



ADMINISTRATIVE RULES OF MONTANA

2.59.1724 RECORDS TO BE MAINTAINED BY MORTGAGE LENDERS

- (1) All licensees shall maintain and preserve financial records concerning business operations, transactions with customers, and escrow account transactions.
- (2) Any books, accounts, or records required to be maintained by the department may be maintained in paper, electronic, or digital format approved by the department provided the records shall be made available to the department as required by the statutes and rules, and at the request of the department, the records shall be printed or transferred to a format that is usable by the department.
- (3) A mortgage lender shall create and maintain the following records:
 - (a) copies of all disclosures required by 32-9-148, MCA;
 - (b) copies of all payroll records, including federal and state withholding tax forms, W-2s, and 1099 forms filed with the Internal Revenue Service by the licensee or its agent on behalf of individuals employed by the licensee or on behalf of individuals acting as independent contractors in the mortgage lending business;
 - (c) a general ledger and subsidiary records sufficient to produce, when requested by the department, an accurate monthly statement of assets and liabilities, and a cumulative profit and loss statement for the current operating year;
 - (d) all checkbooks, bank statements, deposit slips, and cancelled checks that pertain to the mortgage lending business of the licensee;
 - (e) supporting documentation for all expenses and fees paid by the mortgage lender on behalf of the customer; and
 - (f) copies of all credit report bills received from all credit reporting agencies for the most recent five-year period.
- (4) Mortgage lenders shall maintain an employee file for each employee that contains all documents related to the hiring of the employee, including name, date of birth, position or title and responsibilities, starting date, and date and reason for termination of employees. For purposes of this rule, employee shall include employees, independent contractors, and consultants who are involved in loan origination, loan servicing, loan negotiations, investor solicitation, or who transact business with borrowers or lenders.
- (5) Financial records must include, at a minimum:
 - (a) a record of all monies received from borrowers, such as a cash receipts journal, showing at least:

- (i) name of payor;
 - (ii) date of receipt;
 - (iii) amount received;
 - (iv) purpose of receipt including identification of the loan to which it relates, if any; and
 - (v) disposition of all monies received including the date and place of deposit or, if not deposited, the date, name of the person who received the monies, and the manner in which the monies were transmitted;
 - (b) a sequential listing of all checks written for each bank account relating to the licensee's business, such as a cash disbursement journal, showing at least:
 - (i) name of the payee;
 - (ii) date of payment;
 - (iii) amount of the payment; and
 - (iv) purpose of the payment including identification of the loan to which it relates, if any;
 - (c) bank account activity source documents for every account maintained for the licensee's business including at least:
 - (i) receipted deposit tickets and if "less cash deposits" are made, an explanation of the use of the cash;
 - (ii) paid checks if available and if these items are truncated, a copy of a document authorizing the department to request and receive copies of processed items from the financial institution;
 - (iii) bank advices, including, but not limited to, debit and credit notices and overdraft notices; and
 - (iv) monthly or periodic statements;
 - (d) detail on wire transfers into or out of the account(s) including:
 - (i) the name of the person who is the payor or payee;
 - (ii) date;
 - (iii) amount;
 - (iv) purpose of receipt or payment; and
 - (v) identification of the loan to which it relates, if any; and
 - (e) a record or file of all monies owed by the licensee, such as an accounts payable journal.
- (6) Mortgage lenders shall maintain all borrower and investor complaints except complaints unrelated to borrower or investor transactions. Complaint files shall include:
- (a) copies or originals of all written complaints by borrowers and investors maintained in a separate complaint file by the individual's name in alphabetical order;
 - (b) a copy of the response;

- (c) copies of correspondence related to the complaints; and
 - (d) a written disposition of the complaint.
- (7) Mortgage lenders shall maintain residential borrower files that must include:
- (a) a copy of each loan application form;
 - (b) a copy of each executed fee agreement, if prepared;
 - (c) in the case of residential or single family loans, a borrower acknowledged statement that a loan interest rate will float;
 - (d) a copy of the executed lock agreement, if used. The lock agreement must specify at a minimum:
 - (i) the date of the agreement;
 - (ii) the file identification and property address;
 - (iii) the lock-in rate;
 - (iv) the lock expiration date;
 - (v) a disclosure that the lock may be subject to change if any of the loan factors change;
 - (vi) the loan type (fixed, adjustable rate mortgage, other); and
 - (vii) a disclosure that if the lock expires, the rate and points are subject to change;
 - (e) the term of the loan;
 - (f) the loan fee and discount, if any;
 - (g) copies of all good faith estimates prepared pursuant to Regulation X (24 CFR 3500);
 - (h) a copy of the executed authorization to release credit information form;
 - (i) a copy of final credit report, or the report relied upon for the loan decision, if other than the final credit report, received on the borrower including documentation of borrower payment history;
 - (j) all documents relating to the credit, underwriting, and pricing decisions of each loan file irrespective of whether the application has been denied, approved, or withdrawn;
 - (k) all notes and comments by anyone working on the loan file;
 - (l) a copy of the truth in lending disclosure statements made pursuant to Regulation Z (12 CFR 226);
 - (m) a copy of the final U.S. Housing and Urban Development (HUD) settlement statement;
 - (n) a copy of all denial letters;
 - (o) a copy of all appraisals;
 - (p) a copy of all disclosures, handbooks, and pamphlets required by federal law; and
 - (q) copies of the loan estimate and closing disclosures required by the TILA-RESPA Integrated Disclosure rule, which must be signed and dated by the borrowers (12 CFR 1024 and 1026).

- (8) Advertising records must be maintained for five years following the last date of publication of the advertisement. All licensees shall maintain copies of:
 - (a) all printed advertising published in newspapers, magazines, newsletters, or other media designed for mass distribution; and
 - (b) scripts, or audio- and videotapes, for advertising broadcast on radio or television.
- (9) Escrow account records must be maintained as follows:
 - (a) a licensee shall deposit all trust funds received from a client into the escrow depository and shall keep such funds in the escrow depository until the written escrow instructions agreed to by all parties have been fulfilled;
 - (b) a licensee shall not commingle any monies received from a client for deposit into an escrow account with personal funds of the licensee. For purposes of this rule, the following shall not constitute commingling of trust funds with personal funds provided the funds are removed from the trust account within 30 days:
 - (i) earned, but untransferred, interest income accruing to the licensee pursuant to a written agreement with the client; or
 - (ii) earned, but untransferred, fees due the licensee;
 - (c) every deposit into a neutral escrow depository shall be accompanied by a letter of transmittal that shall include a written notation of the file identification assigned to the transaction on whose behalf the deposit is made. Compliance with this rule may be satisfied when a licensee has attached a copy of the client's check to the letter of transmittal.
- (10) With respect to mortgage loans for which a commitment has been issued but the loan has not yet closed and funded, each mortgage lender shall maintain a pipeline report or reports, updated on a monthly basis, that provides the following information, both by state and in the aggregate:
 - (a) total number and dollar amount of such loans;
 - (b) type of loan (i.e., purchase money, refinance, etc.);
 - (c) total number and dollar amount of all such loans having a locked-in interest rate and total number and dollar amount of such loans whose interest rate is not locked in;
 - (d) the date the commitment was issued; and
 - (e) any fees collected from the borrower up to the date of commitment by any party to the mortgage transaction.
- (11) For each line of credit to the lender, a mortgage lender shall maintain a report, or equivalent documentation, updated monthly, listing:
 - (a) each advancement of funds from the line of credit that reflects the date of the advancement;
 - (b) the name of the borrower;
 - (c) the date that the mortgage loan closed; and
 - (d) the date the funds were forwarded to satisfy its obligation for the advancement from the line of credit.

- (12) Each mortgage lender shall maintain a list, by state, of the closing agents or attorneys that it uses that contains, at a minimum, the name, address, and telephone number of the closing agent or attorney.
- (13) Mortgage lenders shall maintain a mortgage loan application log showing:
 - (a) the first and last name of the borrower(s);
 - (b) the property address (street, city, state, and zip code);
 - (c) the phone number of the borrower(s);
 - (d) the initial application date;
 - (e) the date the credit report was requested for the borrower(s);
 - (f) the loan amount;
 - (g) the status of the loan (pending, closed, withdrawn, cancelled, denied);
 - (h) the total fees received indirectly or directly by the mortgage lender at the closing of the loan;
 - (i) the total fees paid to the mortgage loan originator;
 - (j) the loan funding source;
 - (k) the service release premium; and
 - (l) the name of the individual mortgage loan originator who originated the loan.
- (14) For borrower loans that are funded directly or indirectly by investors who are individuals, the following must be maintained by the lender:
 - (a) a copy of the written evidence of obligation and the instrument creating the investor's lien or assignment of the lien;
 - (b) a copy of documents evidencing that the instrument creating the lien or assignment has been recorded; and
 - (c) copies of guarantees, surety agreements, any recourse agreements or guarantees, and correspondence related to any statements made to the investor or any investment made by the investor.

Authorizing statute(s): 32-9-130, MCA

Implementing statute(s): 32-9-121, 32-9-145, MCA

History: NEW, 2010 MAR p. 307, Eff. 2/12/10; AMD, 2015 MAR p. 2249, Eff. 12/25/15.