

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW)	NOTICE OF PROPOSED
RULES I through VIII pertaining to)	ADOPTION
transitioning existing escrow business)	
company licenses to the Nationwide)	NO PUBLIC HEARING
Multistate Licensing System and use of)	CONTEMPLATED
the system for all future licensing)	

TO: All Concerned Persons

1. On September 10, 2014, the Department of Administration proposes to adopt the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on August 29, 2014, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to banking@mt.gov.

3. The department intends to apply these rules retroactively to July 1, 2014. A retroactive application of the proposed rules does not negatively affect any involved party. The department participated in a group of states that started transitioning licensees onto the Nationwide Multistate Licensing System (NMLS) on July 1, 2014. As of that date, the licensees were allowed to request transition of their existing paper licenses to the NMLS.

4. The rules proposed to be adopted provide as follows:

NEW RULE I ADOPTION OF STANDARDIZED FORMS AND PROCEDURES OF THE NATIONWIDE MULTISTATE LICENSING SYSTEM (NMLS)

(1) The NMLS Policy Guidebook dated July 23, 2012, is approved and adopted by reference. It can be found at <http://mortgage.nationwidelicencingsystem.org/licensees/resources/LicenseeResources/NMLS%20Guidebook%20for%20Licensees.pdf>.

(2) The following standardized NMLS forms relating to licensing are approved and adopted by reference:

- (a) NMLS company form dated March 31, 2014;
- (b) NMLS branch form dated March 31, 2014; and
- (c) NMLS individual form dated April 16, 2012.

(3) The following state-specific forms on the NMLS are approved and adopted by reference:

- (a) Montana escrow business company transition checklist dated May 21, 2014;
 - (b) Montana escrow business company new application checklist dated June 2, 2014;
 - (c) Montana escrow business company amendment checklist dated June 2, 2014; and
 - (d) Montana escrow business company surrender checklist dated May 21, 2014.
- (3) For renewal, companies, branches, and individuals must go to the NMLS home page (<http://mortgage.nationwidelicingsystem.org>) and select the "Annual Renewal" link under the State Licensing tab and follow the instructions.
- (4) Copies of the NMLS forms are available on the department's web site www.banking.mt.gov for review and informational purposes only. All standardized forms to be submitted to the department must be accessed through NMLS and submitted electronically.

AUTH: 32-7-109, 32-7-112, MCA
IMP: 32-7-109, 32-7-112, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is needed to ensure that Montana applicants for an escrow business company license and for renewal of that license are aware of and use the NMLS standardized forms and submit them electronically through the NMLS. The NMLS forms are standardized for all license types. One company form exists that all companies use, regardless of the type of license they seek. This is intended to streamline the licensing process for a company that engages in a business that may require more than one license. The company fills out one form and checks the boxes to indicate the business or businesses in which they engage. The company selects the states in which it intends to do business. The application is automatically transmitted to the appropriate jurisdiction(s) in which the company seeks a license. The company can then be licensed by each state under one or more license types using the same application form.

The rule is necessary since the only way to get licensed in the NMLS is to use the proper form to accomplish what the licensee seeks. By this rule the department adopts the various licensing forms that exist in the NMLS and the NMLS policy guidebook. The policy guidebook sets forth the meaning of terms used in the NMLS applications and gives guidance on how to complete the various uniform forms.

NEW RULE II TRANSITION (1) Each licensee holding a Montana escrow business company license shall properly complete and submit a transition request through the NMLS by September 30, 2014. The transition request may be made beginning July 1, 2014. There is no fee for a transition request.

AUTH: 32-7-109, 32-7-112 MCA
IMP: 32-7-109, 32-7-112, MCA

STATEMENT OF REASONABLE NECESSITY: The department has determined that the NMLS allows a more efficient and streamlined process than the department's current paper licensing process because all information is entered and stored electronically. The applicant inputs the application into the system on standardized forms. The applicant checks a box for each state to which the applicant is submitting an application. The NMLS notifies each state to which an application has been submitted.

Department licensing personnel may access and review the application as well as communicate with the applicant through the system, if necessary. If the department determines the application is complete and the requirements of licensure have been met, it may grant a license through the NMLS. As soon as the license is issued electronically, it becomes publicly available through NMLS Consumer Access. NMLS Consumer Access is routinely used by the public and secondary market businesses to ensure the company they are dealing with is properly licensed.

The NMLS is a real-time system of record. As soon as a change is made, it is reflected in the system. It retains every change made in the system, as well as the time and date of every change. The system assigns a unique identifier number to each individual or business that applies for a license. The unique identifier number never changes. The individual or entity can leave the industry for years, switch business types, change addresses, and reappear years later, but the unique identifier number will remain the same and all their prior data will remain in the system. This makes the system an efficient and effective licensing tool for states and lessens the regulatory burden on individuals and companies.

All transition requests must be made by September 30, 2014. The department chose this date for two reasons: it gives licensees ample time to transition and it is one month before renewal begins. The renewal period in NMLS begins on November 1. Each license expires on December 31. The license must be renewed before December 31 to ensure the licensee can continue legally doing business.

To renew a license, it must exist in the NMLS. The one-month period between the close of transition and the beginning of renewal allows the department to process all transition requests, follow up on any stragglers, and ensure the transition process is complete before renewal starts.

The department anticipates that there will be no fiscal impact. There is no NMLS fee or department fee for transition. Therefore, there is no anticipated increase or decrease in revenue resulting from this rule. There are currently 11 escrow business companies licensed in Montana.

NEW RULE III LICENSE RENEWALS (1) The renewal period begins November 1. Every renewal applicant shall apply for renewal through the NMLS. Licensees shall use the NMLS renewal process to request renewal of their license.

(2) Licensees shall submit their renewal applications by December 1 of each year to ensure issuance of the license to qualified renewal applicants by January 1 of the following year.

(3) The holder of an expired license may not conduct any business in Montana until becoming properly licensed.

AUTH: 32-7-109, 32-7-110, 32-7-112, MCA
IMP: 32-7-109, 32-7-110, 32-7-112, MCA

STATEMENT OF REASONABLE NECESSITY: New Rule III is necessary because the NMLS renewal period begins on November 1 and ends on December 31 of each year. To allow the department sufficient time to process the applications before they expire on December 31, the department must receive the completed renewal request by December 1. The department processed 1,845 renewal applications for mortgage licensees alone last year. This year the department will have approximately the same number of mortgage renewal applications, plus 115 sales finance company license renewals, 55 consumer loan license renewals, and 11 escrow business license renewals. Since the department will be processing over 2,000 license renewals, the department must receive the completed renewal application by December 1 to ensure the license will be issued by December 31 to qualified applicants so that they may continue in business as of January 1.

Section (3) is necessary to ensure that licensees understand the license expires on December 31. If the license is not renewed before that date, the license expires. As of January 1, the former licensee is unlicensed and cannot conduct any business in Montana until they are properly licensed.

NEW RULE IV INITIAL LICENSE APPLICATION THROUGH NMLS (1) An applicant for a license shall submit an application for license through the NMLS. The applicant shall use the NMLS forms for requesting a license as an escrow business company.

AUTH: 32-7-109, 32-7-112, MCA
IMP: 32-7-109, 32-7-112, MCA

STATEMENT OF REASONABLE NECESSITY: New Rule IV is necessary because in the future all license applications must be submitted, processed, and issued through the NMLS. Beginning July 1, 2014, paper applications for a license are not accepted by the department. To be licensed through the NMLS, an applicant must select and use the appropriate form in the NMLS system to request licensure. It is essential that applicants are aware of these requirements.

NEW RULE V AMENDMENTS (1) An applicant or licensee needing to amend the information in NMLS shall follow the NMLS procedure and use NMLS forms to submit the amendment.

AUTH: 32-7-109, 32-7-112, MCA
IMP: 32-7-109, 32-7-112, MCA

STATEMENT OF REASONABLE NECESSITY: Amendments through the NMLS are submitted electronically. The department no longer accepts paper amendments. Amendments can only be made electronically through the NMLS. The amendments are automatically transmitted to the proper state regulator who then reviews the proposed amendment for completeness and determines whether

the amendment will be approved. If the amendment is approved, the electronic record is amended on the system and the new information shows as current.

NEW RULE VI LICENSE SURRENDER (1) A licensee shall submit a license surrender request through the NMLS. If the surrender is accepted by the department, the license will be shown as "terminated-surrendered/cancelled" on the NMLS.

AUTH: 32-7-112, MCA
IMP: 32-7-112, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to set forth the procedure for an offer of surrender of a license. Since the license that the licensee wishes to surrender exists in electronic form on the NMLS, the only way to surrender the license is to submit a surrender request to the department through the NMLS. The department will no longer accept paper requests to surrender a license. If the department accepts the surrender of the license, it will change the status of the license to "terminated-surrendered/cancelled" on the NMLS.

NEW RULE VII FEES (1) All fees must be paid through the NMLS.

AUTH: 32-7-110, 32-7-112, MCA
IMP: 32-7-110, 32-7-112, MCA

STATEMENT OF REASONABLE NECESSITY: Since the department is transitioning to the electronic licensing and renewal platform of the NMLS, all fees must be paid through the NMLS. This includes fees for initial applications and renewals of licenses. Fees will not be directly collected by the department.

NEW RULE VIII REINSTATEMENT OF EXPIRED LICENSES (1) Upon expiration of a license issued under 32-7-110, MCA, due to nonrenewal by the renewal date, the former licensee shall immediately cease from engaging in the activities for which the license was issued. The department may reinstate an expired license, provided that by the last day of February following expiration of the license, the following are submitted through the NMLS:

(a) a properly completed license renewal application;
(b) the license renewal fee as set forth in 32-7-110, MCA;
(c) a reinstatement fee of \$50; and
(d) proof that the licensee continues to meet standards for licensure under 32-7-109, MCA.

(2) An expired license that is not reinstated by the last day of February under (1) is "terminated-expired" and may not be reinstated. The holder of a "terminated-expired" license may reapply as a new license applicant.

AUTH: 32-7-109, 32-7-110, 32-7-112, MCA
IMP: 32-7-109, 32-7-110, 32-7-112, MCA

STATEMENT OF REASONABLE NECESSITY: The NMLS allows persons whose licenses expired on December 31 to reinstate their licenses if they apply within the reinstatement period which runs from January 1 to the last day of February. If the license is not renewed during the reinstatement period, the former licensee must reapply as a new applicant. During the reinstatement period, the applicant must file for reinstatement, pay the renewal fee and the reinstatement fee, and show that it still meets the standards for licensure. The properly completed license renewal form is required by the NMLS. The license renewal fee is set forth in 32-7-110, MCA, and is required by statute for all renewals. The reinstatement is one-half the renewal fee and is being set at this amount by the department to discourage missing the renewal deadline. If an applicant misses the reinstatement deadline as well, they must apply as a new licensee and pay the full new application fee which is the same as the renewal fee.

The department cannot predict with any certainty how many entities will avail themselves of the reinstatement period. This is a new option being provided to them. The department estimates that, at most, less than five entities will miss the renewal deadline and choose to reinstate their license, resulting in total fees of \$250 or less.

5. Concerned persons may present their data, views, or arguments concerning the proposed action in writing to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., September 4, 2014.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kelly O'Sullivan at the above address no later than 5:00 p.m., September 4, 2014.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1 person based on the 11 current escrow business companies licensed.

8. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/AdministrativeRules.mcp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site

accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Representative Jenny Eck, the primary bill sponsor of HB 117 (2013), was notified on July 11, 2014, that the department was beginning to draft rules on the subject by U.S. mail at the address for her on the Secretary of State's register of legislator contact information and her comments were invited. None were received.

11. The department has determined that under 2-4-111, MCA, the proposed new rules will not significantly and directly affect small businesses.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State July 28, 2014.