

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

PREAMENDED

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

LLS NO. 09-0342.01 Christy Chase

HOUSE BILL 09-1085

HOUSE SPONSORSHIP

Rice,

SENATE SPONSORSHIP

Heath,

House Committees

Business Affairs and Labor
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE REGULATION OF MORTGAGE LOAN ORIGINATORS,**
102 **AND, IN CONNECTION THEREWITH, MODIFYING THE**
103 **"MORTGAGE BROKER LICENSING ACT" TO CONFORM TO THE**
104 **FEDERAL "SECURE AND FAIR ENFORCEMENT FOR MORTGAGE**
105 **LICENSING ACT OF 2008", EXEMPTING CERTAIN FINANCIAL**
106 **INSTITUTIONS FROM THE LIST OF PROHIBITED PRACTICES UNDER**
107 **THE ACT, 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.

Amends the "Mortgage Broker Licensing Act" (act) to conform to the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" (SAFE act) as follows:

- ! Renames the act as the "Mortgage Loan Originator Licensing Act" and changes the name of "mortgage broker" throughout the act to "mortgage loan originator";
- ! Exempts from the act a loan processor or underwriter who is not an independent contractor and who performs clerical or support duties in connection with a residential mortgage loan application but does not offer or negotiate the terms of the loan;
- ! Exempts from the act a person engaged only in real estate brokerage activities or in extensions of credit relating to time share plans, or an individual servicing a mortgage loan;
- ! Requires state-licensed mortgage loan originators to register with the nationwide mortgage licensing system and registry established pursuant to the SAFE act on or after July 31, 2010, and to obtain a unique identifier through the registry for use on residential mortgage loan application forms, solicitations or advertisements, business cards or web sites, and other residential mortgage loan-related documents as specified by the director of the division of real estate (director);
- ! Allows the director, by rule, to authorize the use of the criminal background check provided by the nationwide mortgage licensing system and registry, instead of the criminal history record check otherwise required by the act, if the director determines that the background check screens applicants in a manner that is sufficient to protect Colorado consumers;
- ! Requires applicants for a mortgage loan originator license to submit fingerprints for purposes of obtaining a fingerprint-based criminal history record check and personal history and experience information and, for applications submitted on and after January 1, 2010, requires the applicant to pay all costs associated with the criminal history record check;
- ! Extends the period within which the director is to issue or deny a license from 21 days to 60 days after the applicant has submitted required information to the director and the nationwide mortgage licensing system and registry;
- ! Establishes a minimum requirement of 8 credit hours of continuing education in order for a licensee to renew his or her license;

- ! Authorizes the director to inactivate a state-issued mortgage loan originator license or a registration with the nationwide mortgage licensing system and registry when a licensee fails to: Maintain the requisite surety bond; maintain errors and omissions insurance coverage; provide current contact, surety bond, and insurance coverage information; respond to an investigation or examination; comply with education or testing requirements; or register with and provide required information to the nationwide mortgage licensing system and registry;
- ! Establishes criteria for license renewal, including continued compliance with the requirements of the act, satisfaction of continuing education requirements, and payment of applicable fees;
- ! Authorizes the director to deny a license application or refuse to renew or to revoke the license of an applicant who has: Had a similar license revoked in another jurisdiction; been convicted of or pled guilty or nolo contendere to a felony involving fraud, dishonesty, breach of trust, or money laundering; failed to demonstrate financial responsibility, character, and general fitness to command confidence of the public; failed to complete the educational requirements set forth in the act; or failed the required written licensure examination;
- ! Retains the confidentiality of information or material provided to the nationwide mortgage licensing system and registry, even when the information or material is shared with other regulatory entities, and, absent a waiver, protects the information or material from disclosure to the public or discovery or admission into evidence in a civil or administrative action;
- ! Authorizes the director to require licensees to submit to the nationwide mortgage licensing system and registry mortgage call reports.

Further amends the act to:

- ! Add a sunset repeal date of July 1, 2011, and require the sunset review to analyze the number and types of complaints made about mortgage loan originators and whether licensure correlates to protection of the public; and
- ! Exempt banks, savings banks, savings and loan associations, building and loan associations, industrial banks, industrial loan companies, credit unions, and bank or savings association holding companies that are subject to regulation by a federal banking agency, subsidiaries of such entities, and employees or exclusive agents of such

entities, from the list of conduct prohibited under the act.

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

2 **SECTION 1.** Part 9 of article 61 of title 12, Colorado Revised
3 Statutes, is amended to read:

4 **12-61-901. Short title.** This part 9 shall be known and may be
5 cited as the "Mortgage ~~Broker~~ LOAN ORIGINATOR Licensing Act".

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

8 (1) "Affiliate" means a person who, directly or indirectly, through
9 intermediaries controls, is controlled by, or is under the common control
10 of another person addressed by this part 9.

11 (1.5) "Borrower" means any person who consults with or retains
12 a mortgage ~~broker~~ LOAN ORIGINATOR in an effort to obtain or seek advice
13 or information on obtaining or applying to obtain a residential mortgage
14 loan for himself, herself, or persons including himself or herself,
15 regardless of whether the person actually obtains such a loan.

16 (2) ~~"Broker a mortgage" means to directly or indirectly act as a~~
17 ~~mortgage broker.~~ "DEPOSITORY INSTITUTION" HAS THE SAME MEANING AS
18 SET FORTH IN THE "FEDERAL DEPOSIT INSURANCE ACT", 12 U.S.C. SEC.
19 1813 (c), AND INCLUDES A CREDIT UNION.

20 (3) "Director" means the director of the division of real estate.

21 (4) "Division" means the division of real estate.

22 (4.3) "DWELLING" SHALL HAVE THE SAME MEANING AS SET FORTH
23 IN THE FEDERAL "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1602 (v).

24 (4.5) "FEDERAL BANKING AGENCY" MEANS THE BOARD OF
25 GOVERNORS OF THE FEDERAL RESERVE SYSTEM, THE COMPTROLLER OF THE

1 CURRENCY, THE DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION, THE
2 NATIONAL CREDIT UNION ADMINISTRATION, OR THE FEDERAL DEPOSIT
3 INSURANCE CORPORATION.

4 (4.7) "INDIVIDUAL" MEANS A NATURAL PERSON.

5 (4.9) (a) "LOAN PROCESSOR OR UNDERWRITER" MEANS AN
6 INDIVIDUAL WHO PERFORMS CLERICAL OR SUPPORT DUTIES AT THE
7 DIRECTION OF, AND SUBJECT TO SUPERVISION BY, A STATE-LICENSED LOAN
8 ORIGINATOR OR A REGISTERED LOAN ORIGINATOR.

9 (b) AS USED IN THIS SUBSECTION (4.9), "CLERICAL OR SUPPORT
10 DUTIES" INCLUDES DUTIES PERFORMED AFTER RECEIPT OF AN APPLICATION
11 FOR A RESIDENTIAL MORTGAGE LOAN, INCLUDING:

12 (I) THE RECEIPT, COLLECTION, DISTRIBUTION, AND ANALYSIS OF
13 INFORMATION COMMONLY USED FOR THE PROCESSING OR UNDERWRITING
14 OF A RESIDENTIAL MORTGAGE LOAN; AND

15 (II) COMMUNICATING WITH A BORROWER TO OBTAIN THE
16 INFORMATION NECESSARY TO PROCESS OR UNDERWRITE A LOAN, TO THE
17 EXTENT THAT THE COMMUNICATION DOES NOT INCLUDE OFFERING OR
18 NEGOTIATING LOAN RATES OR TERMS OR COUNSELING CONSUMERS ABOUT
19 RESIDENTIAL MORTGAGE LOAN RATES OR TERMS.

20 (5) (a) "Mortgage ~~broker~~ LOAN ORIGINATOR" means an individual
21 who:

22 (I) TAKES A RESIDENTIAL MORTGAGE LOAN APPLICATION; OR

23 (II) OFFERS OR negotiates ~~originates, or offers or attempts to~~
24 ~~negotiate or originate for a borrower, and for a commission or other thing~~
25 ~~of value,~~ TERMS OF a residential mortgage loan. ~~to be consummated and~~
26 ~~funded by a mortgage lender.~~

27 (b) "MORTGAGE LOAN ORIGINATOR" DOES NOT INCLUDE:

1 (I) AN INDIVIDUAL ENGAGED SOLELY AS A LOAN PROCESSOR OR
2 UNDERWRITER;

3 (II) A PERSON THAT ONLY PERFORMS REAL ESTATE BROKERAGE OR
4 SALES ACTIVITIES AND IS LICENSED OR REGISTERED PURSUANT TO PART 1
5 OF THIS ARTICLE, UNLESS THE PERSON IS COMPENSATED BY A LENDER OR
6 A MORTGAGE LOAN ORIGINATOR;

7 (III) A PERSON SOLELY INVOLVED IN EXTENSIONS OF CREDIT
8 RELATING TO TIME SHARE PLANS, AS DEFINED IN 11 U.S.C. SEC. 101 (53D);
9 OR

10 (IV) AN INDIVIDUAL WHO IS SERVICING A MORTGAGE LOAN.

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

13 (a) The lender is the payee on the promissory note evidencing the
14 loan; and

15 (b) The loan proceeds are obtained by the lender from its own
16 funds or from a line of credit made available to the lender from a bank or
17 other entity who regularly loans money to lenders for the purpose of
18 funding mortgage loans.

19 (6.3) "NATIONWIDE MORTGAGE LICENSING SYSTEM AND
20 REGISTRY" MEANS A MORTGAGE LICENSING SYSTEM DEVELOPED
21 PURSUANT TO THE FEDERAL "SECURE AND FAIR ENFORCEMENT FOR
22 MORTGAGE LICENSING ACT OF 2008", 12 U.S.C. SEC. 5101 ET SEQ., TO
23 TRACK THE LICENSING AND REGISTRATION OF MORTGAGE LOAN
24 ORIGINATORS AND THAT IS ESTABLISHED AND MAINTAINED BY:

25 (a) THE CONFERENCE OF STATE BANK SUPERVISORS AND THE
26 AMERICAN ASSOCIATION OF RESIDENTIAL MORTGAGE REGULATORS, OR
27 THEIR SUCCESSOR ENTITIES; OR

1 (b) THE SECRETARY OF THE UNITED STATES DEPARTMENT OF
2 HOUSING AND URBAN DEVELOPMENT.

3 (6.5) "NONTRADITIONAL MORTGAGE PRODUCT" MEANS A
4 MORTGAGE PRODUCT OTHER THAN A THIRTY-YEAR, FIXED-RATE
5 MORTGAGE.

6 (7) "Originate A MORTGAGE" means to ~~submit an application or~~
7 ~~documentation to a mortgage lender or underwriter in an attempt to obtain~~
8 ~~a residential mortgage loan~~ ACT, DIRECTLY OR INDIRECTLY, AS A
9 MORTGAGE LOAN ORIGINATOR.

10 (7.5) "PERSON" MEANS A NATURAL PERSON, CORPORATION,
11 COMPANY, LIMITED LIABILITY COMPANY, PARTNERSHIP, FIRM,
12 ASSOCIATION, OR OTHER LEGAL ENTITY.

13 (7.7) "REAL ESTATE BROKERAGE ACTIVITY" MEANS AN ACTIVITY
14 THAT INVOLVES OFFERING OR PROVIDING REAL ESTATE BROKERAGE
15 SERVICES TO THE PUBLIC, INCLUDING, WITHOUT LIMITATION:

16 (a) ACTING AS A REAL ESTATE AGENT OR REAL ESTATE BROKER
17 FOR A BUYER, SELLER, LESSOR, OR LESSEE OF REAL PROPERTY;

18 (b) BRINGING TOGETHER PARTIES INTERESTED IN THE SALE,
19 PURCHASE, LEASE, RENTAL, OR EXCHANGE OF REAL PROPERTY;

20 (c) NEGOTIATING, ON BEHALF OF ANY PARTY, ANY PORTION OF A
21 CONTRACT RELATING TO THE SALE, PURCHASE, LEASE, RENTAL, OR
22 EXCHANGE OF REAL PROPERTY, OTHER THAN MATTERS RELATED TO
23 FINANCING FOR THE TRANSACTION;

24 (d) ENGAGING IN AN ACTIVITY FOR WHICH A PERSON ENGAGED IN
25 THE ACTIVITY IS REQUIRED UNDER APPLICABLE LAW TO BE REGISTERED OR
26 LICENSED AS A REAL ESTATE AGENT OR REAL ESTATE BROKER; OR

27 (e) OFFERING TO ENGAGE IN ANY ACTIVITY, OR ACT IN ANY

1 CAPACITY RELATED TO SUCH ACTIVITY, DESCRIBED IN THIS SUBSECTION
2 (7.7).

3 (8) "Residential mortgage loan" means a loan that is primarily for
4 personal, family, or household use and that is secured by a mortgage, ~~or~~
5 deed of trust, ~~or~~ OR OTHER EQUIVALENT, CONSENSUAL SECURITY
6 INTEREST ON A DWELLING OR residential real estate upon which is
7 constructed or intended to be constructed a single-family dwelling or
8 multiple-family dwelling of four or fewer units.

9 (9) "RESIDENTIAL REAL ESTATE" MEANS ANY REAL PROPERTY
10 UPON WHICH A DWELLING IS OR WILL BE CONSTRUCTED.

11 (10) "SERVICING A MORTGAGE LOAN" MEANS COLLECTING,
12 RECEIVING, OR OBTAINING THE RIGHT TO COLLECT OR RECEIVE PAYMENTS
13 ON BEHALF OF A MORTGAGE LENDER, INCLUDING PAYMENTS OF PRINCIPAL,
14 INTEREST, ESCROW AMOUNTS, AND OTHER AMOUNTS DUE ON OBLIGATIONS
15 DUE AND OWING TO THE MORTGAGE LENDER.

16 (11) "STATE-LICENSED LOAN ORIGINATOR" MEANS AN INDIVIDUAL
17 WHO IS:

18 (a) A MORTGAGE LOAN ORIGINATOR OR ENGAGES IN THE
19 ACTIVITIES OF A MORTGAGE LOAN ORIGINATOR;

20 (b) NOT AN EMPLOYEE OF A DEPOSITORY INSTITUTION OR A
21 SUBSIDIARY THAT IS:

22 (I) OWNED AND CONTROLLED BY A DEPOSITORY INSTITUTION; AND

23 (II) REGULATED BY A FEDERAL BANKING AGENCY;

24 (c) LICENSED OR REQUIRED TO BE LICENSED PURSUANT TO THIS
25 PART 9; AND

26 (d) REGISTERED AS A STATE-LICENSED LOAN ORIGINATOR WITH,
27 AND MAINTAINS A UNIQUE IDENTIFIER THROUGH, THE NATIONWIDE

1 MORTGAGE LICENSING SYSTEM AND REGISTRY.

2 (12) "UNIQUE IDENTIFIER" MEANS A NUMBER OR OTHER IDENTIFIER
3 ASSIGNED TO A MORTGAGE LOAN ORIGINATOR PURSUANT TO PROTOCOLS
4 ESTABLISHED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND
5 REGISTRY.

6 **12-61-903. License required - rules.** (1) (a) On or after ~~January~~
7 ~~1, 2008~~ THE EFFECTIVE DATE OF THIS SUBSECTION (1), AS AMENDED,
8 unless licensed by the director, ~~a person~~ AN INDIVIDUAL shall not ~~broker~~
9 ORIGINATE a mortgage, offer to ~~broker~~ ORIGINATE a mortgage, act as a
10 mortgage ~~broker~~ LOAN ORIGINATOR, or offer to act as a mortgage ~~broker~~
11 LOAN ORIGINATOR. ON OR AFTER JULY 31, 2010, UNLESS LICENSED BY
12 THE DIRECTOR AND REGISTERED WITH THE NATIONWIDE MORTGAGE
13 LICENSING SYSTEM AND REGISTRY AS A STATE-LICENSED LOAN
14 ORIGINATOR, AN INDIVIDUAL SHALL NOT ORIGINATE OR OFFER TO
15 ORIGINATE A MORTGAGE OR ACT OR OFFER TO ACT AS A MORTGAGE LOAN
16 ORIGINATOR.

17 (b) ON AND AFTER JANUARY 1, 2010, a licensed mortgage ~~broker~~
18 LOAN ORIGINATOR shall apply for license renewal in accordance with
19 subsection (4) of this section every ~~three years~~ CALENDAR YEAR AS
20 DETERMINED BY THE DIRECTOR BY RULE.

21 (c) ~~A mortgage broker who was registered under the predecessor~~
22 ~~to this section on or before January 1, 2008, shall have his or her~~
23 ~~registration converted to a license upon satisfaction of all initial licensing~~
24 ~~requirements that he or she had not already satisfied when applying for~~
25 ~~registration. The initial term of licensure of such a mortgage broker shall~~
26 ~~expire on the third anniversary of his or her initial registration.~~

27 (1.5) AN INDEPENDENT CONTRACTOR MAY NOT ENGAGE IN

1 RESIDENTIAL MORTGAGE LOAN ORIGINATION ACTIVITIES AS A LOAN
2 PROCESSOR OR UNDERWRITER UNLESS THE INDEPENDENT CONTRACTOR IS
3 A STATE-LICENSED LOAN ORIGINATOR.

4 (2) An applicant for initial licensing AS A MORTGAGE LOAN
5 ORIGINATOR shall submit to the director the following:

6 (a) A criminal history record check in compliance with subsection
7 (5) of this section;

8 (b) A disclosure of all administrative discipline taken against the
9 applicant concerning the categories listed in section 12-61-905 (1) (c);
10 and

11 (c) The application fee established by the director in accordance
12 with section 12-61-908.

13 (3) (a) In addition to the requirements imposed by subsection (2)
14 of this section, on or after ~~January 1, 2009~~ THE EFFECTIVE DATE OF THIS
15 SUBSECTION (3), AS AMENDED, each individual applicant for initial
16 licensing as a mortgage ~~broker~~ LOAN ORIGINATOR shall have satisfactorily
17 completed ~~within the three years immediately preceding the date of the~~
18 ~~application,~~ a mortgage lending fundamentals course approved by the
19 director and consisting of at least nine hours of ~~classroom~~ instruction in
20 subjects related to mortgage lending. In addition, the applicant shall have
21 satisfactorily completed a written examination approved by the director.

22 (b) The director may contract with one or more independent
23 testing services to develop, administer, and grade the examinations
24 required by paragraph (a) of this subsection (3) and to maintain and
25 administer licensee records. The contract may allow the testing service
26 to recover from applicants its costs incurred in connection with these
27 functions. The director may contract separately for these functions and

1 may allow the costs to be collected by a single contractor for distribution
2 to other contractors.

3 (c) THE DIRECTOR MAY PUBLISH REPORTS SUMMARIZING
4 STATISTICAL INFORMATION PREPARED BY THE NATIONWIDE MORTGAGE
5 LICENSING SYSTEM AND REGISTRY RELATING TO MORTGAGE LOAN
6 ORIGINATOR EXAMINATIONS.

7 (4) An applicant for license renewal shall submit to the director
8 the following:

9 (a) A disclosure of all administrative discipline taken against the
10 applicant concerning the categories listed in section 12-61-905 (1) (c);
11 and

12 (b) The renewal fee established by the director in accordance with
13 section 12-61-908.

14 (5) (a) Prior to submitting an application for a license, an
15 applicant shall submit a set of fingerprints to the Colorado bureau of
16 investigation. Upon receipt of the applicant's fingerprints, the Colorado
17 bureau of investigation shall use the fingerprints to conduct a state and
18 national criminal history record check using records of the Colorado
19 bureau of investigation and the federal bureau of investigation. All costs
20 arising from such criminal history record check shall be borne by the
21 applicant and shall be paid when the set of fingerprints is submitted.
22 Upon completion of the criminal history record check, the bureau shall
23 forward the results to the director. THE DIRECTOR MAY ACQUIRE A
24 NAME-BASED CRIMINAL HISTORY RECORD CHECK FOR AN APPLICANT WHO
25 HAS TWICE SUBMITTED TO A FINGERPRINT-BASED CRIMINAL HISTORY
26 RECORD CHECK AND WHOSE FINGERPRINTS ARE UNCLASSIFIABLE.

27 (b) IF THE DIRECTOR DETERMINES THAT THE CRIMINAL

1 BACKGROUND CHECK PROVIDED BY THE NATIONWIDE MORTGAGE
2 LICENSING SYSTEM AND REGISTRY IS A SUFFICIENT METHOD OF SCREENING
3 LICENSE APPLICANTS TO PROTECT COLORADO CONSUMERS, THE DIRECTOR
4 MAY, BY RULE, AUTHORIZE THE USE OF THAT CRIMINAL BACKGROUND
5 CHECK INSTEAD OF THE CRIMINAL HISTORY RECORD CHECK OTHERWISE
6 REQUIRED BY THIS SUBSECTION (5).

7 (5.5) (a) ON AND AFTER JANUARY 1, 2010, IN CONNECTION WITH
8 AN APPLICATION FOR A LICENSE AS A MORTGAGE LOAN ORIGINATOR, THE
9 APPLICANT SHALL FURNISH INFORMATION CONCERNING THE APPLICANT'S
10 IDENTITY TO THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND
11 REGISTRY. THE APPLICANT SHALL FURNISH, AT A MINIMUM, THE
12 FOLLOWING:

13 (I) FINGERPRINTS FOR SUBMISSION TO THE FEDERAL BUREAU OF
14 INVESTIGATION AND ANY GOVERNMENT AGENCY OR ENTITY AUTHORIZED
15 TO RECEIVE FINGERPRINTS FOR A STATE, NATIONAL, OR INTERNATIONAL
16 CRIMINAL HISTORY RECORD CHECK; AND

17 (II) PERSONAL HISTORY AND EXPERIENCE, IN A FORM PRESCRIBED
18 BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY,
19 INCLUDING SUBMISSION OF AUTHORIZATION FOR THE NATIONWIDE
20 MORTGAGE LICENSING SYSTEM AND REGISTRY TO OBTAIN:

21 (A) AN INDEPENDENT CREDIT REPORT FROM THE CONSUMER
22 REPORTING AGENCY DESCRIBED IN THE FEDERAL "FAIR CREDIT REPORTING
23 ACT", 15 U.S.C. SEC. 1681a (p); AND

24 (B) INFORMATION RELATED TO ANY ADMINISTRATIVE, CIVIL, OR
25 CRIMINAL FINDINGS BY A GOVERNMENT JURISDICTION.

26 (b) AN APPLICANT IS RESPONSIBLE FOR PAYING ALL COSTS ARISING
27 FROM A CRIMINAL HISTORY RECORD CHECK AND SHALL PAY SUCH COSTS

1 UPON SUBMISSION OF FINGERPRINTS.

2 (c) THE DIRECTOR MAY ACQUIRE A NAME-BASED CRIMINAL
3 HISTORY RECORD CHECK FOR AN APPLICANT WHO HAS TWICE SUBMITTED
4 TO A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK AND WHOSE
5 FINGERPRINTS ARE UNCLASSIFIABLE.

6 (5.7) ANY INDIVIDUAL WHO OBTAINS A LICENSE PURSUANT TO THIS
7 PART 9 PRIOR TO JANUARY 1, 2010, SHALL FURNISH AT LEAST THE
8 FOLLOWING INFORMATION CONCERNING THE INDIVIDUAL'S IDENTITY TO
9 THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY:

10 (a) FINGERPRINTS FOR SUBMISSION TO THE FEDERAL BUREAU OF
11 INVESTIGATION AND ANY GOVERNMENT AGENCY OR ENTITY AUTHORIZED
12 TO RECEIVE FINGERPRINTS FOR A STATE, NATIONAL, OR INTERNATIONAL
13 CRIMINAL HISTORY RECORD CHECK; AND

14 (b) PERSONAL HISTORY AND EXPERIENCE IN A FORM PRESCRIBED
15 BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY,
16 INCLUDING SUBMISSION OF AUTHORIZATION FOR THE NATIONWIDE
17 MORTGAGE LICENSING SYSTEM AND REGISTRY TO OBTAIN:

18 (I) AN INDEPENDENT CREDIT REPORT FROM THE CONSUMER
19 REPORTING AGENCY DESCRIBED IN THE FEDERAL "FAIR CREDIT REPORTING
20 ACT", 15 U.S.C. SEC. 1681a (p); AND

21 (II) INFORMATION RELATED TO ANY ADMINISTRATIVE, CIVIL, OR
22 CRIMINAL FINDINGS BY A GOVERNMENT JURISDICTION.

23 (6) Before granting a license to an applicant, the director shall
24 require the applicant to post a bond as required by section 12-61-907.

25 (7) The director shall issue or deny a license within ~~twenty-one~~
26 SIXTY days after: ~~receiving~~

27 (a) THE APPLICANT HAS SUBMITTED THE REQUISITE INFORMATION

1 TO THE DIRECTOR AND THE NATIONWIDE MORTGAGE LICENSING SYSTEM
2 AND REGISTRY, INCLUDING, BUT NOT LIMITED TO, THE COMPLETED
3 APPLICATION, THE APPLICATION FEE, AND PROOF THAT THE APPLICANT HAS
4 POSTED A SURETY BOND AND OBTAINED ERRORS AND OMISSIONS
5 INSURANCE; AND

6 (b) THE DIRECTOR RECEIVES the completed criminal history record
7 check ~~completed application, application fee, and proof of the posting of~~
8 ~~the surety bond~~ AND ALL OTHER RELEVANT INFORMATION OR DOCUMENTS
9 NECESSARY TO REASONABLY ASCERTAIN FACTS UNDERLYING THE
10 APPLICANT'S CRIMINAL HISTORY.

11 (8) (a) The director may require, as a condition of license renewal
12 on or after January 1, 2009, continuing education of licensees for the
13 purpose of enhancing the professional competence and professional
14 responsibility of all licensees.

15 (b) Continuing professional education requirements shall be
16 determined by the director BY RULE; except that licensees shall ~~not~~ be
17 required to complete ~~more than nine~~ AT LEAST EIGHT credit hours of
18 continuing education ~~within a three-year period~~ EACH YEAR. The director
19 may contract with one or more independent service providers to develop,
20 review, or approve continuing education courses. The contract may allow
21 the independent service provider to recover from licensees its costs
22 incurred in connection with these functions. The director may contract
23 separately for these functions and may allow the costs to be collected by
24 a single contractor for distribution to other contractors.

25 (9) (a) The director may require contractors and prospective
26 contractors for services under subsections (3) and (8) of this section to
27 submit, for the director's review and approval, information regarding the

1 contents and materials of proposed courses and other documentation
2 reasonably necessary to further the purposes of this section.

3 (b) The director may set fees for the initial and continuing review
4 of courses for which credit hours will be granted. The initial filing fee for
5 review of materials shall not exceed five hundred dollars, and the fee for
6 continued review shall not exceed two hundred fifty dollars per year per
7 course offered.

8 (10) The director may adopt reasonable rules to implement this
9 section. THE DIRECTOR MAY ADOPT RULES NECESSARY TO IMPLEMENT
10 PROVISIONS REQUIRED IN THE FEDERAL "SECURE AND FAIR ENFORCEMENT
11 FOR MORTGAGE LICENSING ACT OF 2008", 12 U.S.C. SEC. 5101 ET SEQ.,
12 AND FOR PARTICIPATION IN THE NATIONWIDE MORTGAGE LICENSING
13 SYSTEM AND REGISTRY.

14 (11) IN ORDER TO FULFILL THE PURPOSES OF THIS PART 9, THE
15 DIRECTOR MAY ESTABLISH RELATIONSHIPS OR CONTRACTS WITH THE
16 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY OR OTHER
17 ENTITIES DESIGNATED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM
18 AND REGISTRY TO COLLECT AND MAINTAIN RECORDS AND PROCESS
19 TRANSACTION FEES OR OTHER FEES RELATED TO LICENSEES OR OTHER
20 PERSONS SUBJECT TO THIS PART 9.

21 (12) THE DIRECTOR MAY USE THE NATIONWIDE MORTGAGE
22 LICENSING SYSTEM AND REGISTRY AS A CHANNELING AGENT FOR
23 REQUESTING INFORMATION FROM OR DISTRIBUTING INFORMATION TO THE
24 DEPARTMENT OF JUSTICE, A GOVERNMENT AGENCY, OR ANY OTHER
25 SOURCE.

26 **12-61-903.3 License or registration inactivation.** (1) THE
27 DIRECTOR MAY INACTIVATE A STATE LICENSE OR A REGISTRATION WITH

1 THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY WHEN A
2 LICENSEE HAS FAILED TO:

3 (a) COMPLY WITH THE SURETY BOND REQUIREMENTS OF SECTIONS
4 12-61-903 (6) AND 12-61-907;

5 (b) COMPLY WITH THE ERRORS AND OMISSIONS INSURANCE
6 REQUIREMENT IN SECTION 12-61-903.5 OR ANY RULE OF THE DIRECTOR
7 THAT DIRECTLY OR INDIRECTLY ADDRESSES ERRORS AND OMISSIONS
8 INSURANCE REQUIREMENTS;

9 (c) MAINTAIN CURRENT CONTACT INFORMATION, SURETY BOND
10 INFORMATION, OR ERRORS AND OMISSIONS INSURANCE INFORMATION AS
11 REQUIRED BY THIS PART 9 OR BY ANY RULE OF THE DIRECTOR THAT
12 DIRECTLY OR INDIRECTLY ADDRESSES SUCH REQUIREMENTS;

13 (d) RESPOND TO AN INVESTIGATION OR EXAMINATION;

14 (e) COMPLY WITH ANY OF THE EDUCATION OR TESTING
15 REQUIREMENTS SET FORTH IN THIS PART 9 OR IN ANY RULE OF THE
16 DIRECTOR THAT DIRECTLY OR INDIRECTLY ADDRESSES EDUCATION OR
17 TESTING REQUIREMENTS; OR

18 (f) REGISTER WITH AND PROVIDE ALL REQUIRED INFORMATION TO
19 THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.

20 **12-61-903.5. Errors and omissions insurance - duties of the**
21 **director - certificate of coverage - when required - group plan made**
22 **available - effect - rules.** (1) (a) Every licensee under this part 9 ~~except~~
23 ~~an inactive mortgage broker or an attorney licensee who maintains a~~
24 ~~policy of professional malpractice insurance that provides coverage for~~
25 ~~errors and omissions for activities as a licensee under this part 9;~~ shall
26 maintain errors and omissions insurance to cover all activities
27 contemplated under this part 9.

1 (b) THE REQUIREMENTS OF THIS SUBSECTION (1) SHALL NOT APPLY
2 TO:

3 (I) A MORTGAGE LOAN ORIGINATOR WITH AN INACTIVE LICENSE OR
4 REGISTRATION; OR

5 (II) AN ATTORNEY LICENSED AS A LOAN ORIGINATOR WHO
6 MAINTAINS A POLICY OF PROFESSIONAL MALPRACTICE INSURANCE THAT
7 PROVIDES COVERAGE FOR ERRORS AND OMISSIONS FOR ACTIVITIES OF THE
8 ATTORNEY LICENSEE REGULATED BY THIS PART 9.

9 (2) The director shall determine the terms and conditions of
10 coverage required under this section, including the minimum limits of
11 coverage, the permissible deductible, and permissible exemptions. Each
12 licensee SUBJECT TO THE REQUIREMENTS OF THIS SECTION shall maintain
13 evidence of coverage, in a manner satisfactory to the director,
14 demonstrating continuing compliance with the required terms.

15 **12-61-903.7. License renewal.** (1) IN ORDER FOR A LICENSED
16 MORTGAGE LOAN ORIGINATOR TO RENEW A LICENSE ISSUED PURSUANT TO
17 THIS PART 9, THE MORTGAGE LOAN ORIGINATOR SHALL:

18 (a) CONTINUE TO MEET THE MINIMUM STANDARDS FOR ISSUANCE
19 OF A LICENSE PURSUANT TO THIS PART 9;

20 (b) SATISFY THE ANNUAL CONTINUING EDUCATION REQUIREMENTS
21 SET FORTH IN SECTION 12-61-903 (8) AND IN RULES ADOPTED BY THE
22 DIRECTOR; AND

23 (c) PAY APPLICABLE LICENSE RENEWAL FEES.

24 (2) IF A LICENSED MORTGAGE LOAN ORIGINATOR FAILS TO SATISFY
25 THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION FOR LICENSE
26 RENEWAL, THE MORTGAGE LOAN ORIGINATOR'S LICENSE SHALL EXPIRE.
27 THE DIRECTOR SHALL ADOPT RULES TO ESTABLISH PROCEDURES FOR THE

1 REINSTATEMENT OF AN EXPIRED LICENSE CONSISTENT WITH THE
2 STANDARDS ESTABLISHED BY THE NATIONWIDE MORTGAGE LICENSING
3 SYSTEM AND REGISTRY.

4 **12-61-904. Exemptions.** (1) Except as otherwise provided in
5 section 12-61-911, this part 9 shall not apply to the following:

6 (a) Employees of an agency of the federal government, of the
7 Colorado government, or of any of Colorado's political subdivisions;

8 (b) An owner of real property who offers credit secured by a
9 mortgage or deed of trust on the property sold;

10 (c) A bank, savings bank, savings and loan association, building
11 and loan association, industrial bank, industrial loan company, credit
12 union, or bank or savings association holding company organized under
13 the laws of any state, the District of Columbia, a territory or protectorate
14 of the United States, or the United States, subject to regulation and
15 supervision by a federal banking agency, or an operating subsidiary ~~or~~
16 ~~affiliate of such entities~~, or an employee or exclusive agent of any of such
17 entities, including, without limitation, a subsidiary ~~or affiliate of such~~
18 ~~entities~~ THAT IS OWNED OR CONTROLLED BY A DEPOSITORY INSTITUTION;

19 (d) An attorney who renders services in the course of practice,
20 who is licensed in Colorado, and who is not primarily engaged in the
21 business of negotiating residential mortgage loans;

22 (e) (Deleted by amendment, L. 2007, p. 1716, § 2, effective June
23 1, 2007, and p. 1734, § 6, effective January 1, 2008.)

24 (f) A person who:

25 (I) Funds a residential mortgage loan that has been originated and
26 processed by a licensed person or by an exempt person;

27 (II) Does not solicit borrowers in Colorado for the purpose of

1 making residential mortgage loans; and

2 (III) Does not participate in the negotiation of residential
3 mortgage loans with the borrower, except for setting the terms under
4 which a person may buy or fund a residential mortgage loan originated by
5 a licensed or exempt person;

6 (g) A LOAN PROCESSOR OR UNDERWRITER WHO IS NOT AN
7 INDEPENDENT CONTRACTOR AND WHO DOES NOT REPRESENT TO THE
8 PUBLIC THAT THE INDIVIDUAL CAN OR WILL PERFORM ANY ACTIVITIES OF
9 A MORTGAGE LOAN ORIGINATOR. AS USED IN THIS PARAGRAPH (g),
10 "REPRESENT TO THE PUBLIC" MEANS COMMUNICATING, THROUGH
11 ADVERTISING OR OTHER MEANS OF COMMUNICATING OR PROVIDING
12 INFORMATION, INCLUDING THE USE OF BUSINESS CARDS, STATIONERY,
13 BROCHURES, SIGNS, RATE LISTS, OR OTHER PROMOTIONAL ITEMS, THAT THE
14 INDIVIDUAL IS ABLE TO PROVIDE A PARTICULAR SERVICE OR ACTIVITY FOR
15 A CONSUMER.

16 (2) The exemptions in subsection (1) of this section shall not
17 apply to persons acting beyond the scope of such exemptions.

18 **12-61-904.5. Originator's relationship to borrower - rules.**

19 (1) A mortgage ~~broker~~ LOAN ORIGINATOR shall have a duty of good faith
20 and fair dealing in all communications and transactions with a borrower.

21 Such duty includes, but is not limited to:

22 (a) The duty to not recommend or induce the borrower to enter
23 into a transaction that does not have a reasonable, tangible net benefit to
24 the borrower, considering all of the circumstances, including the terms of
25 a loan, the cost of a loan, and the borrower's circumstances;

26 (b) The duty to make a reasonable inquiry concerning the
27 borrower's current and prospective income, existing debts and other

1 obligations, and any other RELEVANT information ~~known to the mortgage~~
2 ~~broker~~ and, after making such inquiry, to make his or her best efforts to
3 recommend, broker, or originate a residential mortgage loan that takes
4 into consideration the information submitted by the borrower, BUT THE
5 MORTGAGE LOAN ORIGINATOR SHALL NOT BE DEEMED TO VIOLATE THIS
6 SECTION IF THE BORROWER CONCEALS OR MISREPRESENTS RELEVANT
7 INFORMATION; and

8 (c) The duty not to commit any ~~unconscionable act or practice~~
9 ~~listed~~ ACTS, PRACTICES, OR OMISSIONS in VIOLATION OF section
10 38-40-105, ~~(1.7)~~; C.R.S.

11 (2) For purposes of implementing subsection (1) of this section,
12 the director may adopt rules defining what constitutes a reasonable,
13 tangible net benefit to the borrower.

14 (3) A violation of this section constitutes a deceptive trade
15 practice under the "Colorado Consumer Protection Act", article 1 of title
16 6, C.R.S.

17 **12-61-905. Powers and duties of the director.** (1) The director
18 ~~shall~~ MAY deny AN APPLICATION FOR A LICENSE, refuse to renew, or
19 revoke the license of an applicant OR LICENSEE who has:

20 (a) Filed an application with the director containing material
21 misstatements of fact or omitted any disclosure required by this part 9;

22 (b) Within the last five years, been convicted of or pled guilty or
23 nolo contendere to a crime involving fraud, deceit, material
24 misrepresentation, theft, or the breach of a fiduciary duty, EXCEPT AS
25 OTHERWISE SET FORTH IN THIS PART 9;

26 (c) EXCEPT AS OTHERWISE SET FORTH IN THIS PART 9, within the
27 last five years, had a license, registration, or certification issued by

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

4 (I) A mortgage broker OR A MORTGAGE LOAN ORIGINATOR;

5 (II) A real estate broker, as defined by section 12-61-101 (2);

6 (III) A real estate salesperson;

7 (IV) A real estate appraiser, as defined by section 12-61-702 (5);

8 (V) An insurance producer, as defined by section 10-2-103 (6),
9 C.R.S.;

10 (VI) An attorney;

11 (VII) A securities broker-dealer, as defined by section 11-51-201
12 (2), C.R.S.;

13 (VIII) A securities sales representative, as defined by section
14 11-51-201 (14), C.R.S.;

15 (IX) An investment advisor, as defined by section 11-51-201
16 (9.5), C.R.S.; or

17 (X) An investment advisor representative, as defined by section
18 11-51-201 (9.6), C.R.S.;

19 (d) Been enjoined within the immediately preceding five years
20 under the laws of this or any other state or of the United States from
21 engaging in deceptive conduct relating to the brokering of OR
22 ORIGINATING a mortgage loan;

23 (e) Been found to have violated the provisions of section
24 12-61-910.2; or

25 (f) Been found to have violated the provisions of section
26 12-61-911;

27 (g) HAD A MORTGAGE LOAN ORIGINATOR LICENSE OR SIMILAR

1 LICENSE REVOKED IN ANY OTHER JURISDICTION; EXCEPT THAT A
2 REVOCATION THAT WAS SUBSEQUENTLY FORMALLY NULLIFIED SHALL NOT
3 BE DEEMED A REVOCATION FOR PURPOSES OF THIS SECTION;

4 (h) AT ANY TIME PRECEDING THE DATE OF APPLICATION FOR A
5 LICENSE OR REGISTRATION, BEEN CONVICTED OF, OR PLED GUILTY OR NOLO
6 CONTENDERE TO, A FELONY IN A DOMESTIC, FOREIGN, OR MILITARY COURT
7 IF THE FELONY INVOLVED AN ACT OF FRAUD, DISHONESTY, BREACH OF
8 TRUST, OR MONEY LAUNDERING; EXCEPT THAT, IF THE INDIVIDUAL
9 OBTAINS A PARDON OF THE CONVICTION, THE INDIVIDUAL SHALL NOT BE
10 DEEMED CONVICTED FOR PURPOSES OF THIS PARAGRAPH (h);

11 (i) BEEN CONVICTED OF, OR PLED GUILTY OR NOLO CONTENDERE
12 TO, A FELONY WITHIN THE SEVEN YEARS IMMEDIATELY PRECEDING THE
13 DATE OF APPLICATION FOR A LICENSE OR REGISTRATION;

14 (j) [REDACTED] NOT DEMONSTRATED FINANCIAL RESPONSIBILITY,
15 CHARACTER, AND GENERAL FITNESS TO COMMAND THE CONFIDENCE OF
16 THE COMMUNITY AND TO WARRANT A DETERMINATION THAT THE
17 INDIVIDUAL WILL OPERATE HONESTLY, FAIRLY, AND EFFICIENTLY,
18 CONSISTENT WITH THE PURPOSES OF THIS PART 9;

19 [REDACTED]
20 (k) NOT COMPLETED THE PRELICENSE EDUCATION REQUIREMENTS
21 SET FORTH IN SECTION 12-61-903 AND ANY APPLICABLE RULES OF THE
22 DIRECTOR; OR

23 (l) NOT PASSED A WRITTEN EXAMINATION THAT MEETS THE
24 REQUIREMENTS SET FORTH IN SECTION 12-61-903 AND ANY APPLICABLE
25 RULES OF THE DIRECTOR.

26 (2) The director may investigate the activities of a licensee or
27 other person that present grounds for disciplinary action under this part

1 9 or that violate section 12-61-910 (1).

2 (3) (a) If the director has reasonable grounds to believe that a
3 mortgage ~~broker~~ LOAN ORIGINATOR is no longer qualified under
4 subsection (1) of this section, the director may summarily suspend the
5 mortgage ~~broker's~~ LOAN ORIGINATOR'S license pending a hearing to
6 revoke the license. A summary suspension shall conform to article 4 of
7 title 24, C.R.S.

8 (b) The director shall suspend the license of a mortgage ~~broker~~
9 LOAN ORIGINATOR who fails to maintain the bond required by section
10 12-61-907 until the licensee complies with such section.

11 (4) The director or an administrative law judge appointed pursuant
12 to part 10 of article 30 of title 24, C.R.S., shall conduct disciplinary
13 hearings concerning mortgage ~~brokers~~ LOAN ORIGINATORS. Such
14 hearings shall conform to article 4 of title 24, C.R.S.

15 (5) (a) Except as provided in paragraph (b) of this subsection (5),
16 ~~a person~~ AN INDIVIDUAL whose license has been revoked shall not be
17 eligible for licensure for two years after the effective date of the
18 revocation.

19 (b) If the director or an administrative law judge determines that
20 an application contained a misstatement of fact or omitted a required
21 disclosure due to an unintentional error, the director shall allow the
22 applicant to correct the application. Upon receipt of the corrected and
23 completed application, the director or administrative law judge shall not
24 bar the applicant from being licensed on the basis of the unintentional
25 misstatement or omission.

26 (6) (a) The director or an administrative law judge may administer
27 oaths, take affirmations of witnesses, and issue subpoenas to compel the

1 attendance of witnesses and the production of all relevant papers, books,
2 records, documentary evidence, and materials in any hearing or
3 investigation conducted by the director or an administrative law judge.
4 THE DIRECTOR MAY REQUEST ANY INFORMATION RELEVANT TO THE
5 INVESTIGATION, INCLUDING, BUT NOT LIMITED TO, INDEPENDENT CREDIT
6 REPORTS OBTAINED FROM A CONSUMER REPORTING AGENCY DESCRIBED
7 IN THE FEDERAL "FAIR CREDIT REPORTING ACT", 15 U.S.C. SEC. 1681a
8 (p).

9 (b) Upon failure of a witness to comply with a subpoena or
10 process, the district court of the county in which the subpoenaed witness
11 resides or conducts business may issue an order requiring the witness to
12 appear before the director or administrative law judge; and produce the
13 relevant papers, books, records, documentary evidence, testimony, or
14 materials in question; OR BOTH. Failure to obey the order of the court
15 may be punished as a contempt of court. The director or an
16 administrative law judge may apply for such order.

17 (c) THE LICENSEE OR INDIVIDUAL WHO, AFTER AN INVESTIGATION
18 UNDER THIS PART 9, IS FOUND TO BE IN VIOLATION OF A PROVISION OF THIS
19 PART 9 SHALL BE RESPONSIBLE FOR PAYING ALL REASONABLE AND
20 NECESSARY COSTS OF THE DIVISION ARISING FROM SUBPOENAS OR
21 REQUESTS ISSUED PURSUANT TO THIS SUBSECTION (6), INCLUDING COURT
22 COSTS FOR AN ACTION BROUGHT PURSUANT TO PARAGRAPH (b) OF THIS
23 SUBSECTION (6).

24 (7) (a) If the director has reasonable cause to believe that a person
25 AN INDIVIDUAL is violating this part 9, including but not limited to section
26 12-61-910 (1), the director may enter an order requiring such person THE
27 INDIVIDUAL to cease and desist such violations.

1 (b) The director, upon his or her own motion, may, and, upon the
2 complaint in writing of any person, shall, investigate the activities of any
3 licensee or any person INDIVIDUAL who assumes to act in such capacity
4 within the state. In addition to any other penalty that may be imposed
5 pursuant to this part 9, any person INDIVIDUAL violating any provision of
6 this part 9 or any rules promulgated pursuant to this article may be fined
7 upon a finding of misconduct by the director as follows:

8 (I) In the first administrative proceeding, a fine not in excess of
9 one thousand dollars per act or occurrence;

10 (II) In a second or subsequent administrative proceeding, a fine
11 not less than one thousand dollars nor in excess of two thousand dollars
12 per act or occurrence.

13 (c) All fines collected pursuant to this subsection (7) shall be
14 transferred to the state treasurer, who shall credit such moneys to the
15 mortgage broker LOAN ORIGINATOR licensing cash fund created in section
16 12-61-908.

17 (8) The director shall keep records of the persons INDIVIDUALS
18 licensed as mortgage brokers LOAN ORIGINATORS and of disciplinary
19 proceedings. The records kept by the director shall be open to public
20 inspection in a reasonable time and manner determined by the director.

21 (9) (a) The director shall maintain a system, which may include,
22 without limitation, a hotline or web site, that gives consumers a
23 reasonably easy method for making complaints about a mortgage broker
24 LOAN ORIGINATOR.

25 (b) ~~The director shall review the complaints annually and prepare~~
26 ~~a report to be issued to the committee of the general assembly that has~~
27 ~~oversight of mortgage brokers. Such report shall contain the trends in~~

1 ~~complaints and investigations under this part 9.~~

2 (10) The director shall promulgate rules to allow licensed
3 mortgage ~~brokers~~ LOAN ORIGINATORS to hire unlicensed mortgage ~~brokers~~
4 LOAN ORIGINATORS under temporary licenses. If ~~such~~ an unlicensed
5 mortgage ~~broker~~ LOAN ORIGINATOR has initiated the application process
6 for a license, he or she shall be assigned a temporary license for a
7 reasonable period until a license is approved or denied. The licensed
8 mortgage ~~broker~~ LOAN ORIGINATOR who employs ~~such~~ an unlicensed
9 mortgage ~~broker~~ LOAN ORIGINATOR shall be held responsible under all
10 applicable provisions of law, including without limitation this part 9 and
11 section 38-40-105, C.R.S., for the actions of the unlicensed mortgage
12 ~~broker~~ LOAN ORIGINATOR to whom a temporary license has been assigned
13 under this subsection (10).

14 **12-61-905.5. Disciplinary actions - grounds - procedures -**
15 **rules.** (1) The director, upon his or her own motion, may, and, upon the
16 complaint in writing of any person, shall, investigate the activities of any
17 mortgage ~~broker~~, and LOAN ORIGINATOR. The director has the power to
18 impose an administrative fine in accordance with section 12-61-905, ~~and~~
19 ~~to~~ DENY A LICENSE, censure a licensee, ~~to~~ place the licensee on probation
20 and ~~to~~ set the terms of probation, ORDER RESTITUTION, ORDER THE
21 PAYMENT OF ACTUAL DAMAGES, or ~~to~~ suspend or revoke a license when
22 the director finds that the licensee OR APPLICANT has performed, is
23 performing, or is attempting to perform any of the following acts:

24 (a) Knowingly making any misrepresentation or knowingly
25 making use of any false or misleading advertising;

26 (b) Making any promise that influences, persuades, or induces
27 another person to detrimentally rely on such promise when the licensee

1 could not or did not intend to keep such promise;

2 (c) Knowingly misrepresenting or making false promises through
3 agents, salespersons, advertising, or otherwise;

4 (d) Violating any provision of the "Colorado Consumer Protection
5 Act", article 1 of title 6, C.R.S., and, if the licensee has been assessed a
6 civil or criminal penalty or been subject to an injunction under said act,
7 the director shall revoke the licensee's license;

8 (e) Acting for more than one party in a transaction without
9 disclosing any actual or potential conflict of interest or without disclosing
10 to all parties any fiduciary obligation or other legal obligation of the
11 mortgage ~~broker~~ LOAN ORIGINATOR to any party;

12 (f) Representing or attempting to represent a mortgage ~~broker~~
13 LOAN ORIGINATOR other than the licensee's PRINCIPAL OR employer
14 without the express knowledge and consent of that PRINCIPAL OR
15 employer;

16 (g) In the case of a licensee in the employ of another mortgage
17 ~~broker~~ LOAN ORIGINATOR, failing to place, as soon after receipt as is
18 practicably possible, in the custody of that licensed mortgage
19 ~~broker-employer~~ LOAN ORIGINATOR-EMPLOYER any deposit money or
20 other money or fund entrusted to the employee by any person dealing with
21 the employee as the representative of that licensed mortgage
22 ~~broker-employer~~ LOAN ORIGINATOR-EMPLOYER;

23 (h) Failing to account for or to remit, within a reasonable time,
24 any moneys coming into his or her possession that belong to others,
25 whether acting as a mortgage ~~broker~~ LOAN ORIGINATOR, real estate
26 broker, salesperson, or otherwise, and failing to keep records relative to
27 said moneys, which records shall contain such information as may be

1 prescribed by the rules of the director relative thereto and shall be subject
2 to audit by the director;

3 (i) Converting funds of others, diverting funds of others without
4 proper authorization, commingling funds of others with the licensee's
5 own funds, or failing to keep such funds of others in an escrow or a
6 trustee account with a bank or recognized depository in this state, which
7 account may be any type of checking, demand, passbook, or statement
8 account insured by an agency of the United States government, and to so
9 keep records relative to the deposit that contain such information as may
10 be prescribed by the rules of the director relative thereto, which records
11 shall be subject to audit by the director;

12 (j) Failing to provide the parties to a residential mortgage loan
13 transaction with such information as may be prescribed by the rules of the
14 director;

15 (k) Failing to maintain possession, for future use or inspection by
16 an authorized representative of the director, for a period of four years, of
17 the documents or records prescribed by the rules of the director or to
18 produce such documents or records upon reasonable request by the
19 director or by an authorized representative of the director;

20 (l) Paying a commission or valuable consideration for performing
21 any of the functions of a mortgage broker LOAN ORIGINATOR, as described
22 in this part 9, to any person WHO IS not licensed under this part 9 except
23 that a licensed mortgage broker may pay a finder's fee or a share of any
24 commission on a cooperative sale when such payment is made to a
25 mortgage broker licensed in another state or country. If such state or
26 country does not license mortgage brokers, then the payee shall be a
27 citizen or resident of said state or country and represent that the payee is

1 ~~in the mortgage brokerage business in said state or country~~ OR IS NOT
2 REGISTERED IN COMPLIANCE WITH THE FEDERAL "SECURE AND FAIR
3 ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008", 12 U.S.C. SEC.
4 5101 ET SEQ.;

5 (m) Disregarding or violating any provision of this part 9 or of any
6 rule adopted by the director pursuant to this part 9; violating any lawful
7 orders of the director; or aiding and abetting a violation of any rule, order
8 of the director, or provision of this part 9;

9 (n) Conviction of, entering a plea of guilty to, or entering a plea
10 of nolo contendere to any crime in article 3 of title 18, C.R.S., in parts 1
11 to 4 of article 4 of title 18, C.R.S., in article 5 of title 18, C.R.S., in part
12 3 of article 8 of title 18, C.R.S., in article 15 of title 18, C.R.S., in article
13 17 of title 18, C.R.S., or any other like crime under Colorado law, federal
14 law, or the laws of other states. A certified copy of the judgment of a
15 court of competent jurisdiction of such conviction or other official record
16 indicating that such plea was entered shall be conclusive evidence of such
17 conviction or plea in any hearing under this part 9.

18 (o) Violating or aiding and abetting in the violation of the
19 Colorado or federal fair housing laws;

20 (p) Failing to immediately notify the director in writing of a
21 conviction, plea, or violation pursuant to paragraph (n) or (o) of this
22 subsection (1);

23 (q) Having demonstrated unworthiness or incompetency to act as
24 a mortgage ~~broker~~ LOAN ORIGINATOR by conducting business in such a
25 manner as to endanger the interest of the public;

26 ~~(r) Failing to exercise reasonable supervision over the activities~~
27 ~~of licensed employees;~~

1 (s) Procuring, or attempting to procure, a mortgage broker's LOAN
2 ORIGINATOR'S license or renewing, reinstating, or reactivating, or
3 attempting to renew, reinstate, or reactivate, a mortgage broker's LOAN
4 ORIGINATOR'S license by fraud, misrepresentation, or deceit or by making
5 a material misstatement of fact in an application for such license;

6 (t) Claiming, arranging for, or taking any secret or undisclosed
7 amount of compensation, commission, or profit or failing to reveal to the
8 licensee's principal or employer the full amount of such licensee's
9 compensation, commission, or profit in connection with any acts for
10 which a license is required under this part 9;

11 (u) Exercising an option to purchase in any agreement authorizing
12 or employing such licensee to sell, buy, or exchange real estate for
13 compensation or commission except when such licensee, prior to or
14 coincident with election to exercise such option to purchase, reveals in
15 writing to the licensee's principal or employer the full amount of the
16 licensee's profit and obtains the written consent of such principal or
17 employer approving the amount of such profit;

18 (v) Fraud, misrepresentation, deceit, or conversion of trust funds
19 that results in the payment of any claim pursuant to this part 9 or that
20 results in the entry of a civil judgment for damages;

21 (w) Any other conduct, whether of the same or a different
22 character than specified in this subsection (1), that evinces a lack of good
23 faith and fair dealing;

24 (x) Having had a mortgage broker's LOAN ORIGINATOR'S license
25 suspended or revoked in any jurisdiction or having had any disciplinary
26 action taken against the mortgage broker LOAN ORIGINATOR in any other
27 jurisdiction. A certified copy of the order of disciplinary action shall be

1 prima facie evidence of such disciplinary action.

2 (2) ~~If a firm, partnership, limited liability company, association,~~
3 ~~or corporation operating under the license of a mortgage broker~~
4 ~~designated and licensed as a representative of said firm, partnership,~~
5 ~~limited liability company, association, or corporation is guilty of any of~~
6 ~~the acts set out in subsection (1) of this section, the director may suspend~~
7 ~~or revoke the right of the firm, partnership, limited liability company,~~
8 ~~association, or corporation to conduct its business under the license of~~
9 ~~said mortgage broker, whether or not the designated mortgage broker had~~
10 ~~personal knowledge thereof and whether or not the director suspends or~~
11 ~~revokes the individual license of said mortgage broker.~~

12 (3) Upon request of the director, when any mortgage ~~broker~~ LOAN
13 ORIGINATOR is a party to any suit or proceeding, either civil or criminal,
14 arising out of any transaction involving a residential mortgage loan and
15 ~~when such~~ THE mortgage ~~broker~~ LOAN ORIGINATOR participated in ~~such~~
16 THE transaction in his or her capacity as a licensed mortgage ~~broker~~, it
17 ~~shall be the duty of such~~ LOAN ORIGINATOR, THE mortgage ~~broker~~ to LOAN
18 ORIGINATOR SHALL supply to the director a copy of the complaint,
19 indictment, information, or other initiating pleading and the answer filed,
20 if any, and ~~to~~ advise the director of the disposition of the case and of the
21 nature and amount of any judgment, verdict, finding, or sentence that may
22 be made, entered, or imposed therein.

23 (4) This part 9 shall not be construed to relieve any person from
24 civil liability or criminal prosecution under the laws of this state.

25 (5) Complaints of record in the office of the director and the
26 results of staff investigations may, in the discretion of the director, be
27 closed to public inspection, except as provided by court order, during the

1 investigatory period and until dismissed or until notice of hearing and
2 charges are served on a licensee.

3 (6) When a complaint or an investigation discloses an instance of
4 misconduct that, in the opinion of the director, does not warrant formal
5 action by the director but that should not be dismissed as being without
6 merit, the director may send a letter of admonition by certified mail,
7 return receipt requested, to the licensee against whom a complaint was
8 made and a copy thereof to the person making the complaint, but the
9 letter shall advise the licensee that the licensee has the right to request in
10 writing, within twenty days after proven receipt, that formal disciplinary
11 proceedings be initiated to adjudicate the propriety of the conduct upon
12 which the letter of admonition is based. If such request is timely made,
13 the letter of admonition shall be deemed vacated, and the matter shall be
14 processed by means of formal disciplinary proceedings.

15 (7) All administrative fines collected pursuant to this section shall
16 be transmitted to the state treasurer, who shall credit the same to the
17 mortgage broker ~~LOAN ORIGINATOR~~ licensing cash fund created in section
18 12-61-908.

19 (8) (a) The director shall not consider an application for licensure
20 from ~~a person~~ AN INDIVIDUAL whose license has been revoked until two
21 years after the date of revocation.

22 (b) If ~~a person's~~ AN INDIVIDUAL'S license was suspended or
23 revoked due to conduct that resulted in financial loss to another person,
24 no new license shall be granted, nor shall a suspended license be
25 reinstated, until full restitution has been made to the person suffering such
26 financial loss. The amount of restitution shall include interest, reasonable
27 attorney fees, and costs of any suit or other proceeding undertaken in an

1 effort to recover the loss.

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

10 **12-61-905.6. Hearing - administrative law judge - review -**
11 **rules.** (1) Except as otherwise provided in this section, all proceedings
12 before the director with respect to disciplinary actions and denial of
13 licensure under this part 9, at the discretion of the director, may be
14 conducted by an AUTHORIZED REPRESENTATIVE OF THE DIRECTOR OR AN
15 administrative law judge pursuant to sections 24-4-104 and 24-4-105,
16 C.R.S.

17 (2) Proceedings shall be held in the county where the director has
18 his or her office or in such other place as the director may designate. If
19 the licensee is employed by another licensed mortgage ~~broker~~ LOAN
20 ORIGINATOR or by a real estate broker, the director shall also notify the
21 licensee's employer by mailing, by first-class mail, a copy of the written
22 notice required under section 24-4-104 (3), C.R.S., to the employer's
23 last-known business address.

24 (3) THE DIRECTOR, AN AUTHORIZED REPRESENTATIVE OF THE
25 DIRECTOR, OR an administrative law judge shall conduct all hearings for
26 denying, suspending, or revoking a license or certificate on behalf of the
27 director, subject to appropriations made to the department of personnel.

1 Each administrative law judge shall be appointed pursuant to part 10 of
2 article 30 of title 24, C.R.S. The administrative law judge shall conduct
3 the hearing in accordance with sections 24-4-104 and 24-4-105, C.R.S.
4 No license shall be denied, suspended, or revoked until the director has
5 made his or her decision.

6 (4) The decision of the director in any disciplinary action or denial
7 of licensure under this section is subject to judicial review ~~under section~~
8 ~~24-4-106, C.R.S.~~ BY THE COURT OF APPEALS. In order to effectuate the
9 purposes of this part 9, the director has the power to promulgate rules
10 pursuant to article 4 of title 24, C.R.S.

11 (5) In a judicial review proceeding, the court may stay the
12 execution or effect of any final order of the director; but a hearing shall
13 be held affording the parties an opportunity to be heard for the purpose
14 of determining whether the public health, safety, and welfare would be
15 endangered by staying the director's order. If the court determines that
16 the order should be stayed, it shall also determine at the hearing the
17 amount of the bond and adequacy of the surety, which bond shall be
18 conditioned upon the faithful performance by such petitioner of all
19 obligations as a mortgage ~~broker~~ LOAN ORIGINATOR and upon the prompt
20 payment of all damages arising from or caused by the delay in the taking
21 effect of or enforcement of the order complained of and for all costs that
22 may be assessed or required to be paid in connection with such
23 proceedings.

24 (6) In any hearing conducted by the director OR AN AUTHORIZED
25 REPRESENTATIVE OF THE DIRECTOR in which there is a possibility of the
26 denial, suspension, or revocation of a license because of the conviction
27 of a felony or of a crime involving moral turpitude, the director OR HIS OR

1 HER AUTHORIZED REPRESENTATIVE shall be governed by section
2 24-5-101, C.R.S.

3 **12-61-905.7. Subpoena - misdemeanor.** (1) The director or the
4 administrative law judge appointed for hearings may issue a subpoena
5 compelling the attendance and testimony of witnesses and the production
6 of books, papers, or records pursuant to an investigation or hearing of the
7 director. ~~Such subpoenas, AS DESCRIBED IN SECTION 12-61-905 (6),~~
8 WHICH shall be served in the same manner as subpoenas issued by district
9 courts and shall be issued without discrimination between public or
10 private parties requiring the attendance of witnesses and OR the
11 production of documents at hearings. ~~If a person fails or refuses to obey~~
12 ~~a subpoena issued by the director or the appointed administrative law~~
13 ~~judge, the director may petition the district court having jurisdiction for~~
14 ~~issuance of a subpoena in the premises, and the court shall, in a proper~~
15 ~~case, issue its subpoena.~~

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

23 **12-61-906. Immunity.** A person participating in good faith in the
24 filing of a complaint or report or participating in an investigation or
25 hearing before the director or an administrative law judge pursuant to this
26 part 9 shall be immune from any liability, civil or criminal, that otherwise
27 might result by reason of such action.

1 **12-61-907. Bond required.** (1) Before receiving a license, an
2 applicant shall post with the director a surety bond ~~or an alternative~~
3 ~~authorized by article 35 of title 11, C.R.S.,~~ IN THE AMOUNT of twenty-five
4 thousand dollars OR SUCH OTHER AMOUNT AS MAY BE PRESCRIBED BY THE
5 DIRECTOR BY RULE. A licensed mortgage ~~broker~~ LOAN ORIGINATOR shall
6 maintain ~~such~~ THE REQUIRED bond at all times.

7 (2) The surety shall not be required to pay a person making a
8 claim upon the bond until a final determination of fraud, forgery, criminal
9 impersonation, or fraudulent representation has been made by a court with
10 jurisdiction.

11 (3) The surety bond shall require the surety to provide notice to
12 the director within thirty days if payment is made from the surety bond or
13 if the bond is cancelled.

14 **12-61-908. Fees - cash fund - created.** (1) The director may set
15 the fees for issuance and renewal of licenses under this part 9. The fees
16 shall be set in amounts that offset the direct and indirect costs of
17 implementing this part 9 and section 38-40-105, C.R.S. The moneys
18 collected pursuant to this section shall be transferred to the state treasurer,
19 who shall credit them to the mortgage ~~broker~~ LOAN ORIGINATOR licensing
20 cash fund.

21 (2) There is hereby created in the state treasury the mortgage
22 ~~broker~~ LOAN ORIGINATOR licensing cash fund. Moneys in the fund shall
23 be spent only to implement this part 9 and section 38-40-105, C.R.S., and
24 shall not revert to the general fund at the end of the fiscal year. The fund
25 shall be subject to annual appropriation by the general assembly.

26 **12-61-909. Attorney general - district attorney - jurisdiction.**
27 The attorney general shall have concurrent jurisdiction with the district

1 attorneys of this state to investigate and prosecute allegations of criminal
2 violations of this part 9.

3 **12-61-910. Violations - injunctions.** (1) (a) Any ~~natural person,~~
4 ~~firm, partnership, limited liability company, or association or any~~
5 ~~corporation~~ INDIVIDUAL violating this part 9 by acting as a mortgage
6 ~~broker~~ LOAN ORIGINATOR in this state without having obtained a license
7 or by acting as a mortgage ~~broker~~ LOAN ORIGINATOR after that ~~person's~~
8 INDIVIDUAL'S license has been revoked or during any period for which
9 said license may have been suspended is guilty of a class 1 misdemeanor
10 and shall be punished as provided in section 18-1.3-501, C.R.S.; except
11 that, if the violator is not a natural person, the violator shall be punished
12 by a fine of not more than five thousand dollars.

13 (b) Each RESIDENTIAL mortgage ~~brokered~~ LOAN NEGOTIATED OR
14 OFFERED TO BE NEGOTIATED by an unlicensed person shall be a separate
15 violation of this subsection (1).

16 (2) (Deleted by amendment, L. 2007, p. 1742, § 11, effective
17 January 1, 2008.)

18 (3) The director may request that an action be brought in the name
19 of the people of the state of Colorado by the attorney general or the
20 district attorney of the district in which the violation is alleged to have
21 occurred to enjoin a person from engaging in or continuing the violation
22 or from doing any act that furthers the violation. In such an action, an
23 order or judgment may be entered awarding such preliminary or final
24 injunction as is deemed proper by the court. The notice, hearing, or
25 duration of an injunction or restraining order shall be made in accordance
26 with the Colorado rules of civil procedure.

27 (4) A violation of this part 9 shall not affect the validity or

1 enforceability of any mortgage.

2 **12-61-910.2. Prohibited conduct - influencing a real estate**

3 **appraisal.** (1) A mortgage ~~broker~~ LOAN ORIGINATOR shall not, directly
4 or indirectly, compensate, coerce, or intimidate an appraiser, or attempt,
5 directly or indirectly, to compensate, coerce, or intimidate an appraiser,
6 for the purpose of influencing the independent judgment of the appraiser
7 with respect to the value of a dwelling offered as security for repayment
8 of a RESIDENTIAL mortgage loan. This prohibition shall not be construed
9 as prohibiting a mortgage ~~broker~~ LOAN ORIGINATOR from requesting an
10 appraiser to:

11 (a) Consider additional, appropriate property information;

12 (b) Provide further detail, substantiation, or explanation for the
13 appraiser's value conclusion; or

14 (c) Correct errors in the appraisal report.

15 **12-61-910.3. Rule-making authority.** The director shall have the
16 authority to promulgate rules as necessary to enable the director to carry
17 out the director's duties under this part 9.

18 **12-61-910.4. Nontraditional mortgage products - consumer**
19 **protections - rules - incorporation of federal interagency guidance.**

20 The director shall adopt rules governing the marketing of nontraditional
21 ~~mortgages~~ MORTGAGE PRODUCTS by mortgage ~~brokers~~ LOAN
22 ORIGINATORS. In adopting such rules, the director shall incorporate
23 appropriate provisions of the final "Interagency Guidance on
24 Nontraditional Mortgage Product Risks" released on September 29, 2006,
25 by the office of the comptroller of the currency and the office of thrift
26 supervision in the federal department of the treasury, the board of
27 governors of the federal reserve system, the federal deposit insurance

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

3 **12-61-911. Prohibited conduct - fraud - misrepresentation -**
4 **conflict of interest - rules.** (1) A mortgage ~~broker~~ LOAN ORIGINATOR,
5 including a mortgage ~~broker~~ LOAN ORIGINATOR otherwise exempted from
6 this part 9 by section 12-61-904 (1) (b), ~~or (1) (c)~~, shall not:

7 (a) Directly or indirectly employ any scheme, device, or artifice
8 to defraud or mislead borrowers or lenders or to defraud any person;

9 (b) Engage in any unfair or deceptive practice toward any person;

10 (c) Obtain property by fraud or misrepresentation;

11 (d) Solicit or enter into a contract with a borrower that provides
12 in substance that the mortgage ~~broker~~ LOAN ORIGINATOR may earn a fee
13 or commission through the mortgage ~~broker's~~ LOAN ORIGINATOR'S "best
14 efforts" to obtain a loan even though no loan is actually obtained for the
15 borrower;

16 (e) Solicit, advertise, or enter into a contract for specific interest
17 rates, points, or other financing terms unless the terms are actually
18 available at the time of soliciting, advertising, or contracting from a
19 lender with whom the mortgage ~~broker~~ LOAN ORIGINATOR maintains a
20 written correspondent or loan ~~broker~~ agreement under section 12-61-913;

21 (f) Fail to make a disclosure to a loan applicant or a
22 noninstitutional investor as required by section 12-61-914 and any other
23 applicable state or federal law;

24 (g) Make, in any manner, any false or deceptive statement or
25 representation with regard to the rates, points, or other financing terms or
26 conditions for a residential mortgage loan or engage in "bait and switch"
27 advertising;

1 (h) Negligently make any false statement or knowingly and
2 willfully make any omission of material fact in connection with any
3 reports filed by a mortgage ~~broker~~ LOAN ORIGINATOR or in connection
4 with any investigation conducted by the division;

5 (i) Advertise any rate of interest without conspicuously disclosing
6 the annual percentage rate implied by such rate of interest;

7 (j) Fail to comply with any requirement of the federal "Truth in
8 Lending Act", 15 U.S.C. sec. 1601 and Regulation Z, 12 CFR 226; the
9 "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601
10 and Regulation X, 24 CFR 3500; the "Equal Credit Opportunity Act", 15
11 U.S.C. sec. 1691 and Regulation B, CFR 202.9, 202.11, and 202.12; Title
12 V, Subtitle A of the financial modernization act of 1999 (known as the
13 "Gramm-Leach-Bliley Act"), 12 U.S.C. secs. 6801 to 6809; the federal
14 trade commission's privacy rules, 16 CFR 313-314, mandated by the
15 "Gramm-Leach-Bliley Act"; the "Home Mortgage Disclosure Act of
16 1975", 12 U.S.C. sec. 2801 et seq. and Regulation C, home mortgage
17 disclosure; the "Federal Trade Commission Act", 12 CFR 203, 15 U.S.C.
18 sec. 45(a); the "Telemarketing and Consumer Fraud and Abuse
19 Prevention Act", 15 U.S.C. secs. 6101 to 6108; and the federal trade
20 commission telephone sales rule, 16 CFR 310, as amended, in any
21 advertising of residential mortgage loans or any other applicable
22 mortgage ~~broker~~ LOAN ORIGINATOR activities covered by the acts. The
23 director may adopt rules requiring mortgage ~~brokers~~ LOAN ORIGINATORS
24 to comply with other applicable federal statutes and regulations. ~~in any~~
25 ~~advertising of residential mortgage loans, or any other mortgage broker~~
26 ~~activity.~~

27 (k) Fail to pay a third-party provider, no later than thirty days after

1 the recording of the loan closing documents or ninety days after
2 completion of the third-party service, whichever comes first, unless
3 otherwise agreed or unless the third-party service provider has been
4 notified in writing that a bona fide dispute exists regarding the
5 performance or quality of the third-party service;

6 (l) Collect, charge, attempt to collect or charge, or use or propose
7 any agreement purporting to collect or charge any fee prohibited by
8 section 12-61-914 or 12-61-915; or

9 (m) Fail to comply with any provision of this part 9 or any rule
10 adopted pursuant to this part 9.

11 **12-61-911.5. Acts of employee - mortgage loan originator's**
12 **liability.** An unlawful act or violation of this part 9 upon the part of an
13 AGENT OR employee ~~officer, or member~~ of a licensed mortgage ~~broker~~
14 LOAN ORIGINATOR shall not be cause for disciplinary action against a
15 mortgage ~~broker~~ LOAN ORIGINATOR unless it appears that the mortgage
16 ~~broker~~ LOAN ORIGINATOR knew or should have known of the unlawful act
17 or violation or had been negligent in the supervision of the AGENT OR
18 employee.

19 **12-61-912. Dual status as real estate broker - requirements.**

20 (1) Unless a mortgage ~~broker~~ LOAN ORIGINATOR complies with both
21 subsections (2) and (3) of this section, he or she shall not act as a
22 MORTGAGE loan originator in any transaction in which:

23 (a) The mortgage ~~broker~~ LOAN ORIGINATOR acts or has acted as a
24 real estate broker OR SALESPERSON; or

25 (b) Another person doing business under the same licensed real
26 estate broker acts or has acted as a real estate broker OR SALESPERSON.

27 (2) Before providing ~~mortgage~~ MORTGAGE-RELATED services to

1 the borrower, a mortgage ~~broker~~ LOAN ORIGINATOR shall make a full and
2 fair disclosure to the borrower, in addition to any other disclosures
3 required by this part 9 or other laws, of all material features of the loan
4 product and all facts material to the transaction.

5 (3) (a) A real estate broker OR SALESPERSON licensed under part
6 1 of this article who also acts as a mortgage ~~broker~~ LOAN ORIGINATOR
7 shall carry on such mortgage ~~broker~~ LOAN ORIGINATOR business activities
8 and shall maintain such person's mortgage ~~broker~~ LOAN ORIGINATOR
9 business records separate and apart from the real estate broker OR SALES
10 activities conducted pursuant to part 1 of this article. Such activities shall
11 be deemed separate and apart even if they are conducted at an office
12 location with a common entrance and mailing address if:

13 (I) Each business is clearly identified by a sign visible to the
14 public;

15 (II) Each business is physically separated within the office facility;
16 and

17 (III) No deception of the public as to the separate identities of the
18 broker business firms results.

19 (b) This subsection (3) shall not require a real estate broker OR
20 SALESPERSON licensed under part 1 of this article who also acts as a
21 mortgage ~~broker~~ LOAN ORIGINATOR to maintain a physical separation
22 within the office facility for the conduct of its real estate BROKER OR
23 SALES and mortgage ~~broker~~ LOAN ORIGINATOR activities if the director
24 determines that maintaining such physical separation would constitute an
25 undue financial hardship upon the mortgage ~~broker~~ LOAN ORIGINATOR
26 and is unnecessary for the protection of the public.

27 **12-61-913. Written contract required - effect.** (1) Every

1 contract between a mortgage broker LOAN ORIGINATOR and a borrower
2 shall be in writing and shall contain the entire agreement of the parties.

3 (2) A mortgage broker LOAN ORIGINATOR shall have a written
4 correspondent or loan broker agreement with a lender before any
5 solicitation of, or contracting with, any member of the public.

6 **12-61-914. Written disclosure of fees and costs - contents -**
7 **limits on fees - lock-in agreement terms - rules.** (1) Within three
8 business days after receipt of a loan application or any moneys from a
9 borrower, a mortgage broker LOAN ORIGINATOR shall provide to each
10 borrower a full written disclosure containing an itemization and
11 explanation of all fees and costs that the borrower is required to pay in
12 connection with obtaining a residential mortgage loan, and specifying the
13 fee or fees that inure to the benefit of the mortgage broker LOAN
14 ORIGINATOR. A good-faith estimate of a fee or cost shall be provided if
15 the exact amount of the fee or cost is not determinable. Except as
16 required by paragraph (c) of subsection (2) of this section, this subsection
17 (1) shall not be construed to require disclosure of the distribution or
18 breakdown of loan fees, discounts, or points between the mortgage broker
19 LOAN ORIGINATOR and any MORTGAGE lender or investor.

20 (2) The written disclosure shall contain the following information:

21 (a) The annual percentage rate, finance charge, amount financed,
22 total amount of all payments, number of payments, amount of each
23 payment, amount of points or prepaid interest, and the conditions and
24 terms under which any loan terms may change between the time of
25 disclosure and closing of the loan. If the interest rate is variable, the
26 written disclosure shall clearly describe the circumstances under which
27 the rate may increase, any limitation on the increase, the effect of an

1 increase, and an example of the payment terms resulting from an increase.

2 (b) The itemized costs of any credit report, appraisal, title report,
3 title insurance policy, mortgage insurance, escrow fee, property tax,
4 insurance, structural or pest inspection, and any other third-party
5 provider's costs associated with the residential mortgage loan;

6 (c) If applicable, the amount of any commission or other
7 compensation to be paid to the mortgage ~~broker~~ LOAN ORIGINATOR,
8 including the manner in which ~~such~~ THE commission or other
9 compensation is calculated and the relationship of ~~such~~ THE commission
10 or other compensation to the cost of the loan received by the borrower;

11 (d) If applicable, the cost, terms, duration, and conditions of a
12 lock-in agreement and whether a lock-in agreement has been entered,
13 whether the lock-in agreement is guaranteed by the mortgage ~~broker~~
14 LOAN ORIGINATOR or lender, and, if a lock-in agreement has not been
15 entered, disclosure in a form acceptable to the director that the disclosed
16 interest rate and terms are subject to change;

17 (e) A statement that, if the borrower is unable to obtain a loan for
18 any reason, the mortgage ~~broker~~ LOAN ORIGINATOR must, within five days
19 after a written request by the borrower, give copies of each appraisal, title
20 report, and credit report paid for by the borrower to the borrower and
21 transmit the appraisal, title report, or credit report to any other mortgage
22 ~~broker~~ LOAN ORIGINATOR or lender to whom the borrower directs the
23 documents to be sent;

24 (f) Whether and under what conditions any lock-in fees are
25 refundable to the borrower; and

26 (g) A statement providing that moneys paid by the borrower to the
27 mortgage ~~broker~~ LOAN ORIGINATOR for third-party provider services are

1 held in a trust account and any moneys remaining after payment to
2 third-party providers will be refunded.

3 (3) If, after the written disclosure is provided under this section,
4 a mortgage ~~broker~~ LOAN ORIGINATOR enters into a lock-in agreement with
5 a borrower or represents to the borrower that the borrower has entered
6 into a lock-in agreement, ~~then no less than three business days thereafter,~~
7 ~~including Saturdays,~~ the mortgage ~~broker~~ LOAN ORIGINATOR shall deliver
8 or send by first-class mail to the borrower a written confirmation of the
9 terms of the lock-in agreement ~~which~~ WITHIN THREE DAYS, INCLUDING
10 SATURDAYS, AFTER THE AGREEMENT IS ENTERED OR THE REPRESENTATION
11 IS MADE. THE WRITTEN CONFIRMATION shall include a copy of the
12 disclosure made under paragraph (d) of subsection (2) of this section.

13 (4) (a) Except as otherwise provided in paragraph (b) of this
14 subsection (4), a mortgage ~~broker~~ LOAN ORIGINATOR shall not charge any
15 fee that inures to the benefit of the mortgage ~~broker~~ LOAN ORIGINATOR
16 and that exceeds the fee disclosed on the written disclosure pursuant to
17 this section unless:

18 (I) The need to charge the fee was not reasonably foreseeable at
19 the time the written disclosure was provided; and

20 (II) The mortgage ~~broker~~ LOAN ORIGINATOR has provided to the
21 borrower, ~~no less than~~ AT LEAST three business days prior to the signing
22 of the loan closing documents, a clear written explanation of the fee and
23 the reason for charging a fee exceeding that which was previously
24 disclosed.

25 (b) If the borrower's closing costs on the final settlement
26 statement, excluding prepaid escrowed costs of ownership as defined by
27 the director by rule, do not exceed the total closing costs in the most

1 recent good-faith estimate, excluding prepaid escrowed costs of
2 ownership, no other disclosures shall be required by this subsection (4).

3 **12-61-915. Fee, commission, or compensation - when**
4 **permitted - amount.** (1) Except as otherwise permitted by subsection
5 (2) or (3) of this section, a mortgage ~~broker~~ LOAN ORIGINATOR shall not
6 receive a fee, commission, or compensation of any kind in connection
7 with the preparation OR negotiation ~~or brokering~~ of a residential mortgage
8 loan unless a borrower actually obtains a loan from a lender on the terms
9 and conditions agreed to by the borrower and mortgage ~~broker~~ LOAN
10 ORIGINATOR.

11 (2) If the mortgage ~~broker~~ LOAN ORIGINATOR has obtained for the
12 borrower a written commitment from a lender for a loan on the terms and
13 conditions agreed to by the borrower and the mortgage ~~broker~~ LOAN
14 ORIGINATOR, and the borrower fails to close on the loan through no fault
15 of the mortgage ~~broker~~ LOAN ORIGINATOR, the mortgage ~~broker~~ LOAN
16 ORIGINATOR may charge a fee, not to exceed three hundred dollars, for
17 services rendered, preparation of documents, or transfer of documents in
18 the borrower's file that were prepared or paid for by the borrower if the
19 fee is not otherwise prohibited by the federal "Truth in Lending Act", 15
20 U.S.C. sec. 1601, and Regulation Z, 12 CFR 226, as amended.

21 (3) A mortgage ~~broker~~ LOAN ORIGINATOR may solicit or receive
22 fees for third-party provider goods or services in advance. Fees for any
23 goods or services not provided shall be refunded to the borrower, and the
24 mortgage ~~broker~~ LOAN ORIGINATOR may not charge more for the goods
25 and services than the actual costs of the goods or services charged by the
26 third-party provider.

27 **12-61-916. Confidentiality.** (1) EXCEPT AS OTHERWISE

1 PROVIDED IN THE FEDERAL "SECURE AND FAIR ENFORCEMENT FOR
2 MORTGAGE LICENSING ACT OF 2008", 12 U.S.C. SEC. 5111, THE
3 REQUIREMENTS UNDER ANY FEDERAL LAW OR LAW OF THIS STATE
4 REGARDING PRIVACY OR CONFIDENTIALITY OF ANY INFORMATION OR
5 MATERIAL PROVIDED TO THE NATIONWIDE MORTGAGE LICENSING SYSTEM
6 AND REGISTRY, AND ANY PRIVILEGE ARISING UNDER FEDERAL OR STATE
7 LAW, INCLUDING THE RULES OF ANY FEDERAL OR STATE COURT WITH
8 RESPECT TO SUCH INFORMATION OR MATERIAL, SHALL APPLY TO THE
9 INFORMATION OR MATERIAL AFTER IT HAS BEEN DISCLOSED TO THE
10 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY. THE
11 INFORMATION OR MATERIAL MAY BE SHARED WITH ALL STATE AND
12 FEDERAL REGULATORY OFFICIALS WITH MORTGAGE INDUSTRY OVERSIGHT
13 AUTHORITY WITHOUT THE LOSS OF PRIVILEGE OR CONFIDENTIALITY
14 PROTECTIONS PROVIDED BY FEDERAL OR STATE LAW.

15 (2) THE DIRECTOR MAY ENTER INTO AGREEMENTS WITH OTHER
16 GOVERNMENT AGENCIES, THE CONFERENCE OF STATE BANK SUPERVISORS,
17 THE AMERICAN ASSOCIATION OF RESIDENTIAL MORTGAGE REGULATORS,
18 OR OTHER ASSOCIATIONS REPRESENTING GOVERNMENT AGENCIES AS
19 ESTABLISHED BY RULE.

20 (3) INFORMATION OR MATERIAL THAT IS SUBJECT TO PRIVILEGE OR
21 CONFIDENTIALITY PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL
22 NOT BE SUBJECT TO THE FOLLOWING:

23 (a) DISCLOSURE UNDER A FEDERAL OR STATE LAW GOVERNING THE
24 DISCLOSURE TO THE PUBLIC OF INFORMATION HELD BY AN OFFICER OR
25 AGENCY OF THE FEDERAL GOVERNMENT OR THE RESPECTIVE STATE; OR

26 (b) SUBPOENA, DISCOVERY, OR ADMISSION INTO EVIDENCE IN ANY
27 PRIVATE CIVIL ACTION OR ADMINISTRATIVE PROCESS, UNLESS WITH

1 RESPECT TO A PRIVILEGE HELD BY THE NATIONWIDE MORTGAGE LICENSING
2 SYSTEM AND REGISTRY REGARDING THE INFORMATION OR MATERIAL, THE
3 PERSON TO WHOM THE INFORMATION OR MATERIAL PERTAINS WAIVES THE
4 PRIVILEGE, IN WHOLE OR IN PART.

5 **12-61-917. Mortgage call reports - reports of violations.**

6 (1) THE DIRECTOR MAY REQUIRE EACH LICENSEE TO SUBMIT TO THE
7 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY MORTGAGE
8 CALL REPORTS, WHICH SHALL BE IN THE FORM AND CONTAIN THE
9 INFORMATION REQUIRED BY THE NATIONWIDE MORTGAGE LICENSING
10 SYSTEM AND REGISTRY.

11 (2) THE DIRECTOR MAY REPORT VIOLATIONS OF THIS PART 9,
12 ENFORCEMENT ACTIONS, AND OTHER RELEVANT INFORMATION TO THE
13 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.

14 **12-61-918. Unique identifier - clearly displayed.** ANY LICENSEE
15 ORIGINATING A RESIDENTIAL MORTGAGE LOAN SHALL SHOW HIS OR HER
16 UNIQUE IDENTIFIER CLEARLY ON ALL RESIDENTIAL MORTGAGE LOAN
17 APPLICATION FORMS, SOLICITATIONS, OR ADVERTISEMENTS, INCLUDING
18 BUSINESS CARDS OR WEB SITES, AND ANY OTHER DOCUMENTS AS SPECIFIED
19 BY THE DIRECTOR BY RULE OR ORDER.

20 **12-61-919. Repeal of part.** (1) THIS PART 9 IS REPEALED,
21 EFFECTIVE JULY 1, 2011.

22 (2) PRIOR TO ITS REPEAL, THE DEPARTMENT OF REGULATORY
23 AGENCIES SHALL REVIEW THE LICENSING OF MORTGAGE LOAN
24 ORIGINATORS IN ACCORDANCE WITH SECTION 24-34-104, C.R.S. THE
25 DEPARTMENT SHALL INCLUDE IN ITS REVIEW OF MORTGAGE LOAN
26 ORIGINATORS AN ANALYSIS OF THE NUMBER AND TYPES OF COMPLAINTS
27 MADE ABOUT MORTGAGE LOAN ORIGINATORS AND WHETHER THE

1 LICENSING OF MORTGAGE LOAN ORIGINATORS CORRELATES WITH PUBLIC
2 PROTECTION FROM FRAUDULENT ACTIVITIES IN THE RESIDENTIAL
3 MORTGAGE LOAN INDUSTRY.

4 **SECTION 2.** 24-34-104 (42) (k), Colorado Revised Statutes, is
5 amended to read:

6 **24-34-104. General assembly review of regulatory agencies**
7 **and functions for termination, continuation, or reestablishment.**

8 (42) The following agencies, functions, or both, shall terminate on July
9 1, 2011:

10 (k) The ~~registration~~ LICENSING of mortgage ~~brokers~~ LOAN
11 ORIGINATORS pursuant to part 9 of article 61 of title 12, C.R.S.;

12 **SECTION 3.** 12-61-113 (1) (y) (I), Colorado Revised Statutes, is
13 amended to read:

14 **12-61-113. Investigation - revocation - actions against licensee**

15 **- repeal.** (1) The commission, upon its own motion, may, and, upon the
16 complaint in writing of any person, shall, investigate the activities of any
17 licensee or any person who assumes to act in such capacity within the
18 state, and the commission, after the holding of a hearing pursuant to
19 section 12-61-114, has the power to impose an administrative fine not to
20 exceed two thousand five hundred dollars for each separate offense and
21 to censure a licensee, to place the licensee on probation and to set the
22 terms of probation, or to temporarily suspend or permanently revoke a
23 license when the licensee has performed, is performing, or is attempting
24 to perform any of the following acts and is guilty of:

25 (y) Within the last five years, having 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 (I) A mortgage broker OR MORTGAGE LOAN ORIGINATOR;

4 **SECTION 4.** 38-40-105 (1) (f), (1.5) and (7), Colorado Revised
5 Statutes, are amended to read:

6 **38-40-105. Prohibited acts by participants in certain mortgage**
7 **loan transactions - unconscionable acts and practices - definitions.**

8 (1) The following acts by any mortgage broker, mortgage originator,
9 mortgage lender, mortgage loan applicant, real estate appraiser, or closing
10 agent, other than a person who provides closing or settlement services
11 subject to regulation by the division of insurance, with respect to any loan
12 that is secured by a first or subordinate mortgage or deed or trust lien
13 against a dwelling are prohibited:

14 (f) ~~To knowingly facilitate the consummation of a mortgage loan~~
15 ~~transaction that violates, or that is connected with a violation of,~~
16 ~~subsection (1.5) of this section.~~

17 (1.5) (a) ~~A mortgage broker or the broker's agent shall provide the~~
18 ~~borrower with draft copies of the mortgage loan agreement and all other~~
19 ~~documents material to the transaction, completed to the extent possible in~~
20 ~~accordance with good-faith estimates, at least one business day before~~
21 ~~closing. There shall be no blank spaces remaining on the agreement form~~
22 ~~and no change to any material term of the agreement or of any~~
23 ~~accompanying document during this time.~~

24 (b) ~~As used in this subsection (1.5), "documents material to the~~
25 ~~transaction" include, without limitation, the deed of conveyance, except~~
26 ~~in the case of a refinancing, the loan agreement, and the title documents~~
27 ~~if requested by the borrower.~~

1 (7) As used in this section, unless the context otherwise requires:

2 (a) "Consumer" has the meaning set forth in section 5-1-301, ~~(10)~~;
3 C.R.S.

4 (b) "Dwelling" has the meaning set forth in section 5-1-301, ~~(18)~~;
5 C.R.S.

6 (c) "Mortgage broker" has the SAME meaning AS "MORTGAGE
7 LOAN ORIGINATOR" AS set forth in section 12-61-902, ~~(5)~~, C.R.S.

8 (d) "Mortgage lender" has the meaning set forth in section
9 12-61-902, ~~(6)~~, C.R.S.

10 (e) "Mortgage originator" ~~means a person who is in the business~~
11 ~~of originating residential mortgage loans~~ HAS THE SAME MEANING AS
12 "MORTGAGE LOAN ORIGINATOR" AS SET FORTH IN SECTION 12-61-902,
13 C.R.S.

14 (f) "Originate" has the SAME meaning AS "ORIGINATE A
15 MORTGAGE" AS set forth in section 12-61-902, ~~(7)~~, C.R.S.

16 (g) "Residential mortgage loan" has the meaning set forth in
17 section 12-61-902, ~~(8)~~, C.R.S.

18 **SECTION 5. Appropriation.** In addition to any other
19 appropriation, there is hereby appropriated, out of any moneys in the
20 mortgage loan originator licensing cash fund created in section
21 12-61-908, Colorado Revised Statutes, not otherwise appropriated, to the
22 department of regulatory agencies, for allocation to the division of real
23 estate, for the fiscal year beginning July 1, 2009, the sum of ninety
24 thousand six hundred thirty-six dollars (\$90,636) and 1.0 FTE, or so
25 much thereof as may be necessary, for the implementation of this act.

26 **SECTION 6. Act subject to petition - effective date.** This act
27 shall take effect at 12:01 a.m. on the day following the expiration of the

1 ninety-day period after final adjournment of the general assembly that is
2 allowed for submitting a referendum petition pursuant to article V,
3 section 1 (3) of the state constitution, (August 4, 2009, if adjournment
4 sine die is on May 6, 2009); except that, if a referendum petition is filed
5 against this act or an item, section, or part of this act within such period,
6 then the act, item, section, or part, if approved by the people, shall take
7 effect on the date of the official declaration of the vote thereon by
8 proclamation of the governor.