

Frequently Asked Questions for Residential Mortgage Originator and Servicer

What are the requirements to be licensed as a residential mortgage originator under Chapter 58?

Significant changes were made to Chapter 58 by the 2007 legislation. Effective August 1, 2007, a mortgage originator licensee under Chapter 58 must be a business entity and must have and maintain at all times one of the following: approval as a mortgagee by HUD or the FNMA; a tangible net worth of \$250,000; or a surety bond or irrevocable letter of credit in the amount of \$50,000. Natural persons will no longer be licensed as mortgage originators. Effective August 1, 2007, exemptions from licensure for certain insurance agents and real estate agents are no longer available.

What happens to an individual (natural person) after July 31, 2007, who is currently licensed as a mortgage originator?

In order to continue in business as a licensed mortgage originator, that individual would have to form a business entity, e.g. incorporate, meet the net worth/surety bond requirements and have his/her application approved by the October 30 renewal date. Another option would be for the individual to go to work for a licensed entity.

When is the renewal date for current licensees under Chapter 58?

The July 31, 2007, renewal date for licensees has been pushed back to October 30 to give licensees more time to comply with the new requirements.

I am a loan officer working for a licensed mortgage originator. Do I need a license?

No, but your employer must do a background check on you, must maintain your name on a perpetual roster of loan officers, and by March 1, 2008, must affirm that you have completed the mandatory 15 hours of education covering state and federal laws concerning residential mortgage lending.

Do I need a license if I am an independent contractor to a licensed residential mortgage originator?

No. As indicated above, beginning August 1, 2007, the Department will no longer license natural persons as mortgage originators. The licensee you are associated with, however, must do a background check on you, maintain your name on a perpetual roster of loan officers, and by March 1, 2008, must affirm that you have completed the mandatory 15 hours of education covering state and federal laws concerning residential mortgage lending.

What if I want to continue to be a mortgage originator and not work for someone else?

You would have to form a business entity and meet the net worth or surety bond requirements and have your application approved by October 30, 2007.

Can I work as a mortgage originator if I have been convicted of a crime?

Effective January 1, 2006, any individual who has been convicted of a crime involving dishonesty, breach of trust, or money laundering, may not serve as a mortgage originator as that term is defined in the statute, without the prior written consent of the commissioner. This restriction is contained in Section 58.125 of the Minnesota Statutes and additional information is contained on the application pursuant to Section 58.125 which is available on this website. There is no "grandfathering" associated with this restriction. The application to serve would be filed by the licensee that proposes to employ the individual. The criteria for deciding applications under Section 58.125 are set forth on the third page of the 58.125 application. With respect to convictions for other crimes, all felonies, gross misdemeanors and misdemeanors (except traffic violations) must be disclosed on the application. Applications which disclose criminal violations are reviewed and decided based on individual circumstances.

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Are there any exemptions from getting a license?

Chapter 58 provides for several exemptions from the licensing requirements, some of which need a Certificate of Exemption. The most common exemptions are financial institutions as that term is defined in Section 58.02, subd. 10. Real estate brokers and insurance agents are no longer exempt under 58.04, subd. 1, as of August 1, 2007.

Are there any provisions for waiver of the licensing requirements?

The 2007 legislation added a provision permitting the commissioner, for good cause shown, to waive any requirement with respect to an initial license application or to permit an applicant to submit substitute information in an application. This authority will likely be used sparingly.

If I am FHA, VA or HUD approved, do I need a license or am I exempt?

You still need a residential mortgage originator license. Being FHA, VA, or HUD approved does not exempt you from the licensing requirements.

Does a bank that makes or services residential mortgage loans have to apply for a license or Certificate of Exemption?

Chapter 58 does not apply to a bank, savings bank, savings association or credit union, or to any subsidiary of them, that is subject to supervision by either a federal regulatory agency or the Commissioner of Commerce. However, many of the standards of conduct found in Section 58.13 and the prepayment penalty law found in Section 58.137, subd. 2 and 3 do apply to banks, credit unions and their subsidiaries.

State chartered banks are exempt from the Minn. Stat. section 58.04 licensing requirements and therefore exempt from maintaining a roster of employees and independent contractors and their education dates under section 58.06. This implies that state banks are completely exempt from the education requirements of section 58.126. A Minnesota state-chartered bank has asked whether both its employees and independent contractors are exempt from the education requirements of the revised Chapter 58?

State banks are exempt from the licensing requirements of Chapter 58 and a state bank's employees would be exempt from the education requirements of Chapter 58. With respect to independent contractors, if they were subject to the same level of control and supervision as bank employees (employed by only one bank, subject to the same background check requirements as bank employees, subject to compliance with the provisions of 12 USC 1829(a) which is very similar to the requirements of section 58.125, subject to bank policies concerning conflicts of interest, etc.) it is possible that a bank's independent contractor(s) could be exempt from the mandatory education requirements. These determinations would be made by the Department on a case-by-case basis and the individual bank would have to request such a determination in writing and provide all relevant information.

Do I need both an originator license and a servicer license if I perform both activities?

No. Minnesota Statutes, Section 58.04, subd. 2(b)(1) exempts an entity from the servicer licensing requirements if the entity is licensed as a residential mortgage originator. A mortgage servicer must provide a \$100,000 surety bond or letter of credit. However, an originator or servicer who is approved by FNMA or FHLMC would not have to provide a bond or a letter of credit.

What license do I need if I am brokering commercial mortgage loans?

You must obtain a Real Estate Broker or Salesperson license if you are acting "for another and for a fee." A Limited Broker license is required if you are acting as "principal." Contact the Commerce Licensing Division at 651-296-6319 or licensing.commerce@state.mn.us for information about how to obtain a Real Estate Broker license or a Limited Broker license.

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What license is needed to make junior lien loans?

The mortgage originator license allows a licensee to make any type of residential real estate loans. The authority to charge high rates on junior lien loans is an issue, however, because Section 58.136 requires all lenders to comply with Minnesota usury laws. An out-of-state lender is not permitted to “import” interest rates into Minnesota. Currently, licensed mortgage originators may use the indexed rate authority of Minnesota Statute, Section 47.20, subd. 4a. That monthly indexing can be found on the Commerce website under Industry Info and Services > Financial Services. That rate applies to loans with a principal amount of less than \$100,000. If a lender seeks to charge higher rates on junior lien loans, an Industrial Loan and Thrift Company license (Chapter 53) would be required. That application is available on the Commerce website under Licenses, Registration, Certification > Other Financial Services.

Does an out-of-state mortgage company need to have a physical presence in Minnesota to be licensed and do business?

A physical presence is not required. However, you should contact the Minnesota Secretary of State (www.sos.state.mn.us or 651-296-2803) for information on registering as a foreign corporation.

I only make a couple of loans a year in Minnesota. Do I need a license or can I get an exemption?

A “person” (broadly defined) that is not in the business of making or servicing residential mortgage loans and makes no more than three such loans, with its own funds, during any 12-month period, is exempt. All of the criteria must be satisfied in order to be exempt.

How do we register or get a license for a branch office?

Minnesota does not require registration or licensing of branch offices. Written notification of any branch locations within the State of Minnesota is required as part of the application.

How long is a license good for?

All residential mortgage originator and servicer licenses are valid through July 31 of each odd-numbered year. If you have a Certificate of Exemption, there is no expiration date. The Certificate of Exemption is valid as long as the information contained in the application that was the basis for the exemption remains the same. The July 31, 2007, renewal date for mortgage originators has been pushed back to October 30, 2007, to enable licensees sufficient time to meet the new requirements.

What are the initial application fees?

Prior to August 1, 2007, the initial license application fee for a mortgage originator is \$425.

Effective August 1, 2007, the initial license application fee for a residential mortgage originator will be \$2,125. The initial license application fee for a residential mortgage servicer is \$1,000. A Certificate of Exemption application fee is \$100. All fees are nonrefundable unless an overpayment of a fee was made.

When must a licensee renew its license?

The residential mortgage servicer licenses expire July 31, 2007, and each odd-numbered year after that. Renewal materials will be mailed to all licensees 1 to 2 months prior to the expiration date. An application for a renewal license is due July 15 of the renewal year. The Certificate of Exemption does not have an expiration date. The July 31, 2007, renewal date for mortgage originators has been pushed back to October 30, 2007.

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What are the renewal fees?

The residential mortgage originator license renewal fee is \$1,125. The residential mortgage servicer license renewal fee is \$500. If you are currently licensed as an individual, and you will be forming a business entity to meet the new (2007) requirements, that application would be considered a new application and not a renewal.

Do I have to file an annual report with the Department of Commerce?

No. However, a licensee must notify the Commissioner of Commerce of any material changes to the information submitted in the most recent application within ten (10) days of the change. However, an annual report may need to be filed with the Minnesota Secretary of State (www.sos.state.mn.us or 651-296-2803). Also, beginning August 1, 2007, a licensee would have to continuously meet the net worth/surety bond requirements.

Are there any educational requirements to get a license?

The 2007 legislation added a requirement that individuals engaged in residential mortgage origination and making residential mortgage loans, including employees and independent contractors, must complete 15 hours of educational training that has been approved by the commissioner and covering state and federal laws concerning residential mortgage lending. This requirement has an effective date of March 1, 2008. The licensee will be required to assure that this requirement has been completed. Provided that the training has been approved by the commissioner, the Department will give credit for education completed within two years prior to August 1, 2007. Likewise, training approved by other states may qualify to satisfy at least part of the training requirement.

What kind of records are licensees required to maintain and how long must such records be maintained?

A licensee or exempt person must keep and maintain for 26 months the business records regarding residential mortgage loans applied for, originated, or serviced in the course of its business. Records may be electronically maintained and stored records must meet the minimum standards found in Minnesota Statutes, Section 46.04, subd. 3.

Under what circumstances must a licensee have a trust account?

A licensee or exempt person must deposit into a trust account any funds received from a borrower that are held in a fiduciary capacity for later distribution. A trust account, which may be a segregated checking account, is required for funds received in advance for later distribution. Examples of trust funds are appraisal fees, credit report fees, taxes or insurance premiums. Trust funds include commitment, lock, extended lock and advance fees. If advance fees are collected the trust account must be controlled by an unaffiliated accountant, attorney, or bank, in a Minnesota financial institution.

Can we do business under an assumed name?

A licensee may do business under no more than one name or title. In other words, a licensee can apply to the Secretary of State and file an assumed name to be added to the license. However, if business is conducted with more than one assumed name, an additional license would have to be obtained.

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How do I notify you of an address change? Is there a fee?

Any material changes to the information that was submitted with the initial application must be made within ten (10) days of the change. Address changes may be done by completing the Address Change Form (no fee), or done online using the PULSE system at www.pulseportal.com. A licensee must use their Federal Employer Identification Number, Mortgage Originator/Servicer License Number and Zip Code to make the change online. An amended license can be printed once the transaction is completed. There is a convenience fee (\$2.25) for this service.

We are no longer doing business in Minnesota. What should we do?

A licensee that ceases activity that is regulated under Chapter 58 must notify the Commissioner of Commerce, in writing and, at the same time, surrender the license. The licensee must also include a plan for the withdrawal from the business, including a timetable for the disposition of the business.

What is the disciplinary authority of the Commerce Department with regard to licensed mortgage originators and servicers?

As with other licenses issued by the Commerce Department, the Department may deny, suspend or revoke a license. A licensee may also be censured or a civil penalty imposed for violations.

How can I get answers to any other questions I may have?

You may contact us by telephone at 651-282-9855 or contact us by e-mail at financial.commerce@state.mn.us