2)(a) The authority described in subsection (1) of this section in-  
14 cludes the authority to examine a licensee or a person described in  
15 subsection (1) of this section at any time.**

16 **“(b) The director may charge and collect from a licensee or a person  
17 the director examines under this section the costs the director incurs  
18 in conducting the examination.**

19 **“(3) In order to carry out an examination under this section, the  
20 director may:**

21 **“(a) Retain attorneys, accountants or other professionals and spe-  
22 cialists as examiners, auditor or investigators.**

23 **“(b) Enter into agreements or relationships with other government  
24 officials or regulatory associations to share resources, use and create  
25 standardized methods, procedures, documents, databases, records, in-  
26 formation or evidence or to reduce the director’s regulatory burden  
27 or improve efficiency.**

28 **“(c) Participate in multistate examinations that the Conference of  
29 State Bank Supervisors or the federal Consumer Financial Protection  
30 Bureau schedules and conducts. In conducting an examination under**

1 this paragraph, the director shall follow the protocol that the confer-  
2 ence or bureau establishes for the examination.

3 “(d) Accept and rely on examination or investigation reports from  
4 other government officials in this or another state.

5 “(4) Books, accounts, papers, records, files, correspondence, con-  
6 tracts and agreements, disclosures, documentation and other infor-  
7 mation, material or evidence the director obtains in an examination  
8 under this section is confidential and subject to the provisions of ORS  
9 705.137, except that a borrower may request to inspect material related  
10 to the borrower’s residential mortgage loan that the director by rule  
11 specifies is available for inspection. The director shall authenticate the  
12 borrower’s identity before disclosing any material to the borrower.

13 **“SECTION 9. (1) A person that services a residential mortgage loan  
14 shall:**

15 “(a) Assess any fee that the person may assess against a borrower  
16 within 45 days after the borrower incurs the fee.

17 “(b) Explain to a borrower in clear language and conspicuous text  
18 the reason for any fee the person assesses against the borrower in a  
19 written statement that the person mails to the borrower at the  
20 borrower’s last-known address not more than 30 days after the person  
21 assesses the fee.

22 “(c) Accept and credit, or treat as credited, to the borrower’s ac-  
23 count all amounts the person receives at the address to which the  
24 borrower has been instructed to send payments on the borrower’s  
25 residential mortgage loan. The person must credit the payment, or  
26 treat the payment as credited, within one business day after receiving  
27 the payment if the borrower has provided sufficient information to  
28 credit the account. If the person uses the scheduled method of ac-  
29 counting and the person receives a regularly scheduled payment before  
30 the scheduled due date, the person shall credit the payment to the

1 borrower's account not later than the scheduled due date.

2       “(d) Mail a written notice to a borrower at the borrower's last-  
3 known address within 10 days after receiving a payment if the person  
4 did not credit the payment, or treat the payment as credited, to the  
5 borrower's account. In the notice, the licensee shall clearly explain the  
6 reason why the licensee did not credit the payment and identify any  
7 action the borrower must take to properly credit the payment or oth-  
8 erwise make current the borrower's account.

9       “(e) Collect funds into an escrow account and make from the  
10 escrow account any payments that are due for property taxes, insur-  
11 ance and all other charges related to the real property that secures a  
12 residential mortgage loan, if the residential mortgage loan agreement  
13 requires the licensee to establish an escrow account and make pay-  
14 ments from the escrow account. The person shall perform the person's  
15 duties under this paragraph in a manner that ensures that the bor-  
16 rower is not subject to late fees, penalties or other negative conse-  
17 quences of a failure to make required payments on time. A person  
18 complies with the requirements of this section if the person complies  
19 with the Real Estate Settlement Procedures Act, 12 U.S.C. 2609.

20       “(f) Make reasonable efforts to respond to a borrower's request  
21 concerning the borrower's residential mortgage loan account and to  
22 any dispute the borrower has with the person or that is related to the  
23 borrower's residential mortgage loan account.

24       “(g) Correct promptly any errors the person makes and refund  
25 promptly any fees the person assesses against the borrower in error.

26       “(h) Provide to a borrower each year a written statement that  
27 specifies:

28       “(A) Whether the account is current and, if the account is not  
29 current, the reasons why the account is not current, including the  
30 date on which any default occurred;

1       **“(B) The current balance due on the borrower’s residential mort-**  
2 **gage loan, including the amount of the principal due, the amount of**  
3 **funds the person holds in a suspense account, the balance in any**  
4 **escrow account the person maintains for the borrower and the amount**  
5 **of any deficiency in the escrow account of which the person is aware;**

6       **“(C) The name, address and other contact information for the in-**  
7 **dividual or business entity that owns or holds the borrower’s residen-**  
8 **tial mortgage loan, or an assignee of the individual or business entity;**  
9 **and**

10       **“(D) The name, address, telephone number and any other contact**  
11 **information for a representative of the person from which the bor-**  
12 **rower can request information or to which the borrower can direct**  
13 **complaints or disputes. The person’s representative must have suffi-**  
14 **cient information and authority to respond to the borrower’s requests,**  
15 **answer the borrower’s questions and resolve the borrower’s disputes**  
16 **with the person.**

17       **“(i) Include in each statement or notice the person mails or sends**  
18 **to the borrower under this subsection text that the Director of the**  
19 **Department of Consumer and Business Services prescribes by rule.**  
20 **The text must include contact information for the Department of**  
21 **Consumer and Business Services and must state clearly that, and how,**  
22 **the borrower may submit a complaint to the department concerning**  
23 **any conduct of the person that is unlawful.**

24       **“(2) A person that services a residential mortgage loan may not,**  
25 **directly or indirectly:**

26       **“(a) Employ any device, scheme or artifice to defraud another per-**  
27 **son;**

28       **“(b) Knowingly make an untrue statement of a material fact or**  
29 **omit a material fact that is necessary to make the person’s statement**  
30 **true in light of the circumstances in which the person makes the**



1 **statement;**

2 **“(c) Engage in an act, practice or course of business that operates**  
3 **or that the person intends to operate as a fraud or deceit upon another**  
4 **person; or**

5 **“(d) Make or file with the department, or cause to be made or filed**  
6 **with the department, a statement, report or document that the person**  
7 **knows is false in any material respect or manner.**

8 **“SECTION 10. (1) If the Director of the Department of Consumer**  
9 **and Business Services receives a complaint concerning a person that**  
10 **services a residential mortgage loan, the director:**

11 **“(a) Shall notify the person of the complaint, provide a copy of the**  
12 **complaint in the notice and require the person to respond to the**  
13 **complaint and to the director within 30 days after the date of the no-**  
14 **tice;**

15 **“(b) May investigate the complaint and require the person to pro-**  
16 **vide books, accounts, papers, records, files, correspondence, contracts**  
17 **and agreements, disclosures, documentation and other information,**  
18 **material or evidence necessary for the director’s investigation; and**

19 **“(c) May investigate the person and the person’s policies and prac-**  
20 **tices with respect to servicing a residential mortgage loan and require**  
21 **the person to provide books, accounts, papers, records, files, doc-**  
22 **umentation and other information, material or evidence necessary for**  
23 **the director’s investigation.**

24 **“(2)(a) Except as provided in paragraph (b) of this subsection,**  
25 **books, accounts, papers, records, files, correspondence, contracts and**  
26 **agreements, disclosures, documentation and other information, mate-**  
27 **rial or evidence the director receives or possesses as a consequence of**  
28 **an investigation under subsection (1) of this section are confidential**  
29 **unless state or federal law or a court order permits or requires dis-**  
30 **closure.**

1       “(b) The director may share any item listed in paragraph (a) of this  
2 subsection with any state or federal agency.

3       “(3) The director may charge and collect from a person the director  
4 investigates under this section the costs the director incurs in con-  
5 ducting the investigation.

6       “SECTION 11. (1) If after conducting an investigation, the Director  
7 of the Department of Consumer and Business Services determines that  
8 a person that services a residential mortgage loan has violated  
9 sections 2 to 14 of this 2017 Act, a rule the director adopted or an order  
10 the director issued under sections 2 to 14 of this 2017 Act or another  
11 applicable law, the director may order the person to:

12       “(a) Cease and desist from any act that constitutes a violation of  
13 sections 2 to 14 of this 2017 Act.

14       “(b) Resolve any complaint the director received under section 10  
15 of this 2017 Act and pay the borrower that submitted the complaint  
16 any damages to which the borrower would be entitled under law.

17       “(c) Pay a borrower any amount the person received from the bor-  
18 rower as compensation while engaging in any action that constituted  
19 a violation of sections 2 to 14 of this 2017 Act.

20       “(2)(a) In addition to and not in lieu of any other penalty provided  
21 by law, the director may impose a civil penalty under ORS 183.745 in  
22 an amount of not more than \$5,000 for each instance in which a person  
23 violates, aids or abets another person in violating or procures a vio-  
24 lation of sections 2 to 14 of this 2017 Act or an order the director issues  
25 under sections 2 to 14 of this 2017 Act.

26       “(b) Each instance described in paragraph (a) of this subsection is  
27 a separate violation and each day in which a person engages in a  
28 continuous violation is a separate violation. The director may not  
29 impose a penalty that exceeds \$20,000 for a continuous violation.

30       “(3) The director may assess the costs of conducting an adminis-

1 trative proceeding under this section against the person that is the  
2 subject of the administrative proceeding or may include the costs of  
3 the administrative proceeding in any civil penalty the director imposes  
4 under this section.

5 “(4) A person that is subject to a civil penalty under this section  
6 may appeal the penalty as provided in ORS chapter 183.

7 “(5) The director shall deposit any amount the director receives  
8 under this section to the General Fund of the State Treasury.

9 **“SECTION 12. (1) A licensee shall:**

10 **“(a) Maintain, until a borrower repays or otherwise satisfies the**  
11 **borrower’s residential mortgage loan or until the licensee sells the**  
12 **residential mortgage loan, written or electronic records of each writ-**  
13 **ten request the borrower submits for information concerning a dispute**  
14 **or error in relation to the borrower’s account.**

15 **“(b) Respond in writing not more than 15 days after receiving a**  
16 **written request for information from a borrower, if the borrower’s**  
17 **request includes the borrower’s name and account number, states that**  
18 **the account is or might be in error and describes the information the**  
19 **borrower seeks in sufficient detail to enable the licensee to comply**  
20 **with the request. In the response, the licensee, at a minimum, shall:**

21 **“(A) State whether the account is current and, if the account is not**  
22 **current, the reasons why the account is not current, including the**  
23 **date on which any default occurred;**

24 **“(B) State the current balance due on the borrower’s residential**  
25 **mortgage loan, including the amount of the principal due, the amount**  
26 **of funds the licensee holds in a suspense account, the balance in any**  
27 **escrow account the licensee maintains for the borrower and the**  
28 **amount of any deficiency in the escrow account of which the licensee**  
29 **is aware;**

30 **“(C) List the name, address, telephone number and other contact**

1 information for the person that owns or holds the borrower's residen-  
2 tial mortgage loan, or an assignee of the person; and

3 **“(D) List the name, address, telephone number and any other con-  
4 tact information for a representative of the licensee from which the  
5 borrower can request further information or to which the borrower  
6 can direct complaints or disputes. The licensee’s representative must  
7 have sufficient information and authority to respond to the borrower’s  
8 requests, answer the borrower’s questions and resolve the borrower’s  
9 disputes with the licensee.**

10 **“(c) Provide to the borrower, at the borrower’s request, one com-  
11 plete account history each year at no charge to the borrower.**

12 **“(2) If a borrower requests further information about the  
13 borrower’s residential mortgage loan account from a licensee that is  
14 more detailed than the information the licensee provides in a state-  
15 ment under subsection (1) of this section, the licensee shall respond  
16 to the borrower not more than 15 business days after receiving the  
17 borrower’s request. The licensee may require the borrower to provide  
18 the borrower’s name and account number, state that the borrower’s  
19 account is or might be in error and describe the information the bor-  
20 rower seeks in sufficient detail to enable the licensee to respond. The  
21 licensee shall respond to a request for more detailed information about  
22 the borrower’s account with a written statement that:**

23 **“(a) Identifies and itemizes for the two-year period before the date  
24 of the borrower’s request, or as much of the two-year period for which  
25 the licensee serviced the borrower’s residential mortgage loan, all fees  
26 and charges the licensee assessed for the residential mortgage loan,  
27 along with a full payment history that lists in conspicuous text all of  
28 the credits and debits to the account, all payments received from the  
29 borrower and the dates of the payments, all credits to and disburse-  
30 ments from any escrow or suspense account the licensee maintains for**

1 the borrower and any other activity in the borrower’s residential  
2 mortgage loan account; and

3 “(b) Identifies any previous residential mortgage loan servicer for  
4 the borrower’s residential mortgage loan, if the licensee has serviced  
5 the residential mortgage loan for less than two years.

6 “(3) If a licensee claims that a borrower owes any delinquent or  
7 outstanding amount on a borrower’s residential mortgage loan from  
8 a period before the licensee began servicing the residential mortgage  
9 loan or from more than the preceding two years, the licensee shall  
10 provide the borrower with a complete account history for the period  
11 beginning in the month during which the licensee claims that the  
12 borrower owes the delinquent or outstanding amount and ending on  
13 the date on which the licensee makes the claim.

14 **“SECTION 13. (1)(a) If the Director of the Department of Consumer  
15 and Business Services determines that a director or officer of a  
16 licensee has violated sections 2 to 14 of this 2017 Act, a rule the Di-  
17 rector of the Department of Consumer and Business Services adopted  
18 or an order the director issued under sections 2 to 14 of this 2017 Act,  
19 directives or instructions the director included in an order or another  
20 applicable law, the Director of the Department of Consumer and  
21 Business Services may order the licensee’s board of directors or con-  
22 troller to suspend or remove the licensee’s director or officer.**

23 “(b) A director or officer that the Director of the Department of  
24 Consumer and Business Services has ordered a licensee’s board of di-  
25 rectors or controller to remove may not, without the Director of the  
26 Department of Consumer and Business Services’ permission, act in  
27 any official capacity or conduct any business for the licensee and may  
28 not in the capacity of a director, officer, controller or stockholder  
29 have access to the licensee’s assets, books, accounts, papers, records,  
30 files, correspondence, contracts and agreements, disclosures, doc-

1 **umentation and other information or material the licensee uses in**  
2 **conducting business.**

3 **“(2) The Director of the Department of Consumer and Business**  
4 **Services shall issue an order under this section in writing and cause**  
5 **the order to be served personally or by certified mail on the licensee**  
6 **and the director or officer that is the subject of the order. The Direc-**  
7 **tor of the Department of Consumer and Business Services may issue**  
8 **the order without an administrative hearing.**

9 **“(3)(a) The board of directors or controller of a licensee that re-**  
10 **ceives an order under this section shall immediately suspend from of-**  
11 **fice the director or officer that is the subject of the order.**

12 **“(b) The director or officer that is the subject of an order under this**  
13 **section may appeal the order as a contested case under ORS 183.415 to**  
14 **183.500.**

15 **“(4) The board of directors or the controller for a licensee by re-**  
16 **solution shall remove a director or officer that is the subject of an**  
17 **order under this section and declare the director’s or officer’s office**  
18 **vacant if:**

19 **“(a) The director or officer does not appeal the order by the date**  
20 **on which the period for an appeal under ORS 183.415 to 183.500 expires;**  
21 **or**

22 **“(b) The order of the Director of the Department of Consumer and**  
23 **Business Services is affirmed on appeal.**

24 **“SECTION 14. (1) A person that performs a residential mortgage**  
25 **loan modification service for compensation or gain shall:**

26 **“(a) Comply with all applicable state and federal laws;**

27 **“(b) Provide the borrower with a summary of the material terms**  
28 **of any agreement under which the licensee provides services related**  
29 **to a modification of the borrower’s residential mortgage loan; and**

30 **“(c) Inform the borrower immediately in writing if:**

1       “(A) The owner of the residential mortgage loan needs additional  
2 information to process or consider the request; or

3       “(B) The owner of the residential mortgage loan will not consider  
4 a modification of the terms.

5       “(2) A person that performs a residential mortgage loan modifica-  
6 tion service for compensation or gain may not:

7       “(a) Charge a fee before providing the service for which the person  
8 charges the fee;

9       “(b) Charge a fee that is not reasonable or that exceeds the usual  
10 and customary fees for the service the person provides; or

11       “(c) Require or encourage a borrower, as a condition of modifying  
12 the terms of a residential mortgage loan or providing a service related  
13 to modifying the terms of a residential mortgage loan, to:

14       “(A) Waive the borrower’s:

15       “(i) Legal defenses, available counterclaims or other legal rights  
16 against the person;

17       “(ii) Right to contest a foreclosure; or

18       “(iii) Right to receive notice before a foreclosure proceeding begins;

19       “(B) Pay a fee, charge or assessment for which the residential  
20 mortgage loan agreement, a servicing agreement or a related agree-  
21 ment does not provide; or

22       “(C) Cease communications with the person, the trustee or benefi-  
23 ciary in a trust deed, the owner or a servicer of the borrower’s resi-  
24 dential mortgage loan or any other person with which the borrower  
25 has the right or duty to communicate concerning the residential  
26 mortgage loan.

27       “(3) A person that does not comply with subsection (1) of this sec-  
28 tion or that engages in conduct that is prohibited under subsection  
29 (2)(a) or (b) of this section violates ORS 86A.154.

30       “SECTION 15. Sections 2 to 14 of this 2017 Act apply to service

1 transactions for residential mortgage loans that occur on or after the  
2 operative date specified in section 16 of this 2017 Act.

3 **“SECTION 16. (1) Sections 2 to 14 of this 2017 Act become operative**  
4 **on January 1, 2018.**

5 **“(2) The Director of the Department of Consumer and Business**  
6 **Services may adopt rules and take any other action before the opera-**  
7 **tive date specified in subsection (1) of this section that is necessary**  
8 **to enable the director, on or after the operative date specified in sub-**  
9 **section (1) of this section, to exercise all of the duties, functions and**  
10 **powers conferred on the director by sections 2 to 14 of this 2017 Act.**

11 **“SECTION 17. This 2017 Act being necessary for the immediate**  
12 **preservation of the public peace, health and safety, an emergency is**  
13 **declared to exist, and this 2017 Act takes effect on its passage.”.**

14

---