

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

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 07-0518.01 Thomas Morris

SENATE BILL 07-085

SENATE SPONSORSHIP

Veiga,

HOUSE SPONSORSHIP

Massey,

Senate Committees

Business, Labor and Technology
Appropriations

House Committees

Business Affairs and Labor
Appropriations

A BILL FOR AN ACT

101 **CONCERNING ADDITIONAL CONSUMER PROTECTIONS RELATING TO**
102 **REAL ESTATE TRANSACTIONS, AND MAKING AN APPROPRIATION**
103 **IN CONNECTION THEREWITH.**

Bill Summary

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

Prohibits a mortgage broker from improperly influencing a real estate appraisal and makes such improper influencing a deceptive trade practice. Specifies criminal penalties for such misconduct. Authorizes the director of the division of registrations in the department of regulatory agencies to revoke a mortgage broker's registration when the broker has improperly influenced a real estate appraisal or has, in the previous 5

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
Amended 2nd Reading
May 2, 2007

SENATE
3rd Reading Unamended
April 23, 2007

SENATE
Amended 2nd Reading
April 20, 2007

years, been enjoined by a court in any state from brokering a mortgage.

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

2 **SECTION 1.** The introductory portion to 12-61-905 (1) (c) and
3 12-61-905 (7), Colorado Revised Statutes, are amended, and the said
4 12-61-905 (1) is further amended BY THE ADDITION OF THE
5 FOLLOWING NEW PARAGRAPHS, to read:

6 **12-61-905. Powers and duties of the director.** (1) The director
7 shall deny, refuse to renew, or revoke the registration of an applicant who
8 has:

9 (c) WITHIN THE LAST FIVE YEARS, had a license, registration, or
10 certification issued by Colorado or another state revoked or suspended for
11 fraud, deceit, material misrepresentation, theft, or the breach of a
12 fiduciary duty, and such discipline denied the person authorization to
13 practice as:

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

18 (e) BEEN FOUND TO HAVE VIOLATED THE PROVISIONS OF SECTION
19 12-61-910.2.

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

24 (b) THE DIRECTOR, UPON HIS OR HER OWN MOTION MAY, AND,
25 UPON THE COMPLAINT IN WRITING OF ANY PERSON, SHALL, INVESTIGATE

1 THE ACTIVITIES OF ANY REGISTRANT OR ANY PERSON WHO ASSUMES TO
2 ACT IN SUCH CAPACITY WITHIN THE STATE. IN ADDITION TO ANY OTHER
3 PENALTY WHICH MAY BE IMPOSED PURSUANT TO THIS PART 9, ANY PERSON
4 VIOLATING ANY PROVISION OF THIS PART 9 OR ANY RULES PROMULGATED
5 PURSUANT TO THIS ARTICLE MAY BE FINED UPON A FINDING OF
6 MISCONDUCT BY THE DIRECTOR AS FOLLOWS:

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

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

12 (c) ALL FINES COLLECTED PURSUANT TO THIS SUBSECTION (7)
13 SHALL BE TRANSFERRED TO THE STATE TREASURER, WHO SHALL CREDIT
14 SUCH MONEYS TO THE CASH FUND CREATED IN SECTION 12-61-908.

15 **SECTION 2.** 12-61-908 (1), Colorado Revised Statutes, is
16 amended to read:

17 **12-61-908. Fees.** (1) The director may set the fee for registration
18 under this part 9. The fee shall be set in an amount not to exceed two
19 hundred dollars, that offsets the direct and indirect costs of implementing
20 this part 9. The moneys collected pursuant to this section shall be
21 transferred to the state treasurer, who shall credit them to the mortgage
22 broker registration cash fund.

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

26 **12-61-910.2. Prohibited conduct - influencing a real estate**
27 **appraisal.** (1) A MORTGAGE BROKER SHALL NOT, DIRECTLY OR

1 INDIRECTLY, COMPENSATE, COERCE, OR INTIMIDATE AN APPRAISER, OR
2 ATTEMPT, DIRECTLY OR INDIRECTLY, TO COMPENSATE, COERCE, OR
3 INTIMIDATE AN APPRAISER, FOR THE PURPOSE OF INFLUENCING THE
4 INDEPENDENT JUDGMENT OF THE APPRAISER WITH RESPECT TO THE VALUE
5 OF A DWELLING OFFERED AS SECURITY FOR REPAYMENT OF A MORTGAGE
6 LOAN. THIS PROHIBITION SHALL NOT BE CONSTRUED AS PROHIBITING A
7 MORTGAGE BROKER FROM REQUESTING AN APPRAISER TO:

8 (a) CONSIDER ADDITIONAL, APPROPRIATE PROPERTY
9 INFORMATION;

10 (b) PROVIDE FURTHER DETAIL, SUBSTANTIATION, OR EXPLANATION
11 FOR THE APPRAISER'S VALUE CONCLUSION; OR

12 (c) CORRECT ERRORS IN THE APPRAISAL REPORT.

13 **12-61-910.3. Rule-making authority.** THE DIRECTOR SHALL
14 HAVE THE AUTHORITY TO PROMULGATE RULES AS NECESSARY TO
15 ENABLE THE DIRECTOR TO CARRY OUT THE DIRECTOR'S DUTIES UNDER THIS
16 PART 9.

17 **SECTION 4.** Part 7 of article 1 of title 6, Colorado Revised
18 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
19 read:

20 **6-1-717. Influencing a real estate appraisal.** (1) A PERSON
21 ENGAGES IN A DECEPTIVE TRADE PRACTICE WHEN, IN THE COURSE OF SUCH
22 PERSON'S BUSINESS, VOCATION, OR OCCUPATION, THE PERSON:

23 (a) KNOWINGLY SUBMITS A FALSE OR MISLEADING APPRAISAL IN
24 CONNECTION WITH A DWELLING OFFERED AS SECURITY FOR REPAYMENT
25 OF A MORTGAGE LOAN; OR

26 (b) DIRECTLY OR INDIRECTLY COMPENSATES, COERCES, OR
27 INTIMIDATES AN APPRAISER, OR ATTEMPTS, DIRECTLY OR INDIRECTLY, TO

1 COMPENSATE, COERCE, OR INTIMIDATE AN APPRAISER, FOR THE PURPOSE
2 OF INFLUENCING THE INDEPENDENT JUDGMENT OF THE APPRAISER WITH
3 RESPECT TO THE VALUE OF A DWELLING OFFERED AS SECURITY FOR
4 REPAYMENT OF A MORTGAGE LOAN.

5 (2) THE PROHIBITION REFERRED TO IN SUBSECTION (1) OF THIS
6 SECTION SHALL NOT BE CONSTRUED AS PROHIBITING A PERSON FROM
7 REQUESTING AN APPRAISER TO:

8 (a) CONSIDER ADDITIONAL, APPROPRIATE PROPERTY
9 INFORMATION;

10 (b) PROVIDE FURTHER DETAIL, SUBSTANTIATION, OR EXPLANATION
11 FOR THE APPRAISER'S VALUE CONCLUSION; OR

12 (c) CORRECT ERRORS IN THE APPRAISAL REPORT.

13 **SECTION 5.** 6-1-105 (1), Colorado Revised Statutes, is
14 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

15 **6-1-105. Deceptive trade practices.** (1) A person engages in a
16 deceptive trade practice when, in the course of such person's business,
17 vocation, or occupation, such person:

18 (yy) VIOLATES ANY PROVISION OF SECTION 6-1-717.

19 **SECTION 6.** 6-1-114, Colorado Revised Statutes, is amended to
20 read:

21 **6-1-114. Criminal penalties.** Upon a first conviction any person
22 who promotes a pyramid promotional scheme in this state or who violates
23 any provision of section 6-1-701 ~~is~~ OR 6-1-717 IS guilty of a class 1
24 misdemeanor, as defined in section 18-1.3-501, C.R.S., and upon a
25 second or subsequent conviction OF SECTION 6-1-701 is guilty of a class
26 6 felony, as defined in section 18-1.3-401, C.R.S.

27 **SECTION 7.** Part 7 of article 38 of title 38, Colorado Revised

1 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
2 read:

3 **38-38-705. Curative provisions.** (1) IF THE PUBLIC TRUSTEE
4 FAILS TO COMPLY WITH ANY OF THE NOTICE DEADLINES SET FORTH IN THIS
5 ARTICLE, UNLESS THE FORECLOSURE HAS ALREADY BEEN WITHDRAWN BY
6 THE HOLDER OF THE EVIDENCE OF DEBT OR THE HOLDER'S ATTORNEY,
7 FOLLOWING WRITTEN NOTICE TO THE HOLDER OF THE EVIDENCE OF DEBT
8 OR THE HOLDER'S ATTORNEY, THE PUBLIC TRUSTEE MAY RERECORD THE
9 NOTICE OF ELECTION AND DEMAND, AND THE PUBLIC TRUSTEE SHALL
10 THEREAFTER COMPLY WITH ALL SUCH NOTICE DEADLINES FROM THE LAST
11 RECORDING DATE AS SET FORTH ON THE RERECORDED NOTICE OF ELECTION
12 AND DEMAND AS THOUGH SUCH FORECLOSURE HAD BEEN COMMENCED ON
13 SUCH DATE.

14 (2) IN THE EVENT OF AN ERROR CONTAINED IN ANY CERTIFICATE
15 OF PURCHASE, CERTIFICATE OF REDEMPTION, PUBLIC TRUSTEE'S DEED, OR
16 OTHER RECORDED DOCUMENT PREPARED BY THE OFFICE OF THE PUBLIC
17 TRUSTEE, THE PUBLIC TRUSTEE MAY CORRECT SUCH ERROR BY EXECUTING
18 AND RECORDING A SCRIVENER'S ERROR AFFIDAVIT AS SET FORTH IN
19 SECTION 38-35-109 (5).

20 **SECTION 8. Appropriation.** (1) In addition to any other
21 appropriation, there is hereby appropriated, out of any moneys in the
22 mortgage broker registration cash fund created in section 12-61-908 (2),
23 Colorado Revised Statutes, not otherwise appropriated, to the department
24 of regulatory agencies, for the fiscal year beginning July 1, 2007, the sum
25 of fifty-six thousand six hundred ninety-six dollars (\$56,696), cash funds,
26 and 0.3 FTE, or so much thereof as may be necessary, for the
27 implementation of this act. Of said sum, forty thousand six hundred

1 sixty-two dollars (\$40,662) shall be allocated to the executive director's
2 office for the purchase of legal services from the department of law and
3 sixteen thousand thirty-four dollars (\$16,034) and 0.3 FTE shall be
4 allocated to the division of real estate.

5 (2) In addition to any other appropriation, there is hereby
6 appropriated, to the department of law, for the fiscal year beginning July
7 1, 2007, the sum of forty thousand six hundred sixty-two dollars
8 (\$40,662) and 0.3 FTE, or so much thereof as may be necessary, for the
9 provision of legal services to the department of regulatory agencies
10 related to the implementation of this act. Said sum shall be from cash
11 funds exempt received from the department of regulatory agencies,
12 executive director's office out of the appropriation for legal services in
13 subsection (1) of this section.

14 **SECTION 9. Applicability.** This act shall apply to acts
15 occurring on or after the effective date of this act.

16 **SECTION 10. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety.