

DEPARTMENT OF ADMINISTRATION
DIVISION OF BANKING & FINANCIAL INSTITUTIONS



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To: Montana Residential Mortgage Brokers, Lenders and Servicers
From: Montana Division of Banking and Financial Institutions
Re: Montana Mortgage Supervisory Guidance
Date: October 22, 2019

Dear Licensee:

The Montana Division of Banking and Financial Institutions (Division) conducts routine examinations of mortgage brokers, lenders, and servicers licensed in Montana to analyze compliance with state statutes and federal regulations governing mortgage origination and servicing activities. This guidance is intended to bring attention to deficiencies the Division has identified in routine examinations since 2018. The Division requests that licensees conduct any necessary review of their practices in order to ensure compliance with the applicable statutes and rules.

The deficiencies for origination-related examinations are as follows:

- 1. Montana Mortgage Loan Originator Disclosure:** Failure to provide the Montana Mortgage Loan Originator Disclosure form that is required from mortgage brokers according to [Mont. Code Annotated § 32-9-124\(2\)](#) and [ARM 2.59.1737](#).
- 2. Adverse Action Notice:** Failure to notify an applicant within 30 days after taking adverse action on an existing account, pursuant to [12 C.F.R. § 1002.9\(a\)\(1\)\(iii\)](#).
- 3. Adverse Action Information:** Failure to include information about the primary regulator on the Adverse Action Form as required by [12 C.F.R. § 1002 – Appendix A](#).
- 4. Tolerance Cures:** Failure to cure zero tolerance charge(s) within 60 days of consummation, per [Mont. Code Annotated § 32-9-148\(1\)](#) and [12 C.F.R. § 1026.19\(e\)\(3\)\(i\)](#).
- 5. Record Maintenance:** Failure to maintain a residential mortgage loan file including all applicable documents for five years, pursuant to [Mont. Code Annotated § 32-9-121\(2\)](#) and [ARM 2.59.1710](#) (mortgage broker) and/or [ARM 2.59.1724](#) (mortgage lender).
- 6. Records Maintenance – Loan List:** Failure to maintain an accurate spreadsheet of all residential mortgage broker applications taken pursuant to [ARM 2.59.1710\(1\)\(c\)](#).
- 7. Records Maintenance – Signatures:** Failure to maintain copies of the loan estimate and closing disclosure required by the TILA-RESPA Integrated Disclosure rule, which must be signed and dated by the borrowers, pursuant to [ARM 2.59.1710\(2\)](#).
- 8. Early Disclosures:** Failure to provide required disclosures by the third business day after receiving an application, pursuant to [12 C.F.R. § 1026.19\(e\)\(1\)\(iii\)](#).

9. **Closing Disclosure:** Failure to ensure that the borrower receives the disclosures required under [12 C.F.R. § 1026.19\(f\)\(1\)\(ii\)](#) no later than three business days before consummation.
10. **Engaging in Prohibited Practices – Signing Documents of Behalf of Others:** Failure to abide by [Mont. Code Annotated § 32-9-124\(1\)\(f\)](#) which states, “A mortgage broker may not do any of the following: sign a borrower’s application or related documents on behalf of or in lieu of another mortgage broker, mortgage lender, or mortgage loan originator.”
11. **NMLS Unique Identifier:** Failure to put the NMLS unique identifier on all application forms, solicitations, advertisements, including business cards or web site, according to [Mont. Code Annotated § 32-9-149\(4\)](#).
12. **Record of Contact:** Failure to maintain a record of contact between the mortgage loan originators and the borrowers specific to the discussions about the rate, term, or conditions of the loan, pursuant to [ARM 2.59.1710](#) (mortgage broker) and [ARM 2.59.1724](#) (mortgage lender).
13. **Appraisal Fee:** Pursuant to [12 C.F.R. § 1026.19\(e\)\(2\)\(i\)\(A\)](#), a mortgage broker or lender may not impose a fee for an appraisal on a borrower prior to disclosing the Loan Estimate and receiving intent to proceed.
14. **Mortgage Call Report:** Failure to file timely mortgage call reports according to [Mont. Code Annotated § 32-9-151](#).
15. **Altering Documents:** [Mont. Code Annotated § 32-9-124](#) and [ARM 2.59.1755](#) prohibit a licensee from altering loan documents which includes the use of correction fluid or tape and cutting and pasting signatures and dates.

The deficiencies for servicing-related examinations are as follows:

1. **Billing Statement:** Failure to provide the borrower with a complete billing statement, per [12 C.F.R. § 1026.41\(a\)\(2\)](#). The billing statement must contain the following items, grouped together in close proximity and located on the first page of the statement: The total of all payments received since the last statement, including a breakdown showing the amount, if any, that was applied to principal, interest, escrow, fees and charges, and the amount, if any, sent to any suspense or unapplied funds accounts.
2. **Servicing Transfer Disclosure:** Failure by the transferor servicer to provide the borrower a notice of servicing transfer not less than 15 days before the effective date, pursuant to [12 C.F.R. § 1024.33\(b\)\(3\)\(i\)](#).
3. **Record Maintenance:** Failure to maintain a mortgage servicing file and all applicable documents for five years, pursuant to [Mont. Code Annotated § 32-9-121\(2\)](#) and [ARM 2.59.1744](#).
4. **Forced Placed Insurance:** [Mont. Code Annotated § 32-9-169\(5\)](#) specifies that a mortgage servicer may not fail to refund a borrower unearned premiums charged to a borrower for hazard, homeowner’s, or flood insurance placed by a mortgage lender or mortgage servicer if the borrower provided reasonable proof that the borrower has obtained coverage.

If you find that your company is deficient in any of the above noted items, please take corrective action immediately. Failure to do so may result in administrative disciplinary action, including civil penalties of up to \$5,000 for the first violation and not to exceed \$10,000 for subsequent violations pursuant to [Mont. Code Annotated § 32-9-133](#).

Please feel free to contact us if you have any questions regarding mortgage examinations.

Sincerely,

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