

Chapter 12: Mortgage Brokers

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

I. Introduction

In 2003, the Department of Regulatory Agencies received a request to initiate a review of the mortgage broker industry to determine whether regulation was appropriate. Accordingly, pursuant to section 24-34-104.1(2), Colorado Revised Statutes, a sunrise review was conducted and completed October 14, 2005. In summary, the review addressed Colorado's current regulatory environment with respect to mortgage transactions and the possibility for public harm.

Colorado was one of two states, the other being Alaska, that had no regulatory oversight of mortgage brokers. The sunrise review also concluded there was significant risk to consumers, as mortgage financing often represented their largest financial transaction. The review highlighted an inherent conflict of interest between the consumer, who seeks the lowest possible interest rate, and the mortgage broker, who receives compensation from higher interest rates. Ultimately, the sunrise review identified a need for regulatory oversight to ensure consumer protection. As a result, the Mortgage Broker Registration Act, House Bill 06-1161, was passed by the Colorado General Assembly in 2006.

The Mortgage Broker Registration Act provided a minimal registration program for mortgage brokers. Registration required a completed criminal background check, a \$25,000 surety bond, a completed application, and payment of the \$200 application fee. Due to the wave of foreclosures and the mortgage fraud epidemic, the Colorado General Assembly passed four new mortgage broker bills in the 2007 session. These included House Bill 07-1322, Senate Bill 07-085, Senate Bill 07-216, and Senate Bill 07-203. Governor Bill Ritter, Jr. signed all four bills into law on June 1, 2007. This new legislation created a significant change in Colorado's regulatory environment. House Bill 07-1322 contains measures to prevent mortgage fraud and establishes comprehensive definitions of prohibited conduct for mortgage brokers. Senate Bill 07-085 prohibits mortgage brokers from coercing or intimidating appraisers for the purpose of influencing an appraiser's independent judgment. Senate Bill 07-216 establishes that mortgage brokers have a duty of good faith and fair dealing in all communications and transactions with a borrower. Finally, Senate Bill 07-203 requires the development of a licensure program and the establishment of grounds for disciplinary actions.

The Colorado Division of Real Estate now has the tools to protect Colorado consumers and ensure fair competition through aggressive enforcement and responsible implementation.

*** II. Mortgage Broker Licensing Act**

Colorado Revised Statutes Title 12, Article 61, Part 9

Colorado Revised Statutes § 12-61-901, Short title.

This part 9 shall be known and may be cited as the “Mortgage Broker Licensing Act.”

12-61-902. Definitions

As used in this part 9, unless the context otherwise requires:

- (1) “Affiliate” means a person who, directly or indirectly, through intermediaries controls, is controlled by, or is under the common control of another person addressed by this part 9.
- (1.5) “Borrower” means any person who consults with or retains a mortgage broker in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.
- (2) “Broker a mortgage” means to directly or indirectly act as a mortgage broker.
- (3) “Director” means the director of the division of real estate.
- (4) “Division” means the division of real estate.
- (5) “Mortgage broker” means an individual who negotiates, originates, or offers or attempts to negotiate or originate for a borrower, and for a commission or other thing of value, a residential mortgage loan to be consummated and funded by a mortgage lender.
- (6) “Mortgage lender” means a lender who is in the business of making residential mortgage loans if:
 - (a) The lender is the payee on the promissory note evidencing the loan; and
 - (b) The loan proceeds are obtained by the lender from its own funds or from a line of credit made available to the lender from a bank or other entity who regularly loans money to lenders for the purpose of funding mortgage loans.
- (7) “Originate” means to submit an application or documentation to a mortgage lender or underwriter in an attempt to obtain a residential mortgage loan.
- (8) “Residential mortgage loan” means a loan that is primarily for personal, family, or household use and that is secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single-family dwelling or multiple-family dwelling of four or fewer units.

12-61-903. License required – rules.

- (1)
 - (a) On or after January 1, 2008, unless licensed by the director, a person shall not broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker.
 - (b) A licensed mortgage broker shall apply for license renewal in accordance with subsection (4) of this section every three years.
 - (c) A mortgage broker who was registered under the predecessor to this section on or before January 1, 2008, shall have his or her registration converted to a license upon satisfaction of all initial licensing requirements that he or she had not already satisfied when applying for registration. The initial term of licensure of such a mortgage broker shall expire on the third anniversary of his or her initial registration.

- (2) An applicant for initial licensing shall submit to the director the following:
 - (a) A criminal history record check in compliance with subsection (5) of this section;
 - (b) A disclosure of all administrative discipline taken against the applicant concerning the categories listed in section 12-61-905 (1) (c); and
 - (c) The application fee established by the director in accordance with section 12-61-908.
- (3)
 - (a) In addition to the requirements imposed by subsection (2) of this section, on or after January 1, 2009, each individual applicant for initial licensing as a mortgage broker shall have satisfactorily completed, within the three years immediately preceding the date of the application, a mortgage lending fundamentals course approved by the director and consisting of at least nine hours of classroom instruction in subjects related to mortgage lending. In addition, the applicant shall have satisfactorily completed a written examination approved by the director.
 - (b) The director may contract with one or more independent testing services to develop, administer, and grade the examinations required by paragraph (a) of this subsection (3) and to maintain and administer licensee records. The contract may allow the testing service to recover from applicants its costs incurred in connection with these functions. The director may contract separately for these functions and may allow the costs to be collected by a single contractor for distribution to other contractors.
- (4) An applicant for license renewal shall submit to the director the following:
 - (a) A disclosure of all administrative discipline taken against the applicant concerning the categories listed in section 12-61-905 (1) (c); and
 - (b) The renewal fee established by the director in accordance with section 12-61-908.
- (5) Prior to submitting an application for a license, an applicant shall submit a set of fingerprints to the Colorado bureau of investigation. Upon receipt of the applicant's fingerprints, the Colorado bureau of investigation shall use the fingerprints to conduct a state and national criminal history record check using records of the Colorado bureau of investigation and the federal bureau of investigation. All costs arising from such criminal history record check shall be borne by the applicant and shall be paid when the set of fingerprints is submitted. Upon completion of the criminal history record check, the bureau shall forward the results to the director.
- (6) Before granting a license to an applicant, the director shall require the applicant to post a bond as required by section 12-61-907.
- (7) The director shall issue or deny a license within twenty-one days after receiving the completed criminal history record check, completed application, application fee, and proof of the posting of the surety bond.
- (8)
 - (a) The director may require, as a condition of license renewal on or after January 1, 2009, continuing education of licensees for the purpose of enhancing the professional competence and professional responsibility of all licensees.
 - (b) Continuing professional education requirements shall be determined by the director; except that licensees shall not be required to complete more than nine credit hours of continuing education within a three-year period. The director may contract with one or more independent service providers to develop, review, or approve continuing education courses. The contract may allow the independent service provider to recover from licensees its costs incurred in connection with these functions. The director may contract separately for these functions and may allow the costs to be collected by a single contractor for distribution to other contractors.
- (9)
 - (a) The director may require contractors and prospective contractors for services under subsections (3) and (8) of this section to submit, for the director's review and approval, information regarding the contents and materials of proposed courses and other documentation reasonably necessary to further the purposes of this section.

- (b) The director may set fees for the initial and continuing review of courses for which credit hours will be granted. The initial filing fee for review of materials shall not exceed five hundred dollars, and the fee for continued review shall not exceed two hundred fifty dollars per year per course offered.
- (10) The director may adopt reasonable rules to implement this section.

12-61-903.5. Errors and omissions insurance – duties of the director – certificate of coverage – when required – group plan made available – effect – rules.

- (1) Every licensee under this part 9, except an inactive mortgage broker or an attorney licensee who maintains a policy of professional malpractice insurance that provides coverage for errors and omissions for activities as a licensee under this part 9, shall maintain errors and omissions insurance to cover all activities contemplated under this part 9.
- (2) The director shall determine the terms and conditions of coverage required under this section, including the minimum limits of coverage, the permissible deductible, and permissible exemptions. Each licensee shall maintain evidence of coverage, in a manner satisfactory to the director, demonstrating continuing compliance with the required terms.

12-61-904. Exemptions.

- (1) Except as otherwise provided in section 12-61-911, this part 9 shall not apply to the following:
 - (a) Employees of an agency of the federal government, of the Colorado government, or of any of Colorado's political subdivisions;
 - (b) An owner of real property who offers credit secured by a mortgage or deed of trust on the property sold;
 - (c) A bank, savings bank, savings and loan association, building and loan association, industrial bank, industrial loan company, credit union, or bank or savings association holding company organized under the laws of any state, the District of Columbia, a territory or protectorate of the United States, or the United States, subject to regulation and supervision by a federal banking agency, or an operating subsidiary or affiliate of such entities, or an employee or exclusive agent of any of such entities, including, without limitation, a subsidiary or affiliate of such entities;
 - (d) An attorney who renders services in the course of practice, who is licensed in Colorado, and who is not primarily engaged in the business of negotiating residential mortgage loans; or
 - (e) (Deleted by amendment, L. 2007, p. 1734, 6, effective January 1, 2008.)
 - (f) A person who:
 - (I) Funds a residential mortgage loan that has been originated and processed by a licensed person or by an exempt person;
 - (II) Does not solicit borrowers in Colorado for the purpose of making residential mortgage loans; and
 - (III) Does not participate in the negotiation of residential mortgage loans with the borrower, except for setting the terms under which a person may buy or fund a residential mortgage loan originated by a licensed or exempt person.
- (2) The exemptions in subsection (1) of this section shall not apply to persons acting beyond the scope of such exemptions.

12-61-904.5. Broker's relationship to borrower – rules.

- (1) A mortgage broker shall have a duty of good faith and fair dealing in all communications and transactions with a borrower. Such duty includes, but is not limited to:

- (a) The duty to not recommend or induce the borrower to enter into a transaction that does not have a reasonable, tangible net benefit to the borrower, considering all of the circumstances, including the terms of a loan, the cost of a loan, and the borrower's circumstances;
 - (b) The duty to make a reasonable inquiry concerning the borrower's current and prospective income, existing debts and other obligations, and any other information known to the mortgage broker and, after making such inquiry, to make his or her best efforts to recommend, broker, or originate a residential mortgage loan that takes into consideration the information submitted by the borrower; and
 - (c) The duty not to commit any unconscionable act or practice listed in section 38-40-105 (1.7), C.R.S.
- (2) For purposes of implementing subsection (1) of this section, the director may adopt rules defining what constitutes a reasonable, tangible net benefit to the borrower.
- (3) A violation of this section constitutes a deceptive trade practice under the "Colorado Consumer Protection Act," article 1 of title 6, C.R.S.

12-61-905. Powers and duties of the director.

- (1) The director shall deny, refuse to renew, or revoke the license of an applicant who has:
- (a) Filed an application with the director containing material misstatements of fact or omitted any disclosure required by this part 9;
 - (b) Within the last five years, been convicted of or pled guilty or nolo contendere to a crime involving fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty; or
 - (c) Within the last five years, had a license, registration, or certification issued by Colorado or another state revoked or suspended for fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty, and such discipline denied the person authorization to practice as:
 - (I) A mortgage broker;
 - (II) A real estate broker, as defined by section 12-61-101 (2);
 - (III) A real estate salesperson;
 - (IV) A real estate appraiser, as defined by section 12-61-702 (5);
 - (V) An insurance producer, as defined by section 10-2-103 (6), C.R.S.;
 - (VI) An attorney;
 - (VII) A securities broker-dealer, as defined by section 11-51-201 (2), C.R.S.;
 - (VIII) A securities sales representative, as defined by section 11-51- 201 (14), C.R.S.;
 - (IX) An investment advisor, as defined by section 11-51-201 (9.5), C.R.S.; or
 - (X) An investment advisor representative, as defined by section 11-51-201 (9.6), C.R.S.
 - (d) Been enjoined within the immediately preceding five years under the laws of this or any other state or of the United States from engaging in deceptive conduct relating to the brokering of a mortgage loan;
 - (e) Been found to have violated the provisions of section 12-61-910.2.
 - (f) Been found to have violated the provisions of section 12-61-911.
- (2) The director may investigate the activities of a licensee or other person that present grounds for disciplinary action under this part 9 or that violate section 12-61-910 (1).

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- (3) (a) If the director has reasonable grounds to believe that a mortgage broker is no longer qualified under subsection (1) of this section, the director may summarily suspend the mortgage broker's license pending a hearing to revoke the license. A summary suspension shall conform to article 4 of title 24, C.R.S.
- (b) The director shall suspend the license of a mortgage broker who fails to maintain the bond required by section 12-61-907 until the licensee complies with such section.
- (4) The director or an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., shall conduct disciplinary hearings concerning mortgage brokers. Such hearings shall conform to article 4 of title 24, C.R.S.
- (5) (a) Except as provided in paragraph (b) of this subsection (5), a person whose license has been revoked shall not be eligible for licensure for two years after the effective date of the revocation.
- (b) If the director or an administrative law judge determines that an application contained a misstatement of fact or omitted a required disclosure due to an unintentional error, the director shall allow the applicant to correct the application. Upon receipt of the corrected and completed application, the director or administrative law judge shall not bar the applicant from being licensed on the basis of the unintentional misstatement or omission.
- (6) (a) The director or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing or investigation conducted by the director or an administrative law judge.
- (b) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed witness resides or conducts business may issue an order requiring the witness to appear before the director or administrative law judge and produce the relevant papers, books, records, documentary evidence, testimony, or materials in question. Failure to obey the order of the court may be punished as a contempt of court. The director or an administrative law judge may apply for such order.
- (7) (a) If the director has reasonable cause to believe that a person is violating this part 9, including but not limited to section 12-61-910 (1), the director may enter an order requiring such person to cease and desist such violations.
- (b) The director, upon his or her own motion may, and, upon the complaint in writing of any person, shall, investigate the activities of any licensee or any person who assumes to act in such capacity within the state. In addition to any other penalty that may be imposed pursuant to this part 9, a person violating any provision of this part 9 or any rules promulgated pursuant to this article may be fined upon a finding of misconduct by the director as follows:
 - (I) In the first administrative proceeding, a fine not in excess of one thousand dollars per act or occurrence;
 - (II) In a second or subsequent administrative proceeding, a fine not less than one thousand dollars nor in excess of two thousand dollars per act or occurrence.
- (c) All fines collected pursuant to this subsection (7) shall be transferred to the state treasurer, who shall credit such moneys to the mortgage broker licensing cash fund created in section 12-61-908.
- (8) The director shall keep records of the persons licensed as mortgage brokers and of disciplinary proceedings. The records kept by the director shall be open to public inspection in a reasonable time and manner determined by the director.
- (9) (a) The director shall maintain a system, which may include, without limitation, a hotline or web site, that gives consumers a reasonably easy method for making complaints about a mortgage broker.

- (b) The director shall review the complaints annually and prepare a report to be issued to the committee of the general assembly that has oversight of mortgage brokers. Such report shall contain the trends in complaints and investigations under this part 9.
- (10) The director shall promulgate rules to allow licensed mortgage brokers to hire unlicensed mortgage brokers under temporary licenses. If such an unlicensed mortgage broker has initiated the application process for a license, he or she shall be assigned a temporary license for a reasonable period until a license is approved or denied. The licensed mortgage broker who employs such an unlicensed mortgage broker shall be held responsible under all applicable provisions of law, including without limitation this part 9 and section 38-40-105, C.R.S., for the actions of the unlicensed mortgage broker to whom a temporary license has been assigned under this subsection (10).

12-61-905.5. Disciplinary actions – grounds – procedures – rules.

- (1) The director, upon his or her own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any mortgage broker, and the director has the power to impose an administrative fine in accordance with section 12-61-905 and to censure a licensee, to place the licensee on probation and to set the terms of probation, or to suspend or revoke a license when the director finds that the licensee has performed, is performing, or is attempting to perform any of the following acts:
 - (a) Knowingly making any misrepresentation or knowingly making use of any false or misleading advertising;
 - (b) Making any promise that influences, persuades, or induces another person to detrimentally rely on such promise when the licensee could not or did not intend to keep such promise;
 - (c) Knowingly misrepresenting or making false promises through agents, salespersons, advertising, or otherwise;
 - (d) Violating any provision of the “Colorado Consumer Protection Act,” article 1 of title 6, C.R.S., and, if the licensee has been assessed a civil or criminal penalty or been subject to an injunction under said act, the director shall revoke the licensee’s license;
 - (e) Acting for more than one party in a transaction without disclosing any actual or potential conflict of interest or without disclosing to all parties any fiduciary obligation or other legal obligation of the mortgage broker to any party;
 - (f) Representing or attempting to represent a mortgage broker other than the licensee’s employer without the express knowledge and consent of that employer;
 - (g) In the case of a licensee in the employ of another mortgage broker, failing to place, as soon after receipt as is practicably possible, in the custody of that licensed mortgage broker-employer any deposit money or other money or fund entrusted to the employee by any person dealing with the employee as the representative of that licensed mortgage broker-employer;
 - (h) Failing to account for or to remit, within a reasonable time, any moneys coming into his or her possession that belong to others, whether acting as a mortgage broker, real estate broker, salesperson, or otherwise, and failing to keep records relative to said moneys, which records shall contain such information as may be prescribed by the rules of the director relative thereto and shall be subject to audit by the director;
 - (i) Converting funds of others, diverting funds of others without proper authorization, commingling funds of others with the licensee’s own funds, or failing to keep such funds of others in an escrow or a trustee account with a bank or recognized depository in this state, which account may be any type of checking, demand, passbook, or statement account insured by an agency of the United States government, and to so keep records

- relative to the deposit that contain such information as may be prescribed by the rules of the director relative thereto, which records shall be subject to audit by the director;
- (j) Failing to provide the parties to a residential mortgage loan transaction with such information as may be prescribed by the rules of the director;
 - (k) Failing to maintain possession, for future use or inspection by an authorized representative of the director, for a period of four years, of the documents or records prescribed by the rules of the director or to produce such documents or records upon reasonable request by the director or by an authorized representative of the director;
 - (l) Paying a commission or valuable consideration for performing any of the functions of a mortgage broker, as described in this part 9, to any person not licensed under this part 9; except that a licensed mortgage broker may pay a finder's fee or a share of any commission on a cooperative sale when such payment is made to a mortgage broker licensed in another state or country. If such state or country does not license mortgage brokers, then the payee shall be a citizen or resident of said state or country and represent that the payee is in the mortgage brokerage business in said state or country.
 - (m) Disregarding or violating any provision of this part 9 or of any rule adopted by the director pursuant to this part 9; violating any lawful orders of the director; or aiding and abetting a violation of any rule, order of the director, or provision of this part 9;
 - (n) Conviction of, entering a plea of guilty to, or entering a plea of nolo contendere to any crime in article 3 of title 18, C.R.S., in parts 1 to 4 of article 4 of title 18, C.R.S., in article 5 of title 18, C.R.S., in part 3 of article 8 of title 18, C.R.S., in article 15 of title 18, C.R.S., in article 17 of title 18, C.R.S., or any other like crime under Colorado law, federal law, or the laws of other states. A certified copy of the judgment of a court of competent jurisdiction of such conviction or other official record indicating that such plea was entered shall be conclusive evidence of such conviction or plea in any hearing under this part 9.
 - (o) Violating or aiding and abetting in the violation of the Colorado or federal fair housing laws;
 - (p) Failing to immediately notify the director in writing of a conviction, plea, or violation pursuant to paragraph (n) or (o) of this subsection (1);
 - (q) Having demonstrated unworthiness or incompetency to act as a mortgage broker by conducting business in such a manner as to endanger the interest of the public;
 - (r) Failing to exercise reasonable supervision over the activities of licensed employees;
 - (s) Procuring, or attempting to procure, a mortgage broker's license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, a mortgage broker's license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for such license;
 - (t) Claiming, arranging for, or taking any secret or undisclosed amount of compensation, commission, or profit or failing to reveal to the licensee's principal or employer the full amount of such licensee's compensation, commission, or profit in connection with any acts for which a license is required under this part 9;
 - (u) Exercising an option to purchase in any agreement authorizing or employing such licensee to sell, buy, or exchange real estate for compensation or commission except when such licensee, prior to or coincident with election to exercise such option to purchase, reveals in writing to the licensee's principal or employer the full amount of the licensee's profit and obtains the written consent of such principal or employer approving the amount of such profit;

Chapter 12: Mortgage Brokers

- (v) Fraud, misrepresentation, deceit, or conversion of trust funds that results in the payment of any claim pursuant to this part 9 or that results in the entry of a civil judgment for damages;
 - (w) Any other conduct, whether of the same or a different character than specified in this subsection (1), that evinces a lack of good faith and fair dealing;
 - (x) Having had a mortgage broker's license suspended or revoked in any jurisdiction, or having had any disciplinary action taken against the mortgage broker in any other jurisdiction. A certified copy of the order of disciplinary action shall be prima facie evidence of such disciplinary action.
- (2) If a firm, partnership, limited liability company, association, or corporation operating under the license of a mortgage broker designated and licensed as a representative of said firm, partnership, limited liability company, association, or corporation is guilty of any of the acts set out in subsection (1) of this section, the director may suspend or revoke the right of the firm, partnership, limited liability company, association, or corporation to conduct its business under the license of said mortgage broker, whether or not the designated mortgage broker had personal knowledge thereof and whether or not the director suspends or revokes the individual license of said mortgage broker.
- (3) Upon request of the director, when any mortgage broker is a party to any suit or proceeding, either civil or criminal, arising out of any transaction involving a residential mortgage loan and when such mortgage broker participated in such transaction in his or her capacity as a licensed mortgage broker, it shall be the duty of such mortgage broker to supply to the director a copy of the complaint, indictment, information, or other initiating pleading and the answer filed, if any, and to advise the director of the disposition of the case and of the nature and amount of any judgment, verdict, finding, or sentence that may be made, entered, or imposed therein.
- (4) This part 9 shall not be construed to relieve any person from civil liability or criminal prosecution under the laws of this state.
- (5) Complaints of record in the office of the director and the results of staff investigations may, in the discretion of the director, be closed to public inspection, except as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee.
- (6) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, the director may send a letter of admonition by certified mail, return receipt requested, to the licensee against whom a complaint was made and a copy thereof to the person making the complaint, but the letter shall advise the licensee that the licensee has the right to request in writing, within twenty days after proven receipt, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.
- (7) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the mortgage broker licensing cash fund created in section 12-61-908.
- (8) (a) The director shall not consider an application for licensure from a person whose license has been revoked until two years after the date of revocation.
- (b) If a person's license was suspended or revoked due to conduct that resulted in financial loss to another person, no new license shall be granted, nor shall a suspended license be reinstated, until full restitution has been made to the person suffering such financial loss. The amount of restitution shall include interest, reasonable attorney fees, and costs of any suit or other proceeding undertaken in an effort to recover the loss.

- (9) When the director or the division becomes aware of facts or circumstances that fall within the jurisdiction of a criminal justice or other law enforcement authority upon investigation of the activities of a licensee, the director or division shall, in addition to the exercise of its authority under this part 9, refer and transmit such information, which may include originals or copies of documents and materials, to one or more criminal justice or other law enforcement authorities for investigation and prosecution as authorized by law.

12-61-905.6. Hearing – administrative law judge – review – rules.

- (1) Except as otherwise provided in this section, all proceedings before the director with respect to disciplinary actions and denial of licensure under this part 9, at the discretion of the director, may be conducted by an administrative law judge pursuant to sections 24-4-104 and 24-4-105, C.R.S.
- (2) Proceedings shall be held in the county where the director has his or her office or in such other place as the director may designate. If the licensee is employed by another licensed mortgage broker or by a real estate broker, the director shall also notify the licensee's employer by mailing, by first-class mail, a copy of the written notice required under section 24-4-104 (3), C.R.S., to the employer's last-known business address.
- (3) An administrative law judge shall conduct all hearings for denying, suspending, or revoking a license or certificate on behalf of the director, subject to appropriations made to the department of personnel. Each administrative law judge shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S. The administrative law judge shall conduct the hearing in accordance with sections 24-4-104 and 24-4-105, C.R.S. No license shall be denied, suspended, or revoked until the director has made his or her decision.
- (4) The decision of the director in any disciplinary action or denial of licensure under this section is subject to judicial review under section 24-4-106, C.R.S. In order to effectuate the purposes of this part 9, the director has the power to promulgate rules pursuant to article 4 of title 24, C.R.S.
- (5) In a judicial review proceeding, the court may stay the execution or effect of any final order of the director; but a hearing shall be held affording the parties an opportunity to be heard for the purpose of determining whether the public health, safety, and welfare would be endangered by staying the director's order. If the court determines that the order should be stayed, it shall also determine at the hearing the amount of the bond and adequacy of the surety, which bond shall be conditioned upon the faithful performance by such petitioner of all obligations as a mortgage broker and upon the prompt payment of all damages arising from or caused by the delay in the taking effect of or enforcement of the order complained of and for all costs that may be assessed or required to be paid in connection with such proceedings.
- (6) In any hearing conducted by the director in which there is a possibility of the denial, suspension, or revocation of a license because of the conviction of a felony or of a crime involving moral turpitude, the director shall be governed by section 24-5-101, C.R.S.

12-61-905.7. Subpoena – misdemeanor.

- (1) The director or the administrative law judge appointed for hearings may issue a subpoena compelling the attendance and testimony of witnesses and the production of books, papers, or records pursuant to an investigation or hearing of the director. Such subpoenas shall be served in the same manner as subpoenas issued by district courts and shall be issued without discrimination between public or private parties requiring the attendance of witnesses and the production of documents at hearings. If a person fails or refuses to obey a subpoena issued by the director or the appointed administrative law judge, the director may petition the district court having jurisdiction for issuance of a subpoena in the premises, and the court shall, in a proper case, issue its subpoena.

- (2) Any person who willfully fails or neglects to appear and testify or to produce books, papers, or records required by subpoena, duly served upon him or her in any matter conducted under this part 9, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of one hundred dollars, or imprisonment in the county jail for not more than thirty days for each such offense, or by both such fine and imprisonment. Each day such person so refuses or neglects constitutes a separate offense.

12-61-906. Immunity.

A person participating in good faith in the filing of a complaint or report or participating in an investigation or hearing before the director or an administrative law judge pursuant to this part 9 shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.

12-61-907. Bond required.

- (1) Before receiving a license, an applicant shall post with the director a surety bond, or an alternative authorized by article 35 of title 11, C.R.S., of twenty-five thousand dollars. A licensed mortgage broker shall maintain such bond at all times.
- (2) The surety shall not be required to pay a person making a claim upon the bond until a final determination of fraud, forgery, criminal impersonation, or fraudulent representation has been made by a court with jurisdiction.
- (3) The surety bond shall require the surety to provide notice to the director within thirty days if payment is made from the surety bond or if the bond is cancelled.

* Ed. Note: C.R.S. § 11-35-101 has been moved from Chapter 1: Real Estate Broker License Law.

* **11-35-101. Alternatives to surety bonds permitted – requirements.**

- (1) The requirement of a surety bond as a condition to licensure or authority to conduct business or perform duties in this state provided in sections 12-5.5-202 (2) (b), 12-6-111, 12-6-112, 12-6-112.2, 12-6-512, 12-6-513, 12-11-101 (1) (d), 12-11-104, 12-11-106, 12-14-124 (1), 12-59-115 (1), 12-60-509 (2.5) (b), 12-61-907, 33-4-101 (1), 33-12-104 (1), 35-33-403 (3), 35-55-104 (1), 37-91-107 (2) and (3), 38-29-119 (2), 39-21-105 (4), 39-27-104 (2) (a), (2) (b), (2) (c), (2) (d), (2) (e), (2.1) (a), (2.1) (b), (2.1) (c), (2.5) (a), and (2.5) (b), 39-28-105 (1), 42-6-115 (3), and 42-7-301 (6), C.R.S., may be satisfied by a savings account or deposit in or a certificate of deposit issued by a state or national bank doing business in this state or by a savings account or deposit in or a certificate of deposit issued by a state or federal savings and loan association doing business in this state. Such savings account, deposit, or certificate of deposit shall be in the amount specified by statute, if any, and shall be assigned to the appropriate state agency for the use of the people of the state of Colorado. The aggregate liability of the bank or savings and loan association shall in no event exceed the amount of the deposit. For the purposes of the sections referred to in this section, “bond” includes the savings account, deposit, or certificate of deposit authorized by this section.

12-61-908. Fees.

- (1) The director may set the fees for issuance and renewal of licenses under this part 9. The fees shall be set in amounts that offset the direct and indirect costs of implementing this part 9 and section 38-40-105, C.R.S. The moneys collected pursuant to this section shall be transferred to the state treasurer, who shall credit them to the mortgage broker licensing cash fund.
- (2) There is hereby created in the state treasury the mortgage broker licensing cash fund. Moneys in the fund shall be spent only to implement this part 9 and section 38-40-105, C.R.S., and shall

not revert to the general fund at the end of the fiscal year. The fund shall be subject to annual appropriation by the general assembly.

12-61-909. Attorney general – district attorney – jurisdiction.

The attorney general shall have concurrent jurisdiction with the district attorneys of this state to investigate and prosecute allegations of criminal violations of this part 9.

12-61-910. Violations – injunctions.

- (1) (a) Any natural person, firm, partnership, limited liability company, or association or any corporation violating this part 9 by acting as a mortgage broker in this state without having obtained a license or by acting as a mortgage broker after that person’s license has been revoked or during any period for which said license may have been suspended is guilty of a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.; except that, if the violator is not a natural person, the violator shall be punished by a fine of not more than five thousand dollars.
- (b) Each mortgage brokered by an unlicensed person shall be a separate violation of this subsection (1).
- (2) (Deleted by amendment, L. 2007, p. 1734, 6, effective January 1, 2008.)
- (3) The director may request that an action be brought in the name of the people of the state of Colorado by the attorney general or the district attorney of the district in which the violation is alleged to have occurred to enjoin a person from engaging in or continuing the violation or from doing any act that furthers the violation. In such an action, an order or judgment may be entered awarding such preliminary or final injunction as is deemed proper by the court. The notice, hearing, or duration of an injunction or restraining order shall be made in accordance with the Colorado rules of civil procedure.
- (4) A violation of this part 9 shall not affect the validity or enforceability of any mortgage.

12-61-910.2. Prohibited conduct – influencing a real estate appraisal.

- (1) A mortgage broker shall not, directly or indirectly, compensate, coerce, or intimidate an appraiser, or attempt, directly or indirectly, to compensate, coerce, or intimidate an appraiser, for the purpose of influencing the independent judgment of the appraiser with respect to the value of a dwelling offered as security for repayment of a mortgage loan. This prohibition shall not be construed as prohibiting a mortgage broker from requesting an appraiser to:
 - (a) Consider additional, appropriate property information;
 - (b) Provide further detail, substantiation, or explanation for the appraiser’s value conclusion; or
 - (c) Correct errors in the appraisal report.

12-61-910.3. Rule-making authority.

The director shall have the authority to promulgate rules as necessary to enable the director to carry out the director’s duties under this part 9.

12-61-910.4. Nontraditional mortgages – consumer protections – rules – incorporation of federal interagency guidance.

The director shall adopt rules governing the marketing of nontraditional mortgages by mortgage brokers. In adopting such rules, the director shall incorporate appropriate provisions of the final “Interagency Guidance on Nontraditional Mortgage Product Risks” released on September 29, 2006, by the office of the comptroller of the currency and the office of thrift supervision in the federal department of the treasury, the board of governors of the federal reserve system, the federal deposit

insurance corporation, and the national credit union administration, as such publication may be amended.

12-61-911. Prohibited conduct – fraud – misrepresentation – conflict of interest – rules.

- (1) A mortgage broker, including a mortgage broker otherwise exempted from this part 9 by section 12-61-904 (1) (b) or (1) (c), shall not:
 - (a) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
 - (b) Engage in any unfair or deceptive practice toward any person;
 - (c) Obtain property by fraud or misrepresentation;
 - (d) Solicit or enter into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;
 - (e) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting from a lender with whom the mortgage broker maintains a written correspondent or loan broker agreement under section 12-61-913;
 - (f) Fail to make a disclosure to a loan applicant or a noninstitutional investor as required by section 12-61-914 and any other applicable state or federal law;
 - (g) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in "bait and switch" advertising;
 - (h) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the division;
 - (i) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest;
 - (j) Fail to comply with any requirement of the federal "Truth in Lending Act," 15 U.S.C. sec. 1601 and Regulation Z, 12 CFR 226; the "Real Estate Settlement Procedures Act of 1974," 12 U.S.C. sec. 2601 and Regulation X, 24 CFR 3500; the "Equal Credit Opportunity Act," 15 U.S.C. sec. 1691 and Regulation B, CFR 202.9, 202.11, and 202.12; Title V, Subtitle A of the financial modernization act of 1999 (known as the "Gramm-Leach-Bliley Act"), 12 U.S.C. secs. 6801-6809; the federal trade commission's privacy rules, 16 CFR 313-314, mandated by the "Gramm-Leach-Bliley Act;" the "Home Mortgage Disclosure Act of 1975," 12 U.S.C. sec. 2801 et seq. and Regulation C, home mortgage disclosure; the "Federal Trade Commission Act," 12 CFR 203, 15 U.S.C. sec. 45(a); the "Telemarketing and Consumer Fraud and Abuse Prevention Act," 15 U.S.C. secs. 6101 to 6108; and the federal trade commission telephone sales rule, 16 CFR 310, as amended, in any advertising of residential mortgage loans or any other applicable mortgage broker activities covered by the acts. The director may adopt rules requiring mortgage brokers to comply with other applicable federal statutes and regulations in any advertising of residential mortgage loans, or any other mortgage broker activity.
 - (k) Fail to pay a third-party provider, no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service;

- (l) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by section 12-61-914 or 12-61-915; or
- (m) Fail to comply with any provision of this part 9 or any rule adopted pursuant to this part 9.

12-61-911.5. Acts of employee – mortgage broker’s liability.

An unlawful act or violation of this part 9 upon the part of an employee, officer, or member of a licensed mortgage broker shall not be cause for disciplinary action against a mortgage broker unless it appears that the mortgage broker knew or should have known of the unlawful act or violation or had been negligent in the supervision of the employee.

12-61-912. Dual status as real estate broker or salesperson – requirements.

- (1) Unless a mortgage broker complies with both subsections (2) and (3) of this section, he or she shall not act as a loan originator in any transaction in which:
 - * (a) The mortgage broker acts or has acted as a real estate broker; or
 - * (b) Another person doing business under the same licensed real estate broker acts or has acted as a real estate broker.
- (2) Before providing mortgage services to the borrower, a mortgage broker shall make a full and fair disclosure to the borrower, in addition to any other disclosures required by this part 9 or other laws, of all material features of the loan product and all facts material to the transaction.
- * (3) (a) A real estate broker licensed under part 1 of this article who also acts as a mortgage broker shall carry on such mortgage broker business activities and shall maintain such person’s mortgage broker business records separate and apart from the real estate broker activities conducted pursuant to part 1 of this article. Such activities shall be deemed separate and apart even if they are conducted at an office location with a common entrance and mailing address if:
 - (I) Each business is clearly identified by a sign visible to the public;
 - (II) Each business is physically separated within the office facility; and
 - (III) No deception of the public as to the separate identities of the broker business firms results.
- * (b) This subsection (3) shall not require a real estate broker licensed under part 1 of this article who also acts as a mortgage broker to maintain a physical separation within the office facility for the conduct of its real estate and mortgage broker activities if the director determines that maintaining such physical separation would constitute an undue financial hardship upon the mortgage broker and is unnecessary for the protection of the public.

12-61-913. Written contract required – effect.

- (1) Every contract between a mortgage broker and a borrower shall be in writing and shall contain the entire agreement of the parties.
- (2) A mortgage broker shall have a written correspondent or loan broker agreement with a lender before any solicitation of, or contracting with, any member of the public.

12-61-914. Written disclosure of fees and costs – contents – limits on fees – lock-in agreement terms – rules.

- (1) Within three business days after receipt of a loan application or any moneys from a borrower, a mortgage broker shall provide to each borrower a full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees that inure

to the benefit of the mortgage broker. A good-faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not determinable. Except as required by paragraph (c) of subsection (2) of this section, this subsection (1) shall not be construed to require disclosure of the distribution or breakdown of loan fees, discounts, or points between the mortgage broker and any lender or investor.

- (2) The written disclosure shall contain the following information:
 - (a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest, and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan. If the interest rate is variable, the written disclosure shall clearly describe the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase.
 - (b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan;
 - (c) If applicable, the amount of any commission or other compensation to be paid to the mortgage broker, including the manner in which such commission or other compensation is calculated and the relationship of such commission or other compensation to the cost of the loan received by the borrower;
 - (d) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, whether the lock-in agreement is guaranteed by the mortgage broker or lender, and, if a lock-in agreement has not been entered, disclosure in a form acceptable to the director that the disclosed interest rate and terms are subject to change;
 - (e) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days after a written request by the borrower, give copies of each appraisal, title report, and credit report paid for by the borrower to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent;
 - (f) Whether and under what conditions any lock-in fees are refundable to the borrower; and
 - (g) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.
- (3) If, after the written disclosure is provided under this section, a mortgage broker enters into a lock-in agreement with a borrower or represents to the borrower that the borrower has entered into a lock-in agreement, then no less than three business days thereafter, including Saturdays, the mortgage broker shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement, which shall include a copy of the disclosure made under paragraph (d) of subsection (2) of this section.
- (4)
 - (a) Except as otherwise provided in paragraph (b) of this subsection (4), a mortgage broker shall not charge any fee that inures to the benefit of the mortgage broker and that exceeds the fee disclosed on the written disclosure pursuant to this section unless:
 - (I) The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and
 - (II) The mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.

- (b) If the borrower's closing costs on the final settlement statement, excluding prepaid escrowed costs of ownership as defined by the director by rule, do not exceed the total closing costs in the most recent good-faith estimate, excluding prepaid escrowed costs of ownership, no other disclosures shall be required by this subsection (4).

12-61-915. Fee, commission, or compensation – when permitted – amount.

- (1) Except as otherwise permitted by subsection (2) or (3) of this section, a mortgage broker shall not receive a fee, commission, or compensation of any kind in connection with the preparation, negotiation, or brokering of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed to by the borrower and mortgage broker.
- (2) If the mortgage broker has obtained for the borrower a written commitment from a lender for a loan on the terms and conditions agreed to by the borrower and the mortgage broker, and the borrower fails to close on the loan through no fault of the mortgage broker, the mortgage broker may charge a fee, not to exceed three hundred dollars, for services rendered, preparation of documents, or transfer of documents in the borrower's file that were prepared or paid for by the borrower if the fee is not otherwise prohibited by the federal "Truth in Lending Act," 15 U.S.C. sec. 1601, and Regulation Z, 12 CFR 226, as amended.
- (3) A mortgage broker may solicit or receive fees for third-party provider goods or services in advance. Fees for any goods or services not provided shall be refunded to the borrower, and the mortgage broker may not charge more for the goods and services than the actual costs of the goods or services charged by the third-party provider.

*** III. Standards for Mortgage Lending and Servicing**

38-40-101. Mortgage broker fees – escrow accounts – unlawful act – penalty.

- (1) Any funds, other than advanced for actual costs and expenses to be incurred by the mortgage broker on behalf of the applicant for a loan, paid to a mortgage broker as a fee conditioned upon the consummation of a loan secured or to be secured by a mortgage or other transfer of or encumbrance on real estate shall be held in an escrow or a trustee account with a bank or recognized depository in this state. Such account may be any type of checking, demand, passbook, or statement account insured by an agency of the United States government.
- (2) It is unlawful for a mortgage broker to misappropriate funds held in escrow or a trustee account pursuant to subsection (1) of this section.
- (3) The withdrawal, transfer, or other use or conversion of any funds held in escrow or a trustee account pursuant to subsection (1) of this section prior to the time a loan secured or to be secured by mortgage or other transfer of or encumbrance on real estate is consummated shall be prima facie evidence of intent to violate subsection (2) of this section.
- (4) Any mortgage broker violating any of the provisions of subsection (2) of this section commits theft as defined in section 18-4-401, C.R.S.
- (5) Any mortgage broker violating any of the provisions of subsection (1) or (2) of this section shall be liable to the person from whom any funds were received for the sum of one thousand dollars plus actual damages caused thereby, together with costs and reasonable attorney fees. No lender shall be liable for any act or omission of a mortgage broker under this section.
- (6) As used in this section, unless the context otherwise requires, "mortgage broker" means a person, firm, partnership, association, or corporation, other than a bank, trust company, savings and loan association, credit union, supervised lender as defined in section 5-1-301 (46), C.R.S., insurance company, federal housing administration approved mortgagee, land mortgagee, or farm loan association or duly appointed loan correspondents, acting through officers, partners, or regular salaried employees for any such entity, that engages in negotiating or offering or

attempting to negotiate for a borrower, and for commission, money, or other thing of value, a loan to be consummated and funded by someone other than the one acting for the borrower.

38-40-102. Disclosure of costs – statement of terms of indebtedness.

- (1) Any person regularly engaged in the making of loans secured by a mortgage or deed of trust on a one-to-four-family dwelling shall provide to any applicant for a loan to be secured by such a mortgage or deed of trust a good faith estimate, as a dollar amount or range, of each charge for a settlement service to be charged by the lender and paid by the applicant or a third party at the time of the making of the loan for which the application is made. Such disclosure shall be delivered to the applicant, and to any third party who will be liable on the loan and to the seller if the name and address of the third party and seller is known to the lender at the time of the application, in the same manner and at the same time as the good faith estimate required by the federal “Real Estate Settlement Procedures Act of 1974,” 12 U.S.C. sec. 2601, et seq. If the lender conditionally guarantees any of the terms of the loan for which the application is made, there shall be delivered to the applicant a written statement of the conditions of such guaranty, including the period of time within which the consummation of the loan must occur in order for the guaranty to be honored.
- (2) A person shall not state terms of an indebtedness to an applicant which are in conflict with the good faith estimate and which he knows to be false or unavailable at the time of the statement or at the time of closing of the agreement creating the indebtedness.
- (3) As used in this section, unless the context otherwise requires, the terms “good faith estimate,” “person,” and “settlement service” shall have the same meanings as given to such terms in the federal “Real Estate Settlement Procedures Act of 1974,” 12 U.S.C. sec. 2601, et seq., and in regulation X, 24 C.F.R. part 3500, issued by the United States secretary of housing and urban development pursuant to such act.
- (4) The provisions of this section shall not apply to a loan to be made by a bank, trust company, savings and loan association, credit union, federal housing administration approved mortgagee, or supervised lender as defined in section 5-1-301 (46), C.R.S., that will be secured by a mortgage or deed of trust other than a first mortgage or deed of trust having priority as a lien on the real property over any other mortgage or deed of trust.

38-40-103. Servicing of mortgages and deeds of trust – liability for interest or late fees for property taxes.

- (1) (a) (I) Any person who regularly engages in the collection of payments on mortgages and deeds of trust for owners of evidences of debt secured by mortgages or deeds of trust shall promptly credit all payments which are received and which are required to be accepted by such person or his agent and shall promptly perform all duties imposed by law and all duties imposed upon the servicer by such evidences of debt, mortgages, or deeds of trust creating or securing the indebtedness.
 - (II) No more than twenty days after the date of transfer of the servicing or collection rights and duties to another person, the transferor of such rights and duties shall mail a notice addressed to the debtor from whom it has been collecting payments at the address shown on its records, notifying such debtor of the transfer of the servicing of his or her debt and the name, address, and telephone number of the transferee of the servicing.
- (b) The debtor may continue to make payments to the transferor of the servicing of his or her loan until a notice of the transfer is received from the transferee containing the name, address, and telephone number of the new servicer of the loan to whom future payments should be made. Such notice may be combined with the notice required in subparagraph (II) of paragraph (a) of this subsection (1). It shall be the responsibility of the transferor

to forward to the transferee any payments received and due after the date of transfer of the loan.

- (2) The servicer of a loan shall respond in writing within twenty days from the receipt of a written request from the debtor or from an agent of the debtor acting pursuant to written authority from the debtor for information concerning the debtor's loan, which is readily available to the servicer from its books and records and which would not constitute the rendering of legal advice. Any such response must include the telephone number of the servicer. The servicer shall not be liable for any damage or harm that might arise from the release of any information pursuant to this section.
- (3) The servicer of a loan shall annually provide to the debtor a summary of activity related to the loan. Such a summary shall contain, but need not be limited to, the total amount of principal and interest paid on the loan in that calendar year.
- (4) The servicer of a loan shall be liable for any interest or late fees charged by any taxing entity if funds for the full payment of taxes on the real estate have been held in an escrow account by such servicer and not remitted to the taxing entity when due.

38-40-105. Prohibited acts by originators of certain mortgage loans.

- (1) The following acts by any mortgage broker, or mortgage originator, mortgage lender, mortgage loan applicant, real estate appraiser, or closing agent, other than a person who provides closing or settlement services subject to regulation by the division of insurance, with respect to any loan that is secured by a first or subordinate mortgage or deed or trust lien against a dwelling are prohibited:
 - (a) To knowingly advertise, display, distribute, broadcast, televise, or cause or permit to be advertised, displayed, distributed, broadcast, or televised, in any manner, any false, misleading, or deceptive statement with regard to rates, terms, or conditions for a mortgage loan;
 - (b) To make a false promise or misrepresentation or conceal an essential or material fact to entice either a borrower or a creditor to enter into a mortgage agreement when, under the terms and circumstances of the transaction, he or she knew or reasonably should have known of such falsity, misrepresentation, or concealment;
 - (c) To knowingly and with intent to defraud present, cause to be presented, or prepare with knowledge or belief that it will be presented to or by a lender or an agent thereof any written statement or information in support of an application for a mortgage loan that he or she knows to contain false information concerning any fact material thereto or if he or she knowingly and with intent to defraud or mislead conceals information concerning any fact material thereto;
 - (d) To facilitate the consummation of a mortgage loan agreement that is unconscionable given the terms and circumstances of the transaction.
 - (e) To knowingly facilitate the consummation of a mortgage loan transaction that violates, or that is connected with a violation of, section 12-61-911, C.R.S.
 - * (f) To knowingly facilitate the consummation of a mortgage loan transaction that violates, or that is connected with a violation of, subsection (1.5) of this section.
- * (1.5) (a) A mortgage broker or the broker's agent shall provide the borrower with draft copies of the mortgage loan agreement and all other documents material to the transaction, completed to the extent possible in accordance with good-faith estimates, at least one business day before closing. There shall be no blank spaces remaining on the agreement form and no change to any material term of the agreement or of any accompanying document during this time.

Chapter 12: Mortgage Brokers

- * (b) As used in this subsection (1.5), “documents material to the transaction” include, without limitation, the deed of conveyance, except in the case of a refinancing, the loan agreement, and the title documents if requested by the borrower.
- * (1.7) (a) A mortgage broker or mortgage originator shall not commit, or assist or facilitate the commission of, the following acts or practices, which are hereby deemed unconscionable:
 - * (I) Engaging in a pattern or practice of providing residential mortgage loans to consumers based predominantly on acquisition of the foreclosure or liquidation value of the consumer’s collateral without regard to the consumer’s ability to repay a loan in accordance with its terms; except that any reasonable method may be used to determine a borrower’s ability to repay. This subparagraph (I) shall not apply to a reverse mortgage that complies with article 38 of title 11, C.R.S.
 - * (II) Knowingly or intentionally flipping a residential mortgage loan. As used in this subparagraph (II), “flipping” means making a residential mortgage loan that refinances an existing residential mortgage loan when the new loan does not have reasonable, tangible net benefit to the consumer considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the consumer’s circumstances. This subparagraph (II) applies regardless of whether the interest rate, points, fees, and charges paid or payable by the consumer in connection with the refinancing exceed any thresholds specified by law.
 - * (III) Entering into a residential mortgage loan transaction knowing there was no reasonable probability of payment of the obligation by the consumer.
- * (b) Except as this subsection (1.7) may be enforced by the attorney general or a district attorney, only the original parties to a transaction shall have a right of action under this subsection (1.7), and no action or claim under this subsection (1.7) may be brought against a purchaser from, or assignee of, a party to the transaction.
- (2) (a) Except as provided in subsection (5) of this section, if a court, as a matter of law, finds a mortgage contract or any clause of the contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any 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 mortgage broker or mortgage originator 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 on the part of one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the mortgage broker, mortgage originator, or lender.
- (3) A violation of this section shall be deemed a deceptive trade practice as provided in section 6-1-105 (1) (uu), C.R.S.
- (4) The provisions of this section are in addition to and are not intended to supersede the deceptive trade practices actionable at common law or under other statutes of this state.
- (5) No right or claim arising under this section may be raised or asserted in any proceeding against a bona fide purchaser of such mortgage contract or in any proceeding to obtain an order authorizing sale of property by a public trustee as required by section 38-38-105.

- (6) The following acts by any real estate agent or real estate broker, as defined in section 12-61-101, C.R.S., in connection with any residential mortgage loan transaction, are prohibited:
 - (a) If directly engaged in negotiating, originating, or offering or attempting to negotiate or originate for a borrower a residential mortgage loan transaction, the real estate agent or real estate broker shall not make a false promise or misrepresentation or conceal an essential or material fact to entice either a borrower or lender to enter into a mortgage loan agreement when the real estate agent or real estate broker actually knew or, under the terms and circumstances of the transaction, reasonably should have known of such falsity, misrepresentation, or concealment.
 - (b) If not directly engaged in negotiating, originating, or offering or attempting to negotiate or originate for a borrower a residential mortgage loan transaction, the real estate agent or real estate broker shall not make a false promise or misrepresentation or conceal an essential or material fact to entice either a borrower or lender to enter into a mortgage loan agreement when the real estate agent or real estate broker had actual knowledge of such falsity, misrepresentation, or concealment.

*** IV. Loan Fraud**

Legislative declaration.

- (1) The general assembly hereby determines that mortgage lending has a significant effect upon Colorado's economy; an estimated two trillion five hundred billion dollars in mortgage loans were made in the United States in 2005; an estimated eighty percent of reported mortgage fraud involves collusion by industry insiders; and Colorado's per capita incidents of mortgage fraud is one of the ten highest in the nation.
- (2) The general assembly hereby declares that the high rates of mortgage fraud in Colorado are unacceptable and that residential mortgage fraud shall not be tolerated. The general assembly further declares that the goals of Colorado law are to deter residential mortgage fraud and to make the victim whole.

18-4-401. Theft.

- (9)
 - (a) If a person is convicted of or pleads guilty or nolo contendere to theft by deception and the underlying factual basis of the case involves the mortgage lending process, a minimum fine of the amount of pecuniary harm resulting from the theft shall be mandatory, in addition to any other penalty the court may impose.
 - (b) A court shall not accept a plea of guilty or nolo contendere to another offense from a person charged with a violation of this section that involves the mortgage lending process unless the plea agreement contains an order of restitution in accordance with part 6 of article 1.3 of this title that compensates the victim for any costs to the victim caused by the offense.
 - (c) The district attorneys and the attorney general have concurrent jurisdiction to investigate and prosecute a violation of this section that involves making false statements or filing or facilitating the use of a document known to contain a false statement or material omission relied upon by another person in the mortgage lending process.
 - (d) Documents involved in the mortgage lending process include, but are not limited to, uniform residential loan applications or other loan applications; appraisal reports; HUD-1 settlement statements; supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, bank statements, tax returns, and payroll stubs; and any required disclosures.
 - (e) For the purposes of this subsection (9):

- (I) “Mortgage lending process” means the process through which a person seeks or obtains a residential mortgage loan, including, without limitation, solicitation, application, or origination; negotiation of terms; third-party provider services; underwriting; signing and closing; funding of the loan; and perfecting and releasing the mortgage.
- (II) “Residential mortgage loan” means a loan or agreement to extend credit, made to a person and secured by a mortgage or lien on residential real property, including, but not limited to, the refinancing or renewal of a loan secured by residential real property.
- (III) “Residential real property” means real property used as a residence and containing no more than four families housed separately.

13-21-125. Civil actions for theft in the mortgage lending process.

A person who suffers damages as a result of a violation of section 18-4-401, C.R.S., in the mortgage lending process, as defined by section 18-4-401 (9) (e) (I), C.R.S., shall have a private civil right of action against the perpetrator, regardless of whether the perpetrator was convicted of the crime. A claim arising under this section shall not be asserted against a bona fide purchaser of a mortgage contract.

18-5-208. Dual contracts to induce loan.

It is a class 3 misdemeanor for any person to knowingly make, issue, deliver, or receive dual contracts for the purchase or sale of real property. The term “dual contracts,” either written or oral, means two separate contracts concerning the same parcel of real property, one of which states the true and actual purchase price and one of which states a purchase price in excess of the true and actual purchase price, and is used, or intended to be used, to induce persons to make a loan or a loan commitment on such real property in reliance upon the stated inflated value.

Loan fraud has become one of the largest areas of white-collar crime and is a recurring subject of Commission disciplinary actions. Loan fraud includes falsified loan applications; fictitious income, employment or deposit verifications; false occupancy claims; undisclosed buyer rebates or credits; and a host of other items, which can be considered dual contracting.

Loan fraud may also result in disbarment by HUD from all federal programs, large fines and federal prosecution. Since virtually all loan programs are affiliated with the federal government in either the primary or secondary mortgage market, disbarment can mean the end of a career in real estate, appraisal and lending or related fields.

*** V. Mortgage Broker Rules (added in 2009)**

**DEPARTMENT OF REGULATORY AGENCIES
Division of Real Estate**

**RULES REGARDING MORTGAGE BROKERS
4 CCR 725-3**

RULE A MORTGAGE BROKERS – BOND REQUIREMENT

A. Alternatives to Surety Bonds

Prior to registration, an applicant for registration shall post with the Director of the Division of Real Estate a surety bond, or an alternative authorized by Article 35 of Title 11, C.R.S., of twenty-five thousand dollars (\$25,000.00).

If the mortgage broker posts an alternative to a surety bond, it shall be in the form of a savings account or deposit in or a certificate of deposit issued by a state or national bank doing business in this state or by a savings account or deposit in or a certificate of deposit issued by a state or federal savings and loan association doing business in this state in the amount of twenty-five thousand dollars (\$25,000.00) net of any penalty or withdrawal or liquidation. The savings account, deposit or certificate of deposit shall be assigned to the Director of the Division of Real Estate for the use of the People of the State of Colorado in the form and manner approved by the Director. The assignment shall be for a period ending six (6) years after the revocation, expiration or surrender of a registration or on such earlier date as may be determined by the Director.

If the alternative to the surety bond is in an interest-bearing instrument, the mortgage broker may receive interest thereon. The alternative to a surety bond must consist of assets that may be immediately liquidated by the Division of Real Estate upon the entering of a judgment from a court of competent jurisdiction pursuant to section §12-61-907 (2), C.R.S.

RULE 1-1-1 CONCERNING GOOD-FAITH TEMPORARY REGISTRATION FOR MORTGAGE BROKERS.

- Section 1. Authority
- Section 2. Scope and Purpose
- Section 3. Applicability
- Section 4. Definitions
- Section 5. Rules Regarding Registration

Section 1. Authority

This regulation is promulgated by the Director of the Division of Real Estate under the authority of § 12-61-910.3, C.R.S., (2007).

Section 2. Scope and Purpose

The purpose of this regulation is to specify the requirements of a good-faith temporary registration.

Section 3. Applicability

This rule governs individuals who broker a mortgage or act as a mortgage broker and is not intended for individuals who remain exempt from registration pursuant to § 12-61-904, C.R.S. (2007).

Section 4. Definitions

A “Good-Faith Effort” is defined as complying with the provisions as set forth below in this rule.

Section 5. Rules Regarding Registration

1. Mortgage brokers demonstrating to the Director a good-faith effort to comply with newly enacted HB07-1322, § 12-61- 901, et seq., C.R.S. shall be issued a Good-Faith Temporary Registration upon compliance with the requirements set forth below.
 - A. Prior to submitting an application, a set of fingerprints for a criminal history record check must be submitted to the Colorado Bureau of Investigation (CBI);
 - B. Acquisition of a \$25,000.00 surety bond as required by § 12-61-907, C.R.S.;
 - C. Completion of the mortgage broker application; and
 - D. Payment of the \$200.00 application fee.
2. Good-Faith Temporary registrations will expire upon determination by the Director that the requirements of the law have not been met. Applicants shall be notified via e-mail, fax or U.S. mail to the contact information provided to the Division of Real Estate in the applicant’s application.
3. Good-Faith Temporary registrations issued by the Director will remain in effect until December 31, 2007, unless the Director issues the applicant a full registration upon the applicant’s compliance with all terms of the applicable registration law, or unless the Director determines the registration to be expired for failure to comply with the requirements to obtain a Good Faith Temporary Registration, as set forth in this regulation.
4. Any temporary registration issued by the Director shall have the same force and effect of the registration required by § 12-61-901, et seq., for the period of time it is in effect.
5. Once the applicant fully complies with the terms of the new law as determined by the Director, the Director shall register the applicant in accordance with § 12-61- 903, C.R.S. The date this occurs will be the applicant’s anniversary date for purposes of compliance with the licensing and education requirements of § 12-61-903, C.R.S.

RULE 1-1-2 MORTGAGE BROKER TEMPORARY LICENSE

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado, and to all persons who have requested to be advised of the intention of the Director of the Colorado Division of Real Estate to promulgate rules.

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

Section 4. Rules Regarding a Mortgage Broker Temporary License

Section 5. Effective Date

Section 1. Authority

The statutory basis for this rule, entitled Mortgage Broker Temporary License , is § 12-61-910.3, C.R.S.

The notice proposes to add rule 1-1-2. The rule establishes a temporary license for mortgage brokers.

Section 2. Scope and Purpose

Section 12-61-905(10), C.R.S. requires the Director of the Division of Real Estate to promulgate rules that allow licensed mortgage brokers to hire unlicensed mortgage brokers under temporary licenses. The purpose of this regulation is to define the parameters under which an individual may receive a temporary license.

Section 3. Applicability

This rule governs individuals who broker a mortgage, offer to broker a mortgage, act as a mortgage broker or offer to act as a mortgage broker and is not intended for individuals who remain exempt from licensing pursuant to § 12-61-904, C.R.S. (2007).

Section 4. Rules Regarding a Mortgage Broker Temporary License

1. Mortgage brokers demonstrating to the Director a good-faith effort to comply with the requirements pursuant to § 12-61-901, et seq., C.R.S. may be issued a temporary license upon completion of the requirements set forth below.
 - a. Prior to submitting an application, a set of fingerprints for a criminal history record check must be submitted to the Colorado Bureau of Investigation (CBI);
 - b. Acquisition of a \$25,000.00 surety bond as required by § 12-61-907, C.R.S. or the alternative to the surety bond as defined by rule;
 - c. Acquisition of the errors and omissions insurance required by § 12-61-903.5, C.R.S. and in compliance with the terms and conditions defined by rule;
 - d. On or after January 1, 2009, completion of the required pre-licensing education and the required written examination required by the Director;
 - e. Completion of the mortgage broker application; and
 - f. Payment of the fee established by the Director for the issuance of a license.
2. Only individuals who hold and maintain a mortgage broker license may hire unlicensed mortgage brokers under the temporary license provision.
 - a. Licensed mortgage brokers who employ such an unlicensed mortgage broker shall be held responsible under all applicable provisions of law, including without limitation this part 9 and section 38-40-105, C.R.S., for the actions of the unlicensed mortgage broker to whom a temporary license has been assigned.
 - i. Licensed mortgage brokers shall notify the Division of Real Estate, in a manner acceptable to the Director, of exact dates of hire and termination of employment for unlicensed mortgage brokers.
 - ii. Licensed mortgage brokers shall be held responsible for the activity of an unlicensed mortgage broker through and including the date of termination and required notification of such termination to the Division of Real Estate.
 - b. Temporary licenses shall expire 120 days after completion of the mortgage broker license application or when the temporary license is terminated by a licensed mortgage broker with whom the temporary licensee is operating under.
 - c. Individuals seeking temporary licenses shall be granted one temporary license. Additional or extended temporary licenses shall be prohibited.
3. Temporary licenses will expire upon determination by the Director that the requirements of the law have not been met. Applicants shall be notified via e-mail, fax or U.S. mail to the contact information provided to the Division of Real Estate in the applicant's mortgage broker license application.
4. Temporary licenses issued by the Director will remain in effect for 120 days after completion of the mortgage broker license application, unless the Director issues the applicant a full license, or unless the Director determines the license to be expired for failure to comply with the requirements to obtain a temporary license, set forth in this regulation.
5. Any temporary license issued by the Director shall have the same force and effect of the license required by § 12-61-901, et seq., C.R.S. for the period of time it is in effect.
6. Once the applicant fully complies with the terms of the new law as determined by the Director, the Director shall license the applicant in accordance with § 12-61-903, C.R.S. The date this occurs will be the applicant's anniversary date for purposes of compliance with the licensing and education requirements of § 12-61-903, C.R.S.

Section 5. Effective Date

This permanent rule becomes effective January 1, 2008.

RULE 1-3-1 ERRORS AND OMISSIONS INSURANCE FOR MORTGAGE BROKERS

- Section 1. Authority
- Section 2. Scope and Purpose
- Section 3. Applicability
- Section 4. Rules Regarding Errors and Omissions Insurance for Mortgage Brokers
- Section 5. Enforcement
- Section 6. Effective Date

Section 1. Authority

The Director of the Division of Real Estate adopts the following permanent rule entitled, Errors and Omissions Insurance for Mortgage Brokers, according to her authority as found in § 12-61-910.3, C.R.S.

The notice proposes to add rule 1-3-1. The rule establishes errors and omissions coverage for mortgage brokers.

Section 2. Scope and Purpose

Section 12-61-903.5, C.R.S. requires the Director to determine the terms and conditions of coverage required, including the minimum limits of coverage, the permissible deductible and permissible exemptions. The purpose of this rule is to define the requisite errors and omissions coverage.

Section 3. Applicability

This rule applies to all mortgage brokers as that term is defined in § 12-61-902(5), C.R.S. and includes those persons who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker.

Section 4. Rules Regarding Errors and Omissions Insurance for Mortgage Brokers

1. Mortgage brokers, at a minimum, shall acquire and maintain the following terms of coverage:
 - a. The contract and policy are in conformance with all relevant Colorado statutory requirements.
 - b. Coverage includes all acts for which a mortgage broker license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.
 - c. Coverage shall encompass all types of transactions conducted by the mortgage broker.
 - d. Coverage is for not less than \$100,000.00 for each licensed individual per covered claim, with an annual aggregate limit of not less than \$300,000.00 per licensed individual.
 - e. Coverage contains a deductible no greater than \$10,000.00.
2. This rule does not prohibit the use of group policies that may be administered by associations or companies for the benefit of volume discounts. While this rule allows group policies, each individual required to be licensed must acquire and maintain the coverage defined in this rule on an individual basis and shall present proof of such coverage to the Director or authorized representative of the Director upon request.
3. The Director has created the Mortgage Broker Licensing Update Form to ensure this information is clearly and concisely disclosed. This form may be found on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm>. Mortgage brokers shall use this form to ensure all information defined in this rule is current.
 - a. Mortgage brokers shall forward this form by mail or personal delivery to the following address:
 - i. Division of Real Estate – Attn: Mortgage Broker Licensing Department

1560 Broadway, Suite 925
Denver, CO. 80202

4. Additionally, mortgage brokers may update all of the information required in this rule electronically. They may access their information through the following website: https://eservices.psiexams.com/index_login.jsp. After entering their password and username, mortgage brokers may update all information without any fees or costs associated with such action.
5. For information regarding errors and omissions insurance providers, visit the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/index.htm>.
6. Applicants for licensure, renewal and reinstatement shall comply with this rule and § 12-61-903.5, C.R.S. in a manner prescribed by the Director. Any licensee who so fails to obtain errors and omissions coverage or to provide proof of continuous coverage shall be subject to disciplinary action.

Section 5. Enforcement

1. Noncompliance with this rule, whether defined or reasonably implied in the rule, may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:
 - a. Revocation;
 - b. Refusal to renew a license;
 - c. Imposition of fines; and
 - d. Restitution for any financial loss.

Section 6. Effective Date

This permanent rule is effective April 1, 2008.

RULE 1-4-1 MORTGAGE BROKER LICENSING EDUCATION

- Section 1. Authority
- Section 2. Scope and Purpose
- Section 3. Applicability
- Section 4. Mortgage Broker Licensing Education Rules
- Section 5. Effective Date

Section 1. Authority

The Director of the Division of Real Estate adopts the following permanent rule entitled, 1-4-1 Mortgage Broker Licensing Education, according to her authority as found in §§ 12-61-910.3, and 24-4-103, C.R.S.

Section 2. Scope and Purpose

Pursuant to § 12-61-903(3)(a), mortgage brokers must complete no less than nine hours of fundamental mortgage lending coursework and satisfactorily complete a corresponding written examination. The Director shall approve the fundamental mortgage lending coursework and the written examination.

The purpose of this rule is to clarify the education requirements for licensed mortgage brokers. The purpose is also to ensure compliance with education standards. It is vital to consumer protection and to competent mortgage broker practice that mortgage brokers understand applicable State and Federal Law.

Section 3. Applicability

This rule applies to each individual mortgage broker applicant and each individual mortgage broker who currently maintains a mortgage broker license through the Colorado Division of Real Estate.

Section 4. Mortgage Broker Licensing Education Rules.

(1) Applicant and Licensee Education Requirements

All mortgage brokers who currently maintain a Colorado mortgage broker's license must complete 40 hours of licensing education and pass a two-part licensing examination by January 1, 2009.

On or after January 1, 2009, each individual applicant for initial licensing as a mortgage broker must complete, within the three years immediately preceding the date of the application, 40 hours of licensing education and pass a two-part exam prior to applying for a mortgage broker license.

(2) Certificate of Completion

Mortgage broker applicants and licensees must receive a certification of completion from their education provider evidencing the successful completion of the respective licensing education coursework before scheduling the exam.

Mortgage broker applicants and licensees must ensure that their education provider files a certification of completion with the examination provider establishing the successful completion of the respective licensing education coursework before scheduling the exam. The education provider must file the certificate of completion with the approved examination provider electronically or in such manner as prescribed by the Director.

(3) Licensing Education Passing Score

The mortgage broker licensing examination consists of two parts. The two parts include Federal and State Law and Mortgage Lending Basics. Applicants for licensure must receive a score of at least 70 percent to pass the Federal and State Law portion of the exam and a 70 percent or higher score to pass the Mortgage Lending Basics portion of the exam. If the applicant fails one of the two parts, the applicant may reschedule with the examination provider to retake only the portion of the exam that the applicant failed. In no event will the Director accept a passing score for licensure beyond one year from the date of the passing score.

(4) Qualifying Schools

Mortgage broker applicants and licensees must receive the required 40 hours of licensing education, approved by the Director, from any accredited degree-granting college or university or any private occupational school that has a certificate of approval from the Division of Private Occupational Schools in accordance with the provisions of article 59 of title 12, Colorado Revised Statutes.

(5) Forty Hour Licensing Education Requirement

Mortgage broker applicants and licensees must successfully complete the required forty hours of licensing education through classroom instruction or an equivalent distant learning course offered in a manner as prescribed by the Director. Pursuant to the requirements in Part 1 of this rule, the following licensing education must be successfully completed prior to taking the examination and applying for a license:

- (a) A minimum of 19.5 hours in Federal and State Law
- (b) A minimum of 16 hours in Mortgage 101
- (c) A minimum of 4.5 hours in Business and Trade Practices

(6) Exemption Qualifications

As prescribed by the Director or person(s) authorized by the Director, qualifying mortgage broker applicants who meet the following criteria are exempt from having to complete the

Mortgage Broker 101 and the Business and Trade Practice portion of the education coursework and respective examination.

To qualify for the exemption, mortgage brokers must meet all five requirements:

- 1) Currently maintain a Colorado mortgage broker license.
- 2) Maintain a membership with a mortgage broker association approved for exemption by the Division of Real Estate.
- 3) Maintain a mortgage broker association designation that is current and in good standing.
- 4) Provide the association's letter of certification to the education course provider prior to completing coursework.
- 5) Provide the association's letter of certification to an independent testing service contracted with by the Director, prior to taking the Federal and State Law exam.

Those who meet the criteria for exemption must complete the Federal and State Law portion of the licensing coursework and pass the Federal and State Law portion of the exam with a score of 70 percent or higher.

(7) Authority to Audit Education Provider

The Director or persons, contractors or organizations authorized by the Director, may audit courses and may request from each education provider and schools offering the approved mortgage broker courses pursuant to requirements in part 5 of this rule, all related instructional materials, student attendance records and other information that may be necessary for an audit. The purpose of the audit is to ensure that education providers and schools adhere to the approved course of study, offer course material and instructions consistent with acceptable education standards and instruct in such a manner that the desired learning objectives are met. Failure to comply with this rule may result in the withdrawal of course approval.

(8) Penalties

Individuals who violate this rule shall be subject to disciplinary action pursuant to § 12-61-905, C.R.S. Disciplinary action includes, but is not limited to:

- a. Revocation;
- b. Refusal to renew a license;
- c. Fines;
- d. Denial of license; and
- e. Restitution for any financial loss.

Section 5. Effective Date

This permanent rule shall be effective August 30, 2008.

RULE 2-1-1 GROUNDS FOR DENIAL OF LICENSE APPLICATIONS OR FOR SANCTIONS REGARDING LICENSE APPLICANTS, LICENSE RENEWALS, LICENSE REINSTATEMENTS AND LICENSEES

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

Section 4. Grounds for Denial of License Applications or for Sanctions Regarding

License Applicants, License Renewals, License Reinstatements and Licensees.

Section 5. Effective Date

Section 1. Authority

The Director of the Division of Real Estate adopts the following emergency rule entitled, **2-1-1 Grounds for Denial of License Applications or for Sanctions Regarding License Applicants, License Renewals, License Reinstatements and Licensees**, according to her authority as found in §§ 12-61-903(10), 12-61-910.3, and 24-4-103(6), C.R.S.

Section 2. Scope and Purpose

The Director finds that immediate adoption of this rule is imperatively necessary for the preservation of public health, safety or welfare and that compliance with the rulemaking requirements of § 24-4-103, C.R.S., applicable to non-emergency rules, would be contrary to the public interest.

The Director has learned of uncertainty regarding two sections of the Mortgage Broker Licensing Act and to whom these sections apply. Specifically, there is confusion regarding whether §§ 12-61-905(1) and 12-61-905.5(1), C.R.S., governing “Powers and Duties of the Director” and “Disciplinary Actions-grounds-procedures-rules” respectively, apply to license applicants, individuals seeking license renewals or reinstatements, and licensees.

The purpose of this rule is to clearly notify individuals seeking mortgage broker licensure, current licensees and the mortgage broker industry that a violation of or failure to comply with any provisions contained in §§ 12-61-905 or 12-61-905.5, C.R.S., is grounds for license application denial and for sanctions.

Without the immediate adoption of this emergency rule, the public’s interest is not served. Wherefore, the Director, pursuant to § 24-4-103(6), C.R.S. has an obvious and stated need to adopt this rule.

Section 3. Applicability

This rule applies to mortgage brokers as that term is defined in § 12-61-902(5), C.R.S. and includes those persons who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker. This rule applies to all individuals required to be licensed pursuant to §§ 12-61-902(2) and 12-61-903(1)(a) , C.R.S. This rule applies to all mortgage broker license applicants who apply for such license pursuant to the Mortgage Broker Licensing Act, § 12-61-903, C.R.S.

Section 4. 2-1-1 Grounds for Denial of License Applications or for Sanctions Regarding License Applicants, License Renewals, License Reinstatements and Licensees

- (1) The Director shall exercise his or her authority to deny a license applied for, refuse to renew, refuse to reinstate, or revoke a license for a violation of § 12-61-911(1)(m), C.R.S., as incorporated by § 12-61-905(1)(f), C.R.S.
- (2) The Director may exercise his or her authority to restrict or deny a license applied for pursuant to § 12-61-905.5(1), C.R.S. and § 24-4-104(11), C.R.S.

Section 5. Effective Date

This emergency rule shall be effective October 28, 2008.

RULE 3-1-1 REASONABLE INQUIRY AND TANGIBLE NET BENEFIT

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado, and to all persons who have requested to be advised of the intention of the Director of the Colorado Division of Real Estate to promulgate rules.

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Definitions

Section 4. Applicability

Section 5. Rules Regarding Mortgage Broker Requirements

Section 6. Effective Date

Section 1. Authority

The statutory basis for this rule, entitled *Reasonable Inquiry and Tangible Net Benefit*, is § 12-61-910.3, C.R.S.

The notice proposes to add rule 3-1-1.

Section 2. Scope and Purpose

Section 12-61-904.5, C.R.S., states that mortgage brokers shall have a duty of good faith and fair dealing in all communications and transactions with a borrower. Section 12-61-904.5(1)(b), C.R.S., requires mortgage brokers to make a reasonable inquiry concerning the borrower's current and prospective income, existing debts and other obligations, and any other information known to the mortgage broker and, after making such inquiry, to make his or her best efforts to recommend, broker, or originate a residential mortgage loan that takes into consideration the information submitted by the borrowers. Additionally, section 12-61-904.5(1)(a), C.R.S., prohibits mortgage brokers from recommending or inducing borrowers to enter into a transaction that does not have a reasonable, tangible net benefit to the borrower, considering all of the circumstances, including the terms of a loan, the cost of a loan, and the borrower's circumstances. After consulting with industry leaders, the Division has learned that there is uncertainty in the marketplace regarding the impact of these new provisions, specific to mortgage products and various documentation types. Documentation types include, but are not limited to: stated income; no income verification; no income disclosure; no asset verification; and no asset disclosure.

The mortgage lending community is uncertain if the aforementioned provisions prohibit non-traditional mortgage products and documentation types, since these provisions are new and have not been interpreted by the Division of Real Estate. This uncertainty could negatively impact the availability of mortgage credit to consumers. Due to the recent rise in foreclosures, the decline of the subprime market, and the closing of lenders on a national scale, the Division must adopt rules to clarify the new provisions in an effort to limit further reductions in mortgage credit. The purpose of this rule is to clarify uncertainties regarding reasonable inquiry and reasonable, tangible net benefit.

Section 3. Definitions

A "Uniform Residential Loan Application" shall mean the Freddie Mac Form 65 or the Fannie Mae Form 1003 used in residential loan transactions on properties of four or fewer units. The Uniform Residential Loan Application forms defined in this rule are those editions of the forms that are current and effective on January 1, 2008 and do not include any later amendments or editions. The forms are available for inspection at the Division of Real Estate at 1560 Broadway, Suite 925, Denver, Colorado, 80202. These forms are posted on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/index.htm> in the mortgage broker section under forms; the form(s) may be examined at any state publications depository library.

Section 4. Applicability

This rule governs individuals who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker pursuant to §§ 12-61-902(2) and (5), C.R.S.

Section 5. Rules Regarding Reasonable Inquiry and Tangible Net Benefit

Mortgage Broker – Reasonable Inquiry and Tangible Net Benefit

1. Section 12-61-904.5(1)(b), C.R.S. does not prohibit specific mortgage products or documentation types. This provision requires the mortgage broker to recommend appropriate products.
 - a. Mortgage brokers shall only recommend appropriate products after reasonable inquiry has been made in order to understand borrower's current and prospective financial status.
 - b. Reasonable inquiry requires the mortgage broker to interview and discuss current and prospective income, including the income's source and likely continuance, with borrowers, and may not require the mortgage broker to verify such income.

- c. Mortgage brokers have a duty to recommend mortgage products based on the information provided by the borrower.
2. Mortgage brokers shall be deemed in compliance with Colorado law, § 12-61-904.5(1)(b), C.R.S., concerning reasonable inquiry, upon interviewing and discussing, with all applicable borrowers, all sections contained in the uniform residential loan application and upon completion of a Tangible Net Benefit Disclosure. The Tangible Net Benefit Disclosure is posted on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm>.
3. A mortgage broker must first make a reasonable inquiry, in order to determine the reasonable, tangible net benefit for a borrower. The reasonable, tangible net benefit standard in § 12-61-904.5(1)(a), C.R.S., is inherently dependent upon the totality of facts and circumstances relating to a specific transaction. While the refinancing of certain home loans may clearly provide a reasonable, tangible net benefit, others may require closer scrutiny or consideration to determine whether a particular loan provides the requisite benefit to the borrower.
 - a. When determining reasonable, tangible net benefit, there are many considerations mortgage brokers shall take into account and discuss with prospective borrowers. If applicable, the required considerations for mortgage brokers determining the requisite benefit shall include, but are not limited to:
 - i. Lower payments;
 - ii. Condensed amortization schedule;
 - iii. Debt consolidation;
 - iv. Cash out;
 - v. Avoiding foreclosure;
 - vi. Negative amortization;
 - vii. Balloon payments;
 - viii. Variable rates;
 - ix. Interest only options;
 - x. Prepayment penalties; and
 - xi. Hybrid mortgage products.
4. The purpose or reason for a purchase or refinance transaction shall be identified by the borrower. A mortgage broker shall require that all borrowers describe, in writing, the reasons they are seeking a mortgage loan or to refinance an existing mortgage loan.
 - a. It is the responsibility of the mortgage broker to ensure this information is acquired and accurately documented.
 - b. Pursuant to § 12-61-904.5(1), C.R.S., a mortgage broker may not have demonstrated a duty of good faith and fair dealing in all communications and transactions with a borrower if it is determined that a mortgage broker completed the required purpose or reason for a purchase or refinance transaction without consulting the borrower.
5. The Division developed a suggested disclosure form regarding reasonable, tangible net benefit. Alternate disclosures are acceptable if they include all information required on the suggested form, as determined by the Director.
 - a. At the time of completing a loan application a mortgage broker shall complete a Tangible Net Benefit Disclosure with the borrower(s).
 - b. The Tangible Net Benefit Disclosure shall also be completed with the borrower(s) prior to the borrower(s) signing loan closing documents if the reasonable, tangible net benefit has changed.
 - c. Tangible Net Benefit disclosures shall be signed by both the mortgage broker and the borrowers.
 - d. Mortgage brokers shall be presumed compliant with this rule when using the suggested form and when disclosures meet the timelines defined in this rule.

Section 6. Effective Date

This permanent rule becomes effective January 1, 2008.

RULE 3-1-2 MORTGAGE BROKERS' DUTY TO RESPOND AND PROVIDE REQUESTED DOCUMENTS FOR INVESTIGATIONS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado, and to all persons who have requested to be advised of the intention of the Director of the Colorado Division of Real Estate to promulgate rules.

- Section 1. Authority
- Section 2. Scope and Purpose
- Section 3. Definitions
- Section 4. Applicability
- Section 5. Rules Regarding Mortgage Brokers' Duty to Respond and Provide Requested Documents for Investigations
- Section 6. Enforcement
- Section 7. Effective Date

Section 1. Authority

The statutory basis for this rule, entitled Mortgage Brokers' Duty to Respond and Provide Requested Documents for Investigations, is § 12-61-910.3, C.R.S.

The notice proposes to add rule 3-1-2. The rule establishes that mortgage brokers have a duty to respond and provide requested documentation for investigations.

Section 2. Scope and Purpose

Section 12-61-905(7)(b), C.R.S., states the Director of the Division of Real Estate, upon his or her own motion may, and, upon the complaint in writing of any person, shall, investigate the activities of any licensee or any person who assumes to act in such capacity within the state. Section 12-61-905.5(1)(k), C.R.S. requires mortgage brokers to maintain possession, for the future use or inspection by an authorized representative of the Director, for a period of four years, of the documents or records prescribed by the rules of the Director or to produce such documents or records upon reasonable request by the Director or by an authorized representative of the Director. The purpose of this regulation is to define what documents should be retained for a period of four years and to require mortgage brokers or other persons who assume to act in such capacity within the state to provide a written response and all requested documents to the Director or an authorized representative of the Director. Additionally, this regulation prescribes the time period in which all persons and entities shall respond to Director inquiries, including, but not limited to, document and information requests during investigations of complaints or any other investigation conducted for the purpose of determining compliance with Colorado mortgage broker law.

Section 3. Definitions

1. "Secure environment" means a system which implements the controlled storage and use of information.

Section 4. Applicability

This rule governs persons who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker.

Section 5. Rules Regarding Mortgage Brokers' Duty to Respond and Provide Requested Documents for Investigations

1. Persons who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker shall provide the Director or his or her authorized representative with all information required by this rule.
 - a. Failure to provide all information requested by the Director or his or her authorized representative within the time set by the Director, or authorized representative of the Director, shall be grounds for disciplinary action and grounds for the imposition of fines unless the Director, or authorized representative of the Director, has granted an extension of time for the response.
 - i. Persons who broker a mortgage, offer to broker a mortgage, act as a mortgage broker or offer to act as a mortgage broker may ask for an extension of time to comply if:
 1. The request is done so in writing; and
 2. The request is received by the Director or authorized representative of the Director prior to the expiration date defined in the notification letter sent by the Director or authorized representative of the Director.
 - ii. Any and all extensions granted are done so at the discretion of the Director or authorized representative of the Director.
 - b. Failure to provide all requested information shall be grounds for disciplinary action and grounds for the imposition of fines regardless of whether the underlying complaint results in further investigation or subsequent action by the Director.
2. The response from the person shall contain the following:
 - a. If requested in the notification letter, a complete and specific answer to the factual recitations, allegations or averments made in the complaint filed against the licensee, whether made by a member of the public or on the Director's own motion or by an authorized representative of the Director;
 - b. A complete and specific response to all questions, allegations or averments presented in the notification letter; and
 - c. Any and all documents or records requested in the notification letter.
3. Persons who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker shall maintain any and all documents collected, gathered and provided for the purpose of negotiating and originating residential mortgage loans for a period of four years. Additionally, persons who broker a mortgage, offer to broker a mortgage, act as a mortgage broker or offer to act as a mortgage broker shall maintain any and all documents used for the purpose of soliciting or marketing borrowers. These documents include, but are not limited to:
 - a. All Uniform residential loan applications (Form 1003);
 - b. All required state and federal disclosures;
 - c. Asset statements;
 - d. Income documentation;
 - e. Verification of employment;
 - f. Verification of deposit;
 - g. Lender submission forms;
 - h. Advertisements;
 - i. Flyers;
 - j. HUD-1 Settlement Statements;
 - k. Uniform Underwriting and Transmittal Summary(Form 1008); and
 - l. Credit report.
4. All documents shall be kept in a secure environment. Electronic storage is acceptable as long as the information is accessible and kept in a secure environment.

5. The company for whom the mortgage broker is an officer, partner, contractor, independent contractor, member, exclusive agent or an employee may provide the requested documents to the Director. However, the mortgage broker is responsible for compliance with the Director's request and is subject to disciplinary action if the company fails or refuses to provide the requested documentation.

Section 6. Enforcement

1. Noncompliance with this rule, whether defined or reasonably implied in the rule, may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:
 - a. Revocation;
 - b. Refusal to renew a license;
 - c. Imposition of fines; and
 - d. Restitution for any financial loss.

Section 7. Effective Date

This permanent rule shall be effective March 1, 2008.

RULE 3-1-3 MAINTAINING CURRENT CONTACT INFORMATION AND ALL INFORMATION REQUIRED FOR LICENSING

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado, and to all persons who have requested to be advised of the intention of the Director of the Colorado Division of Real Estate to promulgate rules.

- Section 1. Authority
- Section 2. Scope and Purpose
- Section 3. Definitions
- Section 4. Applicability
- Section 5. Maintaining Current Contact Information and All Information Required for Licensing
- Section 6. Enforcement
- Section 7. Effective Date

Section 1. Authority

The statutory basis for this rule, entitled *Maintaining Current Contact Information and All Information Required for Licensing*, is § 12-61-910.3, C.R.S.

The notice proposes to add rule 3-1-3. The rule defines the requirement for mortgage brokers to maintain contact information and all information required for licensing.

Section 2. Scope and Purpose

The Director of the Division of Real Estate is required to license and discipline mortgage brokers who are negotiating or originating, or offering or attempting to negotiate or originate mortgage transactions for Colorado borrowers. In order to implement and enforce Colorado mortgage broker laws, the Director must have the ability to correspond or request documentation from mortgage brokers. Furthermore, mortgage brokers are responsible for maintaining specific requirements for licensing. These include, but are not limited to a surety bond and errors and omissions insurance. Mortgage brokers are responsible for maintaining such requirements.

The purpose of this rule is to ensure that mortgage brokers maintain current contact information and all information required for licensing to ensure the Director may adequately protect the Colorado consumer.

Section 3. Definitions

1. “Address” means the street address, city, state and postal code.
2. “Physical Address” means the physical location of the property.
3. “Business Name” means the company for which individuals who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker are officers, partners, members, managers, owners, exclusive agents, contractors, independent contractors or employees.

Section 4. Applicability

This rule governs individuals who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker.

Section 5. Rules Regarding Mortgage Brokers Maintaining Current Contact Information and Information Required for Licensing

1. Individuals who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker shall maintain all current contact information and all information required for licensing, in a manner acceptable to the Director. Failure to maintain the information identified in this rule shall be grounds for disciplinary action.
2. Contact information shall include, but is not limited to:
 - a. E-mail address;
 - b. Legal first, middle and last names;
 - c. Physical home address;
 - d. Home phone number;
 - e. Business address;
 - f. Business phone number; and
 - g. Business name.
3. Information required for licensing includes, but is not limited to:
 - a. Surety bond company;
 - b. Surety bond number;
 - c. Surety bond effective date;
 - d. Errors and omissions insurance provider;
 - e. Errors and omissions policy number;
 - f. Errors and omissions effective and expiration date; and
 - g. Convictions, pleas of guilt or nolo contendere for all crimes.
4. Individuals who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker shall update the Director within thirty (30) days of any changes to the information defined in this rule.
5. The Director has created the Mortgage Broker Licensing Update Form to ensure this information is clearly and concisely disclosed. This form may be found on the Division of Real Estate’s website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm>. Mortgage brokers shall use this form to ensure all information defined in this rule is current.
 - a. Mortgage brokers shall forward this form by mail or personal delivery to the following address:
 - i. Division of Real Estate – Attn: Mortgage Broker Licensing Department
1560 Broadway, Suite 925
Denver, CO. 80202
6. Additionally, mortgage brokers may update all of the information required in this rule electronically. They may access their information through the following website: https://eservices.psiexams.com/index_login.jsp. After entering their password and username, mortgage brokers may update all information without any fees or costs associated with such action.

Section 6. Enforcement

1. Noncompliance with this rule, whether defined or reasonably implied in the rule, may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:
 - a. Revocation;
 - b. Refusal to renew a license;
 - c. Imposition of fines; and
 - d. Restitution for any financial loss.

Section 7. Effective Date

This permanent rule shall be effective March 1, 2008.

RULE 3-1-4 PREPAYMENT PENALTIES

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado, and to all persons who have requested to be advised of the intention of the Director of the Colorado Division of Real Estate to promulgate rules.

- Section 1. Authority
- Section 2. Scope and Purpose
- Section 3. Definitions
- Section 4. Applicability
- Section 5. Rules Regarding Prepayment Penalties
- Section 6. Enforcement
- Section 7. Effective Date

Section 1. Authority

The statutory basis for this rule, entitled *Prepayment Penalties*, is § 12-61-910.3, C.R.S.

The notice proposes to add rule 3-1-4. The rule addresses mortgage transactions that contain specific prepayment penalty terms.

Section 2. Scope and Purpose

The Director has learned that some extended prepayment penalties lead to higher rates of foreclosure. Specifically, prepayment penalties which extend past the adjustment date of a mortgage loan often severely restrict the ability of the borrower to refinance or sell their property. Additionally, in higher rate environments, borrowers often have only two viable options, to absorb a much higher monthly payment or lose their home through foreclosure proceedings. The Director adopts this rule in order to address the high rate of foreclosures in Colorado resulting from particular prepayment penalties.

Pursuant to § 12-61-904.5(1), C.R.S, mortgage brokers have a duty of good faith and fair dealing in all communications and transactions with a borrower. This duty includes, but is not limited to making a reasonable inquiry into a borrower's ability to repay a loan and recommending or inducing a borrower to enter into only those transactions that have a reasonable, tangible net benefit to the borrower.

The purpose of this rule is to establish a presumption that transactions including a prepayment penalty that extends past the adjustment date of any teaser rate, payment rate or interest rate included in a mortgage loan does not provide a reasonable, tangible net benefit to the borrower.

Section 3. Definitions

1. “Adjustable rate mortgage” means a mortgage in which the teaser rate, payment rate or the interest rate changes periodically and in some cases, may adjust according to corresponding fluctuations in an index.
2. “Adjustment date” means the date the teaser rate, payment rate or interest rate changes on an adjustable rate mortgage.
3. “Interest rate” means the rate used to calculate a borrower’s monthly interest payment.
4. “Payment rate” means the rate used to determine a borrower’s monthly payment.
5. “Teaser rate” means a temporary and often low introductory rate on an adjustable rate mortgage.
6. “Prepayment Penalty” means a fee assessed pursuant to the terms of the loan on a borrower who repays all or part of the principal of a loan before it is due. Prepayment penalties do not include interest payments of thirty (30) days or less that may be assessed pursuant to the terms of some FHA or VA loans. Prepayment penalties for the purpose of this rule do not include termination fees of \$500.00 or less that are associated with home equity lines of credit.

Section 4. Applicability

This rule applies to all mortgage brokers as that term is defined in § 12-61-902(5), C.R.S. and includes those persons who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker.

Section 5. Rules Regarding Prepayment Penalties

1. Mortgage brokers who recommend or induce a borrower into a transaction that contains a prepayment penalty which extends past the adjustment date for any type of an adjustable rate mortgage shall be presumed to have violated their duty of good faith and fair dealing requirement pursuant to section 12-61-904.5, C.R.S. This includes, but is not limited to:
 - a. Prepayment penalties that extend past the adjustment date of any teaser rate used to calculate a borrower’s monthly mortgage payment;
 - b. Prepayment penalties that extend past the adjustment date of any interest rate used to calculate a borrower’s monthly mortgage payment;
 - c. Prepayment penalties that extend past the adjustment date of any payment rate used to calculate a borrower’s monthly mortgage payment; and
 - d. Prepayment penalties that extend past the adjustment date of any like tool or instrument, similar to the teaser rate, payment rate or interest rate defined in this rule, used to calculate a borrower’s monthly mortgage payment.
2. Information provided to consumers should clearly explain the ramifications of prepayment penalties. Borrowers should be informed of the existence of any prepayment penalty, how it will be calculated and when it may be imposed. A prepayment penalty disclosure form may be prescribed by the Director, completion of which will constitute compliance with this section 5(2).

Section 6. Enforcement

1. Noncompliance with this rule, whether defined or reasonably implied in the rule, may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:
 - a. Revocation;
 - b. Refusal to renew a license;
 - c. Imposition of fines; and
 - d. Restitution for any financial loss.

Section 7. Effective Date

This permanent rule shall be effective March 1, 2008.

RULE 5-1-1 MORTGAGE BROKER CONTRACTS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado, and to all persons who have requested to be advised of the intention of the Director of the Colorado Division of Real Estate to promulgate rules.

- Section 1. Authority
- Section 2. Scope and Purpose
- Section 3. Applicability
- Section 4. Rules Regarding Mortgage Broker Contracts
- Section 5. Enforcement
- Section 6. Effective Date

Section 1. Authority

The statutory basis for this rule, entitled *Mortgage Broker Contracts*, is § 12-61-910.3, C.R.S.

The notice proposes to add rule 5-1-1. The rule defines the requirement for mortgage brokers to have contracts with borrowers and with mortgage lenders.

Section 2. Scope and Purpose

Section 12-61-913, C.R.S., requires contracts between a mortgage broker and a borrower to be in writing and to contain the entire agreement of the parties. This section also requires mortgage brokers to have a written correspondent or loan broker agreement with a lender before any solicitation of, or contracting with, any member of the public. The purpose of this regulation is to define compliance with the contractual requirements.

Section 3. Applicability

This rule governs individuals who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker.

Section 4. Rules Regarding Mortgage Broker Contracts

1. Section 12-61-913(1), C.R.S. states that every contract between a mortgage broker and a borrower shall be in writing and shall contain the entire agreement of the parties.
 - a. Section 12-61-913(1), C.R.S. does not require a contract between a mortgage broker and a borrower. Rather, that if a contract does exist, such contract shall be in writing.
2. Section 12-61-913(2), C.R.S., states a mortgage broker shall have a written correspondent or loan broker agreement with a lender before any solicitation of, or contracting with, any member of the public.
 - a. Mortgage brokers are compliant with § 12-61-913(2), C.R.S. if they adhere to one of the following requirements:
 - i. They individually have a written correspondent or loan broker agreement with a lender before any solicitation of, or contracting with, any member of the public;
 - ii. They are an officer, partner, member, exclusive agent, or employee of a company that has a written correspondent or loan broker agreement with a lender before any solicitation of, or contracting with, any member of the public;
 - iii. They are acting as an independent contractor and maintain a contractual agreement with a company that has a written correspondent or loan broker agreement with a lender before any solicitation of, or contracting with, any member of the public; or

- iv. They are an employee of a lender before any solicitation of, or contracting with, any member of the public.

Section 5. Enforcement

1. Noncompliance with this rule, whether defined or reasonably implied in the rule, may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:
 - a. Revocation;
 - b. Refusal to renew a license;
 - c. Imposition of fines; and
 - d. Restitution for any financial loss.

Section 6. Effective Date

This permanent rule is effective March 1, 2008.

RULE 5-1-2 MORTGAGE BROKER DISCLOSURES

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado, and to all persons who have requested to be advised of the intention of the Director of the Colorado Division of Real Estate to promulgate rules.

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Definitions

Section 4. Applicability

Section 5. Rules Regarding Mortgage Broker Disclosures

Section 6. Enforcement

Section 1. Authority

The Director of the Division of Real Estate adopts the following permanent rule entitled, *Mortgage Broker Disclosures*, according to her authority as found in § 12-61-910.3, C.R.S.

The notice proposes to add rule 5-1-2. The rule establishes disclosures for mortgage brokers.

Section 2. Scope and Purpose

Section 12-61-914, C.R.S. requires mortgage brokers, within three business days after receipt of a loan application or any moneys from a borrower, to disclose specific details of a loan transaction to the borrower. These details include, but are not limited to: the annual percentage rate; finance charge; amount financed; total amount of all payments; third party costs; and terms of a lock-in agreement. The Director has learned that uncertainty exists in the mortgage industry regarding how and when to provide such disclosures.

The purpose of this rule is to ensure that disclosures, set forth in § 12-61-914, C.R.S., are met and that borrowers are provided with accurate and clear disclosures regarding their mortgage loan transaction.

Section 3. Definitions

- A. “Truth-in-Lending Disclosure” means the disclosure form established by the Truth in Lending Act, specific to regulation Z, appendices H-2, H-3, H-4(a), (b), (c) and (d).
- B. “Good Faith Estimate Disclosure” means the disclosure form established in the Real Estate Settlement Procedures Act, part 3500, appendix C.
- C. “Rate” means the teaser rate, payment rate or interest rate used to determine a borrower’s monthly payment or deferred interest specific to reverse mortgage transactions.

- D. “Teaser rate” means a temporary and often low introductory rate on an adjustable rate mortgage.
- E. “Payment rate” means the rate used to determine a borrower’s monthly payment.
- F. “Interest rate” means the rate used to calculate a borrower’s monthly interest payment.
- G. “Payment Type” means principal and interest, interest only or negative amortization.
- H. “Fixed Term” means the length of time a teaser rate, payment rate or interest rate is fixed and will not adjust.
- I. “Index” means the index for an adjustable rate mortgage.
- J. “Initial Adjustment Cap” means the limit on how much the interest or payment rate can change at the first adjustment period.
- K. “Life Cap” means the limit on how much the interest or payment rate can change over the life of the loan.
- L. “Front End Compensation” means the total compensation charged to the borrower that inures to the benefit of the mortgage broker and the mortgage company for which the mortgage broker is an officer, partner, member, contractor, independent contractor, exclusive agent or employee.
- M. “Back End Compensation” means the total compensation paid by the funding lender that inures to the benefit of the mortgage broker and the mortgage company for which the mortgage broker is an officer, partner, member, contractor, independent contractor, exclusive agent or employee.

Section 4. Applicability

This rule applies to all mortgage brokers as that term is defined in § 12-61-902(5), C.R.S. and includes those persons who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker.

Section 5. Rules Regarding Mortgage Broker Disclosures

- 1. Section 12-61-914 (1), C.R.S., requires that specific disclosures, set forth in § 12-61-914(2), C.R.S., be disclosed within three (3) business days after receipt of a loan application or any moneys from a borrower.
- 2. Section 12-61-914 (2)(a), C.R.S., states the written disclosures shall contain the annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest, and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan. If the interest rate is variable, the written disclosure shall clearly describe the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from such an increase.
 - a. The Director has determined that the Truth in Lending Disclosure form is an acceptable manner in which to disclose the requirements set forth in § 12-61-914(2)(a), C.R.S.
 - b. Requirements defined in § 12-61-914(2)(a), C.R.S., shall be disclosed:
 - i. Within three (3) business days after receipt of a loan application or any moneys from a borrower;
 - ii. If, after the initial written disclosure is provided, a mortgage broker enters into a lock-in agreement, within three (3) business days thereafter, including Saturdays, and prior to the borrower signing loan closing documents; and
 - iii. If, after a mortgage broker enters into a lock-in agreement, the annual percentage rate increases from the annual percentage rate disclosed earlier by more than 1/8 of one (1) percentage point, within three (3) business days of such change and prior to the borrower signing loan closing documents.
- 3. Section 12-61-914(2)(b), C.R.S. states the disclosure shall contain the itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider’s costs associated with the residential mortgage loan.

Chapter 12: Mortgage Brokers

- a. The Director has determined the Good Faith Estimate Disclosure form is an acceptable manner in which to disclose the requirements set forth in § 12-61-914(2)(b), C.R.S.
 - b. Requirements defined in § 12-61-914(2)(b), C.R.S., shall be disclosed:
 - i. Within three (3) business days after receipt of a loan application or any moneys from a borrower;
 - ii. If, after the initial written disclosure is provided, a mortgage broker enters into a lock-in agreement, within three (3) business days thereafter, including Saturdays, and prior to the borrower signing loan closing documents; and
 - iii. If, after a mortgage broker enters into a lock-in agreement, the annual percentage rate increases from the annual percentage rate disclosed earlier by more than 1/8 of one (1) percentage point, within three (3) business days of such change and prior to the borrower signing loan closing documents.
 - c. A mortgage broker shall not charge any fee that inures to the benefit of the mortgage broker and the mortgage company for which they are an officer, partner, member, exclusive agent, contractor, independent contractor or employee if such fee exceeds the fee disclosed on the previous written disclosure unless:
 - i. The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and
 - ii. The mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear and written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.
4. Section 12-61-914(2)(c), C.R.S. states that mortgage brokers shall disclose the amount of any commission or other compensation to be paid to the mortgage broker, including the manner in which such commission or other compensation is calculated and the relationship of such commission or other compensation to the cost of the loan received by the borrower.
- a. Mortgage brokers shall disclose to the borrower all of the front end and back end compensation for the transaction. Annual salaries are not required to be disclosed.
 - b. Only when the dollar amount of compensation cannot be determined, may mortgage brokers disclose a range. Such range shall be disclosed in a dollar amount and the range shall not exceed one (1) percentage point of the loan amount for the total compensation of the transaction. [e.g., on a \$100,000.00 loan, mortgage brokers may disclose \$1,000.00 to \$2,000.00, \$1,800.00 to \$2,800.00, or \$3,000.00 to \$4,000.00. This is not meant as a compensation cap and is only provided as an example of the range.]
 - c. Mortgage brokers shall be deemed compliant if the actual compensation is less than the amount disclosed to the borrower.
 - d. The Director has created the Colorado Compensation Disclosure Form to ensure this information is clearly and concisely disclosed. This disclosure may be found on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm>. Mortgage brokers shall use this form or an alternate form, if such alternate form clearly includes all information required on the suggested form, as determined by the Director.
 - i. The compensation disclosure shall be completed and disclosed:
 1. Within three (3) business days after receipt of a loan application or any moneys from a borrower;
 2. If, after the initial written disclosure is provided, a mortgage broker enters into a lock-in agreement, within three (3) business days thereafter, including Saturdays, and prior to the borrower signing loan closing documents; and
 3. If, after a mortgage broker enters into a lock-in agreement, the annual percentage rate increases from the annual percentage rate disclosed earlier by more than 1/8 of one (1) percentage point, within three (3) business days of such change and prior to the borrower signing loan closing documents.

5. Section 12-61-914(2)(d), C.R.S., states the written disclosure, if applicable, shall contain the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, whether the lock-in agreement is guaranteed by the mortgage broker or lender, and, if a lock-in agreement has not been entered, disclosure in a form acceptable to the Director that the disclosed interest rate and terms are subject to change. Section 12-61-914(2)(g), C.R.S. states the mortgage broker shall disclose whether and under what conditions any lock-in fees are refundable to the borrower.
 - a. The Director has created the Colorado Lock-in Disclosure Form to ensure this information is clearly and concisely disclosed. This disclosure may be found on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm>. Mortgage brokers shall use this form or alternate form, if alternate form clearly includes all information required on the suggested form, as determined by the Director.
 - b. This form or alternate form shall be used when disclosing lock-in agreements, or when the mortgage broker has not entered into a lock-in agreement, to borrowers on residential mortgage loan transactions.
 - i. Mortgage brokers shall disclose the amount of the teaser rate, payment rate or interest rate and also disclose the type of rate. Examples of the type of rate include, but are not limited to:
 1. Teaser rate;
 2. Payment rate; or
 3. Interest rate.
 - ii. When disclosing the payment type, mortgage brokers shall define if the payment type is a negative amortization payment, interest only payment or principal and interest payment.
 - iii. When disclosing the index, mortgage brokers shall include the type and amount of the index at the time the disclosure is completed.
 - iv. When disclosing prepayment penalties, mortgage brokers shall include:
 1. Whether or not a prepayment penalty is included;
 2. The length of the prepayment penalty; and
 3. The cost of the prepayment penalty. Mortgage brokers shall include the dollar amount of the penalty at the time the disclosure is completed.
 - c. If a mortgage broker is completing the lock-in disclosure form for a mortgage product with multiple payment options, all payment options shall be separately and clearly disclosed on the second page of the lock-in disclosure.
 - d. The lock-in agreement disclosure shall be completed and disclosed:
 - i. Within three (3) business days after receipt of a loan application or any moneys from a borrower;
 - ii. If, after the initial written disclosure is provided, a mortgage broker enters into a lock-in agreement, within three (3) business days thereafter, including Saturdays and prior to the borrower signing loan closing documents, the mortgage broker shall deliver or send by first-class mail to the borrower, the written lock-in disclosure created by the Director; and
 - iii. If, after a mortgage broker enters into a lock-in agreement, the annual percentage rate increases from the annual percentage rate disclosed earlier by more than 1/8 of one (1) percentage point, within three (3) business days of such change and prior to the borrower signing loan closing documents.
6. Individuals who broker a mortgage or act as a mortgage broker are required to keep records of the disclosures required in this rule, for a period of four years, for the purposes of inspection by the Director or authorized representative of the Director.
 - a. All documents shall be kept in a secure environment. Electronic storage is acceptable as long as the information is accessible and kept in a secure environment.

- b. The company for whom the mortgage broker is an officer, partner, contractor, independent contractor, member, exclusive agent or an employee may provide the requested documents to the Director. However, the mortgage broker is responsible for compliance with the Director's request and is subject to disciplinary action if the company fails or refuses to provide the requested documentation.

Section 6. Enforcement

1. Noncompliance with this rule, whether defined or reasonably implied in the rule, may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:
 - a. Revocation;
 - b. Refusal to renew a license;
 - c. Imposition of fines; and
 - d. Restitution for any financial loss.

RULE 8-1-1 MORTGAGE BROKER ADVERTISING

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado, and to all persons who have requested to be advised of the intention of the Director of the Colorado Division of Real Estate to promulgate rules.

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Definitions

Section 4. Applicability

Section 5. Rules Regarding Mortgage Broker Advertising

Section 6. Enforcement

Section 1. Authority

The Director of the Division of Real Estate adopts the following rule entitled, *Mortgage Broker Advertising*, according to her authority as found in § 12-61-910.3, C.R.S.

The notice proposes to add rule 8-1-1. The rule establishes advertising guidelines for individuals who broker a mortgage or act as a mortgage broker.

Section 2. Scope and Purpose

Section 12-61-910.4, C.R.S., states the Director shall adopt rules regarding the marketing of nontraditional mortgages by mortgage brokers. In adopting such rules, the Director is required to incorporate appropriate provisions of the final "Interagency Guidance on Nontraditional Mortgage Product Risks" released on September 29, 2006.

Section 12-61-911(1)(j), C.R.S., in summary, prohibits mortgage brokers from failing to comply with the Truth in Lending Act. The Truth in Lending Act defines specific requirements for advertising.

The purpose of this rule is to ensure that individuals who broker a mortgage or act as a mortgage broker are familiar with all current regulations that address advertising and to ensure the advertising of nontraditional mortgage products is addressed.

Section 3. Definitions

1. "Interest Only Mortgage Loan" means a nontraditional mortgage on which, for a specified number of years the borrower is required to pay only the interest due on the loan, during which time, the rate may fluctuate or may be fixed. After the interest only period, the rate may be

- fixed or fluctuate, based on the prescribed index, and payments include both the principal and interest.
2. “Nontraditional Mortgage” means any residential mortgage loan product that allows the borrower to defer repayment of principal or interest. This includes all interest only products, payment option adjustable rate mortgages, and negative amortization mortgages, with the exception of a reverse mortgage and home equity line of credit, other than a simultaneous second-lien loan.
 3. “Payment Option Arm” means a nontraditional adjustable rate mortgage that allows the borrower to choose from a number of different payment options. For example, each month, the borrower may choose a minimum payment option based on a “start” or introductory interest rate, an interest only payment option based on the fully indexed interest rate, or a fully amortizing principal and interest payment option based on a 15 year or 30 year loan term, plus any required escrow payments. The minimum payment option can be less than the interest accruing on the loan, resulting in negative amortization. After a specified number of years, or if the loan reaches a certain negative amortization cap, the required monthly payment amount is recast to require payments that will fully amortize the outstanding balance over the remaining loan term.
 4. “Reduced Documentation” means a loan feature that is commonly referred to as “low doc/no doc,” “no income/no asset,” “stated income,” or “stated assets.” For mortgage loans with this feature, an institution sets reduced or minimal documentation standards to substantiate the borrower’s income and assets.
 5. “Simultaneous Second Lien Loan” means a lending arrangement where either a closed end second lien or a home equity line of credit is originated simultaneously with the first lien mortgage loan, typically in lieu of a higher down payment.
 6. Advertisement: An “advertisement” subject to the Truth in Lending Act is any commercial message that promotes consumer credit. “Advertisements” may appear:
 - a. In newspapers, magazines, leaflets, flyers, catalogs, direct mail literature, or other printed material;
 - b. On radio, television, or a public address system;
 - c. On an inside or outside sign or display, or a window display;
 - d. In point-of-sale literature, price tags, signs, and billboards; or
 - e. Online, such as on the Internet.
 7. “Annual Percentage Rate” means the charge for credit, stated as a percentage, and expressed as an annualized rate as defined by the Truth in Lending Act.
 8. “Closed-end credit” includes all consumer credit that does not fit the definition of open-end credit. Closed-end credit consists of both sales credit and loans. In a typical closed-end credit transaction, credit is advanced for a specific time period, and the “amount financed,” “finance charge,” and “schedule of payments” are agreed upon by the lender and the customer.
 9. “Consumer credit” may be either closed-end or open-end credit. It is credit that is extended primarily for personal, family, or household purposes. It excludes business and agricultural loans, and loans exceeding \$25,000 that are not secured by real property or a dwelling. It also must be extended by a “creditor”.
 10. “Credit Sale” is a transaction in which the seller is also the creditor, at least initially. Often, the seller-creditor will later assign the installment sales contract to another entity, such as a finance company or a bank.
 11. “Creditor” is a person or organization (a) that regularly extends consumer credit for which a finance charge is required or that is repayable in more than four installments even without a finance charge, and (b) to whom the obligation is initially payable—for example, the finance company, bank, automobile dealer or other lender identified on the face of the credit agreement. A person or organization is considered to extend credit “regularly,” if it has extended credit more than 25 times during the preceding year or more than 5 times for transactions secured by dwellings.

12. “Downpayment” is an amount paid to reduce the cash price of goods or services purchased in a credit sale transaction. The value of a trade-in is included in the downpayment. It can include a “pick-up” or deferred downpayment that is not subject to a finance charge and is due no later than the second regularly scheduled payment. The downpayment does not include any prepaid finance charges such as points.
13. “Finance Charge” is the dollar amount charged for credit. It includes interest and other costs, such as service charges, transaction charges, buyer’s points, loan fees, and mortgage insurance. It also includes the premiums for credit life, accident, and health insurance, if required, and for property insurance, unless the buyer may select the insurer.
14. “Terms of Repayment” generally refers to the payment schedule, including the number, timing, and amount of the payments, including any final “balloon” payment, scheduled to repay the debt.

Section 4. Applicability

This rule applies to all mortgage brokers as that term is defined in § 12-61-902(5), C.R.S. and includes those persons who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker.

Section 5. Rules Regarding Mortgage Broker Advertising

1. Mortgage brokers shall comply with all advertising provisions, regulations and official staff commentary of the Truth in Lending Act (Regulation Z). Such provisions, regulations and official staff commentary include:
 - a. Section 226.16; and
 - b. Supplement I of Part 226 – Official Staff interpretations.
2. Mortgage brokers may review the Truth in Lending Act (Regulation Z) on the Division of Real Estate’s website at <http://www.dora.state.co.us/real-estate/index.htm>. Additionally, mortgage brokers may also review the Truth in Lending Act (Regulation Z) at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=635f26c4af3e2fe4327fd25ef4cb5638&tpl=/ecfrbrowse/Title12/12cfr226_main_02.tpl.
3. Individuals who broker a mortgage or act as a mortgage broker may advertise only credit terms that are actually available to the consumer. “Bait and switch” credit or promotions are not allowed. For example, no advertisement may state that a specific installment payment or a specific downpayment can be arranged unless the creditor is prepared to make those arrangements. However, you may advertise terms that will be offered only for a limited time or terms that will become available at a known future date.
4. If you advertise closed-end credit with a “triggering term,” you also must disclose other major terms, including the annual percentage rate. This rule is intended to ensure that all important terms of a credit plan, not just the most attractive ones, appear in an ad. The triggering terms for closed-end credit are:
 - a. The amount of the downpayment expressed as either a percentage or dollar amount, in a “credit sale” transaction. Examples include, but are not limited to:
 - i. “10% down”
 - ii. “\$10,000 down”
 - iii. “90% financing”
 - b. The amount of any payment expressed as either a percentage or dollar amount. Examples include, but are not limited to:
 - i. “Monthly payments less than \$650 on all our loan plans”
 - ii. “Pay \$300.00 per \$100,000 amount borrowed”
 - iii. “\$650 per month”
 - c. The number of payments or the period of repayment. Examples include, but are not limited to:

- i. “Up to thirty years to pay”
 - ii. “180 months to pay”
 - iii. “30-year mortgages available”
 - d. The amount of any finance charge. Examples include, but are not limited to:
 - i. “Financing costs less than \$1,000 per year”
 - ii. “Less than \$1200 interest”
 - e. Some statements about credit terms are too general to trigger additional disclosures. Examples of terms that do not trigger the required disclosures are:
 - i. “No downpayment”
 - ii. “Easy monthly payments”
 - iii. “Loans available at 5% below our standard APR”
 - iv. “Low downpayment accepted”
 - v. “Pay weekly”
 - vi. “Terms to fit your budget”
 - vii. “Financing available.”
 - f. General statements, such as “take years to pay” or “no closing costs,” do not trigger further disclosures because they do not state or suggest the period of repayment or downpayment cost. The more specific the statement, the more likely it is to trigger additional disclosures.
5. If your ad for closed-end credit uses a triggering term, it also must include the following information:
 - a. The amount or percentage of the down-payment;
 - b. The terms of repayment; and
 - c. The “annual percentage rate,” using that term or the abbreviation “APR.” If the annual percentage rate may be increased after consummation of the credit transaction, that fact also must be stated.
6. If your ad shows the finance charge as a rate, that rate must be stated as an “annual percentage rate,” using that term or the abbreviation “APR.” Your ad must state the annual percentage rate, even if it is the same as the simple interest rate. If you want to show only a rate, and the APR is stated in the ad, no other credit information need be included: the “triggering term” requirement does not apply because the rate and APR are not triggering terms. Thus, an advertisement could simply state, “Assume 10% annual percentage rate” or “10% annual percentage rate mortgages available.”
 - a. You must state the annual percentage rate accurately. For example, some transactions include other components in the finance charge besides interest, such as “points” and mortgage insurance premiums paid by the buyer. As a result, the annual percentage rate may be higher than the simple interest rate, because the APR reflects the total cost of credit, including interest and other credit charges.
 - b. As long as you include the annual percentage rate in the ad, you also may state a simple annual rate or a periodic rate or both, applicable to an unpaid balance. However, the simple annual or periodic rate may not be more conspicuous in the advertisement than the annual percentage rate. For example, an advertisement may include the interest rate together with the annual percentage rate, as long as the interest rate is not more prominent than the APR.
7. Ads for variable-rate credit must state that the rate may increase or that it is subject to change, but need not explain how changes will be made.
 - a. The following statement would satisfy this requirement.
 - i. 8.5% annual percentage rate subject to increase or decrease.
 - b. By contrast, an ad that promotes “9% APR graduated payment adjustable mortgages” (graduated payment mortgages plus an adjustable rate feature) would not comply with the law, because it does not state clearly that the rate may change.

8. The annual percentage rate in variable-rate financing ads must be accurate. To help calculate the APR, keep two principles in mind. First, remember there is only one APR per loan, regardless of how many interest rates may apply during the term of the loan. Second, assume that any “index” rates, such as the prime rate or the 6-month Treasury bill, used to determine future interest rate changes will remain constant during the life of the loan.
9. Special rules apply when you advertise a loan in which the seller or a third party “buys down” the interest rate during the early years of the loan.
 - a. To comply with this requirement, you must determine the accurate annual percentage rate. First, ascertain whether the lower rates are stated as part of the credit contract between the consumer and the creditor. If so, you should take the buydown into account in calculating the annual percentage rate for the advertisement.
 - b. If the lower rates are not part of the credit contract, the advertised annual percentage rate should not reflect the buydown. For example, suppose the seller agrees with the consumer to place funds in an escrow account. This escrow account will be drawn upon by the creditor to reduce the consumer’s monthly payments during the term of the loan, but the consumer’s credit obligation is not changed to reflect the lower effective rate and payments. In this situation, you should not consider the buydown in calculating the APR. Assuming the reduced rates are part of the credit contract between the consumer and lender, your ad might read as follows:
 - i. This buydown reduces your interest rate from 10½% to 8½% for the first year of your loan. APR 10½%.
 - c. If the interest rates in the buydown are not part of the credit agreement between the consumer and lender, because, for example, they are included in a separate contract between the consumer and the builder/seller, you still may show the reduced interest rates in the ad. But, if you do so, you must include all the rates, the limited terms to which they apply, and the annual percentage rate for the loan. The annual percentage rate that you disclose will not be based on the reduced interest rates, and therefore will be higher than those rates, as in the following example:
 - i. With this buydown, your interest rate for the first year of your loan is only 8½%. Rate for remainder of term is 10½%. 10¾% APR.
 - d. If you show this information, you also may show the effect of a buydown on the monthly payments without triggering other disclosures. For example, an ad that states the above information also may say “with this buydown, your monthly payment for the first year of the mortgage will be only \$615,” or “save more than \$100 per month the first year!” The use of these terms does not trigger disclosure of other information, other than the APR. But, if the ad shows the full term of the loan, such as “30-year financing,” other required disclosures—namely, the downpayment, the terms of repayment, and the APR—must be shown, because the time period is a triggering term.
10. Adjustable rate mortgages (ARMs) often have a first-year “discount” or “teaser” feature in which the initial rate is substantially reduced. In these loans, the first year’s rate is not computed in the same way as the rate for later years. Often, the “spread” or “margin” that is normally added to an “index,” such as the one-year Treasury-note rate, to determine changes in the interest rate in the future is not included in the first year of a discounted ARM offered by a creditor.
 - a. Special rules, similar to those for buydowns, apply to advertising a discounted variable rate. An ad for this type of plan can show the simple interest rate during the discount period, as long as it also shows the annual percentage rate. However, in contrast to buydowns, the ad need not show the simple interest rate applicable after the discount period. For example, a plan with a low first year’s interest rate (8%), but with a 10.25% rate in subsequent years, and additional credit costs, could be advertised as follows:
 - i. 8% first-year financing. APR 10.41%. APR subject to increase after closing.

- b. As in buydowns, the annual percentage rate in discounted plans is a composite figure that must take into account the interest rates that are known at closing. In the above example, the disclosed APR must reflect the 8% rate for the first year, as well as, for example, the 10.25% rate applicable for the remainder of the term, plus any additional credit costs, such as buyer's points.
 - c. An ad for a discounted variable-rate loan, like an ad for a buydown, may show the effect of the discount on the payment schedule during the discount period without triggering other disclosures. An example of a disclosure that complies with Regulation Z is:
 - i. Interest rate only 8% first year. APR 10.50% subject to increase. With this discount, your monthly payments for the first year will be only \$587.
11. In some transactions, particularly some graduated payment loans, the consumer's payments for the first few years of the loan may be based on an interest rate lower than the rate for which the consumer is liable. This situation is referred to as "negative amortization." As with buydowns, special rules apply when you advertise the "effective" or "payment" rates for these transactions.
- a. Specifically, you may advertise these effective rates if you show the following information:
 - i. The "effective" or "payment" rate;
 - ii. The term of the reduced payments;
 - iii. The "note rate" at which interest is actually accruing; and
 - iv. The annual percentage rate.
 - b. The advertised annual percentage rate must take into account the interest for which the consumer is liable, even though it is not paid by the consumer during the period of reduced payments.
 - c. This type of financing could be advertised as:
 - i. An effective first-year rate of only 1½ percent. Interest being charged at 10½ percent. 10¾% APR.
 - d. In contrast to an ad for a buydown or a discounted variable rate, an ad for an "effective" or "payment" rate may not show the monthly payments without triggering the other disclosures. You can, however, show the range of payments without showing all the intermediate payment amounts.
 - e. In addition to the information about the interest rate and APR, a complying ad for a "payment rate" plan also could state:
 - i. Payments begin at \$557.92 for the first year, ranging to \$800.96 in years six through remainder of loan term.
12. The ad need not show all the different payments required during the life of the loan, if you advertise a mortgage in which the payments vary because:
- a. Payments include mortgage insurance premiums payable monthly or annually; or
 - b. The loan has a "graduated payment" feature.
 - c. These advertisements must state:
 - i. the number and timing of payments,
 - ii. the largest and smallest payments, and
 - iii. the fact that the other payments will vary between those amounts.
 - d. The following example, based upon a condominium with a \$65,000 sale price, illustrates the terms of an advertisement for a loan with mortgage insurance.
 - i. This example would comply with the disclosure requirements, assuming the information is printed clearly and conspicuously:
 - 1. Downpayment \$15,000; 9.5% APR
 - 2. 360 monthly payments
 - 3. Payments 1-120 vary from \$303.94 to \$405.96
 - 4. Remaining 240 payments are \$436.35.
13. When an advertisement promotes a variable-rate loan that is not a "discount" or a "buydown" and has no other special features, the advertisement contains triggering terms that require

disclosure of the “terms of repayment,” which include the payment amounts. In this ad, only one payment amount need be disclosed to comply with the law.

- a. To determine the proper payment disclosure, calculate the payment based on the interest rate that will be in effect initially during the loan, using the best information available at the time you run the ad. For example, suppose you want to determine the payments for a 30-year variable-rate mortgage in which rate changes will be based on the one-year Treasury bill index, and in which there is no discount and no additional “margin” added to the index.
 - b. If that index is at 9.5% at the time you run the ad, you could disclose the payment amounts by developing an example, using 360 monthly payments based on the 9.5% rate.
 - c. If you wish to offer a \$100,000 condominium with a 20% downpayment, leaving an amount financed of \$80,000, with no mortgage insurance and with all prepaid finance charges paid by the seller, the ad could state:
 - i. Payments as low as \$673 monthly. 30-year loan. 20% down. 9.5% APR subject to increase.
14. When an advertisement requiring disclosure of the payment schedule promotes a discounted variable-rate loan, rather than a variable rate plan with no special features, the advertised payment schedule must show all payment amounts that can be determined before consummation of the loan. For example, if the discounted rate is applicable for only one year, the advertisement should show a payment for the first year based on the reduced interest rate in effect for that year. If the interest rate is subject to annual increases thereafter, the advertisement must show a second payment amount based upon the interest rate that would have been in effect at consummation, except for the discount feature of the loan.
- a. Thus, for example, the payment schedule portion of an advertisement for a discounted variable-rate loan with a one-year discount might state:
 - i. 1st year monthly payments are \$585 and 2nd and subsequent years’ monthly payments are \$700.
 - b. If the reduced rate plan has limits or “caps” on the amount that the interest rate or payments may increase in any year, the payment schedule must also show the effect of those caps. Suppose the plan has a cap that limits interest rate increases each year to 2%. Also suppose that interest rates for the loan are determined by the Treasury bill rate plus a 2% margin and that the Treasury bill rate at the time of your ad is 10%. The rate determined by this formula would be 12%, 10% plus the 2% margin. The creditor, however, has set the first-year rate at only 9% and the second-year rate can be no more than 11% because of the cap. In a 30-year loan for \$100,000 with no other credit charges, your payment disclosures for this loan might read:
 - i. 1st year’s monthly payment are \$ 804.62; 2nd year’s monthly payments are \$950.09; and 3rd year and subsequent year’s monthly payments are \$1024.34.
15. All advertisements shall have at least one (1) responsible individual who is accountable. If a mortgage broker license is applicable, advertisements shall contain the license number for the responsible mortgage broker. If a mortgage broker license is not applicable, then the responsible party shall be identified by name in each advertisement.
16. All advertisements shall clearly and conspicuously provide the following information:
- a. Mortgage company name;
 - b. License number or name of the responsible party;
 - c. Business address of mortgage company; and
 - d. Business phone number.
17. All advertisements shall include the following statement:
- a. To check the license status of your mortgage broker, visit <http://www.dora.state.co.us/real-estate/index.htm>.

Section 6. Enforcement

1. Noncompliance with this rule, whether defined or reasonably implied in the rule, may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:
 - a. Revocation;
 - b. Refusal to renew a license;
 - c. Imposition of fines; and
 - d. Restitution for any financial loss.

* VI. Position Statements

* Position Statement – MB 1.1 Non-Traditional Mortgage Products and Documentation Types

The Division's position on the above matter is that section 12-61-904.5 (1)(b), C.R.S. does not prohibit specific mortgage products or documentation types. Rather, the Division views this provision as a responsibility of the mortgage broker to recommend appropriate products. Mortgage brokers may only recommend appropriate products after reasonable inquiry has been made in order to understand borrower's current and prospective financial status. Furthermore, that reasonable inquiry requires the mortgage broker to interview and discuss current and prospective income, including the source and likely continuance, with borrowers, and does not require the mortgage broker to verify such income. As a result, the mortgage broker has a duty to recommend mortgage products based on the information provided by the borrower. The Division of Real Estate does not interpret section 12-61-904.5 (1)(b), C.R.S. to prohibit any specific mortgage products and documentation types, rather prohibits the abusive recommendations by mortgage brokers. Section 12-61-910.4, C.R.S., requires the Director to adopt rules regarding the advertising of non-traditional mortgage products. Such a provision would be unnecessary if these types of products were prohibited.

Section 4. Issuance Date

The Division of Real Estate issues this position statement Tuesday, July 3, 2007.

* Position Statement – MB 1.2 – Mortgage Broker Contracts

1. The Director's position on the above matter is that section 12-61-913(1), C.R.S. does not require or mandate a contract between a mortgage broker and a borrower. Rather that if a contract does exist, it must be in writing and contain the entire agreement of the parties.

2. The Director's position regarding section 12-61-913(2), C.R.S. is that mortgage brokers are compliant if they adhere to one of the following requirements:

- i. They individually have a written correspondent or loan broker agreement with a lender before any solicitation of, or contracting with, any member of the public;
- ii. They are an officer, partner, member, exclusive agent, or employee of a company that has a written correspondent or loan broker agreement with a lender before any solicitation of, or contracting with, any member of the public; or
- iii. They are acting as an independent contractor and maintain a contractual agreement with a company that has a written correspondent or loan broker agreement with a lender before any solicitation of, or contracting with, any member of the public.

Section 4. Issuance Date

The Director of the Division of Real Estate issues this position statement Friday, November 2, 2007.

* **Position Statement – MB 1.3 – License Required**

1. The Director’s position regarding the above uncertainty is that persons who directly supervise individuals that negotiate, originate, or offer or attempt to negotiate or originate for a borrower, and for a commission or other thing of value, a residential mortgage loan to be consummated and funded by a mortgage lender are required to be licensed.

2. Additionally, the Director’s position is that individuals who perform purely administrative or clerical tasks do not fall within the definitions of broker a mortgage or mortgage broker. As a result, individuals who perform purely administrative or clerical tasks are not required to be licensed. Administrative or clerical tasks include, but are not limited to:

a. The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

b. Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

Section 4. Issuance Date

The Director of the Division of Real Estate issues this position statement January 7, 2008.

* **Position Statement – MB 1.4 – Applicability of Colorado Mortgage Broker Licensing Law to Employees and Exclusive Agents of Federal and State Financial Institutions**

It is the position of the Director of the Division of Real Estate that the Mortgage Broker Licensing Act applies to all individuals who broker a mortgage, as defined in § 12-61-902(2), C.R.S. Accordingly, among others, the Act and all rules promulgated pursuant to the Act apply to Financial Institution Employees who broker mortgages, regardless of whether their employer is state or federally chartered, except that those individuals are exempt from the licensing requirements in § 12-61-903 and 903.5, C.R.S.

Section 12-61-902(5), C.R.S. defines a mortgage broker as one who negotiates, originates, or offers or attempts to negotiate or originate for a borrower a residential mortgage loan. § 12-61-902(2), C.R.S. further defines brokering a mortgage to include directly or indirectly acting as a mortgage broker. It is the position of the Director of the Division of Real Estate that Financial Institution Employees are mortgage brokers, even where their employer funds its own loans. Such individuals are directly or indirectly acting as mortgage brokers for a borrower.

Section 12-61-904(1)(c), C.R.S. exempts a “bank, savings bank, savings and loan association, building and loan association, industrial bank, industrial loan company, credit union, or bank or savings association holding company ...subject to regulation and supervision by a federal banking agency, or an operating subsidiary or affiliate of such entities, or an employee or exclusive agent of any of such entities” from the provisions of the Act “[e]xcept as otherwise provided in section 12-61-911.” Section 12-61-911, C.R.S. applies to mortgage brokers “otherwise exempted from this part 9 by section 12-61-904(1)(b) or (1)(c).” Therefore, it is the Director’s position that the financial entities themselves are exempt from the Act. Further, it is the Director’s position that section 904 exempts the Financial Institution Employees only from the licensing requirements of § 12-61-903 and 903.5, C.R.S. and rules promulgated under part 903 and 903.5.

Section 4. Issuance Date

The Director of the Division of Real Estate issues this position statement February 13, 2008.

* **Position Statement – MB 1.5 – Loan Modifications**

This position statement concerns individuals who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker.

1. Section 12-61-902(2), C.R.S. defines brokering a mortgage as meaning to directly or indirectly act as a mortgage broker. It is the Director's position that individuals offering or negotiating loan modifications are, at a minimum, indirectly acting as mortgage brokers. Pursuant to section 12-61-903(1)(a), Colorado Revised Statutes, all persons who meet the definition of broker a mortgage are required to be licensed. As a result, persons who directly or indirectly negotiate, originate or offer or attempt to negotiate or originate loan modifications for a borrower, and for a commission or other thing of value are required to be licensed as mortgage brokers.

2. Additionally, persons who directly supervise individuals who negotiate, originate, or offer or attempt to negotiate or originate loan modifications for a commission or other thing of value are required to be licensed as mortgage brokers.

3. In addition to the licensing requirements, all individuals who directly or indirectly negotiate loan modifications for borrowers and their direct supervisors are required to comply with all other provisions of Colorado mortgage broker law and Director rules. This includes, but is not limited to:

- a. A duty of good faith and fair dealing in all communications and transactions with borrowers;
- b. A prohibition against making any promise that influences, persuades, or induces another person to detrimentally rely on such promise when the licensee could not or did not intend to keep such promise;
- c. A prohibition against soliciting or entering into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower; and
- d. If the mortgage broker has obtained for the borrower a written commitment from a lender for a loan on the terms and conditions agreed to by the borrower and the mortgage broker, and the borrower fails to close on the loan through no fault of the mortgage broker, the mortgage broker may charge a fee, not to exceed three hundred dollars, for services rendered, preparation of documents, or transfer of documents in the borrower's file that were prepared or paid for by the borrower if the fee is not otherwise prohibited by the federal "Truth in Lending Act", 15 U.S.C. section 1601, and Regulation Z, 12 CFR 226, as amended.

4. The Director's position on this matter shall not be construed to include employees of nonprofit HUD-approved housing counseling agencies as long as such individuals receive no compensation nor anything of value for participation in loan modifications.

5. The Director's position on this matter shall not be construed to include employees of mortgage loan servicing companies operating on behalf of mortgage lenders.

6. Noncompliance may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:

- a. Imposition of fines;
- b. Restitution for any financial loss;
- c. Refusal to renew a license;
- d. Refusal to grant a license; and
- e. Revocation.

Section 4. Issuance Date

The Director of the Division of Real Estate issues this position statement November 19, 2008.