

## **(NEW RULE ADOPTION)**

### **441-880-0009**

#### **Commercial Construction Lending Exemption**

- (1) An individual need not obtain a mortgage loan originator license under ORS 86A.200 to 86A.239 to make a residential mortgage loan in which the borrower will use the funds to construct, alter, move, enlarge, replace, repair, or develop land for one to four dwelling units designed or suitable for residential occupancy subject to the following conditions:
  - (a) The borrower does not intend to reside in the completed dwelling;
  - (b) The lender verifies that the borrower is licensed by the Construction Contractors Board as a contractor and holds an endorsement as a:
    - (A) Residential general contractor;
    - (B) Residential specialty contractor;
    - (C) Residential limited contractor; or
    - (D) Residential developer.
  - (c) The lender determines that the loan is not for personal, family, or household purposes. In making this determination, the lender shall consider:
    - (A) The borrower's relationship between her primary occupation and the acquisition;
    - (B) The degree to which the borrower will personally manage the acquisition;
    - (C) The ratio of income from the acquisition to the total income of borrower;
    - (D) The size of the transaction;
    - (E) The borrower's stated purpose of the loan; and
    - (F) Other relevant factors that would indicate the loan is for commercial purposes.
  - (d) The lender does not collect a consumer's financial information that would require the lender to provide a loan estimate under 12 C.F.R. § 1026.19(e);
  - (e) The lender does not advertise that, or otherwise suggest by statements or conduct that, the limited liability company engages in the business of making residential mortgage loans;
  - (f) Neither the borrower nor the lender structures a transaction as to evade licensing requirements for mortgage bankers, mortgage brokers, or mortgage loan originators;
  - (g) The lender does not engage in prohibited conduct or activities under ORS 86A.183;

- (h) The individual does not engage in prohibited conduct or activities under ORS 86A.236;
  - (i) The lender maintains records documenting its compliance with all conditions under this exemption and makes such records available to the Director upon request. Records must be maintained for a period of five years after each loan is made. A lender may maintain records in any electronic format capable of being reduced to written form; and
  - (j) In addition to the records that the lender is required to maintain under OAR 441-880-0010 (1)(k), the lender maintains records used to make the residential mortgage loan, including, but not limited to, tax returns, bank statements, financial statements, annual operating statements, and business operating statements. Applications for commercial construction loans should be limited to balance sheets and other information customarily collected for commercial real estate lending.
- (2) Section (1) of this rule is self-executing and does not require filing or a fee.
- (a) Persons relying on exemptions from licensing have the burden of proof in establishing the availability of the exemption.
  - (b) If the lender fails to document and maintain records of a transaction, the rebuttable presumption is that the transaction required a mortgage banker license and a mortgage loan originator should have taken the loan application.

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 86A.203

Hist.: New.