

**First Regular Session  
Sixty-sixth General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 07-0288.01 Duane Gall

**HOUSE BILL 07-1322**

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**HOUSE SPONSORSHIP**

**Marshall**, Massey, and Garcia

**SENATE SPONSORSHIP**

**Groff**,

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**House Committees**

Business Affairs and Labor

**Senate Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING MEASURES TO PREVENT MORTGAGE FRAUD, AND, IN**  
102             **CONNECTION THEREWITH, EXTENDING THE PROHIBITION**  
103             **AGAINST CERTAIN ACTS TO INCLUDE MORTGAGE LENDERS,**  
104             **MORTGAGE LOAN APPLICANTS, REAL ESTATE BROKERS, REAL**  
105             **ESTATE AGENTS, REAL ESTATE APPRAISERS, AND CLOSING**  
106             **AGENTS; PROHIBITING CERTAIN PRACTICES; AND CHANGING THE**  
107             **MENTAL STATE REQUIRED TO BE PROVEN AS AN ELEMENT OF A**  
108             **VIOLATION.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

Adds definitions of the terms "borrower" and "residential mortgage loan" to the statutes governing mortgage brokers. Includes a chattel loan on a manufactured home or modular home within the definition of "residential mortgage loan". Clarifies the application of the "Mortgage Broker Registration Act" to residential mortgage loans.

In provisions relating to false and deceptive inducements to the creation of a mortgage loan by a mortgage broker or mortgage originator, adds mortgage lenders, mortgage loan applicants, real estate brokers, real estate agents, real estate appraisers, and closing agents to the persons to whom the prohibitions apply.

Reduces the mental state required to be proven in an action for violation of anti-fraud provisions from "knowingly" to "knew or reasonably should have known". Increases the mental state required to be proven in an action for violation of unconscionability provisions from none to "knowingly".

Requires mortgage brokers to make an inquiry about and to take into consideration the borrower's current and prospective income and other factors prior to recommending, brokering, or originating a residential mortgage loan.

Gives the director of the division of real estate rule-making authority to carry out the purposes of the regulatory statutes governing mortgage brokers.

Requires mortgage brokers to make certain disclosures and comply with the requirements of federal laws regarding lending, including the requirements of the federal "Real Estate Settlement Procedures Act". Removes an exemption from state law for mortgage brokers employed by FHA-approved or FHA-appointed lenders.

Authorizes the attorney general to seek injunctions against persons violating anti-fraud provisions, prohibiting them from conducting further business for up to 5 years.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2           **SECTION 1.** 12-61-902 (5) and (7), Colorado Revised Statutes,  
3 are amended, and the said 12-61-902 is further amended BY THE  
4 ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

5           **12-61-902. Definitions.** As used in this part 9, unless the context  
6 otherwise requires:

7           (1.5) "BORROWER" MEANS ANY PERSON WHO CONSULTS WITH OR

1       RETAINS A MORTGAGE BROKER IN AN EFFORT TO OBTAIN OR SEEK ADVICE  
2       OR INFORMATION ON OBTAINING OR APPLYING TO OBTAIN A RESIDENTIAL  
3       MORTGAGE LOAN FOR HIMSELF, HERSELF, OR PERSONS INCLUDING HIMSELF  
4       OR HERSELF, REGARDLESS OF WHETHER THE PERSON ACTUALLY OBTAINS  
5       SUCH A LOAN.

6               (5) "Mortgage broker" means an individual who negotiates,  
7       originates, or offers or attempts to negotiate or originate for a borrower,  
8       and for a commission or other thing of value, a RESIDENTIAL MORTGAGE  
9       loan to be consummated and funded by a mortgage lender.

10              (7) "Originate" means to submit an application or documentation  
11       to a lender or underwriter in an attempt to obtain a RESIDENTIAL  
12       MORTGAGE loan.

13              (8) "RESIDENTIAL MORTGAGE LOAN" MEANS:

14              (a) A LOAN THAT IS PRIMARILY FOR PERSONAL, FAMILY, OR  
15       HOUSEHOLD USE AND THAT IS SECURED BY A MORTGAGE OR DEED OF  
16       TRUST ON RESIDENTIAL REAL ESTATE UPON WHICH IS CONSTRUCTED OR  
17       INTENDED TO BE CONSTRUCTED A SINGLE-FAMILY DWELLING OR  
18       MULTIPLE-FAMILY DWELLING OF FOUR OR FEWER UNITS; AND

19              (b) A CHATTEL LOAN ON A MODULAR HOME OR MANUFACTURED  
20       HOME FOR PERSONAL, FAMILY, OR HOUSEHOLD USE.

21              **SECTION 2.** The introductory portion to 12-61-904 (1) and  
22       12-61-904 (1) (e), Colorado Revised Statutes, are amended to read:

23              **12-61-904. Exemptions.** (1) EXCEPT AS OTHERWISE PROVIDED  
24       IN SECTION 12-61-911, this part 9 shall not apply to the following:

25              (e) ~~A federal housing administration approved mortgagee or an~~  
26       ~~appointed federal housing administration correspondent, acting through~~  
27       ~~officers, partners, members, exclusive agents, contractors, or employees~~

1 of such entities when making or brokering any mortgage loan; or

2           **SECTION 3.** Part 9 of article 61 of title 12, Colorado Revised  
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
4 read:

5           **12-61-904.5. Broker's relationship to borrower.** (1) A  
6 MORTGAGE BROKER SHALL:

7           (a) ACT PRIMARILY FOR THE BENEFIT OF THE BORROWER; AND

8           (b) MAKE A REASONABLE INQUIRY CONCERNING THE BORROWER'S  
9 CURRENT AND PROSPECTIVE INCOME, EXISTING DEBTS AND OTHER  
10 FINANCIAL OBLIGATIONS, AND ANY OTHER INFORMATION KNOWN TO THE  
11 MORTGAGE BROKER AND, AFTER MAKING SUCH INQUIRY, SHALL MAKE HIS  
12 OR HER BEST EFFORTS TO RECOMMEND, BROKER, OR ORIGINATE A  
13 RESIDENTIAL MORTGAGE LOAN THAT TAKES INTO CONSIDERATION THE  
14 INFORMATION SUBMITTED BY THE BORROWER.

15           (2) A VIOLATION OF THIS SECTION CONSTITUTES A DECEPTIVE  
16 TRADE PRACTICE UNDER THE "COLORADO CONSUMER PROTECTION ACT",  
17 ARTICLE 1 OF TITLE 6, C.R.S.

18           **SECTION 4.** The introductory portion to 12-61-905 (1) (c) and  
19 12-61-905 (7), Colorado Revised Statutes, are amended, and the said  
20 12-61-905 (1) is further amended BY THE ADDITION OF THE  
21 FOLLOWING NEW PARAGRAPHS, to read:

22           **12-61-905. Powers and duties of the director.** (1) The director  
23 shall deny, refuse to renew, or revoke the registration of an applicant who  
24 has:

25           (c) WITHIN THE LAST FIVE YEARS, had a license, registration, or  
26 certification issued by Colorado or another state revoked or suspended for  
27 fraud, deceit, material misrepresentation, theft, or the breach of a

1 fiduciary duty, and such discipline denied the person authorization to  
2 practice as:

3 (d) BEEN ENJOINED WITHIN THE IMMEDIATELY PRECEDING FIVE  
4 YEARS UNDER THE LAWS OF THIS OR ANY OTHER STATE OR OF THE UNITED  
5 STATES FROM ENGAGING IN DECEPTIVE CONDUCT RELATING TO THE  
6 BROKERING OF A MORTGAGE LOAN;

7 (e) BEEN FOUND TO HAVE VIOLATED THE PROVISIONS OF SECTION  
8 12-61-911.

9 (7) (a) If the director has reasonable cause to believe that a person  
10 is violating this part 9, including but not limited to section 12-61-910 (1),  
11 the director may enter an order requiring such person to cease and desist  
12 such violations.

13 (b) THE DIRECTOR, UPON HIS OR HER OWN MOTION MAY, AND,  
14 UPON THE COMPLAINT IN WRITING OF ANY PERSON, SHALL, INVESTIGATE  
15 THE ACTIVITIES OF ANY REGISTRANT OR LICENSEE OR ANY PERSON WHO  
16 ASSUMES TO ACT IN SUCH CAPACITY WITHIN THE STATE. IN ADDITION TO  
17 ANY OTHER PENALTY THAT MAY BE IMPOSED PURSUANT TO THIS PART 9,  
18 A PERSON VIOLATING ANY PROVISION OF THIS PART 9 OR ANY RULES  
19 PROMULGATED PURSUANT TO THIS ARTICLE MAY BE FINED UPON A FINDING  
20 OF MISCONDUCT BY THE DIRECTOR AS FOLLOWS:

21 (I) IN THE FIRST ADMINISTRATIVE PROCEEDING, A FINE NOT IN  
22 EXCESS OF ONE THOUSAND DOLLARS PER ACT OR OCCURRENCE;

23 (II) IN ANY SUBSEQUENT ADMINISTRATIVE PROCEEDING, A FINE  
24 NOT LESS THAN ONE THOUSAND DOLLARS NOR IN EXCESS OF TWO  
25 THOUSAND DOLLARS PER ACT OR OCCURRENCE.

26 (c) ALL FINES COLLECTED PURSUANT TO THIS SUBSECTION (7)  
27 SHALL BE TRANSFERRED TO THE STATE TREASURER, WHO SHALL CREDIT

1 SUCH MONEYS TO THE GENERAL FUND.

2 **SECTION 5.** Part 9 of article 61 of title 12, Colorado Revised  
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
4 read:

5 **12-61-910.3. Rule-making authority.** THE DIRECTOR SHALL  
6 HAVE AUTHORITY TO PROMULGATE RULES AS NECESSARY TO ENABLE THE  
7 DIRECTOR TO CARRY OUT THE DIRECTOR'S DUTIES UNDER THIS PART 9.

8 **SECTION 6.** 12-61-911, Colorado Revised Statutes, is  
9 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

10 **12-61-911. Prohibited conduct - fraud - misrepresentation -**  
11 **conflict of interest - rules.** (1) A MORTGAGE BROKER, INCLUDING A  
12 PERSON OTHERWISE EXEMPTED FROM THIS PART 9 BY SECTION 12-61-904  
13 (1) (b), (1) (c), OR (1) (g), SHALL NOT:

14 (a) DIRECTLY OR INDIRECTLY EMPLOY ANY SCHEME, DEVICE, OR  
15 ARTIFICE TO DEFRAUD OR MISLEAD BORROWERS OR LENDERS OR TO  
16 DEFRAUD ANY PERSON;

17 (b) ENGAGE IN ANY UNFAIR OR DECEPTIVE PRACTICE TOWARD ANY  
18 PERSON;

19 (c) OBTAIN PROPERTY BY FRAUD OR MISREPRESENTATION;

20 (d) SOLICIT OR ENTER INTO A CONTRACT WITH A BORROWER THAT  
21 PROVIDES IN SUBSTANCE THAT THE MORTGAGE BROKER MAY EARN A FEE  
22 OR COMMISSION THROUGH THE MORTGAGE BROKER'S "BEST EFFORTS" TO  
23 OBTAIN A LOAN EVEN THOUGH NO LOAN IS ACTUALLY OBTAINED FOR THE  
24 BORROWER;

25 (e) SOLICIT, ADVERTISE, OR ENTER INTO A CONTRACT FOR SPECIFIC  
26 INTEREST RATES, POINTS, OR OTHER FINANCING TERMS UNLESS THE TERMS  
27 ARE ACTUALLY AVAILABLE AT THE TIME OF SOLICITING, ADVERTISING, OR

1 CONTRACTING FROM A PERSON EXEMPT FROM LICENSING UNDER SECTION  
2 12-61-904 (1) (g) OR A LENDER WITH WHOM THE MORTGAGE BROKER  
3 MAINTAINS A WRITTEN CORRESPONDENT OR LOAN BROKER AGREEMENT  
4 UNDER SECTION 12-61-913;

5 (f) FAIL TO MAKE A DISCLOSURE TO A LOAN APPLICANT OR A  
6 NONINSTITUTIONAL INVESTOR AS REQUIRED BY SECTION 12-61-914 AND  
7 ANY OTHER APPLICABLE STATE OR FEDERAL LAW;

8 (g) MAKE, IN ANY MANNER, ANY FALSE OR DECEPTIVE STATEMENT  
9 OR REPRESENTATION WITH REGARD TO THE RATES, POINTS, OR OTHER  
10 FINANCING TERMS OR CONDITIONS FOR A RESIDENTIAL MORTGAGE LOAN  
11 OR ENGAGE IN "BAIT AND SWITCH" ADVERTISING;

12 (h) NEGLIGENTLY MAKE ANY FALSE STATEMENT OR KNOWINGLY  
13 AND WILLFULLY MAKE ANY OMISSION OF MATERIAL FACT IN CONNECTION  
14 WITH ANY REPORTS FILED BY A MORTGAGE BROKER OR IN CONNECTION  
15 WITH ANY INVESTIGATION CONDUCTED BY THE DIVISION;

16 (i) MAKE ANY PAYMENT, DIRECTLY OR INDIRECTLY, TO AN  
17 APPRAISER OF A PROPERTY FOR THE PURPOSE OF INFLUENCING THE  
18 INDEPENDENT JUDGMENT OF THE APPRAISER WITH RESPECT TO THE VALUE  
19 OF THE PROPERTY;

20 (j) ADVERTISE ANY RATE OF INTEREST WITHOUT CONSPICUOUSLY  
21 DISCLOSING THE ANNUAL PERCENTAGE RATE IMPLIED BY SUCH RATE OF  
22 INTEREST;

23 (k) FAIL TO COMPLY WITH ANY REQUIREMENT OF THE FEDERAL  
24 "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1601 AND REGULATION Z, 12  
25 CFR 226; THE "REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974",  
26 12 U.S.C. SEC. 2601 AND REGULATION X, 24 CFR 3500; THE "EQUAL  
27 CREDIT OPPORTUNITY ACT", 15 U.S.C. SEC. 1691 AND REGULATION B,

1 CFR 202.9, 202.11, AND 202.12; TITLE V, SUBTITLE A OF THE FINANCIAL  
2 MODERNIZATION ACT OF 1999 (KNOWN AS THE "GRAMM-LEACH-BLILEY  
3 ACT"), 12 U.S.C. SECS. 6801-6809; THE FEDERAL TRADE COMMISSION'S  
4 PRIVACY RULES, 16 CFR 313-314, MANDATED BY THE  
5 "GRAMM-LEACH-BLILEY ACT"; THE "HOME MORTGAGE DISCLOSURE ACT  
6 OF 1975", 12 U.S.C. SEC. 2801 ET SEQ. AND REGULATION C, HOME  
7 MORTGAGE DISCLOSURE; THE "FEDERAL TRADE COMMISSION ACT", 12  
8 CFR 203, 15 U.S.C. SEC. 45(a); THE "TELEMARKETING AND CONSUMER  
9 FRAUD AND ABUSE PREVENTION ACT", 15 U.S.C. SECS. 6101 TO 6108;  
10 AND THE FEDERAL TRADE COMMISSION TELEPHONE SALES RULE, 16 CFR  
11 310, AS THESE ACTS EXISTED ON JANUARY 1, 2007, OR SUCH SUBSEQUENT  
12 DATE AS MAY BE PROVIDED BY THE DIRECTOR BY RULE, IN ANY  
13 ADVERTISING OF RESIDENTIAL MORTGAGE LOANS, OR ANY OTHER  
14 APPLICABLE MORTGAGE BROKER ACTIVITIES COVERED BY THE ACTS. THE  
15 DIRECTOR MAY ADOPT RULES REQUIRING MORTGAGE BROKERS TO COMPLY  
16 WITH OTHER APPLICABLE FEDERAL STATUTES AND REGULATIONS IN ANY  
17 ADVERTISING OF RESIDENTIAL MORTGAGE LOANS, OR ANY OTHER  
18 MORTGAGE BROKER ACTIVITY.

19 (l) FAIL TO PAY A THIRD-PARTY PROVIDER, NO LATER THAN THIRTY  
20 DAYS AFTER THE RECORDING OF THE LOAN CLOSING DOCUMENTS OR  
21 NINETY DAYS AFTER COMPLETION OF THE THIRD-PARTY SERVICE,  
22 WHICHEVER COMES FIRST, UNLESS OTHERWISE AGREED OR UNLESS THE  
23 THIRD-PARTY SERVICE PROVIDER HAS BEEN NOTIFIED IN WRITING THAT A  
24 BONA FIDE DISPUTE EXISTS REGARDING THE PERFORMANCE OR QUALITY OF  
25 THE THIRD-PARTY SERVICE;

26 (m) COLLECT, CHARGE, ATTEMPT TO COLLECT OR CHARGE, OR USE  
27 OR PROPOSE ANY AGREEMENT PURPORTING TO COLLECT OR CHARGE ANY

1 FEE PROHIBITED BY SECTION 12-61-914 OR 12-61-915; OR

2 (n) FAIL TO COMPLY WITH ANY PROVISION OF THIS PART 9 OR ANY  
3 RULE ADOPTED PURSUANT TO THIS PART 9.

4 **SECTION 7.** Part 9 of article 61 of title 12, Colorado Revised  
5 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW  
6 SECTIONS to read:

7 **12-61-912. Dual status as real estate broker or salesperson -**  
8 **requirements.** (1) UNLESS A MORTGAGE BROKER COMPLIES WITH BOTH  
9 SUBSECTIONS (2) AND (3) OF THIS SECTION, HE OR SHE SHALL NOT ACT AS  
10 A LOAN ORIGINATOR IN ANY TRANSACTION IN WHICH:

11 (a) THE MORTGAGE BROKER ACTS OR HAS ACTED AS A REAL  
12 ESTATE BROKER OR SALESPERSON; OR

13 (b) ANOTHER PERSON DOING BUSINESS UNDER THE SAME LICENSED  
14 REAL ESTATE BROKER ACTS OR HAS ACTED AS A REAL ESTATE BROKER OR  
15 SALESPERSON.

16 (2) BEFORE PROVIDING MORTGAGE SERVICES TO THE BORROWER,  
17 A MORTGAGE BROKER SHALL MAKE A FULL AND FAIR DISCLOSURE TO THE  
18 BORROWER, IN ADDITION TO ANY OTHER DISCLOSURES REQUIRED BY THIS  
19 PART 9 OR OTHER LAWS, OF ALL MATERIAL FEATURES OF THE LOAN  
20 PRODUCT AND ALL FACTS MATERIAL TO THE TRANSACTION.

21 (3) (a) A REAL ESTATE BROKER OR SALESPERSON LICENSED UNDER  
22 PART 1 OF THIS ARTICLE WHO ALSO ACTS AS A MORTGAGE BROKER SHALL  
23 CARRY ON SUCH MORTGAGE BROKER BUSINESS ACTIVITIES AND SHALL  
24 MAINTAIN SUCH PERSON'S MORTGAGE BROKER BUSINESS RECORDS  
25 SEPARATE AND APART FROM THE REAL ESTATE BROKER ACTIVITIES  
26 CONDUCTED PURSUANT TO PART 1 OF THIS ARTICLE. SUCH ACTIVITIES  
27 SHALL BE DEEMED SEPARATE AND APART EVEN IF THEY ARE CONDUCTED

1 AT AN OFFICE LOCATION WITH A COMMON ENTRANCE AND MAILING  
2 ADDRESS IF:

3 (I) EACH BUSINESS IS CLEARLY IDENTIFIED BY A SIGN VISIBLE TO  
4 THE PUBLIC;

5 (II) EACH BUSINESS IS PHYSICALLY SEPARATED WITHIN THE OFFICE  
6 FACILITY; AND

7 (III) NO DECEPTION OF THE PUBLIC AS TO THE SEPARATE  
8 IDENTITIES OF THE BROKER BUSINESS FIRMS RESULTS.

9 (b) THIS SUBSECTION (3) SHALL NOT REQUIRE A REAL ESTATE  
10 BROKER OR SALESPERSON LICENSED UNDER PART 1 OF THIS ARTICLE WHO  
11 ALSO ACTS AS A MORTGAGE BROKER TO MAINTAIN A PHYSICAL  
12 SEPARATION WITHIN THE OFFICE FACILITY FOR THE CONDUCT OF ITS REAL  
13 ESTATE AND MORTGAGE BROKER ACTIVITIES IF THE DIRECTOR DETERMINES  
14 THAT MAINTAINING SUCH PHYSICAL SEPARATION WOULD CONSTITUTE AN  
15 UNDUE FINANCIAL HARDSHIP UPON THE MORTGAGE BROKER AND IS  
16 UNNECESSARY FOR THE PROTECTION OF THE PUBLIC.

17 **12-61-913. Written contract required - effect.** (1) EVERY  
18 CONTRACT BETWEEN A MORTGAGE BROKER AND A BORROWER SHALL BE  
19 IN WRITING AND SHALL CONTAIN THE ENTIRE AGREEMENT OF THE PARTIES.

20 (2) A MORTGAGE BROKER SHALL HAVE A WRITTEN  
21 CORRESPONDENT OR LOAN BROKER AGREEMENT WITH A LENDER BEFORE  
22 ANY SOLICITATION OF, OR CONTRACTING WITH, ANY MEMBER OF THE  
23 PUBLIC.

24 **12-61-914. Written disclosure of fees and costs - contents -**  
25 **limits on fees - lock-in agreement terms - rules.** (1) WITHIN THREE  
26 BUSINESS DAYS AFTER RECEIPT OF A LOAN APPLICATION OR ANY MONEYS  
27 FROM A BORROWER, A MORTGAGE BROKER SHALL PROVIDE TO EACH

1 BORROWER A FULL WRITTEN DISCLOSURE CONTAINING AN ITEMIZATION  
2 AND EXPLANATION OF ALL FEES AND COSTS THAT THE BORROWER IS  
3 REQUIRED TO PAY IN CONNECTION WITH OBTAINING A RESIDENTIAL  
4 MORTGAGE LOAN, AND SPECIFYING THE FEE OR FEES THAT INURE TO THE  
5 BENEFIT OF THE MORTGAGE BROKER. A GOOD-FAITH ESTIMATE OF A FEE  
6 OR COST SHALL BE PROVIDED IF THE EXACT AMOUNT OF THE FEE OR COST  
7 IS NOT DETERMINABLE. THIS SECTION SHALL NOT BE CONSTRUED TO  
8 REQUIRE DISCLOSURE OF THE DISTRIBUTION OR BREAKDOWN OF LOAN  
9 FEES, DISCOUNTS, OR POINTS BETWEEN THE MORTGAGE BROKER AND ANY  
10 LENDER OR INVESTOR.

11 (2) THE WRITTEN DISCLOSURE SHALL CONTAIN THE FOLLOWING  
12 INFORMATION:

13 (a) THE ANNUAL PERCENTAGE RATE, FINANCE CHARGE, AMOUNT  
14 FINANCED, TOTAL AMOUNT OF ALL PAYMENTS, NUMBER OF PAYMENTS,  
15 AMOUNT OF EACH PAYMENT, AMOUNT OF POINTS OR PREPAID INTEREST,  
16 AND THE CONDITIONS AND TERMS UNDER WHICH ANY LOAN TERMS MAY  
17 CHANGE BETWEEN THE TIME OF DISCLOSURE AND CLOSING OF THE LOAN.  
18 IF THE INTEREST RATE IS VARIABLE, THE WRITTEN DISCLOSURE SHALL  
19 CLEARLY DESCRIBE THE CIRCUMSTANCES UNDER WHICH THE RATE MAY  
20 INCREASE, ANY LIMITATION ON THE INCREASE, THE EFFECT OF AN  
21 INCREASE, AND AN EXAMPLE OF THE PAYMENT TERMS RESULTING FROM AN  
22 INCREASE. DISCLOSURE IN COMPLIANCE WITH THE REQUIREMENTS OF THE  
23 FEDERAL "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1601 AND  
24 REGULATION Z, 12 CFR 226, AS AMENDED, SHALL BE DEEMED TO COMPLY  
25 WITH THE DISCLOSURE REQUIREMENTS OF THIS PARAGRAPH (a).

26 (b) THE ITEMIZED COSTS OF ANY CREDIT REPORT, APPRAISAL, TITLE  
27 REPORT, TITLE INSURANCE POLICY, MORTGAGE INSURANCE, ESCROW FEE,

1 PROPERTY TAX, INSURANCE, STRUCTURAL OR PEST INSPECTION, AND ANY  
2 OTHER THIRD-PARTY PROVIDER'S COSTS ASSOCIATED WITH THE  
3 RESIDENTIAL MORTGAGE LOAN. DISCLOSURE THROUGH GOOD-FAITH  
4 ESTIMATES OF SETTLEMENT SERVICES AND SPECIAL INFORMATION  
5 BOOKLETS IN COMPLIANCE WITH THE REQUIREMENTS OF THE FEDERAL  
6 "REAL ESTATE SETTLEMENT PROCEDURES ACT", 12 U.S.C. SEC. 2601,  
7 AND REGULATION X, 24 CFR 3500, AS AMENDED, SHALL BE DEEMED TO  
8 COMPLY WITH THE DISCLOSURE REQUIREMENTS OF THIS PARAGRAPH (b).

9 (c) IF APPLICABLE, THE COST, TERMS, DURATION, AND CONDITIONS  
10 OF A LOCK-IN AGREEMENT AND WHETHER A LOCK-IN AGREEMENT HAS  
11 BEEN ENTERED, WHETHER THE LOCK-IN AGREEMENT IS GUARANTEED BY  
12 THE MORTGAGE BROKER OR LENDER, AND, IF A LOCK-IN AGREEMENT HAS  
13 NOT BEEN ENTERED, DISCLOSURE IN A FORM ACCEPTABLE TO THE  
14 DIRECTOR THAT THE DISCLOSED INTEREST RATE AND TERMS ARE SUBJECT  
15 TO CHANGE;

16 (d) A STATEMENT THAT IF THE BORROWER IS UNABLE TO OBTAIN  
17 A LOAN FOR ANY REASON, THE MORTGAGE BROKER MUST, WITHIN FIVE  
18 DAYS AFTER A WRITTEN REQUEST BY THE BORROWER, GIVE COPIES OF  
19 EACH APPRAISAL, TITLE REPORT, AND CREDIT REPORT PAID FOR BY THE  
20 BORROWER TO THE BORROWER, AND TRANSMIT THE APPRAISAL, TITLE  
21 REPORT, OR CREDIT REPORT TO ANY OTHER MORTGAGE BROKER OR  
22 LENDER TO WHOM THE BORROWER DIRECTS THE DOCUMENTS TO BE SENT;

23 (e) WHETHER AND UNDER WHAT CONDITIONS ANY LOCK-IN FEES  
24 ARE REFUNDABLE TO THE BORROWER; AND

25 (f) A STATEMENT PROVIDING THAT MONEYS PAID BY THE  
26 BORROWER TO THE MORTGAGE BROKER FOR THIRD-PARTY PROVIDER  
27 SERVICES ARE HELD IN A TRUST ACCOUNT AND ANY MONEYS REMAINING

1 AFTER PAYMENT TO THIRD-PARTY PROVIDERS WILL BE REFUNDED.

2 (3) IF, AFTER THE WRITTEN DISCLOSURE IS PROVIDED UNDER THIS  
3 SECTION, A MORTGAGE BROKER ENTERS INTO A LOCK-IN AGREEMENT WITH  
4 A BORROWER OR REPRESENTS TO THE BORROWER THAT THE BORROWER  
5 HAS ENTERED INTO A LOCK-IN AGREEMENT, THEN NO LESS THAN THREE  
6 BUSINESS DAYS THEREAFTER, INCLUDING SATURDAYS, THE MORTGAGE  
7 BROKER SHALL DELIVER OR SEND BY FIRST-CLASS MAIL TO THE BORROWER  
8 A WRITTEN CONFIRMATION OF THE TERMS OF THE LOCK-IN AGREEMENT,  
9 WHICH SHALL INCLUDE A COPY OF THE DISCLOSURE MADE UNDER  
10 PARAGRAPH (c) OF SUBSECTION (2) OF THIS SECTION.

11 (4) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF  
12 THIS SUBSECTION (4), A MORTGAGE BROKER SHALL NOT CHARGE ANY FEE  
13 THAT INURES TO THE BENEFIT OF THE MORTGAGE BROKER AND THAT  
14 EXCEEDS THE FEE DISCLOSED ON THE WRITTEN DISCLOSURE PURSUANT TO  
15 THIS SECTION UNLESS:

16 (I) THE NEED TO CHARGE THE FEE WAS NOT REASONABLY  
17 FORESEEABLE AT THE TIME THE WRITTEN DISCLOSURE WAS PROVIDED; AND

18 (II) THE MORTGAGE BROKER HAS PROVIDED TO THE BORROWER,  
19 NO LESS THAN THREE BUSINESS DAYS PRIOR TO THE SIGNING OF THE LOAN  
20 CLOSING DOCUMENTS, A CLEAR WRITTEN EXPLANATION OF THE FEE AND  
21 THE REASON FOR CHARGING A FEE EXCEEDING THAT WHICH WAS  
22 PREVIOUSLY DISCLOSED.

23 (b) IF THE BORROWER'S CLOSING COSTS ON THE FINAL SETTLEMENT  
24 STATEMENT, EXCLUDING PREPAID ESCROWED COSTS OF OWNERSHIP AS  
25 DEFINED BY THE DIRECTOR BY RULE, DO NOT EXCEED THE TOTAL CLOSING  
26 COSTS IN THE MOST RECENT GOOD-FAITH ESTIMATE, EXCLUDING PREPAID  
27 ESCROWED COSTS OF OWNERSHIP, NO OTHER DISCLOSURES SHALL BE

1       REQUIRED BY THIS SUBSECTION (4).

2               **12-61-915. Fee, commission, or compensation - when**  
3 **permitted - amount.** (1) EXCEPT AS OTHERWISE PERMITTED BY  
4 SUBSECTION (2) OR (3) OF THIS SECTION, A MORTGAGE BROKER SHALL NOT  
5 RECEIVE A FEE, COMMISSION, OR COMPENSATION OF ANY KIND IN  
6 CONNECTION WITH THE PREPARATION, NEGOTIATION, OR BROKERING OF A  
7 RESIDENTIAL MORTGAGE LOAN UNLESS A BORROWER ACTUALLY OBTAINS  
8 A LOAN FROM A LENDER ON THE TERMS AND CONDITIONS AGREED TO BY  
9 THE BORROWER AND MORTGAGE BROKER.

10               (2) IF THE MORTGAGE BROKER HAS OBTAINED FOR THE BORROWER  
11 A WRITTEN COMMITMENT FROM A LENDER FOR A LOAN ON THE TERMS AND  
12 CONDITIONS AGREED TO BY THE BORROWER AND THE MORTGAGE BROKER,  
13 AND THE BORROWER FAILS TO CLOSE ON THE LOAN THROUGH NO FAULT OF  
14 THE MORTGAGE BROKER, THE MORTGAGE BROKER MAY CHARGE A FEE,  
15 NOT TO EXCEED THREE HUNDRED DOLLARS, FOR SERVICES RENDERED,  
16 PREPARATION OF DOCUMENTS, OR TRANSFER OF DOCUMENTS IN THE  
17 BORROWER'S FILE THAT WERE PREPARED OR PAID FOR BY THE BORROWER  
18 IF THE FEE IS NOT OTHERWISE PROHIBITED BY THE FEDERAL "TRUTH IN  
19 LENDING ACT", 15 U.S.C. SEC. 1601, AND REGULATION Z, 12 CFR 226,  
20 AS AMENDED.

21               (3) A MORTGAGE BROKER MAY SOLICIT OR RECEIVE FEES FOR  
22 THIRD-PARTY PROVIDER GOODS OR SERVICES IN ADVANCE. FEES FOR ANY  
23 GOODS OR SERVICES NOT PROVIDED SHALL BE REFUNDED TO THE  
24 BORROWER, AND THE MORTGAGE BROKER MAY NOT CHARGE MORE FOR  
25 THE GOODS AND SERVICES THAN THE ACTUAL COSTS OF THE GOODS OR  
26 SERVICES CHARGED BY THE THIRD-PARTY PROVIDER.

27               **SECTION 8.** The introductory portion to 38-40-105 (1) and

1 38-40-105 (1) (b) and (1) (d), Colorado Revised Statutes, are amended,  
2 and the said 38-40-105 (1) is further amended BY THE ADDITION OF  
3 A NEW PARAGRAPH, to read:

4 **38-40-105. Prohibited acts by participants in certain mortgage**  
5 **loan transactions.** (1) The following acts by any mortgage broker, ~~or~~  
6 mortgage originator, MORTGAGE LENDER, MORTGAGE LOAN APPLICANT,  
7 REAL ESTATE BROKER, REAL ESTATE AGENT, REAL ESTATE APPRAISER, OR  
8 CLOSING AGENT with respect to any loan that is secured by a first or  
9 subordinate mortgage or deed or trust lien against a dwelling are  
10 prohibited:

11 (b) To ~~knowingly~~ make a false promise or misrepresentation or  
12 conceal an essential or material fact to entice either a borrower or a  
13 creditor to enter into a mortgage agreement WHEN, UNDER THE TERMS AND  
14 CIRCUMSTANCES OF THE TRANSACTION, HE OR SHE KNEW OR REASONABLY  
15 SHOULD HAVE KNOWN OF SUCH FALSITY, MISREPRESENTATION, OR  
16 CONCEALMENT;

17 (d) To KNOWINGLY facilitate the consummation of a mortgage  
18 loan agreement that is unconscionable given the terms and circumstances  
19 of the transaction;

20 (e) TO KNOWINGLY FACILITATE THE CONSUMMATION OF A  
21 MORTGAGE LOAN AGREEMENT THAT VIOLATES, OR THAT IS CONNECTED  
22 WITH A VIOLATION OF, SECTION 12-61-911, C.R.S.

23 **SECTION 9.** 6-1-105 (1), Colorado Revised Statutes, is amended  
24 BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to  
25 read:

26 **6-1-105. Deceptive trade practices.** (1) A person engages in a  
27 deceptive trade practice when, in the course of such person's business,

1 vocation, or occupation, such person:

2 (yy) VIOLATES ANY PROVISION OF SECTION 12-61-904.5, C.R.S.;

3 (zz) VIOLATES ANY PROVISION OF SECTION 12-61-911, C.R.S.

4 **SECTION 10.** 6-1-110 (3), Colorado Revised Statutes, is  
5 amended to read:

6 **6-1-110. Restraining orders - injunctions - assurances of**  
7 **discontinuance.** (3) When the attorney general or a district attorney  
8 shows by a preponderance of evidence that a mortgage broker, ~~or~~  
9 mortgage originator, MORTGAGE LENDER, MORTGAGE LOAN APPLICANT,  
10 REAL ESTATE BROKER, REAL ESTATE AGENT, REAL ESTATE APPRAISER, OR  
11 CLOSING AGENT has continued to ~~conduct the business of originating~~  
12 PARTICIPATE IN THE ORIGINATION OF mortgage loans in violation of  
13 section 38-40-105, C.R.S., after having been previously enjoined from  
14 practices in violation of such section, the attorney general or district  
15 attorney may, in addition to any other remedies, apply for and obtain, in  
16 the court that has previously issued an injunction, a further injunction  
17 against continuing to participate in the business of originating mortgage  
18 loans for up to ~~two~~ FIVE years.

19 **SECTION 11. Applicability.** This act shall apply to acts or  
20 omissions committed on or after the effective date of this act.

21 **SECTION 12. Safety clause.** The general assembly hereby finds,  
22 determines, and declares that this act is necessary for the immediate  
23 preservation of the public peace, health, and safety.