BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 2.59.1705 pertaining to licensing examination and continuing education provider requirements and the proposed adoption of NEW RULE I pertaining to records to be maintained	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On July 18, 2006, at 10:00 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who 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 July 12, 2006, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

3. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

2.59.1705 LICENSING EXAMINATION AND CONTINUING EDUCATION PROVIDER REQUIREMENTS (1) through (12) remain the same.

(13) The fee for review of an initial and biennial education provider application is ~~$350~~ $100 for the application fee and $50 for each approved continuing education credit hour. All fees are nonrefundable and must be submitted with the application.

(14) and (15) remain the same.

AUTH: 32-9-130, MCA
IMP: 32-9-110, 32-9-118, MCA

REASON: The division has determined that it is reasonably necessary to amend ARM 2.59.1705 in order to ensure that the cost of approving continuing education providers and continuing education credit hours is commensurate with the time allocated by the division's mortgage broker examiners in reviewing and approving the submitted materials. The division has proposed to reduce the initial and biennial education provider application fee from $350 to $100 while adding a $50 fee for

each approved continuing education credit hour. Under the existing rule there is no difference in cost for approving an education provider that submits a course for three credit hours in comparison to an education provider that submits multiple courses that total 40 credit hours. The time allocated by division staff in approving these materials is directly related to the amount of credit hours submitted for approval. The division estimates that for every hour of continuing education submitted it takes an examiner two hours to review and approve the materials. This time allocated includes not only the time spent on the review, but also time dedicated to correspondence with the education provider regarding the courses submitted.

There are currently 12 continuing education providers that the division has approved. The division anticipates that there will be a financial impact on the related costs of approving the continuing education credit hours. Currently the division has approved 374 continuing education credit hours among the 12 approved education providers. Under the proposed rule and based upon the current approved continuing education credit hours the approved education providers would be required to submit fees in the amount of $19,900. The estimate differs from the $4,200 submitted by the education providers under the existing rule. The division does not anticipate any financial impact on the mortgage broker and loan originator licensees.

4. The proposed new rule provides as follows:

NEW RULE I RECORDS TO BE MAINTAINED (1) A mortgage broker shall create and retain a residential mortgage file. The residential mortgage file shall contain:

(a) a record of all cash, checks, or other monetary instruments received in connection with each mortgage loan application showing the identity of the payor, date received, amount, and purpose;

(b) applicant's name, date, name of person taking the application, HUD-1 Settlement Statement, copies of all agreements or contracts with the applicant, including any commitment and lock-in agreements, and all disclosures required by state and federal law signed by the borrower;

(c) correspondence sent and received by the mortgage broker;

(d) a record of any and all contact with the borrower;

(e) a copy of the hazard insurance, which is adequate to cover replacement costs of all improvements on the property securing the loan, including an endorsement naming the investor as the insured, when applicable;

(f) a copy of the statement from the investor authorizing the loan;

(g) a copy of the appraisal;

(h) a copy of the borrower's credit report;

(i) a copy of all documentation used to support the borrower's income;

(j) a copy of all documentation used to support the borrower's assets;

(k) a copy of the promissory note;

(l) a copy of the policy of title insurance on the property securing the loan; and

(m) a copy of all closing documents, including closing instructions and Good Faith Estimate and final Truth in Lending disclosure signed by the borrower.

(2) A mortgage broker shall maintain a trust account records file showing a sequential listing of checks written for each bank account relating to the licensee's business as a mortgage broker, showing at a minimum, check number, the payee, amount, date, and purpose of payment, including identification of the loan to which it relates, if any. The licensee shall reconcile the bank accounts monthly.

AUTH: 32-9-130, MCA
IMP: 32-9-121, 32-9-124, 32-9-125, MCA

REASON: The division has determined that it is reasonably necessary to adopt New Rule I titled Records to be Maintained in order for the division's mortgage broker examination staff to ensure that mortgage broker and loan originator licensees are in compliance with the provisions of the Montana Mortgage Broker and Loan Originator Licensing Act. It is reasonably necessary for the division's mortgage broker examination staff to review the records outlined in New Rule I in order to perform an examination of a licensees' residential mortgage loan files as well as to investigate any complaints filed by Montana consumers against a licensee. In particular, 32-9-124, MCA, prohibits licensees from making any deceptive statements or misrepresentations in connection with a residential mortgage loan as well as employing any scheme to defraud or mislead a borrower. Additionally, this statute also provides that state and federal disclosures be provided to the borrower at the time of application.

The licensee's financial documents required in (1) and (2) of New Rule I is reasonably necessary to ensure that licensees are in compliance with 32-9-125, MCA. This statute sets forth the trust account requirements as well as restrictions on when a licensee may accept a fee when assisting a borrower with a residential mortgage loan. In addition, a review of these financial documents by the division's mortgage broker examination staff may be necessary to determine that a licensee has not violated any prohibited practices outlined in 32-9-124, MCA.

The division does not anticipate any financial impact from this proposed rule. There are currently 120 mortgage broker entities, 29 mortgage broker sole proprietors, 138 individual mortgage brokers, and 292 loan originators licensed in Montana.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Mark Prichard, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to mprichard@mt.gov, and must be received no later than July 24, 2006.

6. Mark Prichard, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Proposed Amendment and Adoption is available through the department's site on the World Wide Web at http://www.banking.mt.gov, under "Administrative Rule Notices." The department strives to make the electronic copy of this Notice of Proposed Amendment and Adoption conform to the official version of the Notice as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy 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 strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. 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 Christopher Romano, 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 cromano@mt.gov, or may be made by completing a request form at any rules hearing held by the Division of Banking and Financial Institutions.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

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

BY: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State June 12, 2006.