

# Chapter 26: Related Real Estate Law

An \* in the left margin indicates a change in the statute, rule or text since the last publication of the manual.

## I. Preowned Home Warranty Service Contracts

*Colorado Revised Statutes § 12-61-601. Repealed*

### *12-61-602. Definitions.*

As used in this part 6, unless the context otherwise requires:

- (1) Repealed.
- (2) Repealed.
- \* (3) “Person” includes an individual, company, corporation, association, agent, and every other legal entity.
- \* (4) “Preowned” means a single-family residence, residential unit in a multiple-dwelling structure, or mobile home on a foundation that is occupied as a residence and not owned by the builder-developer or first occupant.
- \* (5) “Preowned home warranty service company”, referred to in this part 6 as the “company”, means any person who undertakes a contractual obligation on a preowned home through a preowned home warranty service contract.
- \* (6) (a) “Preowned home warranty service contract” means any contract or agreement whereby a person undertakes for a predetermined fee, with respect to a specified period of time, to maintain, repair, or replace any or all of the following elements of a specified preowned home:
  - (I) Structural components, such as the roof, foundation, basement, walls, ceilings, or floors;
  - (II) Utility systems, such as electrical, air conditioning, plumbing, and heating systems, including furnaces; and
  - (III) Appliances, such as stoves, washers, dryers, and dishwashers.
- (b) “Preowned home warranty service contract” does not include any contract or agreement whereby a public utility undertakes for a predetermined fee, with respect to a specified period of time, to repair or replace any or all of the elements of a specified preowned home as specified in subparagraph (II) or (III) of paragraph (a) of this subsection (6).

*12-61-603. Repealed.*

*12-61-604. Repealed.*

*12-61-605. Repealed.*

*12-61-606. Repealed.*

*12-61-607. Repealed.*

*12-61-608. Repealed.*

*12-61-609. Repealed.*

**12-61-610. Repealed**

**12-61-611. Purchase of service contract not to be compulsory.**

No company selling, offering to sell, or effecting the issuance of a preowned home warranty service contract under this part 6 shall in any manner require a home buyer or seller, or prospective home buyer or seller, or person refinancing a home to purchase a preowned home warranty service contract.

**12-61-611.5. Contract requirements.**

- (1) Every preowned home warranty service contract shall contain the following information:
  - (a) A specific listing of all items or elements excluded from coverage;
  - (b) A specific listing of all other limitations in coverage, including the exclusion of pre-existing conditions if applicable;
  - (c) The procedure that is required to be followed in order to obtain repairs or replacements;
  - (d) A statement as to the time period, following notification to the company, within which the requested repairs will be made or replacements will be provided;
  - (e) The specific duration of the preowned home warranty service contract, including an exact termination date that is not contingent upon an unspecified future closing date or other indefinite event;
  - (f) A statement as to whether the preowned home warranty service contract is transferable;
  - (g) A statement that actions under a preowned home warranty service contract may be covered by the provisions of the “Colorado Consumer Protection Act” or the “Unfair Practices Act”, articles 1 and 2 of title 6, C.R.S., and that a party to such a contract may have a right of civil action under such laws, including obtaining the recourse or penalties specified in such laws.

**12-61-612. Penalty for violation.**

Any person who knowingly violates any provision of this part 6 commits a class 2 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S. Each instance of violation shall be considered a separate offense.

**12-61-613. Repealed**

**12-61-614. Prohibitions.**

It shall be unlawful for any lending institution to require the purchase of preowned home warranty insurance as a condition for granting financing for the purchase of said home.

**12-61-615. Repeal of part.**

This part 6 is repealed, effective July 1, 2008. Prior to such repeal, the provisions in this part 6 shall be reviewed as provided for in section 24-34-104, C.R.S.

## **II. Manufactured Home Installation and Sellers of Manufactured Homes**

**24-32-3301. Legislative declaration.**

- (1) The general assembly hereby finds, determines, and declares that
  - (a) comprehensive regulation of the manufacture of factory-built structures to ensure safety is a matter of statewide concern.

- (b) The comprehensive regulation of the installation of manufactured homes to ensure safety, affordability and performance is a matter of statewide and local concern.
  - (c) The protection of Colorado consumers who purchase manufactured homes from fraud and other unfair business practices is a matter of statewide concern and consumers can best be protected by:
    - (I) Requiring registration of persons engaged in the business of selling manufactured homes;
    - (II) Imposing uniform escrow and bonding requirements upon persons engaged in the business of selling manufactured homes; and
    - (III) Requiring persons engaged in the business of selling manufactured homes to include specified disclosures and provisions in any contract for the sale of a manufactured home.
  - (d) The imposition of registration requirements upon sellers of manufactured homes by both the state and political subdivisions of the state would impose an undue burden upon sellers of manufactured homes and discourage the sale of manufactured homes.
  - (e) The uniform registration, escrow and bonding, and contract requirements imposed on sellers of manufactured homes by this part 33 are exclusive and no political subdivision of the state shall impose any additional registration, escrow and bonding, or contract requirements on the sellers.
- (2) The general assembly further declares that in enacting this part 33, it is the intent of the general assembly that the division establish through board rules as it deems necessary to ensure:
- (a) The safety of factory-built structures;
  - (b) Consumer safety in the purchase of manufactured homes;
  - (c) The registration of manufactured home installers and the creation of uniform standards for the installation of manufactured homes on a statewide basis; and
  - (d) The safety of hotels, motels and multi-family structures in areas of the state where no construction standards for hotels, motels and multi-family structures exist.
- \* (3) The general assembly further declares that the factory-built structure programs administered and rules adopted pursuant to this part 33 shall apply only to work performed in a factory or completed at a site using components shipped with the factory-built structure as reflected in the approved plans for the factory-built structure.

***24-32-3302. Definitions. As used in this part 33, unless the context otherwise requires:***

- (1) “Authorized quality assurance representative” means any quality assurance representative approved by the division pursuant to section 24-32-2202 (1) (c).
- (2) “Board” means the state housing board created in section 24-32-706.
- (3) “Certificate of installation” means a certificate issued by the division for an installation of a manufactured home that meets the requirements of this part 33.
- (4) “Certified installer” means an installer of manufactured homes who is registered with the division and who has installed at least five manufactured homes in compliance with the manufacturer’s instructions or standards created by the division pursuant to this part 33.
- (5) “Dealer” means any person engaged in the sale, leasing or distribution of new manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

- (6) “Defect” means any deviation in the performance, construction or components or material of a manufactured home that renders the home or any part thereof not fit for the ordinary use for which it was intended.
- (7) “Distributor” means any person engaged in the sale and distribution of manufactured homes for resale.
- (8) “Division” means the division of housing created in section 24-32-704.
- (9) “Factory-built nonresidential structure” means any structure or component thereof designed primarily for commercial, industrial or other nonresidential use, either permanent or temporary, including a manufactured unit that is wholly or in substantial part made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a permanent or temporary foundation at the building site.
- (10) “Factory-built residential structure” means a manufactured home constructed to the building codes adopted by the board and designed to be installed on a permanent foundation, except for homes constructed to a federal manufactured home construction and safety standard and any home designated as a mobile home.
- (11) “Factory-built structure” means factory-built nonresidential and factory-built residential buildings.
- (12) “Federal Act” means the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. sec. 5401 et seq.
- (13) “Federal manufactured home construction and safety standard” means any standard promulgated by the secretary of the United States department of housing and urban development pursuant to the federal act.
- (14) “Imminent safety hazard” means an imminent and unreasonable risk of death or severe personal injury.
- (15) “Independent contractor” means a local jurisdiction, individual, private firm, housing inspector, or engineer who has been approved by the division to perform or enforce installation inspections.
- (16) “Installation” means the placement of a manufactured home on a permanent or temporary foundation system. “Installation” includes, without limitation, supporting, blocking, leveling, securing, or anchoring the home and connecting multiple or expandable sections of the home.
- (17) “Installer” means any person who performs the installation of a manufactured home.
- (18) “Local government” means the government of any town, city, county, or city and county.
- (19) “Manufacture” means the process of making fabricating, constructing, forming, or assembling a product from raw, unfinished, or semi-finished materials.
- (20) “Manufactured home” means any preconstructed building unit or combination of preconstructed building units that
  - (a) Include electrical, mechanical, or plumbing services that are fabricated, formed or assembled at a location other than the site of the completed home;
  - (b) Is designed for residential occupancy in either temporary or permanent locations;
  - (c) Is constructed in compliance with the federal act, factory-built residential requirements or mobile home standards
  - (d) Does not have motor power; and
  - (e) Is not licensed as a recreational vehicle.
- (21) “Manufactured home construction” means all activities relating to the assembly, manufacture, major repair, or alteration of a manufactured home, including but not limited to activities related to durability, quality and safety.

- (22) “Manufactured home safety” means the performance of a manufactured home in such a manner that the public is protected against any unreasonable risk of occurrence of accidents due to the design or construction of the manufactured home or any unreasonable risk of death or injury to the user or to the public if accidents do occur.
- (23) “Manufacturer” means any person who constructs or assembles a manufactured residential or nonresidential structure in a factory or other off-site location.
- (24) “Mobile home” means a manufactured home built prior to the adoption of the federal act.
- (25) “Modular home” means a factory-built residential structure.
- (26) “Owner” means the owner of a manufactured home.
- (27) “Principal” means an officer of a corporation, a member of a limited liability company, a general partner of a partnership, the sole proprietor of a sole proprietorship, or any person who has a financial interest of ten percent or more in any legal or commercial entity.
- (28) “Production review” means an evaluation of a manufacturer and a facility’s ability to follow approved plans, standards, codes, and quality control procedures during manufacture.
- (29) “Purchaser” means the first person purchasing a manufactured home in good faith for purposes other than resale.
- (30) “Quality assurance representative” means any state, firm, corporation, or other entity that proposes to conduct production reviews, evaluate a manufacturer’s quality control procedures, and perform design evaluations for manufactured housing units.
- (31) “Registered installer” means an installer who has registered with the division, but who has not yet installed five manufactured homes that have been inspected by the division for compliance with the manufacturer’s instructions or standards created by the division pursuant to this part 33.
- (32) “Secretary” means the secretary of the United States department of housing and urban development.
- (33) “Site” means the entire tract, subdivision, or parcel of land on which manufactured homes are installed.

**24-32-3303. Division of housing – powers and duties.**

- (1) The division shall have the following powers and duties pursuant to this part 33:
  - (a) To administer and enforce uniform construction and maintenance standards adopted by the board pursuant to this part 33.
  - (b) To conduct continuing research into new approaches to housing throughout the state, including but not limited to the following:
    - (I) The development of housing standards and construction codes based on performance; and
    - (II) Modular housing; and
  - (c) To review and approve quality assurance representatives that intend to perform inspections and issue insignia of approval pursuant to this part 33.

**24-32-3304. State housing board – powers and duties**

- (1) The board shall have the following powers and duties pursuant to this part 33:
  - (a) To promulgate uniform construction and maintenance standards for hotels, motels and multiple-family structures in those areas of the state where no standards exist;
  - (b) To promulgate uniform construction standards for factory-built residential and nonresidential structures;

- (c) To develop and submit to the general assembly and local government units recommendations for uniform housing standards and building codes;
- (d) To promulgate rules establishing standards for the installation and setup of manufactured housing units; and
- (e) To promulgate rules establishing specific standards for the use of private inspection and certification entities to perform the division's certification and inspection functions with respect to in-state and out-of-state inspections of manufactured housing units. The standards shall allow, consistent with section 13 of article XII of the state constitution, the provisions of part 5 of article 50 of this title, and the rules of the state personnel board, for the use of private inspection and certification entities when the entities are available at a reasonable cost. The standards shall not prohibit a manufacturer from having the option to contract with the division or an authorized quality assurance representative to perform inspection and certification functions.

***24-32-3305. Rules – advisory committee – enforcement.***

- (1) The board shall promulgate rules as it deems necessary to ensure:
  - (a) The safety of factory-built structures;
  - (b) The safety of consumers purchasing manufactured homes;
  - (c) The safety of manufactured home installations; and
  - (d) The safety of hotels, motels and multi-family structures in areas of the state where no construction standards for hotels, motels, and multi-family structures exist.
- (2) Rules promulgated by the board shall include provisions imposing requirements reasonable consistent with recognized and accepted standards adopted by the international conference of building officials, the international code council, the international association of plumbing and mechanical officials, the national fire protection association, the Colorado state plumbing and electrical codes, and the structural engineers association of Colorado, or a combination thereof, except to the extent that the board finds that the standards and codes are inconsistent with this part 33. All rules promulgated by the board shall be adopted pursuant to article 4 of this title.
- (3) The board shall consult with and obtain the advice of an advisory committee on residential and nonresidential structures in the drafting and promulgation of rules. The committee shall consist of twelve members appointed by the state director of housing from the following technical and professional disciplines: One from architecture, one from structural engineering, 3 from building code enforcement, one from mechanical engineering or contracting, one from the plumbing industry, one from the mobile home industry, one from the construction design or producer industry, one from manufactured housing and one from organized labor. Committee members shall be reimbursed for actual and necessary expenses incurred while engaged in official duties.
- (4) The division shall enforce the provisions of this part 33 and the rules adopted pursuant thereto.
- (5) The division may act as agent for the federal government for the enforcement of mobile home safety and construction standards relating to any issue with respect to which a federal standard has been established under the federal act.

***24-32-3306. Recognition of similar standards – compliance with standards***

- (1) If the board determines that standards for factory-built housing prescribed by statute or rule of another state or by the United States department of housing and urban development are reasonably consistent with, or equal to, standards required by this part 33, it may provide by rule that factory-built housing approved by the other state or by the department meets the standards required by this part 33.

- (2) No person, partnership, firm, corporation or other entity may manufacture, sell, or offer for sale within this state any new factory-built structure that is not manufactured in compliance with the applicable provisions of the construction standards adopted by the board.

***24-32-3307. Noncompliance with standards.***

- (1) The state director of housing may obtain injunctive relief from the appropriate court to enjoin the manufacture, substantial repair or alteration, sale delivery, or installation of factory-built housing by filing an affidavit specifying the manner in which the housing does not conform to the requirements of this part 33 or to rules promulgated pursuant to section 24-32-3305. The director or the director's designee may suspend the issuance of insignias of approval while injunctive relief is being sought.
- (2) If the division, acting as agent for the federal government, determines that any manufactured home does not conform to applicable state or federal manufactured home construction and safety standards or that it contains a defect that constitutes an imminent safety hazard after the sale of the manufactured home by a manufacturer to a distributor or dealer and prior to the sale of the manufactured home by the distributor or dealer to a purchaser, the manufacturer shall provide for parts replacement and installation reimbursement as required under the federal act or rules adopted pursuant thereto.

***24-31-3308. Violation – penalty.***

- (1) A person who violates any of the provisions of this part 33, or any rule promulgated pursuant to section 24-32-3305 shall be subject to a civil penalty of up to one thousand dollars as determined by the board. A separate violation shall be deemed to have occurred with respect to each housing unit involved. A civil penalty collected pursuant to this section shall be transmitted to the state treasurer who shall credit the same to the building regulation fund created in section 24-32-3309.
- (2) In the case of any unit certified under the federal act, civil and criminal penalties provided for in the federal act shall be imposed. Any civil penalty collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the building regulation fund.

***24-32-3309. Fees – building regulation fund***

- (1) The board by rule shall establish a schedule of fees designed to pay all direct and indirect costs incurred by the division in carrying out and enforcing the provisions of this part 33; except that the amount of the registration fees for installers of manufactured homes is the amount specified in 24-32-3315 (5) and the amount of the registration fee for sellers of manufactured homes is the amount specified in section 24-31-3323 (3). Before establishing the schedule of fees, the board shall gather information regarding the fees charged by Colorado local governments for the inspection and certification of improvements to residential real property that are not manufactured homes and the fees charged by governmental entities outside of Colorado for the inspection and certification of manufactured homes. The fees shall be paid to the division and transmitted to the state treasurer who shall credit the fees to the building regulation fund, which fund is hereby created in the state treasury. All interest derived from the deposit and investment of monies in the fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund, or used for any other purpose other than to offset the costs of implementing and administering and enforcing the provisions of this part 33.

**24-32-3310. Local enforcement.**

Nothing in this part 33 shall interfere with the right of local governments to enforce local rules governing the installation of factory-built housing pursuant to this part 33 if the local rules are not inconsistent with state rules adopted pursuant to section 24-32-3305.

**24-31-3311. Certification of factory-built residential and nonresidential structures.**

- (1) Factory-built structures, manufactured, substantially altered or repaired, sold or offered for sale within this state after the effective date of the rules promulgated pursuant to this part 33, shall bear an insignia of approval issued by the division and affixed by the division or an authorized quality assurance representative.
- (2) Factory-built residential structures manufactured prior to March 31, 1971, shall be subject to any existing state or local government rules relating to the manufacture of structures.
- (3) Factory-built nonresidential structures manufactured prior to June 30, 1991 shall be subject to any existing state or local government rules relating to the manufacture of the structures.
- (4) All factory-built structures bearing an insignia of approval issued by the division and affixed by the division or an authorized quality assurance representative pursuant to this part 33 shall be deemed to comply with the requirements of all ordinances or rules, including those for electrical or plumbing, enacted by the state government and any local government that are applicable to the manufacture of the structures. The determination by the board of the scope of such approval is final.
- (5) No factory-built structures bearing an insignia of approval issued by the division and affixed by the division or an authorized quality assurance representative pursuant to this part 33 shall be in any way modified contrary to the rules promulgated pursuant to section 24-31-3305 prior to or during installation unless approval is first obtained from the division.
- (6) All modifications and repairs to factory-built structures previously installed shall be subject to applicable local government rules.

**24-32-3312. Notification and correction of defects.**

A manufacturer to be certified as meeting federal standards shall furnish notification of any defect in a manufactured home produced by the manufacturer that the manufacturer determines, in good faith, relates to a manufactured home construction or safety standard and constitutes an imminent safety hazard to the purchaser of the manufactured home within a reasonable time after the manufacturer has discovered the defect in accordance with the provisions under the federal act or any board rule.

**24-31-3313. Injunctive relief.**

The state director of housing may request the appropriate court to enjoin the sale or delivery of any factory-built structure upon an affidavit, specifying the manner in which the factory-built structure does not conform to the requirements of this part 33 or the rules promulgated pursuant to this part 33. The director may suspend the authority of a manufacturer to affix insignias while injunctive relief is being sought.

**24-32-3314. Cooperation with the department of revenue.**

The division shall cooperate with the department of revenue in any manner feasible to ensure that the provisions of this part 33 are carried out.

**24-32-3315. Installers of manufactured homes – registration.**

- (1) (a) Any installer in this state shall first register with the division. A registered installer shall be responsible for supervising all employees and for the proper and competent performance of all employees working under his or her supervision.



- (b) Persons who shall not be required to register as an installer with the division include:
  - (I) A person employed by a registered or certified installer, as well as a person employed by a legal or commercial entity employing a registered or certified installer when performing installation functions under the direct on-site supervision of such registered or certified installer; and;
  - (II) A person who installs one manufactured home in a twelve-month period on real property owned by the person.
- (c) A homeowner who installs the owner's own manufactured home is not required to register as an installer with the division but shall comply with all provisions of this part 33 other than registration provisions.
- (2) Each registered installer shall file with the division a letter of credit, certificate of deposit issued by a licensed financial institution, or surety bond issued by an authorized insurer in the amount of ten thousand dollars for the performance of an installation pursuant to the manufacturer's instructions or standards promulgated by the division. The letter of credit, certificate of deposit, or surety bond shall be filed with the division at the same time the initial application for registration is filed.
- (3) An application for registration or certification as a manufactured home installer, whether initial or renewal, shall be submitted on a form provided by the division and shall be notarized and verified by a declaration signed under penalty of perjury by the applicant. The application shall contain, in addition to any other information the division may reasonably require, the name, address, and telephone number of the applicant. The division shall make the application and declaration available for public inspection.
- (4) In order to be registered initially as a manufactured home installer, an applicant shall:
  - (a) Be at least eighteen years of age;
  - (b) Furnish written evidence of six months of installation experience under direct supervision of a registered or certified installer or equivalent training or experience as determined by the division; and
  - (c) Carry and provide proof of liability insurance in an amount set by the division but not less than one hundred thousand dollars.
- (5) A registration issued pursuant to this section shall be valid for one year from the date of issuance and shall not be transferred nor assigned to another person. The amount of the registration fee shall not be more than two hundred fifty dollars. If any of the application information for the registered installer changes after the issuance of a registration, the registered installer shall notify the division in writing within thirty days from the date of the change. The division may suspend, revoke, or deny renewal of a registration if the registered installer fails to notify the division of any change in the application.
- (6) Any registered installer seeking to renew registration shall, at the time of applying for renewal, provide proof of liability insurance and letter of credit, certificate of deposit, or surety bond in compliance with subsections (2) and (4) of this section.
- (7)
  - (a) Any registered installer who has performed five installations that have passed inspection by the division shall apply to the division for certification. The division shall issue certification to qualified registered installers. The division shall not charge a fee for certification of installers.
  - (b) Installations performed by certified installers shall only be inspected by the division or an independent contractor upon the written request of the owner, installer, manufacturer, or retailer. The owner, installer, manufacturer, or retailer shall have the right to be present at any inspection.

**24-32-3316. Compliance with manufacturer's installation instructions.**

Any installation of a manufactured home in this state shall be performed in strict accordance with the applicable manufacturer's installation instructions. Where the manufacturer's instructions are not applicable, installation shall be in accordance with standards promulgated by the division. A copy of the manufacturer's instructions or the standards promulgated by the division shall be available at the time of installation and inspection.

**24-32-3317. Installation of manufactured homes – certificates – inspections – rules.**

- (1) Before beginning the installation of a manufactured home, the owner or registered installer of a manufactured home shall make an application for an installer's certificate from the division.
- (2) The division may certify any installer who provides evidence of five or more installations of manufactured homes performed by such installer for which certificates have previously been issued pursuant to this section when, in the judgment of the division, the installer has demonstrated the ability to successfully complete installations of manufactured homes in accordance with the requirements this part 33. An installer certified by the division may, at the time of obtaining an installation certificate required by subsection (1) of this section, obtain a standard form of certificate of installation to be completed by the certified installer upon completion of the installation of the manufactured home in accordance with the requirements of this part 33. The certified installer shall, upon attachment of the certificate of installation to the manufactured home, transmit a report of said certificate to the division. The division or independent contractor at the request of the division may at the division's sole discretion inspect the installation of any manufactured home performed by a certified installer pursuant to this subsection (2) and may require the certified installer to correct, within a period established by rule promulgated by the board, any defects or deficiencies in the installation. The division may revoke the certification of any installer certified pursuant to this subsection (2) when, in the judgment of the division, the installer has performed installations of a manufactured home in violation of the requirements of this part 33. Any installer whose certification has been so revoked may apply for re-certification in accordance with rules promulgated by the division.
- (3)
  - (a) The division may suspend or revoke the registration of a registered installer if the installer fails to:
    - (I) Comply with the registration requirements of section 24-32-3315; or
    - (II) Otherwise pay to the owner or occupant of a manufactured home:
      - (A) The cost of an inspection that fails to meet the requirements of the manufacturer's instructions or the standards promulgated by the division;
      - (B) The cost of any subsequent repairs that are necessary to bring the installation into compliance with the manufacturer's instructions or the standards promulgated by the division; or
      - (C) The cost of subsequent required inspections,
  - (b) The division may execute a performance bond on behalf of an owner.
- (4) An owner and a registered installer shall display an installer's certificate at the site of the manufactured home to be installed until a certificate of installation is issued by the division.
- \* (5) (a) The division shall adopt rules that specify a standard form to be used statewide by the division or an independent contractor as a certificate of installation certifying that a manufactured home was installed in compliance with the provisions of this part 33. However, the certificate of installation applies only to installation of a manufactured home built in a factory and components shipped with the manufactured home as reflected in the approved plans for the manufactured home. The certificate of installation shall include but not be limited to the following:

- (I) The name, address, and telephone number of the division
  - (II) The date the installation was completed; and
  - (III) (III) The name, address, telephone number, and registration number of the registered installer who performed the installation.
- (b) If a vacant manufactured home fails the installation inspection because of conditions that endanger the health or safety of the occupant, the manufactured home shall not be occupied. If the manufactured home fails the installation inspection because of conditions that do not endanger the health or safety of the occupant, the manufactured home may be occupied pending the correction of those defects or deficiencies that served as the basis of the failed inspection.
- (6) In addition to the inspections performed pursuant to subsection (2) of this section, the division or the independent contractor that performs inspections and enforcement of proper installation of manufactured homes shall inspect the installation of a manufactured home upon request filed by the owner, installer, manufacturer, or retailer of a manufactured home. The inspection shall be paid for by the party who requested the inspection.
- (7) If the installation of a manufactured home by an installer has failed the inspection conducted by the division or the independent contractor and it is determined by the division or the independent contractor that the installer has violated any of the installation standards promulgated by the division, the installer shall reimburse the party requesting the inspection for the cost of the failed inspection and shall pay for any subsequent repairs necessary to bring the installation into compliance with the manufacturer's instructions or standards promulgated by the division. The installer shall also pay for any subsequent inspections required by the division or the independent contractor. Failure of the installer to pay for any inspections or subsequent repairs deemed necessary by the division or the independent contractor shall result in the forfeiture of the installer's performance bond on behalf of the owner of the manufactured home.
- (8) The division may authorize an independent contractor to perform inspections and enforcement of proper installation of manufactured homes. The division may provide training for independent contractors. Independent contractors shall be certified by the division to perform installation inspections. The division shall establish by rule the qualifications of an inspector and the areas of expertise necessary for inspecting manufactured homes. The qualifications for an inspector shall include, but are not limited to, those of a professional civil engineer or local housing inspector or independent contractor.
- (9) If an installation or subsequent repair of an installation by an installer fails to meet the standards promulgated by the division within a period determined by the division, the division shall investigate the actions of the installer. The division may revoke, suspend, or refuse to renew the registration or certification of the installer for failing to comply with the division's standards regarding installation of a manufactured home. Any independent contractor that knows of an installer whose installations fail inspection and have not been cured by subsequent repair shall request that the division investigate the installer.
- (10) The division shall adopt rules concerning:
- (a) A standard installer inspection form to be used statewide by the division or an independent contractor that performs manufactured home installation inspection and enforcement activities;
  - (b) Certification requirements for independent contractors to use to inspect installations;
  - (c) Proper installation inspection and enforcement standards;
  - (d) A standard certificate of installation to be used statewide by the division; and
  - (e) Any other rule necessary for the implementation manufactured home installation requirements in this part 33.

**24-32-3318. Local installation standards preempted.**

A local government unit may not adopt less stringent standards for the installation of a manufactured home than those promulgated by the division. A local government unit may not, without express consent by the division, adopt different standards than the standards for the installation of a manufactured home promulgated by the division. Nothing in this section shall preclude a local government unit from enacting standards for manufactured homes concerning unique public safety requirements, such as weight restrictions for snow loads or wind shear factors, as otherwise permitted by law.

**24-32-3319. Prohibited acts.**

It shall be unlawful for any person to perform an installation, without regard to whether such person receives compensation, except as provided in this part 33. Any intentional violation of the provisions of this part 33 constitutes a deceptive trade practice and shall be subject to the provisions of article 1 of title 6, C.R.S. However damages shall be limited in accordance with the provisions of section 6-1-113(2.7), C.R.S.

**24-32-3108. Penalty for violation.**

Any person found to have performed an installation in a manner contrary to the requirements of this part 33 shall be subject to revocation or suspension of an installer's registration, fines or any other measures as prescribed by rule promulgated by the division, or other applicable Colorado law. Multiple violations of this part 33 committed during a single installation shall constitute one violation. Each installation performed in violation of this part 33 shall constitute a separate violation. Fines shall be paid to the division and transmitted to the state treasurer who shall credit the fees to the building regulation fund created in section 24-32-3309.

**24-32-3321. Investigations of consumer complaints.**

The division may investigate complaints filed by owners, occupants, or other consumers relating to the installation of manufactured homes as necessary to enforce and administer this part 33.

**24-32-3322. Training of inspectors – acceptance of gifts, grants, and donations.**

- (1) On and after July 1, 2000, the division shall train independent contractors to perform installation inspections for manufactured homes. The training shall enable independent contractors who successfully complete the training to become certified by the division.
- (2) On and after July 1, 2000, the division may accept gifts, grants, or donations for the training of independent contractors. Such gifts, grants, or donations received shall be transmitted to the state treasurer, who shall credit the moneys to the building regulation fund created in section 24-32-3309.

**24-32-3323. Sellers of manufactured homes – registration**

- (1) Any person whose business involves the sale of manufactured homes shall be required to register with the division before engaging in the business of selling manufactured homes in Colorado. Any person who wishes to engage in the business of selling manufactured homes in Colorado through advertising or sales activities but who does not operate a retail location in Colorado shall obtain a single registration. Any person who wishes to engage in the business of selling manufactured homes from one or more retail locations in Colorado shall obtain a separate registration for each location. The registration requirements of this section shall not apply to any individual who, for a salary, commission, or compensation of any kind, is employed directly or indirectly by any registered manufactured home seller to sell or negotiate for the sale of manufactured homes.

- (2) An application for a registration or renewal required by this section shall be submitted on a form provided by the division of housing and shall be verified by a declaration signed, under penalty of perjury, by a principal of the manufactured home seller. The application shall contain, in addition to such other information regarding the conduct of the manufactured home seller's business as the division may reasonably require, the name, address, and position of each principal of the manufactured home seller and each person who exercises management responsibilities as part of the manufactured home seller's business activities. The application shall also contain the address and telephone number of each retail location operated by the applicant as well as the location and account number of the separate fiduciary account required by section 24-32-3324 (1). The declaration shall specify the date and location of the signing, and the division shall preserve the application and declaration and make them available for public inspection.
- (3) A registration issued pursuant to subsection (2) of this section shall be valid for one year after the date of issuance. The amount of the registration fee shall be no more than two hundred dollars. If, after issuance of a registration, any of the required information submitted with the application for such registration pursuant to subsection (2) of this section becomes inaccurate, a principal of the manufactured home seller shall notify the division of housing in writing of such inaccuracy within thirty days and provide the division of housing with accurate updated information.
- (4) For purposes of this section, a person is not engaged in the business of selling manufactured homes if the person:
  - (a) Is a natural person acting personally in selling a manufactured home owned or leased by the person;
  - (b) Sells a manufactured home in the course of engaging in activities that are subject to the provisions of article 61 of title 12, C.R.S., or activities that would be subject to such provisions but for a specific exemption set forth in article 61 of title 12, C.R.S.;
  - (c) Sells a manufactured home for salvage or nonresidential use; or
  - (d) Directly or indirectly sells, in any calendar year, three or fewer previously occupied manufactured homes that are owned by a manufactured home park owner and are located within one or more manufactured home parks in Colorado.

**24-32-3324. Escrow and bonding requirements.**

- (1) Any person required to register with the division of housing pursuant to section 24-32-3323 shall escrow all manufactured home sale down payments in a separate fiduciary account in a bank or trust company that does business in the state of Colorado until the manufactured home is delivered to the purchaser.
- (2) Any person required to register with the division of housing pursuant to section 24-32-3323 shall provide a letter of credit, certificate of deposit issued by a licensed financial institution, or surety bond issued by an authorized insurer in the amount of fifty thousand dollars and conditioned upon the person's refund of the home sale down payment in accordance with the terms of the contract pursuant to which the payment was received. A person required to register with the division of housing pursuant to section 24-32-3323 who wishes to engage in the business of selling manufactured homes from one or more retail locations in Colorado need not provide a separate letter of credit, certificate of deposit, or surety bond for each retail location but may meet the requirements of this section by providing a single letter of credit, certificate of deposit, or surety bond. The letter of credit, certificate of deposit, or surety bond shall be filed with the division at the same time as the initial application for registration and shall be drawn in favor of the attorney general for the use of the people of Colorado. At least once per month, the division shall send the attorney general an updated list of all persons registered and bonded pursuant to the requirements of this part 33. The letter of credit, certificate of deposit,

or surety bond shall be revocable only upon the written consent of the attorney general. However, a financial institution or authorized insurer shall only be required to make payment to a person making a claim against such letter of credit, certificate of deposit, or surety bond if a court of competent jurisdiction has rendered a final judgment in favor of such person based on a finding that the registered person failed to refund a manufactured home down payment or provide a reasonable per diem living expense in violation of the contractual provisions required by section 24-32-3325 or upon a ceasing of business operations or a bankruptcy filing by the registered person. Any person who is required to register with the division of housing pursuant to section 24-32-3323 and who fails to provide a letter of credit, certificate of deposit, or surety bond as required by this subsection (2), or who otherwise fails to pay any judgment by a court of competent jurisdiction in favor of a purchaser of a manufactured home shall be subject to the suspension or revocation of such registration by the division.

***24-32-3325 Contract for sale of manufactured home – requirements.***

- (1) A seller who is required to register with the division of housing pursuant to section 24-32-3323 shall make the following disclosures in any contract for the sale of a manufactured home:
  - (a) That the buyer may have no legal right to rescind the contract absent delinquent delivery of the manufactured home or the existence of a specific right of rescission set forth in the contract;
  - (b) That the seller has a separate fiduciary account for the escrow of home sale down payments pending delivery of the manufactured home and a letter of credit, certificate of deposit, or surety bond filed with the division of housing for the repayment of home sale down payments pending delivery of manufactured homes;
  - (c) That an aggrieved person may file a complaint for a refund of a down payment held in escrow by a seller of manufactured homes against such seller with the attorney general or with the district attorney for the district in which the sale occurs; and
  - (d) That an aggrieved person may bring a civil action pursuant to the provisions of the “Colorado Consumer Protection Act”, article 1 of title 6, C.R.S. to remedy violations manufactured home seller requirements in this part 33.
- (2) A contract for the sale of a manufactured home by a person who is required to register with the division of housing pursuant to section 24-32-3323 shall contain the following provisions:
  - (a) A date certain for the delivery of the manufactured home or a listing of specified delivery preconditions that must occur before a date certain for delivery can be determined; and
  - (b) A statement that if delivery of the manufactured home is delayed by more than sixty days after the delivery date specified in the contract of sale or by more than sixty days after the delivery preconditions set forth in the contract of sale have been met if no date certain for delivery has been set, the seller will either refund the manufactured home sale down payment or provide a reasonable per diem living expense to the buyer for the days between the delivery date specified in the contract or the sixty-first day after the delivery preconditions set forth in the contract have been met, whichever is applicable, and the actual date of delivery, unless the delay in delivery is unavoidable or caused by the buyer.

***24-32-3326. Unlawful manufactured home sale practices.***

- (1) Any person who is required to register with the division of housing pursuant to section 24-32-3323 engages in an unlawful manufactured home sale practice when such person:
  - (a) Fails to comply with the registration requirements of section 24-32-3323;
  - (b) Fails to comply with the escrow and bonding requirements of section 24-32-3324;
  - (c) Fails to include in any contract for the sale of a manufactured home any of the disclosures or contract provisions required by section 24-32-3325; or

- (d) Fails to refund a manufactured home down payment or provide a reasonable per diem living expense in violation of the contractual provisions required by section 24-32-3325 (2) (b).

**24-32-3327. Inspections**

- (1) For the purposes of enforcement of this part 33, persons duly designated by the state director of housing, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized:
  - (a) To enter at reasonable times and without advance notice any factory, warehouse, or establishment in which manufactured homes or factory-built structures are manufactured, stored or held for sale;
  - (b) To inspect at reasonable times, within reasonable limits, and in a reasonable manner, any factory, warehouse, or establishment in which manufactured homes or factory built structures are manufactured, stored, or held for sale and to inspect any books, papers, records, and documents that relate to the safety of manufactured homes or factory-built structures. Each inspection shall be commenced and completed with reasonable promptness.
  - (c) To enter at reasonable times and without advance notice any site on which manufactured housing is or has been installed for the first time for residential use; and
  - (d) To inspect at reasonable times, within reasonable limits, and in a reasonable manner any initial residential use installation and inspect any books, papers, records, and documents that relate to the proper installation of manufactured housing.
- (2) In addition to any other inspection responsibilities, the division shall have the responsibility for the electrical inspections of any factory-built structures in plants that are certified by the division pursuant to this part 33.
- (3) When acting as agent for the federal government, the division is authorized to conduct inspections pursuant to this section as may be necessary to promulgate or enforce federal manufactured home construction and safety standards established under the federal act or otherwise to carry out its duties under its agreement as agent. The division shall furnish the secretary any information obtained indicating noncompliance with the standards for appropriate action.
- (4) The state director of housing is authorized to contract, as an agent for the federal government to:
  - (a) Conduct inspections, hearings, and building plan approvals;
  - (b) Keep records;
  - (c) Report inspections; and
  - (d) Perform all other necessary activities to fulfill federal functions under the federal act.

**III. Mobile Home Park Act**

**38-12-200.1. Short Title.**

This part 2 shall be known and may be cited as the “Mobile Home Park Act”.

**38-12-200.2. Legislative declaration.**

The general assembly hereby declares that the purpose of this part 2 is to establish the relationship between the owner of a mobile home park and the owner of a mobile home situated in such park.

**38-12-201. Application of part 2.**

- (1) This part 2 shall apply only to manufactured homes, as defined in section 42-1-102 (106) (b), C.R.S.
- (2) Repealed

**38-12-201.5. Definitions.**

As used in this part 2, unless the context otherwise requires:

- (1) “Home owner” means any person or family of such person owning a mobile home that is subject to a tenancy in a mobile home park under a rental agreement.
- (1.5) “Management” or “landlord” means the owner or person responsible for operating and managing a mobile home park or an agent, employee, or representative authorized to act on said management’s behalf in connection with matters relating to tenancy in the park.
- (2) “Mobile home” means a single-family dwelling built on a permanent chassis designed for long-term residential occupancy and containing complete electrical, plumbing, and sanitary facilities and designed to be installed in a permanent or semipermanent manner with or without a permanent foundation, which is capable of being drawn over public highways as a unit, or in sections by special permit.
- (3) “Mobile home park” or “park” means a parcel of land used for the continuous accommodation of five or more occupied mobile homes and operated for the pecuniary benefit of the owner of the parcel of land, his agents, lessees or assignees. Mobile home park does not include mobile home subdivisions or property zoned for manufactured home subdivisions.
- (4) “Mobile home space,” “space,” “mobile home lot,” or “lot” means a parcel of land within a mobile home park designated by the management to accommodate one mobile home and its accessory buildings and to which the required sewer and utility connections are provided by the mobile home park.
- (5) “Premises” means a mobile home park and existing facilities and appurtenances therein, including furniture and utilities where applicable, and grounds, areas, and existing facilities held out for the use of home owners generally or the use of which is promised to the home owner.
- (6) “Rent” means any money or other consideration to be paid to the management for the right of use, possession, and occupation of the premises.
- (7) “Rental agreement” means an agreement, written or implied by law, between the management and the home owner establishing the terms and conditions of a tenancy, including reasonable rules and regulations promulgated by the park management. A lease is a rental agreement.
- (8) Repealed.
- (9) “Tenancy” means the rights of a home owner to use a space or lot within a park on which to locate, maintain, and occupy a mobile home, lot improvements, and accessory structures for human habitation, including the use of services, and facilities of the park.

**38-12-202. Tenancy – notice to quit.**

- (1) (a) No tenancy or other lease or rental occupancy of space in a mobile home park shall commence without written lease or rental agreement, and no tenancy in a mobile home park shall be terminated until a notice to quit has been served. Said notice to quit shall be in writing and in the form specified in section 13-40-107(2), C.R.S. The property description required in section 13-40-107(2), C.R.S., shall be deemed legally sufficient if it states:
  - (I) The name of the landlord or the mobile home park;
  - (II) The mailing address of the property;



- (III) The location or space number upon which the mobile home is situate; and
- (IV) The county in which the mobile home is situate.
- (b) Service of the notice to quit shall be as specified in section 13-40-108, C.R.S. Service by posting shall be deemed legally sufficient within the meaning of section 13-40-108, C.R.S., if the notice is affixed to the main entrance of the mobile home.
- (c) (I) Except as otherwise provided in subparagraph (II) of this paragraph (c), the home owner shall be given a period of not less than thirty days, to be extended to not less than sixty days where the home owner must remove a multisection mobile home, to remove any mobile home from the premises from the date the notice is served or posted. In those situations where a multisection mobile home is being leased to, or occupied by, persons other than its owner and in a manner contrary to the rules and regulations of the landlord then, in that event, the tenancy may be terminated by the landlord upon giving a thirty-day notice rather than said sixty-day notice.
- (II) If the tenancy is terminated on grounds specified in section 38-12-203 (1) (f), the home owner shall be given a period of not less than ten days, to be extended to not less than fifteen days where the home owner must remove a multisection mobile home, to remove any mobile home from the premises from the date the notice is served or posted.
- (d) No lease shall contain any provision by which the home owner waives his rights under this part 2, and any such waiver shall be deemed contrary to public policy and shall be unenforceable and void. However, any lease may provide that the tenancy may be terminated on the landlord's notice in writing to the home owner, in such prescribed manner, to remove the home owner's unit from the premises within a period of not less than thirty days, to be extended to not less than sixty days where the home owner must remove a multisection mobile home, from the date the notice is served or posted. In those situations where a multisection mobile home is being leased to, or occupied by, persons other than its owner and in a manner contrary to the rules and regulations of the landlord then, in that event, the tenancy may be terminated by the" landlord upon giving a thirty-day notice rather than said sixty-day notice.
- (2) The landlord or management of a mobile home park shall specify, in the notice required by this section, the reason for the termination of any tenancy in such mobile home park. If the tenancy is being terminated based on the mobile home or mobile home lot being out of compliance with the rules and regulations adopted pursuant to section 38-12-203 (1)(c), C.R.S. the notice required by this section shall include a statement advising the home owner that the home owner has a right to cure the noncompliance within thirty days of the date of service or posting of the notice to quit. The thirty-day period to cure an noncompliance set forth in this subsection (2) "run concurrently with the thirty-day period to remove a mobile home from the premises as set forth in paragraphs (c) and (d) of subsection (1) of this section. Acceptance of rent by the landlord or management of a mobile home park during the thirty-day right to cure period set froth m section 38-12-203 (1) (c) shall not constitute a waiver of the landlord's right to terminate the tenancy for any noncompliance set forth in section 38-12-203 (1) (c).
- (3) Repealed

***38-12-202.5. Action for termination.***

- (1) The action for termination shall be commenced in the manner described in section 13-40-110, C.R.S. The property description shall be deemed legally sufficient and within the meaning of section 13-40-110, C.R.S., if it states:
  - (a) The name of the landlord or the mobile home park;
  - (b) The mailing address of the property;

- (c) The location or space number upon which the mobile home is situate; and
  - (d) The county in which the mobile home is situate.
- (2) Service of summons shall be as specified in section 13-40-112, C.R.S. Service by posting shall be deemed legally sufficient within the meaning of section 13-40-112, C.R.S., if summons is affixed to the main entrance of the mobile home.
  - (3) Jurisdiction of courts in cases of forcible entry, forcible detainer, or unlawful detainer shall be as specified in section 13-40-109, C.R.S. 1973. Trial on the issue of possession shall be timely as specified in section 13-40-114, C.R.S. 1973, with no delay allowed for the determination of other issues or claims which may be severed at the discretion of the trial court.
  - (4) After commencement of the action and before judgment, any person not already a party to the action who is discovered to have a property interest in the mobile home shall be allowed to enter into a stipulation with the landlord and be bound thereby.

***38-12-203. Reasons for terminations.***

- (1) A tenancy shall be terminated pursuant to this part 2 only for one or more of the following reasons:
  - (a) Failure of the home owner to comply with local ordinances and state laws and regulations relating to mobile homes and mobile home lots;
  - (b) Conduct of the home owner, on the mobile home park premises, which constitutes an annoyance to other home owners or interference with park management;
  - (c) Failure of the home owner to comply with written rules and regulations of the mobile home park either established by the management in the rental agreement at the inception of the tenancy, amended subsequently thereto with the consent of the home owner, or amended subsequently thereto without the consent of the home owner on sixty days' written notice if the amended rules and regulations are reasonable, except that the home owner shall have thirty days from the date of service or posting of the notice to quit set forth in section 38-12-202 (2) to cure any noncompliance on the mobile home or mobile home lot before an action for termination may be commenced, except if local ordinances, state laws and regulations park, rules or regulations, or emergency health or safety situations require immediate compliance. If a home owner was in noncompliance pursuant to this paragraph (c) and was given notice and a right to cure such noncompliance, and within a twelve month period from the date of service of the notice is in noncompliance with the same rule or regulation and is given notice of the second noncompliance, there shall be no right to cure the second noncompliance. Regulations applicable to recreational facilities may be amended at the discretion of the management. For purposes of this paragraph (c), when the mobile home is owned by a person other than the owner of the mobile home park, the mobile home is a separate unit of ownership, and regulations which are adopted subsequent to the unit location in the park without the consent of the home owner and which place restrictions or requirements on that separate unit are prima facie unreasonable. Nothing in this paragraph (c) shall prohibit a mobile home park owner from requiring compliance with current park unit regulations at the time of sale or transfer of the mobile home to a new owner. Transfer under this paragraph (c) shall not include transfer to a co-owner pursuant to death or divorce or to a new co-owner pursuant to marriage.
  - (d) (I) Condemnation or change of use of the mobile home park. When the owner of a mobile home park is formally notified by an appropriate governmental agency that his mobile home park is the subject of a condemnation proceeding, the landlord shall, within seventeen days, notify his home owners in writing of the terms of the condemnation notice which he receives.

- (II) In those cases where the zoning law allows the landlord to change the use of his land without obtaining the consent of the zoning authority and where such change of use would result in eviction of inhabited mobile homes, the landlord shall first give the owner of each mobile home subject to such eviction a written notice of his intent to evict not less than six months prior to such change of use of the land, notice to be mailed to each home owner.
- (e) The making or causing to be made, with knowledge, of false or misleading statements on an application for tenancy.
- (f) Conduct of the home owner or any lessee of the home owner or any guest, agent, invitee, or associate of the home owner or lessee of the home owner, that:
  - (I) Occurs on the mobile home park premises and unreasonably endangers the life of the landlord, any home owner or lessee of the mobile home park, any person living in the park, or any guest, agent, invitee, or associate of the home owner or lessee of the home owner;
  - (II) Occurs on the mobile home park premises and constitutes willful, wanton, or malicious damage to or destruction of property of the landlord, any home owner or lessee of the mobile home park, any person living in the park, or any guest, agent, invitee, or associate of the home owner or lessee of the home owner;
  - (III) Occurs on the mobile home park premises and constitutes a felony prohibited under article 3, 4, 6, 7, 9,10,12, or 18 of title 18 C.R.S.; or
  - (IV) Is the basis for a pending action to declare the mobile home or any of its contents a class 1 public nuisance under section 16-13-303, C.R.S.
- (2) In an action pursuant to this part 2, the landlord shall have the burden of proving that the landlord complied with the relevant notice requirements and that the landlord provided the home owner with a statement of reasons for the termination. In addition to any other defenses a home owner may have, it shall be an affirmative defense that the landlord's allegations are false or that the reasons for termination are invalid.

***38-12-204. Non-payment of rent – notice required for rent increase.***

- (1) Any tenancy or other estate at will or lease in a. mobile home park may be terminated upon the landlord's written notice to the home owner requiring, in the alternative, payment of rent or the removal of the home owner's unit from the premises, within a period of not less than five days after the date notice is served or posted, for failure to pay rent when due.
- (2) Rent shall not be increased without sixty days' written notice to the homeowner. In addition to the amount and the effective date of the rent increase, such written notice shall include the name, address, and telephone number of the mobile home park management, if such management is a principal owner, or owner of the mobile home park and, if the owner is other than a natural person, the name, address, and telephone number of the owner's chief executive officer or managing partner; except that such ownership information need not be given if it was disclosed in the rental agreement made pursuant to section 38-12-213.

***38-12-204.3. Notice required for termination.***

- (1) Where the tenancy of a mobile home owner is being terminated under section 38-12-202 or section 38-12-204, the landlord or mobile home park owner shall provide such mobile home owner with written notice as provided for in subsection (2) of this section. Service of such notice shall occur at the same time and in the same manner as service of:
  - (a) The notice to quit as provided in section 38-12-202(1); or
  - (b) The notice of nonpayment of rent as provided in section 38-12-204(1).

- (2) The notice required under this section shall be in at least ten-point type and shall read as follows:

**“IMPORTANT NOTICE TO THE HOME OWNER:**

This notice and the accompanying notice to quit/notice of nonpayment of rent are the first steps in the eviction process. Any dispute you may have regarding the grounds for eviction should be addressed with your landlord or the management of the mobile home park or in the courts if an eviction action is filed. Please be advised that the “Mobile Home Park Act”, part 2 of article 12 of title 38, Colorado Revised Statutes, may provide you with legal protection:

**NOTICE TO QUIT:** The landlord or management of a mobile home park must serve to a home owner a notice to quit in order to terminate a home owner’s tenancy. The notice must be in writing and must contain certain information, including:

- The grounds for the termination of the tenancy; and
- Whether or not the home owner has a right to cure under the “Mobile Home Park Act”.

**NOTICE OF NONPAYMENT OF RENT:** The landlord or management of a mobile home park must serve to a home owner a notice of nonpayment of rent in order to terminate a home owner’s tenancy. The notice must be in writing and must require that the home owner either make payment of rent and any applicable fees due and owing or remove the owner’s unit from the premises, within a period of not less than five days after the date the notice is served or posted, for failure to pay rent when due.

**CURE PERIODS:** If the home owner has a right to cure under the “Mobile Home Park Act”, the landlord or management of a mobile home park cannot terminate a home owner’s tenancy without first providing the home owner with a time period to cure the noncompliance. “Cure” refers to a home owner remedying, fixing, or otherwise correcting the situation or problem that caused the tenancy to be terminated pursuant to sections 38-12-202, 38-12-203, and 38-12-204, Colorado Revised Statutes.

**COMMENCEMENT OF LEGAL ACTION TO TERMINATE THE TENANCY:** After the last day of the notice period, a legal action may be commenced to take possession of the space leased by the home owner. In order to evict a home owner, the landlord or management of the mobile home park must prove:

- The landlord or management complied with the notice requirements of the “Mobile Home Park Act”;
- The landlord or management provided the home owner with a statement of reasons for termination of the tenancy; and
- The reasons for termination of the tenancy are true and valid under the “Mobile Home Park Act”.

A home owner must appear in court to defend against an eviction action. If the court rules in favor of the landlord or management of the mobile home park, the home owner will have not less than 48 hours from the time of the ruling to remove the mobile home and to vacate the premises.”

***38-12-205. Termination prohibited.***

A tenancy or other estate at will or lease in a mobile home park may not be terminated solely for the purpose of making the home owner’s space in the park available for another mobile home or trailer coach.

**38-12-206. Home owner meetings.**

Meetings of home owners relating to mobile home living and affairs in their park community hall or recreation hall, if such a facility or similar facility exists, shall not be subject to prohibition by the park management if the hall is reserved according to the park rules and such meetings are held at reasonable hours and when the facility is not otherwise in use.

**38-12-207. Security deposits – legal process.**

- (1) The owner of a mobile home park or his agents may charge a security deposit not greater than the amount of one month's rent or two month's rent for multiwide units.
- (2) Legal process, other than eviction, shall be used for the collection of utility charges and incidental service charges other than those provided by the rental agreement.

**38-12-208. Remedies.**

- (1)
  - (a) Upon granting judgment for possession by the landlord in a forcible entry and detainer action, the court shall immediately issue a writ of restitution which the landlord shall take to the sheriff. Upon receipt of the writ of restitution, the sheriff shall serve notice in accordance with the requirements of section 13-40-108, C.R.S., to the home owner of the court's decision and entry of judgment.
  - (b) The notice of judgment shall state that at a specified time, not less than forty-eight hours from the entry of judgment, the sheriff will return to serve a writ of restitution and superintend the peaceful and orderly removal of the mobile home under that order of court. The notice of judgment shall also advise the home owner to prepare the mobile home for removal from the premises by removing the skirting, disconnecting utilities, attaching tires, and otherwise making the mobile home safe and ready for highway travel.
  - (c) Should the home owner fail to have the mobile home safe and ready for physical removal from the premises or should inclement weather or other unforeseen problems occur at the time specified in the notice of judgment, the landlord and the sheriff may by written agreement extend the time for the landlord to arrange to have the necessary work done or to permit the sheriff's execution of the writ of restitution at a time when weather or other conditions will make removal less hazardous to the mobile home.
  - (d) If the mobile home is not removed from the landlord's land on behalf of the mobile home owner within the time permitted by the writ of restitution, then the landlord and the sheriff shall have the right to take possession of the mobile home for the purposes of removal and storage. The liability of the landlord and the sheriff in such event shall be limited to gross negligence or willful and wanton disregard of the property rights of the mobile home owner. The responsibility to prevent freezing and to prevent wind and weather damage to the mobile home lies exclusively with those persons who have a property interest in the mobile home; except that the landlord may take appropriate action to prevent freezing, to prevent wind and weather damage, and to prevent damage caused by vandals.
  - (e) Reasonable removal and storage charges and the costs associated with preventing damage caused by wind, weather, or vandals can be paid by any party in interest. Those charges will run with the mobile home and whoever ultimately claims the mobile home will owe that sum to the person who paid it.
- (2)
  - (a) Prior to the issuance of said writ of restitution, the court shall make a finding of fact based upon evidence or statements of counsel that there is or is not a security agreement on the mobile home being subjected to the writ of restitution. A written statement on the mobile home owner's application for tenancy with the landlord that there is no security

agreement on the mobile home shall be prima facie evidence of the nonexistence of such security agreement.

- (b) In those cases where the court finds there is a security agreement on the mobile home subject to the writ of restitution and where that holder of the security agreement can be identified with reasonable certainty, then, upon receipt of the writ of restitution, the plaintiff shall promptly inform the holder of such security agreement as to the location of the mobile home, the name of the landlord who obtained the writ of restitution, and the time when the mobile home will be subject to removal by the sheriff and the landlord.
- (3) The remedies provided in part 1 of this article and article 40 of title 13, C.R.S., except as inconsistent with this part 2, shall be applicable to this part 2.

***38-12-209. Entry fees prohibited – entry fee defined – security deposit – court costs.***

- (1) The owner of a mobile home park, or the agent of such owner, shall neither pay to nor receive from an owner or a seller of a mobile home an entry fee of any type as a condition of tenancy in a mobile home park.
- (2) As used in this section, “entry fee” means any fee paid to or received from an owner of a mobile home park or his agent except for:
  - (a) Rent;
  - (b) A security deposit against actual damages to the premises or to secure rental payments, which deposit shall not be greater than the amount allowed under this part 2. Subsequent to July 1, 1979, security deposits will remain the property of the home owner, and they shall be deposited into a separate trust account by the landlord to be administered by the landlord as a private trustee. For the purpose of preserving corpus, the landlord will not commingle the trust funds with other money, but he is permitted to keep the interest and profits thereon as his compensation for administering the trust account.
  - (c) Fees charged by any state, county, town, or city governmental agency;
  - (d) Utilities;
  - (e) Incidental reasonable charges for services actually performed by the mobile home park owner or his agent and agreed to in writing by the home owner.
- (3) The trial judge may award court costs and attorney fees in any court action brought pursuant to any provision of this part 2 to the prevailing party upon finding that the prevailing party undertook the court action and legal representation for a legally sufficient reason and not for a dilatory or unfounded cause.
- (4) The management or the resident may bring a civil action for violation of the rental agreement or any provision of this part 2 in the appropriate court of the county in which the park is located. Either party may recover actual damages or, the court may, in its discretion, award such equitable relief as it deems necessary, including the enjoining of either party from further violations.

***38-12-210. Closed parks prohibited.***

- (1) The owner of a mobile home park or his agent shall not require as a condition of tenancy in a mobile home park that the prospective home owner has purchased a mobile home from any particular seller or from any one of a particular group of sellers.
- (2) Such owner or agent shall not give any special preference in renting to a prospective home owner who has purchased a mobile home from a particular seller.
- (3) A seller of mobile homes shall not require as a condition of sale that a purchaser locate in a particular mobile home park or in any one of a particular group of mobile home parks.

- (4) The owner or operator of a mobile home park shall treat all persons equally in renting or leasing available space. Notwithstanding the foregoing, nothing in this subsection (4) shall be construed to preclude owners and operators of mobile home parks from providing housing for older persons as defined in section 24-34-502 (7) (b), C.R.S.

**38-12-211. Selling fees prohibited.**

The owner of a mobile home park or his agent shall not require payment of any type of selling fee or transfer fee by either a home owner in the park wishing to sell his mobile home to another party or by any party wishing to buy a mobile home park from a home owner in the park as a condition of tenancy in a mobile home park for the prospective buyer. This section shall in no way prevent the owner of a mobile home park or his agent from applying the normal park standards to prospective buyers before granting or denying tenancy or from charging a reasonable selling fee or transfer fee for service actually performed and agreed to in writing by the home owner. Nothing in this section shall be construed to affect the rent charged. The owner of a mobile home shall have the right to place a “for sale” sign on or in his mobile home. The size, placement, and character of such signs shall be subject to reasonable rules and regulations of the mobile home park.

**38-12-212. Certain types of landlord-seller agreements prohibited.**

A seller of mobile homes shall not pay or offer cash or other consideration to the owner of a mobile home park or his agent for the purpose of reserving spaces or otherwise inducing acceptance of one or more mobile homes in a mobile home park.

**38-12-212.3. Responsibilities of landlord – acts prohibited.**

- (1) (a) Except as otherwise provided in this section, a landlord shall be responsible for and pay the cost of the maintenance and repair of:
  - (I) Any sewer lines, utility service lines, or related connections owned and provided by the landlord to the utility pedestal or pad space for a mobile home site in the park; and
  - (II) any accessory buildings or structures, including, but not limited to, sheds and carports, owned by the landlord and provided for the use of the residents; and
  - (III) the premises as defined in section 38-12-201.5 (5).
- (b) Any landlord who fails to maintain or repair the items delineated in paragraph (a) of this subsection (1) shall be responsible for and pay the cost of repairing any damage to a mobile home which results from such failure.
- (2) No landlord shall require a resident to assume the responsibilities outlined in subsection (1) of this section as a condition of tenancy in the mobile home park.
- (3) Nothing in this section shall be construed as:
  - (a) Limiting the liability of a resident for the cost of repairing any damage caused by such resident to the landlord’s property or other property located in the park; or
  - (b) Restricting a landlord or his agent, or property manager from requiring a resident to comply with reasonable rules and regulations or terms of the rental agreement, and any covenants binding upon the landlord or resident, including covenants running with the land which pertain to the cleanliness of such resident’s lot and routine lawn and yard maintenance, exclusive of major landscaping projects.

**38-12-212.7. Landlord utilities account.**

- (1) Whenever a landlord contracts with a utility for service to be provided to a resident, the usage of which is to be measured by a master meter or other composite measurement device, such landlord shall remit to the utility all moneys collected from each resident as payment for the

resident's share of the charges for such utility service within forty-five days of the landlord's receipt of payment.

- (2) If a landlord fails to timely remit utility moneys collected from residents as required by subsection (1) of this section, such utility may, after written demand therefor is served upon the landlord, require the landlord to deposit an amount equal to the average daily charge for the usage of such utility service for the preceding twelve months multiplied by the sum of ninety.
- (3) Any utility which prevails in an action brought to enforce the provisions of this section shall be entitled to an award of its reasonable attorney fees and court costs.

***38-12-213. Rental agreement – disclosure of terms in writing.***

- (1) The terms and conditions of a tenancy must be adequately disclosed in writing in a rental agreement by the management to any prospective home owner prior to the rental or occupancy of a mobile home space or lot. Said disclosures shall include:
  - (a) The term of a tenancy and the amount of rent therefore;
  - (b) The day rental payment is due and payable;
  - (c) The day when unpaid rent shall be considered in default;
  - (d) The rules and regulations of the park then in effect;
  - (e) The name and mailing address where a manager's decision can be appealed;
  - (f) All charges to the home owner other than rent.
- (2) Said rental agreement shall be signed by both the management and the home owner and each party shall receive a copy thereof.
- (3) The management and the home owner may include in a rental agreement terms and conditions not prohibited by this part 2.

***38-12-214. Rules and regulations.***

- (1) The management shall adopt written rules and regulations concerning all home owners' use and occupancy of the premises. Such rules and regulations are enforceable against a home owner only if:
  - (a) Their purpose is to promote the convenience, safety or welfare of the home owners, protect and preserve the premises from abusive use, or make a fair distribution of services and facilities held out for the home owners generally.
  - (b) They are reasonably related to the purpose for which they are adopted;
  - (c) They are not retaliatory or discriminatory in nature;
  - (d) They are sufficiently explicit in prohibition, direction, or limitation of the home owner's conduct to fairly inform him of what he must or must not do to comply.

***38-12-215. New developments and parks – rental of sites to dealers authorized.***

- (1) The management of a new mobile home park or manufactured housing community development may require as a condition of leasing a mobile home site or manufactured home site for the first time such site is offered for lease that the prospective lessee has purchased a mobile home or manufactured home from a particular seller or from any one of a particular group of sellers.
- (2) A licensed mobile home dealer or a manufactured home dealer may, by contract with the management of a new mobile home park or manufactured housing community development, be granted the exclusive right to first-time rental of one or more mobile home sites or manufactured home sites.



***38-12-216. Mediation, when permitted – court actions.***

- (1) In any controversy between the management and a home owner of a mobile home park arising out of the provisions of this part 2, except for the non-payment of rent or in cases in which the health or safety of other home owners is in imminent danger, such controversy may be submitted to mediation by either party, prior to the filing of a forcible entry and detainer lawsuit upon agreement of the parties.
- (2) The agreement, if one is reached, shall be presented to the court as a stipulation. Either party to the mediation may terminate the mediation process at any time without prejudice.
- (3) If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief.

***38-12-217. Notice of sale of mobile home park.***

- (1) The mobile home park owner shall notify the owners of all mobile homes in the park of his intent to sell. Such notification shall be made only once for any particular contract to sell or trade and shall be by written notice mailed to each mobile home owner at the address shown on the rental agreement with the mobile home park owner at least ten days prior to the first scheduled closing for the sale or trade.
- (2) The provisions of this section shall not apply to the sale of a mobile home park when such sale occurs between members of an immediate family or partners in a partnership. For purposes of this section “immediate family” means persons related by blood or adoption.

#### **IV. Nondisclosure of Information Psychologically Impacting Real Property**

***38-35.5-101. Circumstances psychologically impacting real property – no duty for broker or salesperson to disclose.***

- (1) Facts or suspicions regarding circumstances occurring on a parcel of property which could psychologically impact or stigmatize such property are not material facts subject to a disclosure requirement in a real estate transaction. Such facts or suspicions include, but are not limited to, the following:
  - (a) That an occupant of real property is, or was at any time suspected to be, infected or has been infected with human immunodeficiency virus (HIV) or diagnosed with acquired immune deficiency syndrome (AIDS), or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place; or
  - (b) That the property was the site of a homicide or other felony or of a suicide.
- (2) No cause of action shall arise against a real estate broker or salesperson for failing to disclose such circumstance occurring on the property which might psychologically impact or stigmatize such property.

Effective date. This act shall take effect July 1, 1991.

#### **V. Soil and Hazard Analyses of Residential Construction**

**Title 6, Article 6.5**

***6-6.5-101. Disclosure to purchaser – penalty.***

- (1) At least fourteen days prior to closing the sale of any new residence for human habitation, every developer or builder or their representatives shall provide the purchaser with a copy of a

summary report of the analysis and the site recommendations. For sites in which significant potential for expansive soils is recognized, the builder or his representative shall supply each buyer with a copy of a publication detailing the problems associated with such soils, the building methods to address these problems during construction, and suggestions for care and maintenance to address such problems.

- (2) In addition to any other liability or penalty, any builder or developer failing to provide the report or publication required by subsection (1) of this section shall be subject to a civil penalty of five hundred dollars payable to the purchaser.
- (3) The requirements of this section shall not apply to any individual constructing a residential structure for his own residence.

## VI. Uniform Statutory Form Power of Attorney Act

### *15-1-1301. Legislative declaration – purpose – short title.*

- (1) The general assembly hereby finds, determines, and declares that:
  - (a) The public interest requires a standard form of power of attorney that an individual may use to authorize an agent to act for the individual in dealing with the individual's property and financial and other affairs;
  - (b) A statutory form offering a set of optional powers is necessary to enable the individual to design the power of attorney best suited to the individual's needs in a simple fashion and be assured that the agent's authority will be honored by any third party with whom the agent deals, regardless of the physical or mental condition of the principal at the time the power is exercised;
  - (c) When any person creates a power of attorney using substantially the form set forth in section 15-1-1302, any third party may rely in good faith on the acts of the agent within the scope of the power of attorney without fear of liability to the principal. However, the form set forth in section 15-1-1302 is not exclusive, and persons may use other forms of power of attorney.
- (2) This part 13 shall be known and may be cited as the "Uniform Statutory Form Power of Attorney Act".

### *15-1-1302. Statutory form of power of attorney.*

- (1) (a) **Form.** The form set forth in paragraph (b) of this subsection (1) may be known as the "statutory power of attorney for property" and may be used to grant an agent powers with respect to property and financial and other matters of the principal. When a power of attorney in substantially the form set forth in paragraph (b) of this subsection (1) is used, including the notice paragraphs in capital letters at the beginning of the form and the notarized form of acknowledgment at the end of the form, it shall have the meaning and effect prescribed in this part 13. The issue of whether a power of attorney meets the requirements of a statutory power of attorney for property shall not be affected if one or more of the categories of optional powers listed in the form are withheld or if the form includes specific limitations on or additions to the agent's powers, as permitted by the form. Nothing in this part 13 shall invalidate or bar any principal's use of any other or different form of power of attorney for property. Any nonstatutory power of attorney for property must be executed by the principal and must designate the agent and the agent's powers, but need not be acknowledged or conform in any other respect to the statutory power of attorney for property.
- (b) The following statutory power of attorney for property form is legally sufficient: (**See forms Chapter 27 for the actual statutory power of attorney**)

- (2) **Requirements.** A statutory power of attorney is legally sufficient under this act, if the wording of the form complies substantially with subsection (1), the form is properly completed, and the signature of the principal is acknowledged.

**15-1-1303. Durable power of attorney.**

A power of attorney legally sufficient under this Part 13 is durable to the extent that durable powers are permitted by any other law of this state and the power of attorney contains language, such as “this power of attorney will continue to be effective even though I become disabled, incapacitated, or incompetent”, showing the intent of the principal that the power granted maybe exercised notwithstanding later disability, incapacity, or incompetency.

**15-1-1304. Construction of powers generally.**

- (1) By executing a statutory power of attorney with respect to a subject listed in section 15-1-1302 (1), the principal, except as limited or extended by the principal in the power of attorney, empowers the agent, for that subject to:
- (a) Demand, receive, and obtain by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled; and conserve, invest, disburse, or use anything so received for the purposes intended;
  - (b) Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction, and perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of the principal;
  - (c) Execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the agent considers desirable to accomplish a purpose of a transaction;
  - (d) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, a claim existing in favor of or against the principal or intervene in litigation relating to the claim;
  - (e) Seek on the principal’s behalf the assistance of a court to carry out an act authorized by the power of attorney;
  - (f) Engage, compensate, and discharge an attorney, accountant, expert witness or other assistant;
  - (g) Keep appropriate records of each transaction, including an accounting of receipts and disbursements;
  - (h) Prepare, execute, and file a record, report, or other document the agent considers desirable to safeguard or promote the principal’s interest under a statute or governmental regulation;
  - (i) Reimburse the agent for expenditures properly made by the agent in exercising the powers granted by the power of attorney; and
  - (j) In general, do any other lawful act with respect to the subject.

**15-1-1305. Construction of power relating to real property transactions.**

- (1) In a statutory power of attorney, when properly recorded, the language granting power with respect to real property transactions empowers the agent to:
- (a) Accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire, an interest in real property or a right incident to real property;
  - (b) Sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition, consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant

- options concerning, lease, sublease, or otherwise dispose of, an interest in real property or a right incident to real property;
- (c) Release, assign, satisfy, and enforce by litigation or otherwise, a mortgage, deed of trust, encumbrance, lien, or other claim to real property which exists or is asserted;
  - (d) Do any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned, or claimed to be owned, by the principal, including:
    - (I) Insuring against a casualty, liability, or loss;
    - (II) Obtaining or regaining possession, or protecting the interest or right, by litigation or otherwise;
    - (III) Paying, compromising, or contesting taxes or assessments, or applying for and receiving refunds in connection with them; and
    - (IV) Purchasing supplies, hiring assistance or labor, and making repairs or alternations in the real property;
  - (e) Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;
  - (f) Participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property and receive and hold shares of stock or obligations received in a plan of reorganization, and act with respect to them, including:
    - (I) Selling or otherwise disposing of them;
    - (II) Exercising or selling an option, conversion, or similar right with respect to them; and
    - (III) Voting them in person or by proxy;
  - (g) Change the form of title of an interest in or right incident to real property;
  - (h) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

***15-1-1306. Construction of power relating to tangible personal property transactions.***

- (1) In a statutory power of attorney, the language granting power with respect to tangible personal property transactions empowers the agent to:
  - (a) Accept as a gift or as security for a loan, reject, demand, buy, receive, or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property;
  - (b) Sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, grant options concerning, lease, sublease to others, or otherwise dispose of tangible personal property or an interest in tangible personal property;
  - (c) Release, assign, satisfy, or enforce by litigation or otherwise, a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property; and
  - (d) Do an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including:
    - (I) Insuring against casualty, liability, or loss;
    - (II) Obtaining or regaining possession, or protecting the property or interest, by litigation or otherwise;

- (III) Paying, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;
- (IV) Moving from place to place;
- (V) Storing for hire or on a gratuitous bailment; and
- (VI) Using, altering, and making repairs or alterations.

**15-1-1307. Construction of power relating to stock and bond transactions.**

In a statutory power of attorney, the language granting power with respect to stock and bond transactions empowers the agent to buy, sell, and exchange stocks, bonds, mutual funds, and all other types of securities and financial instruments except commodity futures contracts and call and put options on stocks and stock indexes, receive certificates and other evidences of ownership with respect to securities, exercise voting rights with respect to securities in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

**15-1-1308. Construction of power relating to commodity and option transactions.**

In a statutory power of attorney, the language granting power with respect to commodity and option transactions empowers the agent to buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call and put options on stocks and stock indexes traded on a regulated option exchange, and establish, continue, modify, and terminate option accounts with a broker.

**15-1-1309. Construction of power relating to banking and other financial institution transactions.**

- (1) In a statutory power of attorney, the language granting power with respect to banking and other financial institution transactions, empowers the agent to:
  - (a) Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;
  - (b) Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;
  - (c) Hire a safe deposit box or space in a vault;
  - (d) Contract to procure other services available from a financial institution as the agent considers desirable;
  - (e) Withdraw by check, order, or otherwise money or property of the principal deposited with or left in the custody of a financial institution;
  - (f) Receive bank statements, vouchers, notices, and similar documents from a financial institution and act with respect to them;
  - (g) Enter a safe deposit box or vault and withdraw or add to the contents;
  - (h) Borrow money at an interest rate agreeable to the agent and pledge as security personal property of the principal necessary in order to borrow, pay, renew, or extend the time of payment of a debt of the principal;
  - (i) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal, or payable to the principal or the principal's order, receive the cash or other proceeds of those transactions, accept a draft drawn by a person upon the principal, and pay it when due;
  - (j) Receive for the principal and act upon a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument;

- (k) Apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution, and give an indemnity or other agreement in connection with letters of credit; and
- (l) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

**15-1-1310. Construction of power relating to business operating transactions.**

- (1) In a statutory power of attorney, the language granting power with respect to business operating transactions, empowers the agent to:
  - (a) Operate, buy, sell, enlarge, reduce, and terminate a business interest;
  - (b) To the extent that an agent is permitted by law to act for a principal and subject to the terms of the partnership agreement to:
    - (I) Perform a duty or discharge a liability and exercise a right, power, privilege, or option that the principal has, may have, or claims to have, under a partnership agreement, whether or not the principal is a partner;
    - (II) Enforce the terms of a partnership agreement by litigation or otherwise; and
    - (III) Defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of membership in the partnership;
  - (c) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of a bond, share, or other instrument of similar character and defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of a bond, share, or similar instrument;
  - (d) With respect to a business owned solely by the principal:
    - (I) Continue, modify, renegotiate, extend, and terminate a contract made with an individual or a legal entity, firm, association, or corporation by or on behalf of the principal with respect to the business before execution of the power of attorney;
    - (II) Determine:
      - (A) The location of its operation;
      - (B) The nature and extent of its business;
      - (C) The methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;
      - (D) The amount and types of insurance carried;
      - (E) The mode of engaging, compensating, and dealing with its accountants, attorneys, and other agents and employees;
    - (III) Change the name or form of organization under which the business is operated and enter into a partnership agreement with other persons or organize a corporation to take over all or part of the operation of the business; and
    - (IV) Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the business, and control and disburse the money in the operation of the business;
  - (e) Put additional capital into a business in which the principal has an interest;
  - (f) Join in a plan of reorganization, consolidation, or merger of the business;
  - (g) Sell or liquidate a business or part of it at the time and upon the terms the agent considers desirable;
  - (h) Establish the value of a business under a buy-out agreement to which the principal is a party;

- (i) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business which are required by a governmental agency or instrumentality or which the agent considers desirable, and make related payments; and
- (j) Pay, compromise, or contest taxes or assessments and do any other act which the agent considers desirable to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

***15-1-1311. Construction of power relating to insurance transactions.***

- (1) In a statutory power of attorney, the language granting power with respect to insurance and annuity transactions empowers the agent to:
  - (a) Continue, pay the premium or assessment on, modify, rescind, release, or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;
  - (b) Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents; and select the amount, type of insurance or annuity, and mode of payment;
  - (c) Pay the premium or assessment on, modify, rescind, release, or terminate a contract of insurance or annuity procured by the agent;
  - (d) Designate the beneficiary of the contract, but an agent may be named a beneficiary of the contract, or an extension, renewal, or substitute for it, only to the extent the agent was named as a beneficiary under a contract procured by the principal before executing the power of attorney;
  - (e) Apply for and receive a loan on the security of the contract of insurance or annuity;
  - (f) Surrender and receive the cash surrender value;
  - (g) Exercise an election;
  - (h) Change the manner of paying premiums;
  - (i) Change or convert the type of insurance contract or annuity, with respect to which the principal has or claims to have a power described in this section;
  - (j) Change the beneficiary of a contract of insurance or annuity, but the agent may not be designated a beneficiary except to the extent permitted by paragraph (d) of this subsection (1)
  - (k) Apply for and procure government aid to guarantee or pay premiums of a contract of insurance on the life of the principal;
  - (l) Collect, sell, assign, hypothecate, borrow upon, or pledge the interest of the principal in a contract of insurance or annuity; and
  - (m) Pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

***15-1-1312. Construction of power relating to estate, trust, and other beneficiary transactions.***

- (1) In a statutory power of attorney, the language granting power with respect to estate, trust, and other beneficiary transactions, empowers the agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other

fund from which the principal is, may become, or claims to be entitled, as a beneficiary, to a share or payment, including to:

- (a) Accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund;
- (b) Demand or obtain by litigation or otherwise money or other thing of value to which the principal is, may become, or claims to be entitled by reason of the fund;'
- (c) Initiate, participate in, and oppose litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;
- (d) (d) Initiate, participate in, and oppose litigation to remove, substitute, or surcharge, a fiduciary;
- (e) Conserve, invest, disburse, and use anything received for an authorized purpose; and
- (f) Transfer an interest of the principal in real property, stocks, bonds, accounts with financial institutions, insurance, and other property, to the trustee of a revocable trust cheated by the principal as settlor.

***15-1-1313. Construction of power relating to claims and litigation.***

- (1) In a statutory power of attorney, the language with respect to claims and litigation empowers the agent to:
  - (a) Assert and prosecute before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, and defend against an individual, a legal entity, or government, including suits to 'recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief;
  - (b) Bring an action to determine adverse claims, intervene in litigation, and act as amicus curiae;
  - (c) In connection with litigation, procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;
  - (d) In connection with litigation, perform any lawful act, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding the principal in litigation;
  - (e) Submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation;
  - (f) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive and execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;
  - (g) Act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, concerning the principal or some other person, with respect to a reorganization proceeding, or a receivership or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value; and



- (h) Pay a judgment against the principal or a settlement made in connection with litigation and receive and conserve money, or other thing of value paid in settlement of or as proceeds of a claim or litigation.

**15-1-1314. Construction of power relating to personal and family maintenance.**

- (1) In a statutory power of attorney, the language granting power with respect to personal and family maintenance, empowers the agent to:
  - (a) Do the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, children, and other individuals customarily or legally entitled to be supported by the principal, including providing living quarters by purchase, lease, or other contract, or paying the operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by those individuals;
  - (b) Provide for the individuals described in paragraph (a) of this subsection (1) normal domestic help; usual vacations and travel expenses; and funds for shelter, clothing, food, appropriate education, and other current living costs;
  - (c) Pay for the individuals described in paragraph (a) of this subsection (1) necessary medical, dental, and surgical care, hospitalization, and custodial care;
  - (d) Continue any provision made by the principal, for the individuals described in paragraph (a) of this subsection (1), for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them;
  - (e) Maintain or open charge accounts for the convenience of the individuals described in paragraph (a) of this subsection (1) and open new accounts the agent considers desirable to accomplish a lawful purpose; and
  - (f) Continue payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization or to continue contributions to those organizations.

**15-1-1315. Construction of power relating to benefits from social security, medicare, medicaid, or other governmental programs, or military service.**

- (1) In a statutory power of attorney, the language granting power with respect to benefits from social security, medicare, medicaid or other governmental programs, or civil or military service, empowers the agent to:
  - (a) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in section 15-1-1314 (1) (a), and for shipment of their household effects;
  - (b) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bin of lading, shipping ticket, certificate, or other instrument for that purpose;
  - (c) Prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled, under a statute or governmental regulation;
  - (d) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive; and
  - (e) Receive the financial proceeds of a claim of the type described in this section, conserve, invest, disburse, or use anything received for a lawful purpose.

**15-1-1316. Construction of power relating to retirement plan transactions.**

- (1) In a statutory power of attorney, the language granting power with respect to retirement plan transactions empowers the agent to:
  - (a) Select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;
  - (b) Designate beneficiaries under those plans and change existing designations;
  - (c) Make voluntary contributions to those plans;
  - (d) Exercise the investment powers available under any self-directed retirement plan;
  - (e) Make “rollovers” of plan benefits into other retirement plans;
  - (f) If authorized by the plan, borrow from, sell assets to, and purchase assets from the plan; and
  - (g) Waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed.

**15-1-1317. Construction of power relating to tax matters.**

- (1) In a statutory power of attorney, the language granting power with respect to tax matters empowers the agent to:
  - (a) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, federal insurance contributions act returns, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents (including consents and agreements under internal revenue code section 2032A or any successor section), closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following twenty-five tax years;
  - (b) Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;
  - (c) Exercise any election available to the principal under federal, state, local, or foreign tax law; and
  - (d) Act for the principal in all tax matters for all periods before the Internal Revenue Service, and any other taxing authority.

**15-1-1318. Existing interests – foreign interests..**

The powers described in sections 15-1-1304 through 15-1-1317 are exercisable equally with respect to an interest the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state, and whether or not the powers are exercised or the power of attorney is executed in this state.

**15-1-1319. Uniformity of application and construction.**

This part 13 shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part 13 among states enacting it.

**15-1-1320. Severability clause.**

If any provision of this part 13 or its application to any person or circumstance is held invalid, the invalidity does not effect other provisions or applications of this part 13 which can be given effect without the invalid provision or application, and to this end the provisions of this part 13 are severable.

Section 2. Effective date. This act shall take effect July 1, 1992.

## **VII. Relief of Residential Taxpayers from Lien of Special District Taxes for General Obligation Indebtedness**

### **Certification and Notice of Special District Taxes for General Obligation Indebtedness**

#### ***32-1-1601. Legislative declaration.***

The general assembly hereby finds and declares that special districts are political subdivisions and instrumentalities of the state of Colorado and local governments thereof. The general assembly further finds that defaults in payment of general obligation debts and the possibility of further defaults by some special districts have resulted in a general loss of confidence by investors in bonds and undertakings of all types issued or to be issued by local governments of the state and have imposed severe hardship on investors in general obligation bonds of special districts and upon owners of residential real property within such districts. The general assembly further finds that this Part 16 is necessary to protect the credit reputation of local governments of this state, to restore confidence of investors in local government obligations, and to protect owners of residential real property within special districts.

#### ***32-1-1602. Definitions.***

As used in this part 16, unless the context otherwise requires:

- (1) "General obligation debt" means an obligation of a special district created by a resolution of the special district authorizing the issuance of bonds or a contract, the obligations of which are backed by a pledge of the full faith and credit of the special district and a covenant to impose mill levies without limit to retire the bonds or fund the contractual obligation.
- (2) "Special district" shall have the same meaning as provided in section 32-1-103 (20).

#### ***32-1-1603. Separate mill levies – certification to county commissioners.***

After July 1, 1992, special districts which levy taxes for payment of general obligation debt shall certify separate mill levies to the board of county commissioners, one each for funding requirements of each such debt in accordance with the relevant contracts or bond resolutions which identifies each bond issue by series, date, coupon rate, and maturity and each contract by title, date, principal amount and maturity and one for the remainder of the budget of said district.

#### ***32-1-1604. Recording.***

Whenever a special district authorizes or incurs a general obligation debt, a notice of such action and a description of such debt in a form prescribed by the director of the division of local government in the department of local affairs shall be recorded by the special district with the county clerk and recorder in each county in which the district is located. The recording shall be done within thirty days after authorizing or incurring the debt.

#### ***32-1-1605. Limitations on actions – prior law.***

Any claim for relief under section 32-1-1504, as it existed prior to July 1, 1992, shall be commenced on or before January 1, 1993, and not thereafter.

**10-11-122. Title commitments.**

- (1) Every title insurance agent or title insurance company shall provide, along with each title commitment issued for the sale of residential real property as defined in Section 39-1-102 (14.5), C.R.S., a statement disclosing the following information:
  - (a) That the subject real property may be located in a special taxing district;
  - (b) That a certificate of taxes due listing each taxing jurisdiction shall be obtained from the county treasurer or the county treasurer's authorized agent.
  - (c) That information regarding special districts and the boundaries of such districts may be obtained from the board of county commissioners, the county clerk and recorder, or the county assessor.
- (2) Failure of a title insurance agent or a title insurance company to provide the statement required by subsection (1) of this section shall subject such agent or company to the penalty provisions of section 10-3-111 but shall not affect or invalidate any provisions of the commitment for title insurance.
- (3) Before issuing any title insurance policy, unless the proposed insured provides written instructions to the contrary, a title insurance agent or title insurance company shall obtain a certificate of taxes due or other equivalent documentation from the county treasurer or the county treasurer's authorized agent.

**38-35.7-101. Disclosure – special taxing districts – general obligation indebtedness.**

- (1) Every contract for the purchase and sale of residential real property shall contain a disclosure statement in bold-faced type which is clearly legible and in substantially the following form:

**“SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. PURCHASERS SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.”**

*Note: The above disclosure is printed in all three versions of the real estate commission-approved “Contract to Buy and Sell Real Estate “.*

- (2) The obligation to provide the disclosure set forth in subsection (1) of this section shall be upon the seller, and, in the event of the failure by the seller to provide the written disclosure described in subsection (1) of this section, the purchaser shall have a claim for relief against the seller for all damages to the purchaser resulting from such failure plus court costs.

## VIII. Colorado Consumer Protection Act

Colorado Statute 12-61-113 (1) (c.5) C.R.S., which is printed in chapter one of this manual, lists as a cause for disciplinary action and possible revocation of a real estate license, the conviction of a violation of 6-1-105 (1) C.R.S. known as The Colorado Consumer Protection Act. The civil penalties for conviction include a payment of up to \$100,000.00 to the state general fund and three times the amount of actual damages to the injured party in a private civil action.

Printed below are the portions of the law pertinent to the real estate industry.

### ***6-1-104. Cooperative reporting.***

The district attorneys may cooperate in a statewide reporting system by receiving, on forms provided by the attorney general, complaints from persons concerning deceptive trade practices listed in sections 6-1-105 and part 7 of this article and transmitting such complaints to the attorney general.

### ***6-1-105. Deceptive trade practices.***

- (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:
  - (a) Knowingly passes off goods, services, or property as those of another;
  - (b) Knowingly makes a false representation as to the source, sponsorship, approval, or certification of goods, services, or property;
  - (c) Knowingly makes a false representation as to affiliation, connection, or association with or certification by another;
  - (d) Uses deceptive representations or designations of geographic origin in connection with goods or services;
  - (e) Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith;
  - (f) Represents that goods are original or new if he knows or should know that they are deteriorated, altered, reconditioned, reclaimed, used, or second hand;
  - (g) Represents that goods, food, services, or property are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another;
  - (h) Disparages the goods, services, property, or business of another by false or misleading representation of fact;
  - (i) Advertises goods, services, or property with intent not to sell them as advertised;
  - (j) Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
  - (k) Advertises under the guise of obtaining sales personnel when in fact the purpose is to first sell a product or service to the sales personnel applicant;
  - (l) Makes false or misleading statements of fact concerning the price of goods, services, or property or the reasons for, existence of, or amounts of price reductions;
  - (m) Fails to deliver to the customer at the time of an installment sale of goods or services a written order, contract, or receipt setting forth the name and address of the seller, the name and address of the organization which he represents, and all of the terms and

- conditions of the sale, including a description of the goods or services, stated in readable, clear, and unambiguous language;
- (n) Employs “bait and switch” advertising, which is advertising accompanied by an effort to sell goods, services, or property other than those advertised or on terms other than those advertised and which is also accompanied by one or more of the following practices:
    - (I) Refusal to show the goods or property advertised or to offer the services advertised;
    - (II) Disparagement in any respect of the advertised goods, property, or services or the terms of sale;
    - (III) Requiring tie-in sales or other undisclosed conditions to be met prior to selling the advertised goods, property, or services;
    - (IV) Refusal to take orders for the goods, property, or services advertised for delivery within a reasonable time;
    - (V) Showing or demonstrating defective goods, property, or services which are unusable or impractical for the purposes set forth in the advertisement;
    - (VI) Accepting a deposit for the goods, property, or services and subsequently switching the purchase order to higher-priced goods, property, or services; or
    - (VII) Failure to make deliveries of the goods, property, or services within a reasonable time or to make a refund therefor;
  - (o) Knowingly fails to identify flood-damaged or water-damaged goods as to such damages;
  - (p) Solicits door-to-door as a seller, unless the seller, within thirty seconds after beginning the conversation, identifies himself or herself, whom he or she represents, and the purpose of the call;
  - (q) Contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes any pyramid promotional scheme.
  - (r) Advertises or otherwise represents that goods or services are guaranteed without clearly and conspicuously disclosing the nature and extent of the guarantee, any material conditions or limitations in the guarantee which are imposed by the guarantor, the manner in which the guarantor will perform, and the identity of such guarantor. Any representation that goods or services are “guaranteed for life” or have a “lifetime guarantee” shall contain, in addition to the other requirements of this paragraph (r), a conspicuous disclosure of the meaning of “life” or “lifetime” as used in such representation (whether that of the purchaser, the goods or services, or otherwise). Guarantees shall not be used which under normal conditions could not be practically fulfilled or which are for such a period of time or are otherwise of such a nature as to have the capacity and tendency of misleading purchasers or prospective purchasers into believing that the goods or services so guaranteed have a greater degree of serviceability, durability, or performance capability in actual use than is true in fact. The provisions of this paragraph (r) apply not only to guarantees but also to warranties, to disclaimer of warranties, to purported guarantees and warranties, and to any promise or representation in the nature of a guarantee or warranty; however, such provisions do not apply to any reference to a guarantee in a slogan or advertisement so long as there is no guarantee or warranty of specific merchandise or other property.
  - (u) Fails to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction;
  - (v) Disburses funds in connection with a real estate transaction in violation of section 38-35-125 (2), C.R.S.

- (y) Fails, in connection with any solicitation, to clearly and prominently disclose immediately adjacent to or after the description of any item or prize to be received by any person the actual retail value of each item or prize to be awarded. For the purposes of this paragraph (y), the actual retail value is the price at which substantial sales of the item were made in the person's trade area or in the trade area in which the item or prize is to be received within the last ninety days or, if no substantial sales were made, the actual cost of the item or prize to the person on whose behalf any contest or promotion is conducted; except that, whenever the actual cost of the item to the provider is less than fifteen dollars per item, a disclosure that "actual cost to the provider is less than fifteen dollars" may be made in lieu of disclosure of actual cost. The provisions of this paragraph (y) shall not apply to a promotion which is soliciting the sale of a newspaper, magazines, or periodicals of general circulation or to a promotion soliciting the sale of books, records, audio tapes, compact disks, or videos, when the promoter allows the purchaser to review the merchandise without obligation for at least seven days and provides a full refund within thirty days after the receipt of the returned merchandise or when a membership club operation is in conformity with rules and regulations of the federal trade commission contained in 16 C.F.R. 425.
- (z) Refuses or fails to obtain all governmental licenses or permits required to perform the services or to sell the goods, food, services, or property as agreed to or contracted for with a consumer;
- (cc) Engages in any commercial telephone solicitation which constitutes an unlawful telemarketing practice as defined in section 6-1-304;  
*Note: 6-1-304 C.R.S. concerning telemarketing fraud, became effective July 1, 1993 and requires commercial telephone solicitors to register with the attorney general. The act exempts from registration any person or affiliate of that person if regulated by the Colorado real estate commission.*
- (ll) Knowingly making a false representation as to the results of a radon test or the need for radon mitigation;

**6-1-113. Damages.**

- (1) The provisions of this article shall be available in a civil action for any claim against any person who has engaged in or caused another to engage in any deceptive trade practice listed in this article. An action under this section shall be available to any person who:
  - (a) Is an actual or potential consumer of the defendant's goods, services, or property and is injured as a result of such deceptive trade practice; or
  - (b) Is any successor in interest to an actual consumer who purchased the defendant's goods, services, or property; or
  - (c) In the course of the person's business or occupation, is injured as a result of such deceptive trade practice.
- (2) Except in a class action or a case brought for a violation of section 6-1-709, any person who, in a private civil action, is found to have engaged in or caused another to engage in any deceptive trade practice listed in this article shall be liable in an amount equal to the sum of:
  - (a) The greater of:
    - (I) The amount of actual damages sustained; or
    - (II) Five hundred dollars; or
    - (III) Three times the amount of actual damages sustained, if it is established by clear and convincing evidence that such person engaged in bad faith conduct; plus
  - (b) In the case of any successful action to enforce said liability, the costs of the action together with reasonable attorney fees as determined by the court.

- (2.3) As used in subsection (2) of this section, “bad faith conduct” means fraudulent, willful, knowing, or intentional conduct that causes injury.
- (2.5) Notwithstanding the provisions of subsection (2) of this section, in the case of any violation of section 6-1-709, in addition to interest, costs of the action, and reasonable attorney fees as determined by the court, the prevailing party shall be entitled only to damages in an amount sufficient to refund moneys actually paid for a manufactured home not delivered in accordance with the provisions of section 6-1-709.
- (2.7) Notwithstanding the provisions of subsection (2) of this section, in case of any violation of section 6-1-105 (1) (ss) , the court may award reasonable costs of the action and attorney fees and interest, and in addition, the prevailing party shall be entitled only to damages in an amount sufficient to refund moneys actually paid for the installation of a manufactured home not installed in accordance with the provisions of part 31 of article 32 of title 24, C.R.S.
- (3) Any person who brings an action under this article that is found by the court to be groundless and in bad faith or for the purpose of harassment shall be liable to the defendant for the costs of the action together with reasonable attorney fees as determined by the court.
- (4) Costs and attorney fees shall be awarded to the attorney general or a district attorney in all actions where the attorney general or the district attorney successfully enforces this article.

***6-1-703. Time shares- deceptive trade practices.***

- (1) A person engages in a deceptive trade practice when, in the course of such person’s business, vocation, or occupation, such person engages in one or more of the following activities in connection with the advertisement or sale of a time share:
  - (a) Misrepresents the investment, resale, or rental value of any time share; the conditions under which a purchaser may exchange the right to use accommodations or facilities in one location for the right to use accommodations or facilities in another location; or the period of time during which the accommodations or facilities contracted for will be available to the purchaser;
  - (b) Fails to allow any purchaser of a time share a right to rescind the sale within five calendar days after the sale;
  - (c) Fails to provide conspicuous notice on the contract of the right of a purchaser of a time-share to rescind the sale either by telegram, mail, or hand delivery. For purposes of this section, notice of rescission is considered given, if by mail when postmarked, if by telegram when filed for telegraphic transmission, or if by hand delivery when delivered to the seller’s place of business; or
  - (d) Fails to refund any down payment or deposit made pursuant to a time share contract within seven days after the seller receives the purchaser’s written notice of rescission.

***6-1-709. Sales of manufactured homes – deceptive trade practices.***

- (1) A person engages in a deceptive trade practice when, in the course of such person’s business, vocation, or occupation, such person:
  - (a) Engages in conduct that constitutes an unlawful manufactured home sale practice as described in section 24-32-3326, C.R.S.



Ed. Note: C.R.S. § 37-60-126 has been moved to Chapter 12: Water Rights.

## **IX. Disclosure – Methamphetamine Laboratory**

**CONCERNING MANDATORY DISCLOSURE IN CONNECTION WITH THE PURCHASE OF RESIDENTIAL REAL PROPERTY OF WHETHER THE PROPERTY HAS BEEN USED AS A METHAMPHETAMINE LABORATORY. (EFFECTIVE JANUARY 1, 2007)**

### ***38-35.7-103. Disclosure – methamphetamine laboratory.***

- (1) A buyer of residential real property has the right to test the property for the purpose of determining whether the property has ever been used as a methamphetamine laboratory.
- (2)
  - (a) Tests conducted pursuant to this section shall be performed by a certified industrial hygienist or industrial hygienist, as those terms are defined in section 24-30-1402, C.R.S. If the buyer's test results indicate that the property has been used as a methamphetamine laboratory but has not been remediated to meet the standards established by rules of the state board of health promulgated pursuant to section 25-18.5-102, C.R.S., the buyer shall promptly give written notice to the seller of the results of the test, and the buyer may terminate the contract.
  - (b) The seller shall have thirty days after receipt of the notice to conduct a second independent test. If the seller's test results indicate that the property has been used as a methamphetamine laboratory but has not been remediated to meet the standards established by rules of the state board of health promulgated pursuant to section 25-18.5-102, C.R.S., then the second independent hygienist shall so notify the seller.
  - (c) If the seller receives the notice referred to in paragraph (b) of this subsection (2) or if the seller receives the notice referred to in paragraph (a) of this subsection (2) and does not elect to have the property retested pursuant to paragraph (b) of this subsection (2), then an illegal drug laboratory used to manufacture methamphetamine shall be deemed to have been discovered and the owner shall be deemed to have received notice pursuant to section 25-18.5-103 (1) (a), C.R.S. Nothing in this section shall prohibit a buyer from purchasing the property and assuming liability pursuant to section 25-18.5-103, C.R.S., provided that on the date of closing, the buyer shall provide notice to the department of public health and environment of the purchase and assumption of liability and further provided that the remediation required by section 25-18.5-103, C.R.S., shall be completed within ninety days after the date of closing.
- (3)
  - (a) Except as specified in subsection (4) of this section, the seller shall disclose in writing to the buyer whether the seller knows that the property was previously used as a methamphetamine laboratory.
  - (b) A seller who fails to make a disclosure required by this section at or before the time of sale and who knew of methamphetamine production on the property is liable to the buyer for:
    - (I) Costs relating to remediation of the property according to the standards established by rules of the state board of health promulgated pursuant to section 25-18.5-102, C.R.S.;
    - (II) Costs relating to health-related injuries occurring after the sale to residents of the property caused by methamphetamine production on the property; and
    - (III) Reasonable attorney fees for collection of costs from the seller.

- (c) A buyer shall commence an action under this subsection (3) within three years after the date on which the buyer closed the purchase of the property where the methamphetamine production occurred.
- (4) If the seller became aware that the property was once used for the production of methamphetamine and the property was remediated in accordance with the standards established pursuant to section 25-18.5-102, C.R.S., and evidence of such remediation was received by the applicable governing body in compliance with the documentation requirements established pursuant to section 25-18.5-102, C.R.S., then the seller shall not be required to disclose that the property was used as a methamphetamine laboratory to a buyer and the property shall be removed from any government-sponsored informational service listing properties that have been used for the production of methamphetamine.
- (5) For purposes of this section, “residential real property” includes a: Manufactured home; mobile home; condominium; townhome; home sold by the owner, a financial institution, or the federal department of housing and urban development; rental property, including an apartment; and short-term residence such as a motel or hotel.

***SECTION 2 Effective date – applicability.***

This act shall take effect January 1, 2007, and shall apply to contracts for the purchase and sale of residential real property that are offered or entered into on or after said date.

## **X. Common Interest Community Disclosure**

***38-35.7-102. Disclosure – common interest community – obligation to pay assessments – requirement for architectural approval.***

- (1) On and after January 1, 2007, every contract for the purchase and sale of residential real property in a common interest community shall contain a disclosure statement in bold-faced type that is clearly legible and in substantially the following form:

**THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER’S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.**

- (2) (a) The obligation to provide the disclosure set forth in subsection (1) of this section shall be upon the seller, and, in the event of the failure by the seller to provide the written disclosure described in subsection (1) of this section, the purchaser shall have a claim for relief against the seller for actual damages directly and proximately caused by such failure plus court costs. It shall be an affirmative defense to any claim for damages

brought under this section that the purchaser had actual or constructive knowledge of the facts and information required to be disclosed.

- (b) Upon request, the seller shall either provide to the buyer or authorize the unit owners' association to provide to the buyer, upon payment of the association's usual fee pursuant to section 38-33.3-317 (3), all of the common interest community's governing documents and financial documents, as listed in the most recent available version of the contract to buy and sell real estate promulgated by the real estate commission as of the date of the contract.
- (3) This section shall not apply to the sale of a unit that is a time share unit, as defined in section 38-33-110 (7).

Ed. Note: The section "Standards for Mortgage Lending and Servicing" has been moved to Chapter 11: Mortgage Brokers

## XI. Equity Skimming

### *18-5-802. Equity skimming of real property.*

- (1) A person commits the crime of equity skimming of real property if he knowingly:
  - (a) Acquires an interest in real property which is encumbered by a loan secured by a mortgage or deed of trust and the loan is in arrears at the time he acquires the interest or is placed in default within eighteen months after acquiring such interest in real property; and
  - (b) Fails to apply all rent derived from his interest in the real property first toward the satisfaction of all outstanding payments due on the loan and second toward any fees due to any association of real property owners which charges such fees for the upkeep of the housing facility, or common area including buildings and grounds thereof, of which the real property is a part before appropriating the remainder of such rent or any part thereof for any other purpose except for the purpose of repairs necessary to prevent waste of the real property.
- (2) Repealed.
- (3) Equity skimming of real property is a class 5 felony.
- (4) It shall be an affirmative defense to this section:
  - (a) That all deficiencies in all underlying encumbrances at the time of acquisition have been fully satisfied and brought current and that, in addition, any regular payments on the underlying encumbrances during the succeeding nine months after the date of acquisition have been timely paid in full;
  - (b) That any fees due to an association of real property owners for the upkeep of the housing facility, or common area including buildings and grounds thereof, of which the real property is a part have been paid in full.
- (5) The provisions of this section shall not apply to any bona fide lender who accepts a deed in lieu of foreclosure or who forecloses upon the real property.
- (6) The provisions of this section shall not apply to any bona fide purchaser who acquires fee title in any real property without agreeing to pay all underlying encumbrances and takes fee title subject to all underlying encumbrances, if the following written, verbatim warning was provided to the seller in capital letters of no less than ten-point, bold-faced type and acknowledged by the seller's signature:

**WARNING: PURCHASER, , WILL NOT ASSUME OR PAY ANY PRESENT MORTGAGE, DEEDS OF TRUST, OR OTHER LIENS OR ENCUMBRANCES AGAINST THE PROPERTY.**

**THE SELLER, , UNDERSTANDS HE/SHE WILL REMAIN RESPONSIBLE FOR ALL PAYMENTS DUE ON SUCH MORTGAGES, DEEDS OF TRUST, OR OTHER LIENS OR ENCUMBRANCES AND FOR ANY DEFICIENCY JUDGMENT UPON FORECLOSURE. I HAVE HAD THE FOREGOING READ TO ME AND UNDERSTAND THE PURCHASER, , WILL NOT ASSUME ANY PRESENT MORTGAGES, DEEDS OF TRUST, OR OTHER LIENS OR ENCUMBRANCES AGAINST THE PROPERTY DESCRIBED AS:**

**DATE:** \_\_\_\_\_

**SELLER(S) NAME AND SIGNATURE:** \_\_\_\_\_

Ed. Note: The section "Loan Fraud" has been moved to Chapter 11: Mortgage Brokers
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## **XII. Colorado Foreclosure Protection Act**

***6-1-1101. Short title. This part 11 shall be known and may be cited as the "Colorado Foreclosure Protection Act".***

***6-1-1102. Legislative declaration.***

The general assembly hereby finds, determines, and declares that home ownership and the accumulation of equity in one's home provide significant social and economic benefits to the state and its citizens. Unfortunately, too many home owners in financial distress, especially the poor, elderly, and financially unsophisticated, are vulnerable to a variety of deceptive or unconscionable business practices designed to dispossess them or otherwise strip the equity from their homes. There is a compelling need to curtail and to prevent the most deceptive and unconscionable of these business practices, to provide each home owner with information necessary to make an informed and intelligent decision regarding transactions with certain foreclosure consultants and equity purchasers, to provide certain minimum requirements for contracts between such parties, including statutory rights to cancel such contracts, and to ensure and foster fair dealing in the sale and purchase of homes in foreclosure. Therefore, it is the intent of the general assembly that all violations of this part 11 have a significant public impact and that the terms of this part 11 be liberally construed to achieve these purposes.

***6-1-1103 Definitions.***

As used in this part 11, unless the context otherwise requires:

- (1) "Associate" means a partner, subsidiary, affiliate, agent, or any other person working in association with a foreclosure consultant or an equity purchaser. "Associate" does not include a person who is excluded from the definition of an "equity purchaser" or a "foreclosure consultant".
- (2) "Equity purchaser" means a person who, in the course of the person's business, vocation, or occupation, acquires title to a residence in foreclosure; except that the term does not include a person who acquires such title:
  - (a) For the purpose of using such property as his or her personal residence for at least one year;
  - (b) By a deed in lieu of foreclosure to the holder of an evidence of debt, or an associate of the holder of an evidence of debt, of a consensual lien or encumbrance of record if such consensual lien or encumbrance is recorded in the real property records of the clerk and recorder of the county where the residence in foreclosure is located prior to the recording of the notice of election and demand for sale required under section 38-38-101, C.R.S.;
  - (c) By a deed from the public trustee or a county sheriff as a result of a foreclosure sale conducted pursuant to article 38 of title 38, C.R.S.;

- (d) At a sale of property authorized by statute;
  - (e) By order or judgment of any court;
  - (f) From the person's spouse, relative, or relative of a spouse, by the half or whole blood or by adoption, or from a guardian, conservator, or personal representative of a person identified in this paragraph (f); or
  - (g) While performing services as a part of a person's normal business activities under any law of this state or the United States that regulates banks, trust companies, savings and loan associations, credit unions, insurance companies, title insurers, insurance producers, or escrow companies authorized to conduct business in the state, an affiliate or subsidiary of such person, or an employee or agent acting on behalf of such person.
- (3) "Evidence of debt" means a writing that evidences a promise to pay or a right to the payment of a monetary obligation, such as a promissory note, bond, negotiable instrument, a loan, credit, or similar agreement, or a monetary judgment entered by a court of competent jurisdiction.
- (4) (a) "Foreclosure consultant" means a person who does not, directly or through an associate, take or acquire any interest in or title to the residence in foreclosure and who, in the course of such person's business, vocation, or occupation, makes a solicitation, representation, or offer to a home owner to perform, in exchange for compensation from the home owner or from the proceeds of any loan or advance of funds, a service that the person represents will do any of the following:
- (I) Stop or postpone a foreclosure sale;
  - (II) Obtain a forbearance from a beneficiary under a deed of trust, mortgage, or other lien;
  - (III) Assist the home owner in exercising a right to cure a default as provided in article 38 of title 38, C.R.S.;
  - (IV) Obtain an extension of the period within which the home owner may cure a default as provided in article 38 of title 38, C.R.S.;
  - (V) Obtain a waiver of an acceleration clause contained in an evidence of debt secured by a deed of trust, mortgage, or other lien on a residence in foreclosure or contained in such deed of trust, mortgage, or other lien;
  - (VI) Assist the home owner to obtain a loan or advance of funds;
  - (VII) Avoid or reduce the impairment of the home owner's credit resulting from the recording of a notice of election and demand for sale, commencement of a judicial foreclosure action, or due to any foreclosure sale or the granting of a deed in lieu of foreclosure or resulting from any late payment or other failure to pay or perform under the evidence of debt, the deed of trust, or other lien securing such evidence of debt;
  - (VIII) In any way delay, hinder, or prevent the foreclosure upon the home owner's residence; or
  - (IX) Assist the home owner in obtaining from the beneficiary, mortgagee, or grantee of the lien in foreclosure, or from counsel for such beneficiary, mortgagee, or grantee, the remaining or excess proceeds from the foreclosure sale of the residence in foreclosure.
- (b) The term "foreclosure consultant" does not include:
- (I) A person licensed to practice law in this state, while performing any activity related to the person's attorney-client relationship with a home owner or any activity related to the person's attorney-client relationship with the beneficiary, mortgagee, grantee, or holder of any lien being enforced by way of foreclosure;

- (II) A holder or servicer of an evidence of debt or the attorney for the holder or servicer of an evidence of debt secured by a deed of trust or other lien on any residence in foreclosure while the person performs services in connection with the evidence of debt, lien, deed of trust, or other lien securing such debt;
  - (III) A person doing business under any law of this state or the United States, which law regulates banks, trust companies, savings and loan associations, credit unions, insurance companies, title insurers, insurance producers, or escrow companies authorized to conduct business in the state, while the person performs services as part of the person's normal business activities, an affiliate or subsidiary of any of the foregoing, or an employee or agent acting on behalf of any of the foregoing;
  - (IV) A person originating or closing a loan in a person's normal course of business if, as to that loan:
    - (A) The loan is subject to the requirements of the federal "Real Estate Settlement Procedures Act", 12 U.S.C. sec. 2601 to 2617; or
    - (B) With respect to any second mortgage or home equity line of credit, the loan is subordinate to and closed simultaneously with a qualified first mortgage loan under sub-subparagraph (A) of this subparagraph (IV) or is initially payable on the face of the note or contract to an entity included in subparagraph (III) of this paragraph (b);
  - (V) A judgment creditor of the home owner, if the judgment is recorded in the real property records of the clerk and recorder of the county where the residence in foreclosure is located and the legal action giving rise to the judgment was commenced before the notice of election and demand for sale required under section 38-38-101, C.R.S.;
  - (VI) A title insurance company or title insurance agent authorized to conduct business in this state, while performing title insurance and settlement services;
  - (VII) A person licensed as a real estate broker or real estate salesperson under article 61 of title 12, C.R.S., while the person engages in any activity for which the person is licensed; or
  - (VIII) A nonprofit organization that solely offers counseling or advice to home owners in foreclosure or loan default, unless the organization is an associate of the foreclosure consultant.
- (5) "Foreclosure consulting contract" means any agreement between a foreclosure consultant and a home owner.
- (6) "Holder of evidence of debt" means the person in actual possession of or otherwise entitled to enforce an evidence of debt; except that "holder of evidence of debt" does not include a person acting as a nominee solely for the purpose of holding the evidence of debt or deed of trust as an electronic registry without any authority to enforce the evidence of debt or deed of trust. The following persons are presumed to be the holder of evidence of debt:
- (a) The person who is the obligee of and who is in possession of an original evidence of debt;
  - (b) The person in possession of an original evidence of debt together with the proper indorsement or assignment thereof to such person in accordance with section 38-38-101 (6), C.R.S.;
  - (c) The person in possession of a negotiable instrument evidencing a debt, which has been duly negotiated to such person or to bearer or indorsed in blank; or

- (d) The person in possession of an evidence of debt with authority, which may be granted by the original evidence of debt or deed of trust, to enforce the evidence of debt as agent, nominee, or trustee or in a similar capacity for the obligee of the evidence of debt.
- (7) "Home owner" means the owner of a residence in foreclosure, including a vendee under a contract for deed to real property, as that term is defined in section 38-35-126 (1) (b), C.R.S.
- (8) "Residence in foreclosure" means a residence or dwelling, as defined in sections 5-1-201 and 5-1-301, C.R.S., that is occupied as the home owner's principal place of residence and against which any type of foreclosure action has been commenced.

### **XIII. Foreclosure Consultants**

#### ***6-1-1104. Foreclosure consulting contract.***

- (1) A foreclosure consulting contract shall be in writing and provided to and retained by the home owner, without changes, alterations, or modifications, for review at least twenty-four hours before it is signed by the home owner.
- (2) A foreclosure consulting contract shall be printed in at least twelve-point type and shall include the name and address of the foreclosure consultant to which a notice of cancellation can be mailed and the date the home owner signed the contract.
- (3) A foreclosure consulting contract shall fully disclose the exact nature of the foreclosure consulting services to be provided and the total amount and terms of any compensation to be received by the foreclosure consultant or associate.
- (4) A foreclosure consulting contract shall be dated and personally signed, with each page being initialed, by each home owner of the residence in foreclosure and the foreclosure consultant and shall be acknowledged by a notary public in the presence of the home owner at the time the contract is signed by the home owner.
- (5) A foreclosure consulting contract shall contain the following notice, which shall be printed in at least fourteen-point bold-faced type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the home owner's signature:

#### **Notice Required by Colorado Law**

**\_\_\_\_\_ (Name) or (his/her/its) associate cannot ask you to sign or have you sign any document that transfers any interest in your home or property to (him/her/it) or (his/her/its) associate.**

**\_\_\_\_\_ (Name) or (his/her/its) associate cannot guarantee you that they will be able to refinance your home or arrange for you to keep your home.**

**You may, at any time, cancel this contract, without penalty of any kind.**

**If you want to cancel this contract, mail or deliver a signed and dated copy of this notice of cancellation, or any other written notice, indicating your intent to cancel to \_\_\_\_\_ (name and address of foreclosure consultant) at \_\_\_\_\_ (address of**

**foreclosure consultant, including facsimile and electronic mail address).**

**As part of any cancellation, you (the home owner) must repay any money actually spent on your behalf by \_\_\_\_\_ (name of foreclosure consultant) prior to receipt of this notice and as a result of this agreement, within sixty days, along with interest at the prime rate published by the federal reserve plus two percentage points, with the total interest rate not to exceed eight percent per year.**

**This is an important legal contract and could result in the loss of your home. Contact an attorney or a housing counselor approved by the federal department of housing and urban development before signing.**

- (6) A completed form in duplicate, captioned "Notice of Cancellation" shall accompany the foreclosure consulting contract. The notice of cancellation shall:
- (a) Be on a separate sheet of paper attached to the contract;
  - (b) Be easily detachable; and
  - (c) Contain the following statement, printed in at least fourteen-point type:

### **Notice of Cancellation**

**(Date of contract)**

**To: (name of foreclosure consultant)**

**(Address of foreclosure consultant, including facsimile and electronic mail)**

**I hereby cancel this contract.**

\_\_\_\_\_ **(Date)**

\_\_\_\_\_ **(Home owner's signature)**

- (7) The foreclosure consultant shall provide to the home owner a signed, dated, and acknowledged copy of the foreclosure consulting contract and the attached notice of cancellation immediately upon execution of the contract.
- (8) The time during which the home owner may cancel the foreclosure consulting contract does not begin to run until the foreclosure consultant has complied with this section.

#### ***6-1-1105. Right of cancellation.***

- (1) In addition to any right of rescission available under state or federal law, the home owner has the right to cancel a foreclosure consulting contract at any time.
- (2) Cancellation occurs when the home owner gives written notice of cancellation of the foreclosure consulting contract to the foreclosure consultant at the address specified in the contract or through any facsimile or electronic mail address identified in the contract or other materials provided to the home owner by the foreclosure consultant.



- (3) Notice of cancellation, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid.
- (4) Notice of cancellation need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the home owner to cancel the foreclosure consulting contract.
- (5) As part of the cancellation of a foreclosure consulting contract, the home owner shall repay, within sixty days after the date of cancellation, all funds paid or advanced in good faith prior to the receipt of notice of cancellation by the foreclosure consultant or associate under the terms of the foreclosure consulting contract, together with interest at the prime rate published by the federal reserve plus two percentage points, with the total interest rate not to exceed eight percent per year, from the date of expenditure until repaid by the home owner.
- (6) The right to cancel may not be conditioned on the repayment of any funds.

**6-1-1106. Waiver of rights – void.**

- (1) A provision in a foreclosure consulting contract is void as against public policy if the provision attempts or purports to:
  - (a) Waive any of the rights specified in this subpart 2 or the right to a jury trial;
  - (b) Consent to jurisdiction for litigation or choice of law in a state other than Colorado;
  - (c) Consent to venue in a county other than the county in which the property is located; or
  - (d) Impose any costs or fees greater than the actual costs and fees.

**6-1-1107. Prohibited acts.**

- (1) A foreclosure consultant may not:
  - (a) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;
  - (b) Claim, demand, charge, collect, or receive any interest or any other compensation for a loan that the foreclosure consultant makes to the home owner that exceeds the prime rate published by the federal reserve at the time of any loan plus two percentage points, with the total interest rate not to exceed eight percent per year;
  - (c) Take a wage assignment, lien of any type on real or personal property, or other security to secure the payment of compensation;
  - (d) Receive any consideration from a third party in connection with foreclosure consulting services provided to a home owner unless the consideration is first fully disclosed in writing to the home owner;
  - (e) Acquire an interest, directly, indirectly, or through an associate, in the real or personal property of a home owner with whom the foreclosure consultant has contracted;
  - (f) Obtain a power of attorney from a home owner for any purpose other than to inspect documents as provided by law; or
  - (g) Induce or attempt to induce a home owner to enter into a foreclosure consulting contract that does not comply in all respects with this subpart 2.

**6-1-1108. Criminal penalties.**

A person who violates section 6-1-1107 is guilty of a misdemeanor, as defined in section 18-1.3-504, C.R.S., and shall be subject to imprisonment in county jail for up to one year, a fine of up to twenty-five thousand dollars, or both.

**6-1-1109. Unconscionability.**

- (1) A foreclosure consultant or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.
- (2)
  - (a) If a court, as a matter of law, finds a foreclosure consultant contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.
  - (b) When it is claimed or appears to the court that a foreclosure consultant contract or any clause of such contract may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court in making the determination.
  - (c) In order to support a finding of unconscionability, there must be evidence of some bad faith overreaching on the part of the foreclosure consultant or associate such as that which results from an unreasonable inequality of bargaining power or other circumstances in which there is an absence of meaningful choice for one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the foreclosure consultant or associate.

**6-1-1110. Language.**

A foreclosure consulting contract, and all notices of cancellation provided for therein, shall be written in English and shall be accompanied by a written translation from English into any other language principally spoken by the home owner, certified by the person making the translation as a true and correct translation of the English version. The translated version shall be presumed to have equal status and credibility as the English version.

## **XIV. Equity Purchasers**

**6-1-1111. Written contract required.**

Every contract shall be written in at least twelve-point bold-faced type and fully completed, signed, and dated by the home owner and equity purchaser prior to the execution of any instrument quit-claiming, assigning, transferring, conveying, or encumbering an interest in the residence in foreclosure.

**6-1-1112. Written contract – contents – notice.**

- (1) Every contract shall contain the entire agreement of the parties and shall include the following terms:
  - (a) The name, business address, and telephone number of the equity purchaser;
  - (b) The street address and full legal description of the residence in foreclosure;
  - (c) Clear and conspicuous disclosure of any financial or legal obligations of the home owner that will be assumed by the equity purchaser. If the equity purchaser will not be assuming any financial or legal obligations of the home owner, the equity purchaser shall provide to the home owner a separate written disclosure that substantially complies with section 18-5-802 (6), C.R.S.
  - (d) The total consideration to be paid by the equity purchaser in connection with or incident to the acquisition by the equity purchaser of the residence in foreclosure;

- (e) The terms of payment or other consideration, including, but not limited to, any services of any nature that the equity purchaser represents will be performed for the home owner before or after the sale;
- (f) The date and time when possession of the residence in foreclosure is to be transferred to the equity purchaser;
- (g) The terms of any rental agreement or lease;
- (h) The specifications of any option or right to repurchase the residence in foreclosure, including the specific amounts of any escrow deposit, down payment, purchase price, closing costs, commissions, or other fees or costs;
- (i) A notice of cancellation as provided in section 6-1-1114; and
- (j) The following notice, in at least fourteen-point bold-faced type, and completed with the name of the equity purchaser, immediately above the statement required by section 6-1-1114:

### **NOTICE REQUIRED BY COLORADO LAW**

**Until your right to cancel this contract has ended, (Name) or anyone working for \_\_\_\_\_ (Name) CANNOT ask you to sign or have you sign any deed or any other document.**

- (2) The contract required by this section survives delivery of any instrument of conveyance of the residence in foreclosure, but does not have any effect on persons other than the parties to the contract or affect title to the residence in foreclosure.

#### ***6-1-1113. Cancellation.***

- (1) In addition to any right of rescission available under state or federal law, the home owner has the right to cancel a contract with an equity purchaser until 12 midnight of the third business day following the day on which the home owner signs a contract that complies with this part 11 or until 12 noon on the day before the foreclosure sale of the residence in foreclosure, whichever occurs first.
- (2) Cancellation occurs when the home owner personally delivers written notice of cancellation to the address specified in the contract or upon deposit of such notice in the United States mail, properly addressed, with postage prepaid.
- (3) A notice of cancellation given by the home owner need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the home owner not to be bound by the contract.
- (4) In the absence of any written notice of cancellation from the home owner, the execution by the home owner of a deed or other instrument of conveyance of an interest in the residence in foreclosure to the equity purchaser after the expiration of the rescission period creates a rebuttable presumption that the home owner did not cancel the contract with the equity purchaser.

#### ***6-1-1114. Notice of cancellation.***

- (1) (a) The contract shall contain, as the last provision before the space reserved for the home owner's signature, a conspicuous statement in at least twelve-point bold-faced type, as follows:

**You may cancel this contract for the sale of your house without any penalty or obligation at any time before \_\_\_\_\_ (Date and time of day). See the attached notice of cancellation form for an explanation of this right.**

- (b) The equity purchaser shall accurately specify the date and time of day on which the cancellation right ends.
- (2) The contract shall be accompanied by duplicate completed forms, captioned “notice of cancellation” in at least twelve-point bold-faced type if the contract is printed or in capital letters if the contract is typed, followed by a space in which the equity purchaser shall enter the date on which the home owner executed the contract. Such form shall:
  - (a) Be attached to the contract;
  - (b) Be easily detachable; and
  - (c) Contain the following statement, in at least ten-point type if the contract is printed or in capital letters if the contract is typed:

**NOTICE OF CANCELLATION**

\_\_\_\_\_ (Enter date contract signed). You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before \_\_\_\_\_ (Enter date and time of day). To cancel this transaction, personally deliver a signed and dated copy of this Notice of Cancellation in the United States mail, postage prepaid, to \_\_\_\_\_, (Name of purchaser) at \_\_\_\_\_ (Street address of purchaser’s place of business) NOT LATER THAN \_\_\_\_\_ (Enter date and time of day). I hereby cancel this transaction \_\_\_\_\_ (Date)

\_\_\_\_\_ (Seller’s signature)

- (3) The equity purchaser shall provide the home owner with a copy of the contract and the attached notice of cancellation.
- (4) Until the equity purchaser has complied with this section, the home owner may cancel the contract.

**6-1-1115. Options through reconveyances.**

- (1) A transaction in which a home owner purports to grant a residence in foreclosure to an equity purchaser by an instrument that appears to be an absolute conveyance and reserves to the home owner or is given by the equity purchaser an option to repurchase shall be permitted only where all of the following conditions have been met:
  - (a) The reconveyance contract complies in all respects with section 6-1-1112;
  - (b) The reconveyance contract provides the home owner with a nonwaivable thirty-day right to cure any default of said reconveyance contract and specifies that the home owner may exercise this right to cure on at least three separate occasions during such reconveyance contract;
  - (c) The equity purchaser fully assumes or discharges the lien in foreclosure as well as any prior liens that will not be extinguished by such foreclosure, which assumption or discharge shall be accomplished without violation of the terms and conditions of the liens being assumed or discharged;
  - (d) The equity purchaser verifies and can demonstrate that the home owner has or will have a reasonable ability to make the lease payments and to repurchase the residence in foreclosure within the term of the option to repurchase under the reconveyance contract. For purposes of this section, there is a rebuttable presumption that the home owner has a reasonable ability to make lease payments and to repurchase the residence in foreclosure if the home owner’s payments for primary housing expenses and regular principal and interest payments on other personal debt do not exceed sixty percent of the home owner’s monthly gross income; and

- (e) The price the home owner must pay to exercise the option to repurchase the residence in foreclosure is not unconscionable. Without limitation on available claims under section 6-1-1119, a repurchase price exceeding twenty-five percent of the price at which the equity purchaser acquired the residence in foreclosure creates a rebuttable presumption that the reconveyance contract is unconscionable. The acquisition price paid by the equity purchaser may include any actual costs incurred by the equity purchaser in acquiring the residence in foreclosure.

**6-1-1116. Waiver of rights – void.**

- (1) A provision in a contract between an equity purchaser and home owner is void as against public policy if it attempts or purports to:
  - (a) Waive any of the rights specified in this subpart 3 or the right to a jury trial;
  - (b) Consent to jurisdiction for litigation or choice of law in a state other than Colorado;
  - (c) Consent to venue in a county other than the county in which the property is located; or
  - (d) Impose any costs or fees greater than the actual costs and fees.

**6-1-1117. Prohibited conduct.**

- (1) The contract provisions required by sections 6-1-1111 to 6-1-1114 shall be provided and completed in conformity with such sections by the equity purchaser.
- (2) Until the time within which the home owner may cancel the transaction has fully elapsed, the equity purchaser shall not do any of the following:
  - (a) Accept from a home owner an execution of, or induce a home owner to execute, an instrument of conveyance of any interest in the residence in foreclosure;
  - (b) Record with the county recorder any document, including, but not limited to, the contract or any lease, lien, or instrument of conveyance, that has been signed by the home owner;
  - (c) Transfer or encumber or purport to transfer or encumber an interest in the residence in foreclosure to a third party; or
  - (d) Pay the home owner any consideration.
- (3) Within ten days following receipt of a notice of cancellation given in accordance with sections 6-1-1113 and 6-1-1114, the equity purchaser shall return without condition the original contract and any other documents signed by the home owner.
- (4) An equity purchaser shall make no untrue or misleading statements of material fact regarding the value of the residence in foreclosure, the amount of proceeds the home owner will receive after a foreclosure sale, any contract term, the home owner's rights or obligations incident to or arising out of the sale transaction, the nature of any document that the equity purchaser induces the home owner to sign, or any other untrue or misleading statement concerning the sale of the residence in foreclosure to the equity purchaser.

**6-1-1118. Criminal penalties.**

A person who violates section 6-1-1117 (2) or (3) or who intentionally violates section 6-1-1117 (4) is guilty of a misdemeanor, as defined in section 18-1.3-504, C.R.S., and shall be subject to imprisonment in county jail for up to one year, a fine of up to twenty-five thousand dollars, or both.

**6-1-1119. Unconscionability.**

- (1) An equity purchaser or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.
- (2) (a) If a court, as a matter of law, finds an equity purchaser contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to

enforce the contract, enforce the remainder of the contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.

- (b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court in making the determination.
- (c) In order to support a finding of unconscionability, there must be evidence of some bad faith overreaching on the part of the equity purchaser or associate such as that which results from an unreasonable inequality of bargaining power or under other circumstances in which there is an absence of meaningful choice for one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the equity purchaser or associate.

***6-1-1120. Language.***

Any contract, rental agreement, lease, option or right to repurchase, and any notice, conveyance, lien, encumbrance, consent, or other document or instrument signed by a home owner, shall be written in English and shall be accompanied by a written translation from English into any other language principally spoken by the home owner, certified by the person making the translation as a true and correct translation of the English version. The translated version shall be presumed to have equal status and credibility as the English version.

***6-1-105. Deceptive trade practices.***

- (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:
  - (xx) Violates any provision of part 11 of this article.

**XV. Notaries Public Act**

***12-55-101. Short title***

This part 1 shall be known and may be cited as the "Notaries Public Act".

***12-55-102. Definitions***

As used in this part 1, unless the context otherwise requires:

- (1) "Attested" means subscribed, signed, acknowledged, sworn to, affirmed, certified, verified, or attested to and includes other words and phrases that have a substantially similar meaning.
  - (1.1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
  - (1.2) "Electronic record" means a record containing information that is created, generated, sent, communicated, received, or stored by electronic means.
  - (1.3) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.
  - (1.4) "Misdemeanor involving dishonesty" means a violation of, or a conspiracy to violate, a civil or criminal law involving fraud, dishonesty, bribery, perjury, larceny, theft, robbery, extortion, forgery, counterfeiting, embezzlement, misappropriation of property, or any other offense adversely affecting such person's fitness to serve as a notary public.

- (1.5) “Notarial acts” means those acts that a notary public is empowered to perform pursuant to section 12-55-110(1).
- (2) “Notarization” means the performance of a notarial act.
- (3) “Notary” or “notary public” means any individual appointed and commissioned to perform notarial acts.

***12-55-102.5. Disposition of fees***

- (1) All fees collected by the office of the secretary of state pursuant to this article shall be collected in the manner required by section 24-21- 104(3), C.R.S., and transmitted to the state treasurer, who shall credit the same to the notary administration cash fund, which fund is hereby created in the state treasury.
- (2) The general assembly shall make annual appropriations from the notary administration cash fund for expenditures of the secretary of state incurred in the performance of the secretary of state’s duties under this article.
- (3) Pursuant to section 24-36-114, C.R.S., all interest derived from the deposit and investment of moneys in the notary administration cash fund shall be credited to the general fund.

***12-55-103. Appointment – terms***

Upon application pursuant to this part 1, the secretary of state may appoint and commission individuals as notaries public for a term of four years, unless said commission is revoked as provided in section 12-55-107. An applicant who has been denied appointment and commission may appeal such decision pursuant to article 4 of title 24, C.R.S. The secretary of state shall promptly notify the applicant in writing of such denial.

***12-55-103.5. Training***

The office of the secretary of state may enter into a contract with a private contractor or contractors to conduct notary training programs. The contractor or contractors may charge a fee for any such training program.

***12-55-104. Application***

- (1) Every applicant for appointment and commission as a notary public shall complete an application form furnished by the secretary of state to be filed with the secretary of state, stating:
  - (a) That the applicant is a resident of Colorado who is at least eighteen years of age;
  - (b) That the applicant is able to read and write the English language;
  - (c) The addresses and telephone numbers of the applicant’s business and residence in this state;
  - (d) That the applicant’s commission as a notary public has never been revoked;
  - (e) That the applicant has not been convicted of a felony or, in the prior five years, a misdemeanor that disqualifies him or her from being a notary public pursuant to section 12-55-107(1)(b).
- (2) The application shall include a handwritten sample of the applicant’s official signature, the applicant’s typed legal name, and the affirmation as provided in section 12-55-105. The application may also contain the applicant’s electronic signature if the applicant is issued a journal.
- (3) Subject to subsection (2) of this section, the secretary of state shall ensure, at the earliest practicable time, that an application pursuant to this article may be delivered electronically. All

such applications shall be stored by the secretary of state in a medium that is retrievable by the secretary of state in perceivable form.

**12-55-105. Applicant's affirmation**

Every applicant for appointment and commission as a notary public shall take the following affirmation in the presence of a person qualified to administer an affirmation in this state:

"I, (name of applicant) solemnly affirm, under the penalty of perjury in the second degree, as defined in section 18-8-503, Colorado Revised Statutes, that I have carefully read the notary law of this state, and, if appointed and commissioned as a notary public, I will faithfully perform, to the best of my ability, all notarial acts in conformance with the law.

(signature of applicant)

\_\_\_\_\_

Subscribed and affirmed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(official signature and seal of person qualified to administer affirmation) ."

**12-55-106. Repealed**

**12-55-106.5. Notary's electronic signature – secretary of state**

- (1) In every instance, the electronic signature of a notary public shall contain or be accompanied by the following elements, all of which shall be immediately perceptible and reproducible in the electronic record to which the notary's electronic signature is attached: The notary's name; the words "NOTARY PUBLIC" and "STATE OF COLORADO"; a document authentication number issued by the secretary of state; and the words "my commission expires" followed by the expiration date of the notary's commission. A notary's electronic signature shall conform to any standards promulgated by the secretary of state.
- (2) The secretary of state shall promulgate rules necessary to establish standards, procedures, practices, forms, and records relating to a notary's electronic signature.
- (3) To the extent the provisions of this part 1 differ from the requirements of the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., the provisions of this part 1 are intended to modify, limit, or supercede the requirements of such act, as provided for in section 7002(a) of such act.

**12-55-106.7. Pictorial notary public – secretary of state – rules**

The secretary of state shall adopt rules necessary to establish standards, procedures, practices, forms, and records relating to the ability of notaries public to transmit encrypted, authenticated photographs of individuals for use by motor vehicle offices, credit card companies, and other entities requiring an authenticated photograph of an individual. The rules shall require the notary to maintain an encryption device or other technology enabling the notary to transmit photographs electronically and protect the security and authenticity of the photographs. The rules shall authorize the notary to charge a reasonable fee, not to exceed ten dollars, for each photograph electronically transmitted. The secretary of state shall adopt the rules as soon as administratively feasible. Notwithstanding the provisions of section 24-4-103(5), C.R.S., the rules adopted pursuant to this section shall not take effect until the general assembly, acting by bill other than a bill enacted pursuant to section 24-4-103(8)(c)(I), C.R.S., approves the rules.



**12-55-107. Revocation of commission**

- (1) The secretary of state or the secretary of state's designee shall deny the application of any person for appointment or reappointment, or revoke the commission of any notary public during such notary's term of appointment, if the notary public:
  - (a) Submits an application for commission and appointment that contains substantial and material misstatement or omission of fact;
  - (b) Is convicted of official misconduct under this part 1 or any felony or, in the prior five years, a misdemeanor involving dishonesty;
  - (c) Fails to exercise the powers or perform the duties of a notary public in accordance with this part 1;
  - (d) Knowingly uses false or misleading advertising in which such notary represents that such notary has powers, duties, rights, or privileges that such notary does not possess by law;
  - (e) Is found by a court of this state to have engaged in the unauthorized practice of law;
  - (f) Ceases to fulfill the requirements applicable to such notary's most recent appointment;
  - (g) Notarizes any blank document;
  - (h) Knowingly uses false or misleading advertising to represent a level of authority not permitted to a notary public by law.
- (1.5) Whenever the secretary of state or the secretary of state's designee believes that a violation of this article has occurred, the secretary of state or the secretary of state's designee may investigate any such violation. The secretary of state or the secretary of state's designee may also investigate possible violations of this article upon a signed complaint from any person.
- (2) The secretary of state or the secretary of state's designee may revoke a notary's commission under the provisions of this part 1 only if action is taken pursuant to article 4 of title 24, C.R.S.
- (3) After a notary public receives notice from the secretary of state or the secretary of state's designee that such notary's commission has been revoked, and unless such revocation has been enjoined, such notary shall immediately send or have delivered to the secretary of state such notary's journal of notarial acts, all other papers and copies relating to such notary's notarial acts, and such notary's official seal.
- (4) A person whose notary commission has been revoked pursuant to this part 1 may not apply for or receive a commission and appointment as a notary.

**12-55-108. Reappointment – failure to be reappointed**

Every notary public, before or at the expiration of such notary's commission, may submit an application for reappointment by submitting the same information and documents as required by sections 12-55-104 and 12-55-105 for the initial application. The secretary of state shall then determine whether the person shall be reappointed as a notary public. If the secretary of state determines such notary shall not be reappointed, the applicant may appeal such determination pursuant to article 4 of title 24, C.R.S.

**12-55-109. Certificate of appointment – recording**

- (1) The secretary of state is authorized to issue a certificate of authority qualifying said person as a notary public. The certificate shall also state the date of expiration of the commission and any other fact concerning such notary public which is required by the laws of this state.
- (2) A notary public may record his certificate of authority in any county of this state and, after such recording, the county clerk and recorder of such county may issue a certificate that such person is a notary public, the date of expiration of his commission, and any other fact concerning such notary public which is required by the laws of this state.

- (3) A notary public may exhibit to the judge or clerk of any court of record his certificate of authority, and the said judge or clerk may thereupon issue a certificate that such person is a notary public, the date of expiration of his commission, and any other fact concerning such notary which is required by the laws of this state.

***12-55-110. Powers and limitations***

- (1) Every notary public is empowered to:
  - (a) Take acknowledgments and other unsworn statements, proof of execution, and attest documents and electronic records;
  - (b) Administer oaths and affirmations;
  - (c) Give certificates or other statements as to a notarial act performed by such notary. Such acts shall include, but are not limited to, the giving of certificates as to, or certified copies of, any record or other document relating to a notarial act performed by such notary and certifying that a copy of a document is a true copy of another document or that a facsimile is a true facsimile of another document in accordance with section 12-55-120.
  - (d) Take depositions, affidavits, verifications, and other sworn testimony or statements;
  - (d.5) Perform any other act that is recognized or otherwise given effect under the law, rules, or regulations of another jurisdiction, including the United States, provided such other law, rule, or regulation authorizes a notary in this state to perform such act. However, no notary is empowered to perform an act under this paragraph (d.5) if such performance is prohibited by the law, rules, or regulations of this state.
  - (e) Perform any other act authorized by law, rules, or regulations;
  - (f) Present and give notice of dishonor and protest notes and other negotiable instruments as provided in part 5 of article 3 of title 4, C.R.S., or the corresponding laws of another jurisdiction.
- (2) A notary public who has a disqualifying interest in a transaction may not legally perform any notarial act in connection with such transaction. For the purposes of this section, a notary public has a disqualifying interest in a transaction in connection with which notarial services are requested if he:
  - (a) May receive directly, and as a proximate result of the notarization, any advantage, right, title, interest, cash, or property exceeding in value the sum of any fee properly received in accordance with this part 1; or
  - (b) Is named, individually, as a party to the transaction.
- (3) In no case shall a notary public notarize any blank document.
- (4) No notary shall sign a certificate or other statements as to a notarial act to the effect that a document or any part thereof was attested by an individual, unless:
  - (a) Such individual has attested such document or part thereof while in the physical presence of such notary; and
  - (b) Such individual is personally known to such notary as the person named in the certificate, statement, document, or part thereof, or such notary receives satisfactory evidence that such individual is the person so named. For purposes of this paragraph (b), “satisfactory evidence” includes but is not limited to the sworn statement of a credible witness who personally knows such notary and the individual so named, or a current identification card or document issued by a federal or state governmental entity containing a photograph and signature of the individual who is so named.

**12-55-110.3. Advertisements for services – unauthorized practice of law – prohibited conduct – penalties**

- (1) (a) A notary public who is not a licensed attorney in the state of Colorado and who advertises, including by signage, his or her services in a language other than English shall include in the advertisement the following notice, both in English and in the language of the advertisement:

“I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF COLORADO AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.”
- (b) All written advertisements shall include the language exactly as written in paragraph (a) of this subsection (1). Such language shall be clearly visible. Oral advertisements or solicitations, including those on radio or television, shall contain the same message but shall not be required to use the exact language.
- (2) A notary public who advertises in a language other than English shall post a list of fees permitted by law for notarial services. Such list shall be written in English and in the language of the advertisement and shall be posted in a highly visible location at the notary’s place of business. Such list shall include the notice included in paragraph (a) of subsection (1) of this section.
- (3) (a) A notary public who is not a licensed attorney in the state of Colorado shall not represent or advertise himself or herself as an immigration consultant or an expert on immigration matters.
- (b) A notary public who is not an attorney licensed to practice law in Colorado is prohibited from:
  - (I) Providing any service that constitutes the unauthorized practice of law;
  - (II) Stating or implying that he or she is an attorney licensed to practice law in this state;
  - (III) Soliciting or accepting compensation to prepare documents for or otherwise represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, United States citizenship, or related matters;
  - (IV) Soliciting or accepting compensation to obtain relief of any kind on behalf of another from any officer, agency, or employee of the state of Colorado or of the United States; or
  - (V) Using the phrase “notario” or “notario publico” to advertise the services of a notary public, whether by sign, pamphlet, stationery, or other written communication or by radio, television, or other nonwritten communication.
- (4) Knowing and willful violation of the provisions of this section shall constitute a deceptive trade practice pursuant to section 6-1-105, C.R.S., and shall also constitute official misconduct pursuant to section 12-55-116.

**12-55-110.5. Accommodation of physical limitations**

- (1) A notary public may certify as to the subscription or signature of an individual when it appears that such individual has a physical limitation that restricts such individual’s ability to sign by writing or making a mark, pursuant to the following:
  - (a) The name of an individual may be signed, or attached electronically in the case of an electronic record, by another individual other than the notary public at the direction and

- in the presence of the individual whose name is to be signed and in the presence of the notary public.
- (b) The words “Signature written by” or “Signature attached by” in the case of an electronic record, “(name of individual directed to sign or directed to attach) at the direction and in the presence of (name as signed) on whose behalf the signature was written” or “attached electronically” in the case of an electronic record, or words of substantially similar effect shall appear under or near the signature.
- (2) A notary public may use signals or electronic or mechanical means to take an acknowledgment from, administer an oath or affirmation to, or otherwise communicate with any individual in the presence of such notary public when it appears that such individual is unable to communicate verbally or in writing.

***12-55-111. Journal***

- (1) Every notary public shall keep a journal of every acknowledgment taken by such notary to an instrument affecting the title to real property and, if required, give a certified copy of or a certificate as to any such journal or any of such notary’s acts, upon payment of such notary’s fee.
- (2) For each notarial act, a notary’s journal may contain the following information:
  - (a) The type and date of the notarial act;
  - (b) The title or type of document or proceeding that was notarized and the date of such document or proceeding, if different than the date of the notarization;
  - (c) The name of each person whose oath, affirmation, acknowledgment, affidavit, declaration, deposition, protest, verification, or other statement is taken;
  - (d) The signature and address of each person whose oath, affirmation, acknowledgment, affidavit, declaration, deposition, protest, verification, or other statement is taken;
  - (e) The signature, printed name, and address of each witness to the notarization;
  - (e.5) Deleted by Laws 2004, Ch. 337, § 5, eff. May 28, 2004.
  - (f) Any other information the notary considers appropriate to record that concerns the notarial act.
- (3)
  - (a) Subsection (1) of this section shall not apply to any document or electronic record where the original or a copy of such document or electronic record contains the information otherwise required to be entered in the notary’s journal and such original or copy or electronic record is retained by the notary’s firm or employer in the regular course of business.
  - (b) Notwithstanding any provision of this subsection (3) to the contrary, no firm, employer, or professionally licensed person shall prohibit an employee who is a notary from maintaining a journal of his or her notarial acts in the regular course of business of such firm, employer, or professionally licensed person.
  - (c) For purposes of this subsection (3), “firm” includes but is not limited to an office where the business of a real estate broker, lawyer, title insurance company, title insurance agent, or other licensed professional is regularly carried on and the records of such business are regularly maintained.
- (4) Except as otherwise exempted by paragraph (a) of subsection (3) of this section or by another law of this state, for each electronic record or document signed by the notary public, the notary public shall record the document authentication number issued by the secretary of state for each document authenticated in the journal pursuant to this section.

**12-55-112. Official signature – rubber stamp seal – seal embosser – notary’s electronic signature**

- (1) At the time of notarization, a notary public shall sign such notary’s official signature on every notary certificate or in the case of an electronic record, a notary public shall affix his or her electronic signature.
- (2) Under or near such notary’s official signature on every notary certificate, a notary public shall rubber stamp or emboss clearly and legibly such notary’s official seal. The official notary seal shall contain only the outline of the seal, the name of the notary, exactly as such notary writes his or her official signature, the words “STATE OF COLORADO”, and the words “NOTARY PUBLIC”.
- (3) Under or near such notary’s official signature on every notary certificate, a notary public shall write or stamp “my commission expires (commission expiration date)”.
- (4) Every notary public may provide, keep, and use a seal embosser engraved to show such notary’s name and the words “NOTARY PUBLIC” and “STATE OF COLORADO”. The indentations made by the seal embosser shall not be applied on the document where the notary certificate appears in a manner that will render illegible or incapable of photographic reproduction any of the printed marks or writing.
- (4.5) In the case of notarization of an electronic record, the application of a notary’s electronic signature in lieu of a handwritten signature and rubber stamp seal or seal embosser is sufficient. A notary shall not use an electronic signature unless:
  - (a) The notary uses a journal if maintaining such journal is required by section 12-55-111; and
  - (b) The notary attaches to the document a document authentication number issued by the secretary of state.
- (5) The illegibility of any of the information required by this section does not affect the validity of a document or transaction.
- (6) For purposes of this section, “notary certificate” means a certificate or other statement of a notary relating to a notarial act performed by such notary.

**12-55-113. Lost journal or official seal**

Every notary public shall send or have delivered notice to the secretary of state within thirty days after the notary loses or misplaces such notary’s journal of notarial acts, or official seal, or the notary becomes aware that any other person has electronic control of his or her electronic signature. The fee payable to the secretary of state for recording notice of a lost journal, or seal, or that another person has electronic control of a notary’s electronic signature shall be determined and collected pursuant to section 24-21-104(3), C.R.S.

**12-55-114. Change of name or address**

- (1) Every notary public shall send or have delivered notice to the secretary of state within thirty days after such notary changes the address of such notary’s business or residence in this state. The fee payable to the secretary of state for recording notice of change of address shall be determined and collected pursuant to section 24-21-104(3), C.R.S.
- (2) Every notary public shall send or have delivered notice to the secretary of state within thirty days after such notary changes such notary’s name, including with the notification a sample of such notary’s handwritten official signature that contains such notary’s surname and at least the initial of such notary’s first name. The fee payable to the secretary of state for recording notice of change of notary’s name shall be determined and collected pursuant to section 24-21-104(3), C.R.S.

**12-55-115. Death – resignation – removal from state**

- (1) If a notary public dies during the term of the notary's appointment, the notary's heirs or personal representative, as soon as reasonably possible after the notary's death, shall send or have delivered to the secretary of state the deceased notary's journal of notarial acts and the notary's seal, if available.
- (2) If a notary public no longer desires to be a notary public or has ceased to have a business or residence address in this state, the notary shall send or have delivered to the secretary of state a letter of resignation, the notary's journal of notarial acts, and all other papers and copies relating to the notary's notarial acts, including the notary's seal. The notary's commission shall thereafter cease to be in effect.

**12-55-116. Official misconduct by a notary public – liability of notary or surety**

- (1) A notary public who knowingly and willfully violates the duties imposed by this part 1 commits official misconduct and is guilty of a class 2 misdemeanor.
- (2) A notary public and the surety or sureties on his bond are liable to the persons involved for all damages proximately caused by the notary's official misconduct.
- (3) Nothing in this article shall be construed to deny a notary public the right to obtain a surety bond or insurance on a voluntary basis to provide coverage for liability.

**12-55-117. Willful impersonation**

Any person who acts as, or otherwise willfully impersonates, a notary public while not lawfully appointed and commissioned to perform notarial acts is guilty of a class 2 misdemeanor.

**12-55-118. Wrongful possession of journal or seal**

Any person who unlawfully possesses and uses a notary's journal, an official seal, a notary's electronic signature, or any papers, copies, or electronic records relating to notarial acts is guilty of a class 3 misdemeanor.

**12-55-119. Affirmation procedures – form**

- (1) If an affirmation is to be administered by the notary public in writing, the person taking the affirmation shall sign his name thereto, and the notary public shall write or print under the text of the affirmation the fact that the document has been subscribed and affirmed, or sworn to before me in the county of \_\_\_\_\_, state of Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(official signature, seal, and commission expiration date of notary) .

- (2) If an affirmation is to be administered by the notary public in an electronic record, the person taking the affirmation shall attach his or her electronic signature thereto. Within the affirmation, the notary shall add the fact that the document has been subscribed and affirmed, or sworn to before me in the county of \_\_\_\_\_, state of Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(notary's electronic signature) .

**12-55-120. Certified facsimiles of documents – procedure and form**

- (1) A notary public may certify a facsimile of a document if the original of the document is exhibited to him, together with a signed written request stating that:

- (a) A certified copy or facsimile of the document cannot be obtained from the office of any clerk and recorder of public documents or custodian of documents in this state; and
  - (b) The production of a facsimile, preparation of a copy, or certification of a copy of the document does not violate any state or federal law.
- (2) The certification of a facsimile shall be substantially in the following form:
- “State of \_\_\_\_\_, County (or City) of \_\_\_\_\_, I, (name of notary) , a Notary Public in and for said state, do certify that on (date) , I carefully compared with the original the attached facsimile of (type of document) and the facsimile I now hold in my possession. They are complete, full, true, and exact facsimiles of the document they purport to reproduce.
- (official signature, official seal, and commission expiration date of notary) .”

#### ***12-55-121. Fees***

- (1) The fees of notaries public may be, but shall not exceed, five dollars for each document attested by a person before a notary, except as otherwise provided by law. The fee for each such document shall include the following incidental services of such notary:
  - (a) Receiving evidence of such person’s identity as enumerated in section 12-55-110(4);
  - (b) Administering an oath or affirmation to such person; and
  - (c) Signing and sealing a certificate or statement of such notary that is included in or attached to such document and evidences that the document was attested before such notary.
- (2) In lieu of the fee authorized in subsection (1) of this section, a notary public may charge a fee, not to exceed ten dollars, for the notary’s electronic signature.

#### ***12-55-122. Applicability***

This part 1 shall apply to all applications, both new and for reappointment, submitted to the office of secretary of state on or after July 1, 1981. Nothing in this part 1 shall be construed to revoke any notary public commission existing on July 1, 1981.

#### ***12-55-123. Repeal of article***

This article is repealed, effective July 1, 2009. Prior to such repeal, the appointment function of the secretary of state shall be reviewed as provided for in section 24-34-104, C.R.S.

## **XVI. Uniform Recognition of Acknowledgments Act**

#### ***12-55-201. Short title***

This part 2 shall be known and may be cited as the “Uniform Recognition of Acknowledgments Act”.

#### ***12-55-202. Definitions***

As used in this part 2, unless the context otherwise requires:

- (1) “Notarial acts” means acts which the laws and regulations of this state authorize notaries public of this state to perform, including, but not limited to, the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents.

#### ***12-55-203. Recognition of notarial acts performed outside this state***

- (1) Notarial acts may be performed outside this state for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the

laws and regulations of other governments, in addition to any other person authorized by the laws and regulations of this state:

- (a) A notary public authorized to perform notarial acts in the place in which the act is performed;
- (b) A judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed;
- (c) An officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States department of state to perform notarial acts in the place in which the act is performed;
- (d) A commissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts if the notarial act is performed for one of the following or his dependents: A merchant seaman of the United States, a member of the armed forces of the United States, or any other person serving with or accompanying the armed forces of the United States; or
- (e) Any other person authorized to perform notarial acts in the place in which the act is performed.

***12-55-204. Authentication of authority of officer***

- (1) If the notarial act is performed by any of the persons described in section 12-55-203(1)(a) to (1)(d), other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, rank, or title and serial number, if any, of the person are sufficient proof of the authority of a holder of that rank or title to perform the act. Further proof of his authority is not required.
- (2) If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to act if:
  - (a) Either a foreign service officer of the United States resident in the country in which the act is performed or a diplomatic or consular officer of the foreign country resident in the United States certifies that a person holding that office is authorized to perform the act;
  - (b) Either the official seal of the person performing the notarial act is affixed to the document, or, in the case of an electronic record, such information that is required in lieu of a notary seal by the laws of the place granting notarial authority to the person performing the notarial act is attached to or logically associated with the document; or
  - (c) The title and indication of authority to perform notarial acts of the person appears either in a digest of foreign law or in a list customarily used as a source of such information.
- (3) If the notarial act is performed by a person other than one described in subsections (1) and (2) of this section, there is sufficient proof of the authority of that person to act if the clerk of a court of record in the place in which the notarial act is performed certifies to the official character of that person and to his authority to perform the notarial act.
- (4) The signature and title of the person performing the act are prima facie evidence that he is a person with the designated title and that the signature is genuine.

***12-55-205. Certificate of person taking acknowledgment***

- (1) The person taking an acknowledgment shall certify that:
  - (a) The person acknowledging appeared before him and acknowledged he executed the instrument; and
  - (b) The person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.



**12-55-206. Recognition of certificate of acknowledgment**

- (1) The form of a certificate of acknowledgment used by a person whose authority is recognized under section 12-55-203 shall be accepted in this state if:
  - (a) The certificate is in a form prescribed by the laws or regulations of this state; or
  - (b) The certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or
  - (c) The certificate contains the words “acknowledged before me”, or their substantial equivalent.

**12-55-207. Certificate of acknowledgment**

- (1) “Acknowledged before me” means:
  - (a) That the person acknowledging appeared before the person taking the acknowledgment; and
  - (b) That he acknowledged he executed the instrument; and
  - (c) That, in the case of:
    - (I) A natural person, he executed the instrument for the purposes therein stated;
    - (II) A corporation, the officer or agent acknowledged he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose therein stated;
    - (III) A partnership, the partner or agent acknowledged he signed the instrument on behalf of the partnership by proper authority and he executed the instrument as the act of the partnership for the purposes therein stated;
    - (IV) A person acknowledging as principal by an attorney in fact, he executed the instrument by proper authority as the act of the principal for the purposes therein stated;
    - (V) A person acknowledging as a public officer, trustee, administrator, guardian, or other representative, he signed the instrument by proper authority and he executed the instrument in the capacity and for the purposes therein stated; and
  - (d) That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

**12-55-208. Short forms of acknowledgment**

- (1) The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any law of this state. The forms shall be known as “Statutory Short Forms of Acknowledgment” and may be referred to by that name. The authorization of the following forms does not preclude the use of other forms:

- (a) For an individual acting in his own right:

“State of .....

County of .....

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged).

(signature of person taking acknowledgment)

(title or rank)

(serial number, if any)”;

- (b) For a corporation:

“State of .....

County of .....

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place of incorporation, corporation, on behalf of the corporation).

(signature of person taking acknowledgment)

(title or rank)

(serial number, if any)”;

- (c) For a partnership:

“State of .....

County of .....

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.

(signature of person taking acknowledgment)

(title or rank)

(serial number, if any)”;

- (d) For an individual acting as principal by an attorney in fact:

“State of .....

County of .....

The foregoing instrument was acknowledged before me this (date) by (name of attorney-in-fact) as attorney in fact on behalf of (name of principal).

(signature of person taking acknowledgment)

(title or rank)

(serial number, if any)”;

- (e) By any public officer, trustee, or personal representative:

“State of .....

County of .....

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

(signature of person taking acknowledgment)

(title or rank)

(serial number, if any)".

***12-55-209. Acknowledgments not affected by this part 2***

A notarial act performed prior to July 1, 1969, is not affected by this part 2. This part 2 provides an additional method of proving notarial acts. Nothing in this part 2 diminishes or invalidates the recognition accorded to notarial acts by other laws or regulations of this state.

***12-55-210. Uniformity of interpretation***

This part 2 shall be so interpreted as to make uniform the laws of those states which enact it.

***12-55-211. Seals***

Whenever any law, rule, or regulation requires the use of a seal, it shall be sufficient that a rubber stamp with a facsimile affixed thereon of the seal required to be used is placed or stamped upon the document requiring the seal with indelible ink or, in the case of an electronic record, attachment of such information that is required in lieu of a notary seal by the laws of the place granting notarial authority to the person performing the notarial act shall be sufficient in lieu of any other form of notary seal.

