

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 07-0288.01 Duane Gall

HOUSE BILL 07-1322

HOUSE SPONSORSHIP

Marshall, Massey, and Garcia

SENATE SPONSORSHIP

Groff,

House Committees

Business Affairs and Labor
Appropriations

Senate Committees

Business, Labor and Technology
Appropriations

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; CHANGING THE**
107 **MENTAL STATE REQUIRED TO BE PROVEN AS AN ELEMENT OF A**
108 **VIOLATION; AND MAKING AN APPROPRIATION.**

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.*

HOUSE
3rd Reading Unamended
March 29, 2007

HOUSE
Amended 2nd Reading
March 28, 2007

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.

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

2 **SECTION 1.** 12-61-902 (5), the introductory portion to
3 12-61-902 (6), and 12-61-902 (7), Colorado Revised Statutes, are
4 amended, and the said 12-61-902 is further amended BY THE
5 ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

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

1 (1.5) "BORROWER" MEANS ANY PERSON WHO CONSULTS WITH OR
2 RETAINS A MORTGAGE BROKER IN AN EFFORT TO OBTAIN OR SEEK ADVICE
3 OR INFORMATION ON OBTAINING OR APPLYING TO OBTAIN A RESIDENTIAL
4 MORTGAGE LOAN FOR HIMSELF, HERSELF, OR PERSONS INCLUDING HIMSELF
5 OR HERSELF, REGARDLESS OF WHETHER THE PERSON ACTUALLY OBTAINS
6 SUCH A LOAN.

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

11 (6) "Mortgage lender" means a lender who is in the business of
12 making RESIDENTIAL mortgage loans if:

13 (7) "Originate" means to submit an application or documentation
14 to a MORTGAGE lender or underwriter in an attempt to obtain a
15 RESIDENTIAL MORTGAGE loan.

16 (8) "RESIDENTIAL MORTGAGE LOAN" MEANS A [REDACTED] LOAN THAT IS
17 PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD USE AND THAT IS
18 SECURED BY A MORTGAGE OR DEED OF TRUST ON RESIDENTIAL REAL
19 ESTATE UPON WHICH IS CONSTRUCTED OR INTENDED TO BE CONSTRUCTED
20 A SINGLE-FAMILY DWELLING OR MULTIPLE-FAMILY DWELLING OF FOUR OR
21 FEWER UNITS.

22 [REDACTED]
23 **SECTION 2.** The introductory portion to 12-61-904 (1) and
24 12-61-904 (1) (e), Colorado Revised Statutes, are amended to read:

25 **12-61-904. Exemptions.** (1) EXCEPT AS OTHERWISE PROVIDED
26 IN SECTION 12-61-911, this part 9 shall not apply to the following:

27 (e) ~~A federal housing administration approved mortgagee or an~~

1 ~~appointed federal housing administration correspondent, acting through~~
2 ~~officers, partners, members, exclusive agents, contractors, or employees~~
3 ~~of such entities when making or brokering any mortgage loan; or~~

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

7 **12-61-904.5. Broker's relationship to borrower.** (1) A
8 MORTGAGE BROKER SHALL:

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

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

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

20 **SECTION 4.** The introductory portion to 12-61-905 (1) (c) and
21 12-61-905 (7), Colorado Revised Statutes, are amended, and the said
22 12-61-905 (1) is further amended BY THE ADDITION OF THE
23 FOLLOWING NEW PARAGRAPHS, to read:

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

27 (c) WITHIN THE LAST FIVE YEARS, had a license, registration, or

1 certification issued by Colorado or another state revoked or suspended for
2 fraud, deceit, material misrepresentation, theft, or the breach of a
3 fiduciary duty, and such discipline denied the person authorization to
4 practice as:

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

9 (e) BEEN FOUND TO HAVE VIOLATED THE PROVISIONS OF SECTION
10 12-61-911.

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

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

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

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

1 (c) ALL FINES COLLECTED PURSUANT TO THIS SUBSECTION (7)
2 SHALL BE TRANSFERRED TO THE STATE TREASURER, WHO SHALL CREDIT
3 SUCH MONEYS TO THE GENERAL FUND.

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

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

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

12 **12-61-911. Prohibited conduct - fraud - misrepresentation -**
13 **conflict of interest - rules.** (1) A MORTGAGE BROKER, INCLUDING A
14 MORTGAGE BROKER OTHERWISE EXEMPTED FROM THIS PART 9 BY SECTION
15 12-61-904 (1) (b) OR (1) (c), SHALL NOT:

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

19 (b) ENGAGE IN ANY UNFAIR OR DECEPTIVE PRACTICE TOWARD ANY
20 PERSON;

21 (c) OBTAIN PROPERTY BY FRAUD OR MISREPRESENTATION;

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

27 (e) SOLICIT, ADVERTISE, OR ENTER INTO A CONTRACT FOR SPECIFIC

1 INTEREST RATES, POINTS, OR OTHER FINANCING TERMS UNLESS THE TERMS
2 ARE ACTUALLY AVAILABLE AT THE TIME OF SOLICITING, ADVERTISING, OR
3 CONTRACTING FROM A LENDER WITH WHOM THE MORTGAGE BROKER
4 MAINTAINS A WRITTEN CORRESPONDENT OR LOAN BROKER AGREEMENT
5 UNDER SECTION 12-61-913;

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

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

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

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

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

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

1 CREDIT OPPORTUNITY ACT", 15 U.S.C. SEC. 1691 AND REGULATION B,
2 CFR 202.9, 202.11, AND 202.12; TITLE V, SUBTITLE A OF THE FINANCIAL
3 MODERNIZATION ACT OF 1999 (KNOWN AS THE "GRAMM-LEACH-BLILEY
4 ACT"), 12 U.S.C. SECS. 6801-6809; THE FEDERAL TRADE COMMISSION'S
5 PRIVACY RULES, 16 CFR 313-314, MANDATED BY THE
6 "GRAMM-LEACH-BLILEY ACT"; THE "HOME MORTGAGE DISCLOSURE ACT
7 OF 1975", 12 U.S.C. SEC. 2801 ET SEQ. AND REGULATION C, HOME
8 MORTGAGE DISCLOSURE; THE "FEDERAL TRADE COMMISSION ACT", 12
9 CFR 203, 15 U.S.C. SEC. 45(a); THE "TELEMARKETING AND CONSUMER
10 FRAUD AND ABUSE PREVENTION ACT", 15 U.S.C. SECS. 6101 TO 6108;
11 AND THE FEDERAL TRADE COMMISSION TELEPHONE SALES RULE, 16 CFR
12 310, AS AMENDED, IN ANY ADVERTISING OF RESIDENTIAL MORTGAGE
13 LOANS OR ANY OTHER APPLICABLE MORTGAGE BROKER ACTIVITIES
14 COVERED BY THE ACTS. THE DIRECTOR MAY ADOPT RULES REQUIRING
15 MORTGAGE BROKERS TO COMPLY WITH OTHER APPLICABLE FEDERAL
16 STATUTES AND REGULATIONS IN ANY ADVERTISING OF RESIDENTIAL
17 MORTGAGE LOANS, OR ANY OTHER MORTGAGE BROKER ACTIVITY.

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

25 (m) COLLECT, CHARGE, ATTEMPT TO COLLECT OR CHARGE, OR USE
26 OR PROPOSE ANY AGREEMENT PURPORTING TO COLLECT OR CHARGE ANY
27 FEE PROHIBITED BY SECTION 12-61-914 OR 12-61-915; OR

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

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

6 **12-61-912. Dual status as real estate broker or salesperson -**
7 **requirements.** (1) UNLESS A MORTGAGE BROKER COMPLIES WITH BOTH
8 SUBSECTIONS (2) AND (3) OF THIS SECTION, HE OR SHE SHALL NOT ACT AS
9 A LOAN ORIGINATOR IN ANY TRANSACTION IN WHICH:

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

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

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

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

1 ADDRESS IF:

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

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

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

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

16 **12-61-913. Written contract required - effect.** (1) EVERY
17 CONTRACT BETWEEN A MORTGAGE BROKER AND A BORROWER SHALL BE
18 IN WRITING AND SHALL CONTAIN THE ENTIRE AGREEMENT OF THE PARTIES.

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

23 **12-61-914. Written disclosure of fees and costs - contents -**
24 **limits on fees - lock-in agreement terms - rules.** (1) WITHIN THREE
25 BUSINESS DAYS AFTER RECEIPT OF A LOAN APPLICATION OR ANY MONEYS
26 FROM A BORROWER, A MORTGAGE BROKER SHALL PROVIDE TO EACH
27 BORROWER A FULL WRITTEN DISCLOSURE CONTAINING AN ITEMIZATION

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

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

12 (a) THE ANNUAL PERCENTAGE RATE, FINANCE CHARGE, AMOUNT
13 FINANCED, TOTAL AMOUNT OF ALL PAYMENTS, NUMBER OF PAYMENTS,
14 AMOUNT OF EACH PAYMENT, AMOUNT OF POINTS OR PREPAID INTEREST,
15 AND THE CONDITIONS AND TERMS UNDER WHICH ANY LOAN TERMS MAY
16 CHANGE BETWEEN THE TIME OF DISCLOSURE AND CLOSING OF THE LOAN.
17 IF THE INTEREST RATE IS VARIABLE, THE WRITTEN DISCLOSURE SHALL
18 CLEARLY DESCRIBE THE CIRCUMSTANCES UNDER WHICH THE RATE MAY
19 INCREASE, ANY LIMITATION ON THE INCREASE, THE EFFECT OF AN
20 INCREASE, AND AN EXAMPLE OF THE PAYMENT TERMS RESULTING FROM AN
21 INCREASE.

22 (b) THE ITEMIZED COSTS OF ANY CREDIT REPORT, APPRAISAL, TITLE
23 REPORT, TITLE INSURANCE POLICY, MORTGAGE INSURANCE, ESCROW FEE,
24 PROPERTY TAX, INSURANCE, STRUCTURAL OR PEST INSPECTION, AND ANY
25 OTHER THIRD-PARTY PROVIDER'S COSTS ASSOCIATED WITH THE
26 RESIDENTIAL MORTGAGE LOAN;

27 (c) IF APPLICABLE, THE AMOUNT OF ANY COMMISSION OR OTHER

1 COMPENSATION TO BE PAID TO THE MORTGAGE BROKER, INCLUDING THE
2 MANNER IN WHICH SUCH COMMISSION OR OTHER COMPENSATION IS
3 CALCULATED AND THE RELATIONSHIP OF SUCH COMMISSION OR OTHER
4 COMPENSATION TO THE COST OF THE LOAN RECEIVED BY THE BORROWER;

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

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

19 (f) WHETHER AND UNDER WHAT CONDITIONS ANY LOCK-IN FEES
20 ARE REFUNDABLE TO THE BORROWER; AND

21 (g) A STATEMENT PROVIDING THAT MONEYS PAID BY THE
22 BORROWER TO THE MORTGAGE BROKER FOR THIRD-PARTY PROVIDER
23 SERVICES ARE HELD IN A TRUST ACCOUNT AND ANY MONEYS REMAINING
24 AFTER PAYMENT TO THIRD-PARTY PROVIDERS WILL BE REFUNDED.

25 (3) IF, AFTER THE WRITTEN DISCLOSURE IS PROVIDED UNDER THIS
26 SECTION, A MORTGAGE BROKER ENTERS INTO A LOCK-IN AGREEMENT WITH
27 A BORROWER OR REPRESENTS TO THE BORROWER THAT THE BORROWER

1 HAS ENTERED INTO A LOCK-IN AGREEMENT, THEN NO LESS THAN THREE
2 BUSINESS DAYS THEREAFTER, INCLUDING SATURDAYS, THE MORTGAGE
3 BROKER SHALL DELIVER OR SEND BY FIRST-CLASS MAIL TO THE BORROWER
4 A WRITTEN CONFIRMATION OF THE TERMS OF THE LOCK-IN AGREEMENT,
5 WHICH SHALL INCLUDE A COPY OF THE DISCLOSURE MADE UNDER
6 PARAGRAPH (d) OF SUBSECTION (2) OF THIS SECTION.

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

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

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

19 (b) IF THE BORROWER'S CLOSING COSTS ON THE FINAL SETTLEMENT
20 STATEMENT, EXCLUDING PREPAID ESCROWED COSTS OF OWNERSHIP AS
21 DEFINED BY THE DIRECTOR BY RULE, DO NOT EXCEED THE TOTAL CLOSING
22 COSTS IN THE MOST RECENT GOOD-FAITH ESTIMATE, EXCLUDING PREPAID
23 ESCROWED COSTS OF OWNERSHIP, NO OTHER DISCLOSURES SHALL BE
24 REQUIRED BY THIS SUBSECTION (4).

25 **12-61-915. Fee, commission, or compensation - when**
26 **permitted - amount.** (1) EXCEPT AS OTHERWISE PERMITTED BY
27 SUBSECTION (2) OR (3) OF THIS SECTION, A MORTGAGE BROKER SHALL NOT

1 RECEIVE A FEE, COMMISSION, OR COMPENSATION OF ANY KIND IN
2 CONNECTION WITH THE PREPARATION, NEGOTIATION, OR BROKERING OF A
3 RESIDENTIAL MORTGAGE LOAN UNLESS A BORROWER ACTUALLY OBTAINS
4 A LOAN FROM A LENDER ON THE TERMS AND CONDITIONS AGREED TO BY
5 THE BORROWER AND MORTGAGE BROKER.

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


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

23 **SECTION 8.** The introductory portion to 38-40-105 (1) and
24 38-40-105 (1) (b), Colorado Revised Statutes, are amended, and the said
25 38-40-105 (1) is further amended BY THE ADDITION OF A NEW
26 PARAGRAPH, to read:

27 **38-40-105. Prohibited acts by participants in certain mortgage**

1 **loan transactions.** (1) The following acts by any mortgage broker, or
2 mortgage originator, MORTGAGE LENDER, MORTGAGE LOAN APPLICANT,
3 REAL ESTATE BROKER, REAL ESTATE AGENT, REAL ESTATE APPRAISER, OR
4 CLOSING AGENT, OTHER THAN A PERSON WHO PROVIDES CLOSING OR
5 SETTLEMENT SERVICES SUBJECT TO REGULATION BY THE DIVISION OF
6 INSURANCE, with respect to any loan that is secured by a first or
7 subordinate mortgage or deed or trust lien against a dwelling are
8 prohibited:

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

15 
16 (e) TO KNOWINGLY FACILITATE THE CONSUMMATION OF A
17 MORTGAGE LOAN AGREEMENT THAT VIOLATES, OR THAT IS CONNECTED
18 WITH A VIOLATION OF, SECTION 12-61-911, C.R.S.

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

22 **6-1-105. Deceptive trade practices.** (1) A person engages in a
23 deceptive trade practice when, in the course of such person's business,
24 vocation, or occupation, such person:

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

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

27 **SECTION 10.** 6-1-110 (3), Colorado Revised Statutes, is

1 amended to read:

2 **6-1-110. Restraining orders - injunctions - assurances of**
3 **discontinuance.** (3) When the attorney general or a district attorney
4 shows by a preponderance of evidence that a mortgage broker, ~~or~~
5 mortgage originator, MORTGAGE LENDER, MORTGAGE LOAN APPLICANT,
6 REAL ESTATE BROKER, REAL ESTATE AGENT, REAL ESTATE APPRAISER, OR
7 CLOSING AGENT, OTHER THAN A PERSON WHO PROVIDES CLOSING OR
8 SETTLEMENT SERVICES SUBJECT TO REGULATION BY THE DIVISION OF
9 INSURANCE, has continued to ~~conduct the business of originating~~
10 PARTICIPATE IN THE ORIGINATION OF mortgage loans in violation of
11 section 38-40-105, C.R.S., after having been previously enjoined from
12 practices in violation of such section, the attorney general or district
13 attorney may, in addition to any other remedies, apply for and obtain, in
14 the court that has previously issued an injunction, a further injunction
15 against continuing to participate in the business of originating mortgage
16 loans for up to ~~two~~ FIVE years.

17 **SECTION 11. Appropriation.** (1) In addition to any other
18 appropriation, there is hereby appropriated, out of any moneys in the
19 mortgage broker registration cash fund created in Section 12-61-908 (2),
20 Colorado Revised Statutes, not otherwise appropriated, to the department
21 of regulatory agencies, for the fiscal year beginning July 1, 2007, the sum
22 of four hundred ninety-five thousand eighty-four dollars (\$495,084), cash
23 funds, and 2.5 FTE, or so much thereof as may be necessary. Of said sum,
24 one hundred eighteen thousand five hundred ninety-eight dollars
25 (\$118,598) shall be allocated to the executive director's office for the
26 purchase of legal services from the department of law and three hundred
27 seventy-six thousand four hundred eighty-six dollars (\$376,486) and 2.5

1 FTE shall be allocated to the division of real estate for the implementation
2 of this act.

3 (2) (a) In addition to any other appropriation, there is hereby
4 appropriated, to the department of law, for the fiscal year beginning July
5 1, 2007, the sum of one hundred eighteen thousand five hundred
6 ninety-eight dollars (\$118,598) and 1.0 FTE, or so much thereof as may
7 be necessary, for the provision of legal services to the department of
8 regulatory agencies related to the implementation of this act. Said sum
9 shall be from cash funds exempt received from the department of
10 regulatory agencies, executive director's office out of the appropriation
11 for legal services in subsection (1) of this section.

12 (b) In addition to any other appropriation, there is hereby
13 appropriated, to the department of law, for consumer protection, for the
14 fiscal year beginning July 1, 2007, the sum of two hundred sixty-four
15 thousand six hundred eight dollars (\$264,608), cash funds exempt, and
16 3.0 FTE, or so much thereof as may be necessary, for the implementation
17 of this act. Said sum shall be from cash funds exempt received from the
18 department of regulatory agencies out of the appropriation to the division
19 of real estate in subsection (1) of this section.

20 (3) (a) In addition to any other appropriation, there is hereby
21 appropriated, to the department of public safety, for allocation to the
22 Colorado bureau of investigation, for the processing of fingerprint-based
23 criminal history checks for mortgage brokers, for the fiscal year
24 beginning July 1, 2007, the sum of eighty-six thousand eighty-eight
25 dollars (\$86,088), cash funds, and 1.7 FTE, or so much thereof as may be
26 necessary, for the implementation of this act. Said sum shall be from
27 fingerprint processing fees collected by the Colorado bureau of

1 investigation.

2 (b) In addition to any other appropriation, there is hereby
3 appropriated to the department of public safety, for the fiscal year
4 beginning July 1, 2007, the sum of two hundred eleven thousand two
5 hundred dollars (\$211,200), cash funds exempt, or so much thereof as
6 may be necessary, for pass through to the federal bureau of investigation
7 for fingerprint-based national criminal history checks for mortgage
8 brokers related to the implementation of this act. Said sum shall be from
9 fingerprint processing fees collected by the Colorado bureau of
10 investigation.

11 **SECTION 12. Applicability.** This act shall apply to acts or
12 omissions committed on or after the effective date of this act.

13 **SECTION 13. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.