

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

INTRODUCED

LLS NO. 09-0342.01 Christy Chase

HOUSE BILL 09-1085

HOUSE SPONSORSHIP

Rice,

SENATE SPONSORSHIP

Heath,

House Committees

Business Affairs and Labor

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" AND EXEMPTING CERTAIN FINANCIAL**
106 **INSTITUTIONS FROM THE LIST OF PROHIBITED PRACTICES UNDER**
107 **THE ACT.**

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; and

5 (c) The duty not to commit any ~~unconscionable act or practice~~
6 ~~listed~~ ACTS, PRACTICES, OR OMISSIONS in VIOLATION OF section
7 38-40-105, ~~(1.7)~~; C.R.S.

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

11 (3) A violation of this section constitutes a deceptive trade
12 practice under the "Colorado Consumer Protection Act", article 1 of title
13 6, C.R.S.

14 **12-61-905. Powers and duties of the director.** (1) The director
15 shall deny AN APPLICATION FOR A LICENSE, refuse to renew, or revoke the
16 license of an applicant who has:

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

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

23 (c) EXCEPT AS OTHERWISE SET FORTH IN THIS PART 9, within the
24 last five years, had a license, registration, or certification issued by
25 Colorado or another state revoked or suspended for fraud, deceit, material
26 misrepresentation, theft, or the breach of a fiduciary duty, and such
27 discipline denied the person authorization to practice as:

- 1 (I) A mortgage broker OR A MORTGAGE LOAN ORIGINATOR;
- 2 (II) A real estate broker, as defined by section 12-61-101 (2);
- 3 (III) A real estate salesperson;
- 4 (IV) A real estate appraiser, as defined by section 12-61-702 (5);
- 5 (V) An insurance producer, as defined by section 10-2-103 (6),
- 6 C.R.S.;
- 7 (VI) An attorney;
- 8 (VII) A securities broker-dealer, as defined by section 11-51-201
- 9 (2), C.R.S.;
- 10 (VIII) A securities sales representative, as defined by section
- 11 11-51-201 (14), C.R.S.;
- 12 (IX) An investment advisor, as defined by section 11-51-201
- 13 (9.5), C.R.S.; or
- 14 (X) An investment advisor representative, as defined by section
- 15 11-51-201 (9.6), C.R.S.;
- 16 (d) Been enjoined within the immediately preceding five years
- 17 under the laws of this or any other state or of the United States from
- 18 engaging in deceptive conduct relating to the brokering of OR
- 19 ORIGINATING a mortgage loan;
- 20 (e) Been found to have violated the provisions of section
- 21 12-61-910.2; or
- 22 (f) Been found to have violated the provisions of section
- 23 12-61-911;
- 24 (g) HAD A MORTGAGE LOAN ORIGINATOR LICENSE OR SIMILAR
- 25 LICENSE REVOKED IN ANY OTHER JURISDICTION; EXCEPT THAT A
- 26 REVOCATION THAT WAS SUBSEQUENTLY FORMALLY NULLIFIED SHALL NOT
- 27 BE DEEMED A REVOCATION FOR PURPOSES OF THIS SECTION;

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

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

11 (j) (I) NOT DEMONSTRATED FINANCIAL RESPONSIBILITY,
12 CHARACTER, AND GENERAL FITNESS TO COMMAND THE CONFIDENCE OF
13 THE COMMUNITY AND TO WARRANT A DETERMINATION THAT THE
14 INDIVIDUAL WILL OPERATE HONESTLY, FAIRLY, AND EFFICIENTLY,
15 CONSISTENT WITH THE PURPOSES OF THIS PART 9.

16 (II) FOR PURPOSES OF THIS PARAGRAPH (j), AN INDIVIDUAL HAS
17 SHOWN THAT HE OR SHE IS NOT FINANCIALLY RESPONSIBLE WHEN HE OR
18 SHE HAS SHOWN A DISREGARD IN THE MANAGEMENT OF HIS OR HER OWN
19 FINANCIAL CONDITION. A DETERMINATION UNDER THIS PARAGRAPH (j)
20 MAY INCLUDE, WITHOUT LIMITATION, CONSIDERATION OF THE FOLLOWING:

21 (A) CURRENT, OUTSTANDING JUDGMENTS, OTHER THAN
22 JUDGMENTS RESULTING SOLELY FROM MEDICAL EXPENSES;

23 (B) CURRENT, OUTSTANDING TAX LIENS OR OTHER GOVERNMENT
24 LIENS OR FILINGS;

25 (C) FORECLOSURES WITHIN THE PAST THREE YEARS; OR

26 (D) A PATTERN OF SERIOUSLY DELINQUENT ACCOUNTS WITHIN THE
27 PAST THREE YEARS;

1 (k) NOT COMPLETED THE PRELICENSE EDUCATION REQUIREMENTS
2 SET FORTH IN SECTION 12-61-903 AND ANY APPLICABLE RULES OF THE
3 DIRECTOR; OR

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

7 (2) The director may investigate the activities of a licensee or
8 other person that present grounds for disciplinary action under this part
9 or that violate section 12-61-910 (1).

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

16 (b) The director shall suspend the license of a mortgage ~~broker~~
17 LOAN ORIGINATOR who fails to maintain the bond required by section
18 12-61-907 until the licensee complies with such section.

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

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

27 (b) If the director or an administrative law judge determines that

1 an application contained a misstatement of fact or omitted a required
2 disclosure due to an unintentional error, the director shall allow the
3 applicant to correct the application. Upon receipt of the corrected and
4 completed application, the director or administrative law judge shall not
5 bar the applicant from being licensed on the basis of the unintentional
6 misstatement or omission.

7 (6) (a) The director or an administrative law judge may administer
8 oaths, take affirmations of witnesses, and issue subpoenas to compel the
9 attendance of witnesses and the production of all relevant papers, books,
10 records, documentary evidence, and materials in any hearing or
11 investigation conducted by the director or an administrative law judge.
12 THE DIRECTOR MAY REQUEST ANY INFORMATION RELEVANT TO THE
13 INVESTIGATION, INCLUDING, BUT NOT LIMITED TO, INDEPENDENT CREDIT
14 REPORTS OBTAINED FROM A CONSUMER REPORTING AGENCY DESCRIBED
15 IN THE FEDERAL "FAIR CREDIT REPORTING ACT", 15 U.S.C. SEC. 1681a
16 (p).

17 (b) Upon failure of a witness to comply with a subpoena or
18 process, the district court of the county in which the subpoenaed witness
19 resides or conducts business may issue an order requiring the witness to
20 appear before the director or administrative law judge; ~~and~~ produce the
21 relevant papers, books, records, documentary evidence, testimony, or
22 materials in question; OR BOTH. Failure to obey the order of the court
23 may be punished as a contempt of court. The director or an
24 administrative law judge may apply for such order.

25 (c) THE LICENSEE OR INDIVIDUAL SUBJECT TO INVESTIGATION
26 UNDER THIS PART 9 SHALL BE RESPONSIBLE FOR PAYING ALL COSTS
27 ARISING FROM SUBPOENAS OR REQUESTS ISSUED PURSUANT TO THIS

1 SUBSECTION (6), INCLUDING COURT COSTS FOR AN ACTION BROUGHT
2 PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (6).

3 (7) (a) If the director has reasonable cause to believe that a ~~person~~
4 AN INDIVIDUAL is violating this part 9, including but not limited to section
5 12-61-910 (1), the director may enter an order requiring ~~such person~~ THE
6 INDIVIDUAL to cease and desist such violations.

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

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

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

20 (c) All fines collected pursuant to this subsection (7) shall be
21 transferred to the state treasurer, who shall credit such moneys to the
22 mortgage ~~broker~~ LOAN ORIGINATOR licensing cash fund created in section
23 12-61-908.

24 (8) The director shall keep records of the ~~persons~~ INDIVIDUALS
25 licensed as mortgage ~~brokers~~ LOAN ORIGINATORS and of disciplinary
26 proceedings. The records kept by the director shall be open to public
27 inspection in a reasonable time and manner determined by the director.

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

5 (b) ~~The director shall review the complaints annually and prepare~~
6 ~~a report to be issued to the committee of the general assembly that has~~
7 ~~oversight of mortgage brokers. Such report shall contain the trends in~~
8 ~~complaints and investigations under this part 9.~~

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

21 **12-61-905.5. Disciplinary actions - grounds - procedures -**
22 **rules.** (1) The director, upon his or her own motion, may, and, upon the
23 complaint in writing of any person, shall, investigate the activities of any
24 mortgage broker, and LOAN ORIGINATOR. The director has the power to
25 impose an administrative fine in accordance with section 12-61-905, and
26 to DENY A LICENSE, censure a licensee, to place the licensee on probation
27 and to set the terms of probation, ORDER RESTITUTION, ORDER THE

1 PAYMENT OF ACTUAL DAMAGES, or to suspend or revoke a license when
2 the director finds that the licensee has performed, is performing, or is
3 attempting to perform any of the following acts:

4 (a) Knowingly making any misrepresentation or knowingly
5 making use of any false or misleading advertising;

6 (b) Making any promise that influences, persuades, or induces
7 another person to detrimentally rely on such promise when the licensee
8 could not or did not intend to keep such promise;

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

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

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

19 (f) Representing or attempting to represent a mortgage ~~broker~~
20 LOAN ORIGINATOR other than the licensee's PRINCIPAL OR employer
21 without the express knowledge and consent of that PRINCIPAL OR
22 employer;

23 (g) In the case of a licensee in the employ of another mortgage
24 ~~broker~~ LOAN ORIGINATOR, failing to place, as soon after receipt as is
25 practicably possible, in the custody of that licensed mortgage
26 ~~broker-employer~~ LOAN ORIGINATOR-EMPLOYER any deposit money or
27 other money or fund entrusted to the employee by any person dealing with

1 the employee as the representative of that licensed mortgage
2 ~~broker-employer~~ LOAN ORIGINATOR-EMPLOYER;

3 (h) Failing to account for or to remit, within a reasonable time,
4 any moneys coming into his or her possession that belong to others,
5 whether acting as a mortgage ~~broker~~ LOAN ORIGINATOR, real estate
6 broker, salesperson, or otherwise, and failing to keep records relative to
7 said moneys, which records shall contain such information as may be
8 prescribed by the rules of the director relative thereto and shall be subject
9 to audit by the director;

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

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

22 (k) Failing to maintain possession, for future use or inspection by
23 an authorized representative of the director, for a period of four years, of
24 the documents or records prescribed by the rules of the director or to
25 produce such documents or records upon reasonable request by the
26 director or by an authorized representative of the director;

27 (l) Paying a commission or valuable consideration for performing

1 any of the functions of a mortgage ~~broker~~ LOAN ORIGINATOR, as described
2 in this part 9, to any ~~person~~ INDIVIDUAL not licensed under this part 9;
3 ~~except that a licensed mortgage broker may pay a finder's fee or a share~~
4 ~~of any commission on a cooperative sale when such payment is made to~~
5 ~~a mortgage broker licensed in another state or country. If such state or~~
6 ~~country does not license mortgage brokers, then the payee shall be a~~
7 ~~citizen or resident of said state or country and represent that the payee is~~
8 ~~in the mortgage brokerage business in said state or country.~~

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

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

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

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

27 (q) Having demonstrated unworthiness or incompetency to act as

1 a mortgage ~~broker~~ LOAN ORIGINATOR by conducting business in such a
2 manner as to endanger the interest of the public;

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

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

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

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

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

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

1 (x) Having had a mortgage ~~broker's~~ LOAN ORIGINATOR'S license
2 suspended or revoked in any jurisdiction or having had any disciplinary
3 action taken against the mortgage ~~broker~~ LOAN ORIGINATOR in any other
4 jurisdiction. A certified copy of the order of disciplinary action shall be
5 prima facie evidence of such disciplinary action.

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

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

27 (4) This part 9 shall not be construed to relieve any person from

1 civil liability or criminal prosecution under the laws of this state.

2 (5) Complaints of record in the office of the director and the
3 results of staff investigations may, in the discretion of the director, be
4 closed to public inspection, except as provided by court order, during the
5 investigatory period and until dismissed or until notice of hearing and
6 charges are served on a licensee.

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

19 (7) All administrative fines collected pursuant to this section shall
20 be transmitted to the state treasurer, who shall credit the same to the
21 mortgage broker ~~LOAN ORIGINATOR~~ licensing cash fund created in section
22 12-61-908.

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

26 (b) If a ~~person's~~ AN INDIVIDUAL'S license was suspended or
27 revoked due to conduct that resulted in financial loss to another person,

1 no new license shall be granted, nor shall a suspended license be
2 reinstated, until full restitution has been made to the person suffering such
3 financial loss. The amount of restitution shall include interest, reasonable
4 attorney fees, and costs of any suit or other proceeding undertaken in an
5 effort to recover the loss.

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

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

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

1 (3) THE DIRECTOR, AN AUTHORIZED REPRESENTATIVE OF THE
2 DIRECTOR, OR an administrative law judge shall conduct all hearings for
3 denying, suspending, or revoking a license or certificate on behalf of the
4 director, subject to appropriations made to the department of personnel.
5 Each administrative law judge shall be appointed pursuant to part 10 of
6 article 30 of title 24, C.R.S. The administrative law judge shall conduct
7 the hearing in accordance with sections 24-4-104 and 24-4-105, C.R.S.
8 No license shall be denied, suspended, or revoked until the director has
9 made his or her decision.

10 (4) The decision of the director in any disciplinary action or denial
11 of licensure under this section is subject to judicial review ~~under section~~
12 ~~24-4-106, C.R.S.~~ BY THE COURT OF APPEALS. In order to effectuate the
13 purposes of this part 9, the director has the power to promulgate rules
14 pursuant to article 4 of title 24, C.R.S.

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

1 (6) In any hearing conducted by the director OR AN AUTHORIZED
2 REPRESENTATIVE OF THE DIRECTOR in which there is a possibility of the
3 denial, suspension, or revocation of a license because of the conviction
4 of a felony or of a crime involving moral turpitude, the director OR HIS OR
5 HER AUTHORIZED REPRESENTATIVE shall be governed by section
6 24-5-101, C.R.S.

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

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

27 **12-61-906. Immunity.** A person participating in good faith in the

1 filing of a complaint or report or participating in an investigation or
2 hearing before the director or an administrative law judge pursuant to this
3 part 9 shall be immune from any liability, civil or criminal, that otherwise
4 might result by reason of such action.

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

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

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

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

25 (2) There is hereby created in the state treasury the mortgage
26 ~~broker~~ LOAN ORIGINATOR licensing cash fund. Moneys in the fund shall
27 be spent only to implement this part 9 and section 38-40-105, C.R.S., and

1 shall not revert to the general fund at the end of the fiscal year. The fund
2 shall be subject to annual appropriation by the general assembly.

3 **12-61-909. Attorney general - district attorney - jurisdiction.**

4 The attorney general shall have concurrent jurisdiction with the district
5 attorneys of this state to investigate and prosecute allegations of criminal
6 violations of this part 9.

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

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

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

22 (3) The director may request that an action be brought in the name
23 of the people of the state of Colorado by the attorney general or the
24 district attorney of the district in which the violation is alleged to have
25 occurred to enjoin a person from engaging in or continuing the violation
26 or from doing any act that furthers the violation. In such an action, an
27 order or judgment may be entered awarding such preliminary or final

1 injunction as is deemed proper by the court. The notice, hearing, or
2 duration of an injunction or restraining order shall be made in accordance
3 with the Colorado rules of civil procedure.

4 (4) A violation of this part 9 shall not affect the validity or
5 enforceability of any mortgage.

6 **12-61-910.2. Prohibited conduct - influencing a real estate**

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

- 15 (a) Consider additional, appropriate property information;
- 16 (b) Provide further detail, substantiation, or explanation for the
17 appraiser's value conclusion; or
- 18 (c) Correct errors in the appraisal report.

19 **12-61-910.3. Rule-making authority.** The director shall have the
20 authority to promulgate rules as necessary to enable the director to carry
21 out the director's duties under this part 9.

22 **12-61-910.4. Nontraditional mortgage products - consumer**
23 **protections - rules - incorporation of federal interagency guidance.**

24 The director shall adopt rules governing the marketing of nontraditional
25 ~~mortgages~~ MORTGAGE PRODUCTS by mortgage ~~brokers~~ LOAN
26 ORIGINATORS. In adopting such rules, the director shall incorporate
27 appropriate provisions of the final "Interagency Guidance on

1 Nontraditional Mortgage Product Risks" released on September 29, 2006,
2 by the office of the comptroller of the currency and the office of thrift
3 supervision in the federal department of the treasury, the board of
4 governors of the federal reserve system, the federal deposit insurance
5 corporation, and the national credit union administration, as such
6 publication may be amended.

7 **12-61-911. Prohibited conduct - fraud - misrepresentation -**
8 **conflict of interest - rules.** (1) A mortgage ~~broker~~ LOAN ORIGINATOR,
9 including a mortgage ~~broker~~ LOAN ORIGINATOR otherwise exempted from
10 this part 9 by section 12-61-904 (1) (b), ~~or (1) (c)~~, shall not:

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

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

14 (c) Obtain property by fraud or misrepresentation;

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

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

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

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

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

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

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

1 to comply with other applicable federal statutes and regulations. ~~in any~~
2 ~~advertising of residential mortgage loans, or any other mortgage broker~~
3 ~~activity.~~

4 (k) Fail to pay a third-party provider, no later than thirty days after
5 the recording of the loan closing documents or ninety days after
6 completion of the third-party service, whichever comes first, unless
7 otherwise agreed or unless the third-party service provider has been
8 notified in writing that a bona fide dispute exists regarding the
9 performance or quality of the third-party service;

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

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

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

23 **12-61-912. Dual status as real estate broker - requirements.**

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

27 (a) The mortgage ~~broker~~ LOAN ORIGINATOR acts or has acted as a

1 real estate broker OR SALESPERSON; or

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

4 (2) Before providing ~~mortgage~~ MORTGAGE-RELATED services to
5 the borrower, a mortgage ~~broker~~ LOAN ORIGINATOR shall make a full and
6 fair disclosure to the borrower, in addition to any other disclosures
7 required by this part 9 or other laws, of all material features of the loan
8 product and all facts material to the transaction.

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

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

19 (II) Each business is physically separated within the office facility;
20 and

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

23 (b) This subsection (3) shall not require a real estate broker OR
24 SALESPERSON licensed under part 1 of this article who also acts as a
25 mortgage ~~broker~~ LOAN ORIGINATOR to maintain a physical separation
26 within the office facility for the conduct of its real estate BROKER OR
27 SALES and mortgage ~~broker~~ LOAN ORIGINATOR activities if the director

1 determines that maintaining such physical separation would constitute an
2 undue financial hardship upon the mortgage broker LOAN ORIGINATOR
3 and is unnecessary for the protection of the public.

4 **12-61-913. Written contract required - effect.** (1) Every
5 contract between a mortgage broker LOAN ORIGINATOR and a borrower
6 shall be in writing and shall contain the entire agreement of the parties.

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

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

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

25 (a) The annual percentage rate, finance charge, amount financed,
26 total amount of all payments, number of payments, amount of each
27 payment, amount of points or prepaid interest, and the conditions and

1 terms under which any loan terms may change between the time of
2 disclosure and closing of the loan. If the interest rate is variable, the
3 written disclosure shall clearly describe the circumstances under which
4 the rate may increase, any limitation on the increase, the effect of an
5 increase, and an example of the payment terms resulting from an increase.

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

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

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

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

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

3 (g) A statement providing that moneys paid by the borrower to the
4 mortgage ~~broker~~ LOAN ORIGINATOR for third-party provider services are
5 held in a trust account and any moneys remaining after payment to
6 third-party providers will be refunded.

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

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

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

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

1 disclosed.

2 (b) If the borrower's closing costs on the final settlement
3 statement, excluding prepaid escrowed costs of ownership as defined by
4 the director by rule, do not exceed the total closing costs in the most
5 recent good-faith estimate, excluding prepaid escrowed costs of
6 ownership, no other disclosures shall be required by this subsection (4).

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

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

25 (3) A mortgage ~~broker~~ LOAN ORIGINATOR may solicit or receive
26 fees for third-party provider goods or services in advance. Fees for any
27 goods or services not provided shall be refunded to the borrower, and the

1 mortgage broker LOAN ORIGINATOR may not charge more for the goods
2 and services than the actual costs of the goods or services charged by the
3 third-party provider.

4 **12-61-916. Confidentiality.** (1) EXCEPT AS OTHERWISE
5 PROVIDED IN THE FEDERAL "SECURE AND FAIR ENFORCEMENT FOR
6 MORTGAGE LICENSING ACT OF 2008", 12 U.S.C. SEC. 5111, THE
7 REQUIREMENTS UNDER ANY FEDERAL LAW OR LAW OF THIS STATE
8 REGARDING PRIVACY OR CONFIDENTIALITY OF ANY INFORMATION OR
9 MATERIAL PROVIDED TO THE NATIONWIDE MORTGAGE LICENSING SYSTEM
10 AND REGISTRY, AND ANY PRIVILEGE ARISING UNDER FEDERAL OR STATE
11 LAW, INCLUDING THE RULES OF ANY FEDERAL OR STATE COURT WITH
12 RESPECT TO SUCH INFORMATION OR MATERIAL, SHALL APPLY TO THE
13 INFORMATION OR MATERIAL AFTER IT HAS BEEN DISCLOSED TO THE
14 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY. THE
15 INFORMATION OR MATERIAL MAY BE SHARED WITH ALL STATE AND
16 FEDERAL REGULATORY OFFICIALS WITH MORTGAGE INDUSTRY OVERSIGHT
17 AUTHORITY WITHOUT THE LOSS OF PRIVILEGE OR CONFIDENTIALITY
18 PROTECTIONS PROVIDED BY FEDERAL OR STATE LAW.

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

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

27 (a) DISCLOSURE UNDER A FEDERAL OR STATE LAW GOVERNING THE

1 DISCLOSURE TO THE PUBLIC OF INFORMATION HELD BY AN OFFICER OR
2 AGENCY OF THE FEDERAL GOVERNMENT OR THE RESPECTIVE STATE; OR

3 (b) SUBPOENA, DISCOVERY, OR ADMISSION INTO EVIDENCE IN ANY
4 PRIVATE CIVIL ACTION OR ADMINISTRATIVE PROCESS, UNLESS WITH
5 RESPECT TO A PRIVILEGE HELD BY THE NATIONWIDE MORTGAGE LICENSING
6 SYSTEM AND REGISTRY REGARDING THE INFORMATION OR MATERIAL, THE
7 PERSON TO WHOM THE INFORMATION OR MATERIAL PERTAINS WAIVES THE
8 PRIVILEGE, IN WHOLE OR IN PART.

9 **12-61-917. Mortgage call reports - reports of violations.**

10 (1) THE DIRECTOR MAY REQUIRE EACH LICENSEE TO SUBMIT TO THE
11 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY MORTGAGE
12 CALL REPORTS, WHICH SHALL BE IN THE FORM AND CONTAIN THE
13 INFORMATION REQUIRED BY THE NATIONWIDE MORTGAGE LICENSING
14 SYSTEM AND REGISTRY.

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

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

24 **12-61-919. Repeal of part.** (1) THIS PART 9 IS REPEALED,
25 EFFECTIVE JULY 1, 2011.

26 (2) PRIOR TO ITS REPEAL, THE DEPARTMENT OF REGULATORY
27 AGENCIES SHALL REVIEW THE LICENSING OF MORTGAGE LOAN

1 ORIGINATORS IN ACCORDANCE WITH SECTION 24-34-104, C.R.S. THE
2 DEPARTMENT SHALL INCLUDE IN ITS REVIEW OF MORTGAGE LOAN
3 ORIGINATORS AN ANALYSIS OF THE NUMBER AND TYPES OF COMPLAINTS
4 MADE ABOUT MORTGAGE LOAN ORIGINATORS AND WHETHER THE
5 LICENSING OF MORTGAGE LOAN ORIGINATORS CORRELATES WITH PUBLIC
6 PROTECTION FROM FRAUDULENT ACTIVITIES IN THE RESIDENTIAL
7 MORTGAGE LOAN INDUSTRY.

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

10 **24-34-104. General assembly review of regulatory agencies**
11 **and functions for termination, continuation, or reestablishment.**

12 (42) The following agencies, functions, or both, shall terminate on July
13 1, 2011:

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

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

18 **12-61-113. Investigation - revocation - actions against licensee**
19 **- repeal.** (1) The commission, upon its own motion, may, and, upon the
20 complaint in writing of any person, shall, investigate the activities of any
21 licensee or any person who assumes to act in such capacity within the
22 state, and the commission, after the holding of a hearing pursuant to
23 section 12-61-114, has the power to impose an administrative fine not to
24 exceed two thousand five hundred dollars for each separate offense and
25 to censure a licensee, to place the licensee on probation and to set the
26 terms of probation, or to temporarily suspend or permanently revoke a
27 license when the licensee has performed, is performing, or is attempting

1 to perform any of the following acts and is guilty of:

2 (y) Within the last five years, having a license, registration, or
3 certification issued by Colorado or another state revoked or suspended for
4 fraud, deceit, material misrepresentation, theft, or the breach of a
5 fiduciary duty, and such discipline denied the person authorization to
6 practice as:

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

8 **SECTION 4.** 38-40-105 (7), Colorado Revised Statutes, is
9 amended to read:

10 **38-40-105. Prohibited acts by participants in certain mortgage**
11 **loan transactions - unconscionable acts and practices - definitions.**

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

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

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

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

19 (d) "Mortgage lender" has the meaning set forth in section
20 12-61-902, ~~(6)~~, C.R.S.

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

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

27 (g) "Residential mortgage loan" has the meaning set forth in

1 section 12-61-902, ~~(8)~~; C.R.S.

2 **SECTION 5. Act subject to petition - effective date.** This act
3 shall take effect at 12:01 a.m. on the day following the expiration of the
4 ninety-day period after final adjournment of the general assembly that is
5 allowed for submitting a referendum petition pursuant to article V,
6 section 1 (3) of the state constitution, (August 4, 2009, if adjournment
7 sine die is on May 6, 2009); except that, if a referendum petition is filed
8 against this act or an item, section, or part of this act within such period,
9 then the act, item, section, or part, if approved by the people, shall take
10 effect on the date of the official declaration of the vote thereon by
11 proclamation of the governor.