

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF ADOPTION,
Rules I through VII pertaining to)	AMENDMENT, AND REPEAL
mortgage servicers, the amendment of)	
ARM 2.59.1701, 2.59.1703, 2.59.1706,)	
2.59.1707, 2.59.1709, 2.59.1725,)	
2.59.1727, 2.59.1728, 2.59.1730,)	
2.59.1731, and the repeal of ARM)	
2.59.1721, 2.59.1722, 2.59.1723,)	
2.59.1732, and 2.59.1736)	

TO: All Concerned Persons

1. On April 26, 2012, the Department of Administration published MAR Notice No. 2-59-462 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 778 of the 2012 Montana Administrative Register, Issue Number 8.

2. The department has adopted New Rules II (2.59.1744), IV (2.59.1745), and VI (2.59.1747) as proposed. The department has adopted New Rules I (2.59.1743), V (2.59.1746), and VII (2.59.1748), as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined as follows:

NEW RULE I (2.59.1743) REPORTING FORMS FOR MORTGAGE SERVICERS ~~(1) An applicant for a mortgage servicer license in Montana shall provide a report to the department of the Montana residential mortgage loans serviced within the previous 12-month period prior to the submission of its mortgage servicer application. The report must contain the information in (3). The report must be submitted to the department on the mortgage servicer reporting form, MT-5 Servicer Reporting Form, which is adopted by reference. The form may be downloaded from the Nationwide Mortgage Licensing System web site <http://mortgage.nationwidelicensingsystem.org/slr/StateForms/MT5-Servicer%20Reporting%20Form.pdf>.~~

(2) through (3)(f) remain as proposed, but are renumbered as (1) through (2)(f).

AUTH: 32-9-130, MCA
IMP: 32-9-170, MCA

The department is deleting (1) dealing with the report of the Montana residential mortgage loans serviced within the previous 12-month period prior to the submission of a mortgage servicer application. The department no longer needs this report. Since mortgage servicers had to be licensed as of October 1, 2011, there

should not be any Montana mortgage loans serviced by new applicants in the 12-month period before the application because that would be unlicensed activity.

NEW RULE V (2.59.1746) RECORD MAINTENANCE, STORAGE, TRANSFER, AND DESTRUCTION (1) through (3) remain as proposed.

(4) A person who disposes of records at the end of the retention period shall destroy personal information by shredding, burning, erasing, or otherwise making the information indecipherable as required by 30-14-1703, MCA, the Fair and Accurate Credit Transactions Act of 2003 (15 USC 1681 et seq.), and the regulations adopted thereunder (16 CFR 682).

(5) remains as proposed.

AUTH: 32-9-121, 32-9-130, MCA

IMP: 32-9-121, 32-9-124, 30-14-1703, 30-14-1704, MCA

The department is correcting a typographical error. The statute cited should be 30-14-1703, not 30-14-703, MCA. In addition, the department is adding two additional statutes that are implemented by this rule.

NEW RULE VII (2.59.1748) MONTANA-SPECIFIC ESCROW FUND (1) A mortgage servicer shall:

(a) establish an escrow fund specifically for Montana residential mortgage loans being serviced. The escrow fund must contain only money related to Montana residential mortgage loans; or

(b) elect to provide to the department loan account histories of the residential mortgage loans located in Montana along with the escrow account statements or reports showing how, when, and where those payments were held, applied, and distributed for the period the servicer has serviced the loan.

AUTH: 32-9-130, MCA

IMP: 32-9-145, MCA

The department is revising New Rule VII based on comment received. See Comment 2.

3. The department has amended ARM 2.59.1701 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined as follows:

2.59.1701 DEFINITIONS For purposes of the Montana Mortgage Act and this subchapter, the following definitions apply:

(1) through (5) remain as proposed.

(6) "Personal information" means:

~~(a) a customer's name, address, or telephone number, in conjunction with the customer's social security number, date of birth, driver's license number, account number, credit or debit card number, or a personal identification number or password that would permit access to the customer's account; or~~

~~(b) any combination of components of customer information that would allow an unauthorized third party to access the customer's account electronically, such as user name and password or password and account number.~~

an individual's name, signature, address, or telephone number, in combination with one or more additional pieces of information about the individual, consisting of the individual's passport number, driver's license, or state identification number, insurance policy number, bank account number, credit card number, debit card number, password, or personal identification number required to obtain access to the individual's finances. A social security number, in and of itself, constitutes personal information.

(8) through (11) remain as proposed.

AUTH: 32-9-121, 32-9-125, 32-9-130, MCA

IMP: 32-9-109, 32-9-116, 32-9-117, 32-9-121, 32-9-122, 32-9-123, 32-9-125, 32-9-133, MCA

The department is amending this proposed rule in response to the comments received in this rulemaking.

2.59.1703 TRANSFER OF LOAN ORIGINATOR LICENSE (1) Transfer of an individual mortgage loan originator license from one entity to another must be approved by the department. To transfer an individual mortgage loan originator license, the individual mortgage loan originator shall request sponsorship through the Nationwide Mortgage Licensing System (NMLS) by the new entity. The new entity must accept sponsorship of the individual through the NMLS. The request for sponsorship must be accompanied by a nonrefundable processing fee of \$50.

AUTH: 32-9-130, MCA

IMP: 32-9-116, 32-9-117, MCA

The department is amending this rule to explain the abbreviation of NMLS in these rules.

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: The Montana Credit Union Network (MCUN) commented the definition of personal information should be broadened from "customer" to "consumer" to better reflect the relationship that some individuals in a mortgage application situation may pose. The MCUN recommends the department adopt the definition of personal information in 30-14-1702, MCA.

RESPONSE 1: The department thanks the Montana Credit Union Network for this comment. The department agrees with this comment and has revised the definition.

COMMENT 2: Select Portfolio Servicing, Inc. (SPS) commented that proposed Rule VII requires an unnecessary burden and cost for the servicing industry in the management of escrow accounts. SPS commented that requiring a Montana-specific account is contrary to current industry practice, is unlike other accounting requirements in other jurisdictions, and would require the manual movement of Montana consumers' escrow funds. SPS services loans that were bundled and pooled into various trusts. Each trust is governed by a separate agreement. Each trust has its own separate account into which borrowers' funds are placed in order to ensure proper accounting. SPS has 350 pools at present. The rule would require SPS to have 700 escrow accounts to monitor and document.

SPS believes an examination requirement that servicers provide escrow account statements and loan account payment histories would allow the department to examine servicers and track escrow account payments.

RESPONSE 2: The department appreciates this comment and has redrafted the rule in light of this comment.

COMMENT 3: SPS commented that proposed Rule I (3)(d) which requires the unique identifier of the originating broker or lender requires information that third-party servicers generally do not have. Moreover, SPS has no way to compel production of that information from the originating broker or lender.

RESPONSE 3: The department understands that third-party servicers will not have this information. However, all that is required by the proposed rule is that the third-party servicer write "N/A" in response to this question. The department does not view this requirement as unduly burdensome on third-party servicers.

5. The department has amended the following rules exactly as proposed: ARM 2.59.1706, 2.59.1707, 2.59.1709, 2.59.1725, 2.59.1727, 2.59.1730, and 2.59.1731.

6. The department has repealed the following rules as proposed: ARM 2.59.1721, 2.59.1722, 2.59.1723, 2.59.1732, and 2.59.1736.

7. The department has decided not to adopt New Rule III or amend ARM 2.59.1728 at this time. New Rule III and ARM 2.59.1728 will be renoticed at a later date.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State August 27, 2012.