


 Colorado Legislative Council Staff Fiscal Note
STATE and LOCAL
FINAL FISCAL IMPACT

Drafting Number: LLS 07-0518
Prime Sponsor(s): Sen. Veiga
 Rep. Massey

Date: June 20, 2007
Bill Status: Signed into Law
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TITLE: CONCERNING ADDITIONAL CONSUMER PROTECTIONS RELATING TO REAL ESTATE TRANSACTIONS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Fiscal Impact Summary	FY 2007-2008	FY 2008-2009
State Revenue		
General Fund	Fines	Fines
Cash Funds		
Mortgage Broker Registration Cash Fund - Fines	< \$ 5,000	< \$ 5,000
Fines Collection Cash Fund	< 5,000	< 5,000
State Expenditures		
Cash Funds		
Mortgage Broker Registration Cash Fund	\$ 56,696	\$ 104,301
FTE Position Change	0.6 FTE	1.2 FTE
Effective Date: Applies to all acts occurring on or after June 1, 2007, the date the Governor signed the bill into law.		
Appropriation Summary for FY 2007-2008: See State Appropriations section.		
Local Government Impact: Potential county jail impact.		

Summary of Legislation

The Division of Real Estate in the Department of Regulatory Agencies is responsible for registering mortgage brokers and licensing real estate appraisers. This bill makes the following changes to the regulation of mortgage brokers and to real estate transactions:

- mortgage broker applicants forbidden from brokering mortgages in any state in the previous five years are not eligible for licensure;
- the director of the Division of Real Estate may now make rules for the Mortgage Broker Registration Act and *must* pursue written complaints;
- influencing a real estate appraiser, as defined by the bill, becomes a deceptive trade practice under the Colorado Consumer Protection Act (CCPA);
- influencing a real estate appraiser is a class 1 misdemeanor;
- violators of the Mortgage Broker Registration Act may be fined;

- if a public trustee fails to comply with foreclosure notice deadlines he or she may rerecord the notice; and
- the \$200 cap on mortgage broker fees is removed.

State Revenue

Fine Revenue. This bill authorizes the director of the Division of Real Estate or an administrative law judge to administer a fine for persons found in violation of the Mortgage Broker Registration Act. Fines of up to \$1,000 for a first offense, and between \$1,000 and \$2,000 for a second offense, will be credited to the Mortgage Broker Registration Cash Fund. Since the fine amount is discretionary, the impact to state revenue from administrative proceedings cannot be determined. However, a minimum amount of fine revenue (<\$5,000 per year) is assumed under the bill.

Influencing a real estate appraiser is deemed a class 1 misdemeanor. Per Section 18-1.3-501, C.R.S., the penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. Fine revenue not otherwise appropriated is deposited into the Fines Collection Cash Fund. Because the courts have the discretion of incarceration or imposing a fine, the impact to state revenue cannot be determined. However, a minimal amount of fine revenue (< \$5,000 per year) is assumed under the bill.

Influencing a real estate appraiser is also added to the Colorado Consumer Protection Act, allowing the Office of the Attorney General to pursue civil and criminal actions. Civil penalties under the CCPA are up to \$2,000 per violation or up to \$10,000 per violation if the victim is over the age of 60. CCPA fine revenue is credited to the General Fund. While compliance with the bill's requirements is expected to be high, moderate fine revenue is expected. However, the increase in fine revenue cannot be quantified.

Fee Revenue. Costs to the Department of Regulatory Agencies are borne by participants in the regulatory program. The current fee charged is \$200 per registrant. Typically, the costs of investigating complaints and pursuing disciplinary action described in the State Expenditures section of the fiscal note would cause an increase to the mortgage broker fees. However, the roughly 3,500 mortgage brokers registered with the department exceeds predicted participation level and is expected to provide enough extra revenue to support the program without needing a fee adjustment. Should the number of brokers registered with the department continue to exceed expectations and more than fully fund the expenditures of the program, the fee schedule will be adjusted accordingly.

State Expenditures

Total state expenditures for SB07-085 are \$56,696 and 0.6 FTE in FY 2007-08 and \$104,301 and 1.2 FTE in FY 2008-09. Costs are for complaint investigation, and administrative hearings. Table 1 and the discussion that follows explain the cost components of the bill.

Table 1. Total Costs Under SB07-085		
Cost Components - Department of Regulatory Agencies	FY 2007-08	FY 2008-09
Personal Services (Compliance Investigator I)	\$ 14,471	\$ 24,119
Operating Expenses	0	552
Capital Outlay	1,563	0
Legal Services	40,662	79,630
Mortgage Broker Registration Cash Fund Total	\$ 56,696	\$ 104,301
FTE	0.3	0.5

Department of Regulatory Agencies. The Division of Real Estate is responsible for investigating complaints that are generated by this bill. The amount of resources required is based on the number of complaints. Using the number of complaints filed against real estate appraisers to estimate the number of complaints that will be filed against mortgage brokers, 48 complaints per year are expected (with 24 in the first year). Complaints will be received and evaluated by a Compliance Investigator I at 0.3 FTE in the first year and 0.5 FTE in out years. The investigator’s workload is expected to increase as complaints are filed and work their way through the investigation process to hearings.

Complaints may lead to dismissal, denial of registration, revocation of registration, or administrative fines. The division will require legal services from the Department of Law for all hearings. The division will also need legal services to advise in the rule-making process.

Department of Law. The Department of Law is responsible for assisting the Department of Regulatory Agencies in promulgating rules for the complaint process and for legal representation in the hearings with mortgage brokers. With 24 complaints in the first year and 48 complaints in the second year and with 25 hours of rule-making assistance each year, legal services of 600 and 1175 hours are required. This is equivalent to 0.3 FTE in FY 2007-08 and 0.7 FTE in FY 2008-09.

The Department of Law is also responsible for prosecuting violations of the Colorado Consumer Protection Act. The addition of “influencing a real estate appraiser” to the act may result in additional case filings by the department. The number of cases brought by the Office of the Attorney General is unknown, and this fiscal note assumes that the workload will be absorbed. If more resources are required, the need will be addressed through the budget process.

Department of Personnel and Administration. The workload of the Office of Administrative Courts within the Department of Personnel and Administration (DPA) is impacted by any hearings that result from this bill. However, this bill alone does not generate the need for

more administrative law judges. Should a number of bills pass this session and significantly impact the DPA, it is assumed that any additional resources will be addressed through the annual budget process.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, funding for the items noted below will not be included in fiscal note expenditure estimates. However, indirect costs are calculated for the purpose of identifying the "per applicant" cost of a new or revised fee to reflect the total direct and indirect costs required to support a particular program.

- group health, life and dental insurance
- inflation indices
- amortization equalization disbursements
- supplemental amortization equalization disbursements
- short-term disability
- leased space
- indirect costs

Local Government Impact

The penalty for a class 1 misdemeanor is six to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails a daily rate of \$48.96 to house state inmates. It is assumed that the impact of this new misdemeanor will be minimal and will not create the need for additional county jail space.

State Appropriations

This fiscal note indicates a cash funds exempt appropriation of \$56,696 and 0.3 FTE from the Mortgage Broker Registration Cash Fund to the Division of Real Estate, Department of Regulatory Agencies, in FY 2007-08. Of this amount, the Department of Law needs \$40,662 cash funds exempt and authorization for 0.3 FTE.

Departments Contacted

Corrections	District Attorneys Council
Judicial	Law
Public Safety	Regulatory Agencies