

First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

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.

HOUSE
3rd Reading Unamended
February 25, 2009

HOUSE
Amended 2nd Reading
February 24, 2009

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) "MORTGAGE LENDER" MEANS A LENDER WHO IS IN THE
21 BUSINESS OF MAKING RESIDENTIAL MORTGAGE LOANS IF:

22 (a) THE LENDER IS THE PAYEE ON THE PROMISSORY NOTE
23 EVIDENCING THE LOAN; AND

24 (b) THE LOAN PROCEEDS ARE OBTAINED BY THE LENDER FROM ITS
25 OWN FUNDS OR FROM A LINE OF CREDIT MADE AVAILABLE TO THE LENDER
26 FROM A BANK OR OTHER ENTITY WHO REGULARLY LOANS MONEY TO
27 LENDERS FOR THE PURPOSE OF FUNDING MORTGAGE LOANS.

1 ~~(5)~~ (6) "Mortgage ~~broker~~ LOAN ORIGINATOR" means an individual
2 who:

- 3 (I) TAKES A RESIDENTIAL MORTGAGE LOAN APPLICATION; OR
4 (II) OFFERS OR negotiates ~~originates, or offers or attempts to~~
5 ~~negotiate or originate for a borrower, and for a commission or other thing~~
6 ~~of value, TERMS OF a residential mortgage loan. to be consummated and~~
7 ~~funded by a mortgage lender.~~

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

9 (I) AN INDIVIDUAL ENGAGED SOLELY AS A LOAN PROCESSOR OR
10 UNDERWRITER;

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

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

17 ~~(IV) AN INDIVIDUAL WHO IS SERVICING A MORTGAGE LOAN; OR~~
18 (IV) AN INDIVIDUAL WHO IS SERVICING A MORTGAGE LOAN; OR

19 (V) A PERSON THAT ONLY PERFORMS THE SERVICES AND
20 ACTIVITIES OF A MANUFACTURED HOME DEALER, AS DEFINED IN SECTION
21 24-32-3302, C.R.S., UNLESS THE PERSON IS COMPENSATED BY A
22 MORTGAGE LENDER OR A MORTGAGE LOAN ORIGINATOR.

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

25 ~~(a) The lender is the payee on the promissory note evidencing the~~
26 ~~loan; and~~

27 ~~(b) The loan proceeds are obtained by the lender from its own~~

1 ~~funds or from a line of credit made available to the lender from a bank or~~
2 ~~other entity who regularly loans money to lenders for the purpose of~~
3 ~~funding mortgage loans.~~

4 (6.3) "NATIONWIDE MORTGAGE LICENSING SYSTEM AND
5 REGISTRY" MEANS A MORTGAGE LICENSING SYSTEM DEVELOPED
6 PURSUANT TO THE FEDERAL "SECURE AND FAIR ENFORCEMENT FOR
7 MORTGAGE LICENSING ACT OF 2008", 12 U.S.C. SEC. 5101 ET SEQ., TO
8 TRACK THE LICENSING AND REGISTRATION OF MORTGAGE LOAN
9 ORIGINATORS AND THAT IS ESTABLISHED AND MAINTAINED BY:

10 (a) THE CONFERENCE OF STATE BANK SUPERVISORS AND THE
11 AMERICAN ASSOCIATION OF RESIDENTIAL MORTGAGE REGULATORS, OR
12 THEIR SUCCESSOR ENTITIES; OR

13 (b) THE SECRETARY OF THE UNITED STATES DEPARTMENT OF
14 HOUSING AND URBAN DEVELOPMENT.

15 (6.5) "NONTRADITIONAL MORTGAGE PRODUCT" MEANS A
16 MORTGAGE PRODUCT OTHER THAN A THIRTY-YEAR, FIXED-RATE
17 MORTGAGE.

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

22 (7.5) "PERSON" MEANS A NATURAL PERSON, CORPORATION,
23 COMPANY, LIMITED LIABILITY COMPANY, PARTNERSHIP, FIRM,
24 ASSOCIATION, OR OTHER LEGAL ENTITY.

25 (7.7) "REAL ESTATE BROKERAGE ACTIVITY" MEANS AN ACTIVITY
26 THAT INVOLVES OFFERING OR PROVIDING REAL ESTATE BROKERAGE
27 SERVICES TO THE PUBLIC, INCLUDING, WITHOUT LIMITATION:

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

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

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

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

12 (e) OFFERING TO ENGAGE IN ANY ACTIVITY, OR ACT IN ANY
13 CAPACITY RELATED TO SUCH ACTIVITY, DESCRIBED IN THIS SUBSECTION
14 (7.7).

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

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

23 (10) "SERVICING A MORTGAGE LOAN" MEANS COLLECTING,
24 RECEIVING, OR OBTAINING THE RIGHT TO COLLECT OR RECEIVE PAYMENTS
25 ON BEHALF OF A MORTGAGE LENDER, INCLUDING PAYMENTS OF PRINCIPAL,
26 INTEREST, ESCROW AMOUNTS, AND OTHER AMOUNTS DUE ON OBLIGATIONS
27 DUE AND OWING TO THE MORTGAGE LENDER.

1 (11) "STATE-LICENSED LOAN ORIGINATOR" MEANS AN INDIVIDUAL
2 WHO IS:

3 (a) A MORTGAGE LOAN ORIGINATOR OR ENGAGES IN THE
4 ACTIVITIES OF A MORTGAGE LOAN ORIGINATOR;

5 (b) NOT AN EMPLOYEE OF A DEPOSITORY INSTITUTION OR A
6 SUBSIDIARY THAT IS:

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

8 (II) REGULATED BY A FEDERAL BANKING AGENCY;

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

11 (d) REGISTERED AS A STATE-LICENSED LOAN ORIGINATOR WITH,
12 AND MAINTAINS A UNIQUE IDENTIFIER THROUGH, THE NATIONWIDE
13 MORTGAGE LICENSING SYSTEM AND REGISTRY.

14 (12) "UNIQUE IDENTIFIER" MEANS A NUMBER OR OTHER IDENTIFIER
15 ASSIGNED TO A MORTGAGE LOAN ORIGINATOR PURSUANT TO PROTOCOLS
16 ESTABLISHED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND
17 REGISTRY.

18 **12-61-903. License required - rules.** (1) (a) On or after ~~January~~
19 ~~1, 2008~~ THE EFFECTIVE DATE OF THIS SUBSECTION (1), AS AMENDED,
20 unless licensed by the director, ~~a person~~ AN INDIVIDUAL shall not ~~broker~~
21 ORIGINATE a mortgage, offer to ~~broker~~ ORIGINATE a mortgage, act as a
22 mortgage ~~broker~~ LOAN ORIGINATOR, or offer to act as a mortgage ~~broker~~
23 LOAN ORIGINATOR. ON OR AFTER JULY 31, 2010, UNLESS LICENSED BY
24 THE DIRECTOR AND REGISTERED WITH THE NATIONWIDE MORTGAGE
25 LICENSING SYSTEM AND REGISTRY AS A STATE-LICENSED LOAN
26 ORIGINATOR, AN INDIVIDUAL SHALL NOT ORIGINATE OR OFFER TO
27 ORIGINATE A MORTGAGE OR ACT OR OFFER TO ACT AS A MORTGAGE LOAN

1 ORIGINATOR.

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

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

12 (1.5) AN INDEPENDENT CONTRACTOR MAY NOT ENGAGE IN
13 RESIDENTIAL MORTGAGE LOAN ORIGINATION ACTIVITIES AS A LOAN
14 PROCESSOR OR UNDERWRITER UNLESS THE INDEPENDENT CONTRACTOR IS
15 A STATE-LICENSED LOAN ORIGINATOR.

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

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

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

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

25 (3) (a) In addition to the requirements imposed by subsection (2)
26 of this section, on or after ~~January 1, 2009~~ THE EFFECTIVE DATE OF THIS
27 SUBSECTION (3), AS AMENDED, each individual applicant for initial

1 licensing as a mortgage ~~broker~~ LOAN ORIGINATOR shall have satisfactorily
2 completed ~~within the three years immediately preceding the date of the~~
3 ~~application~~, a mortgage lending fundamentals course approved by the
4 director and consisting of at least nine hours of ~~classroom~~ instruction in
5 subjects related to mortgage lending. In addition, the applicant shall have
6 satisfactorily completed a written examination approved by the director.

7 (b) The director may contract with one or more independent
8 testing services to develop, administer, and grade the examinations
9 required by paragraph (a) of this subsection (3) and to maintain and
10 administer licensee records. The contract may allow the testing service
11 to recover from applicants its costs incurred in connection with these
12 functions. The director may contract separately for these functions and
13 may allow the costs to be collected by a single contractor for distribution
14 to other contractors.

15 (c) THE DIRECTOR MAY PUBLISH REPORTS SUMMARIZING
16 STATISTICAL INFORMATION PREPARED BY THE NATIONWIDE MORTGAGE
17 LICENSING SYSTEM AND REGISTRY RELATING TO MORTGAGE LOAN
18 ORIGINATOR EXAMINATIONS.

19 (4) An applicant for license renewal shall submit to the director
20 the following:

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

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

26 (5) (a) Prior to submitting an application for a license, an
27 applicant shall submit a set of fingerprints to the Colorado bureau of

1 investigation. Upon receipt of the applicant's fingerprints, the Colorado
2 bureau of investigation shall use the fingerprints to conduct a state and
3 national criminal history record check using records of the Colorado
4 bureau of investigation and the federal bureau of investigation. All costs
5 arising from such criminal history record check shall be borne by the
6 applicant and shall be paid when the set of fingerprints is submitted.
7 Upon completion of the criminal history record check, the bureau shall
8 forward the results to the director. THE DIRECTOR MAY ACQUIRE A
9 NAME-BASED CRIMINAL HISTORY RECORD CHECK FOR AN APPLICANT WHO
10 HAS TWICE SUBMITTED TO A FINGERPRINT-BASED CRIMINAL HISTORY
11 RECORD CHECK AND WHOSE FINGERPRINTS ARE UNCLASSIFIABLE.

12 (b) IF THE DIRECTOR DETERMINES THAT THE CRIMINAL
13 BACKGROUND CHECK PROVIDED BY THE NATIONWIDE MORTGAGE
14 LICENSING SYSTEM AND REGISTRY IS A SUFFICIENT METHOD OF SCREENING
15 LICENSE APPLICANTS TO PROTECT COLORADO CONSUMERS, THE DIRECTOR
16 MAY, BY RULE, AUTHORIZE THE USE OF THAT CRIMINAL BACKGROUND
17 CHECK INSTEAD OF THE CRIMINAL HISTORY RECORD CHECK OTHERWISE
18 REQUIRED BY THIS SUBSECTION (5).

19 (5.5) (a) ON AND AFTER JANUARY 1, 2010, IN CONNECTION WITH
20 AN APPLICATION FOR A LICENSE AS A MORTGAGE LOAN ORIGINATOR, THE
21 APPLICANT SHALL FURNISH INFORMATION CONCERNING THE APPLICANT'S
22 IDENTITY TO THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND
23 REGISTRY. THE APPLICANT SHALL FURNISH, AT A MINIMUM, THE
24 FOLLOWING:

25 (I) FINGERPRINTS FOR SUBMISSION TO THE FEDERAL BUREAU OF
26 INVESTIGATION AND ANY GOVERNMENT AGENCY OR ENTITY AUTHORIZED
27 TO RECEIVE FINGERPRINTS FOR A STATE, NATIONAL, OR INTERNATIONAL

1 CRIMINAL HISTORY RECORD CHECK; AND

2 (II) PERSONAL HISTORY AND EXPERIENCE, IN A FORM PRESCRIBED
3 BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY,
4 INCLUDING SUBMISSION OF AUTHORIZATION FOR THE NATIONWIDE
5 MORTGAGE LICENSING SYSTEM AND REGISTRY TO OBTAIN:

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

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

11 (b) AN APPLICANT IS RESPONSIBLE FOR PAYING ALL COSTS ARISING
12 FROM A CRIMINAL HISTORY RECORD CHECK AND SHALL PAY SUCH COSTS
13 UPON SUBMISSION OF FINGERPRINTS.

14 (c) THE DIRECTOR MAY ACQUIRE A NAME-BASED CRIMINAL
15 HISTORY RECORD CHECK FOR AN APPLICANT WHO HAS TWICE SUBMITTED
16 TO A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK AND WHOSE
17 FINGERPRINTS ARE UNCLASSIFIABLE.

18 (5.7) ANY INDIVIDUAL WHO OBTAINS A LICENSE PURSUANT TO THIS
19 PART 9 PRIOR TO JANUARY 1, 2010, SHALL FURNISH AT LEAST THE
20 FOLLOWING INFORMATION CONCERNING THE INDIVIDUAL'S IDENTITY TO
21 THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY:

22 (a) FINGERPRINTS FOR SUBMISSION TO THE FEDERAL BUREAU OF
23 INVESTIGATION AND ANY GOVERNMENT AGENCY OR ENTITY AUTHORIZED
24 TO RECEIVE FINGERPRINTS FOR A STATE, NATIONAL, OR INTERNATIONAL
25 CRIMINAL HISTORY RECORD CHECK; AND

26 (b) PERSONAL HISTORY AND EXPERIENCE IN A FORM PRESCRIBED
27 BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY,

1 INCLUDING SUBMISSION OF AUTHORIZATION FOR THE NATIONWIDE
2 MORTGAGE LICENSING SYSTEM AND REGISTRY TO OBTAIN:

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

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

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

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

12 (a) THE APPLICANT HAS SUBMITTED THE REQUISITE INFORMATION
13 TO THE DIRECTOR AND THE NATIONWIDE MORTGAGE LICENSING SYSTEM
14 AND REGISTRY, INCLUDING, BUT NOT LIMITED TO, THE COMPLETED
15 APPLICATION, THE APPLICATION FEE, AND PROOF THAT THE APPLICANT HAS
16 POSTED A SURETY BOND AND OBTAINED ERRORS AND OMISSIONS
17 INSURANCE; AND

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

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

27 (b) Continuing professional education requirements shall be

1 determined by the director BY RULE; except that licensees shall ~~not~~ be
2 required to complete ~~more than nine~~ AT LEAST EIGHT credit hours of
3 continuing education ~~within a three-year period~~ EACH YEAR. The director
4 may contract with one or more independent service providers to develop,
5 review, or approve continuing education courses. The contract may allow
6 the independent service provider to recover from licensees its costs
7 incurred in connection with these functions. The director may contract
8 separately for these functions and may allow the costs to be collected by
9 a single contractor for distribution to other contractors.

10 (9) (a) The director may require contractors and prospective
11 contractors for services under subsections (3) and (8) of this section to
12 submit, for the director's review and approval, information regarding the
13 contents and materials of proposed courses and other documentation
14 reasonably necessary to further the purposes of this section.

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

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

26 (11) IN ORDER TO FULFILL THE PURPOSES OF THIS PART 9, THE
27 DIRECTOR MAY ESTABLISH RELATIONSHIPS OR CONTRACTS WITH THE

1 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY OR OTHER
2 ENTITIES DESIGNATED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM
3 AND REGISTRY TO COLLECT AND MAINTAIN RECORDS AND PROCESS
4 TRANSACTION FEES OR OTHER FEES RELATED TO LICENSEES OR OTHER
5 PERSONS SUBJECT TO THIS PART 9.

6 (12) THE DIRECTOR MAY USE THE NATIONWIDE MORTGAGE
7 LICENSING SYSTEM AND REGISTRY AS A CHANNELING AGENT FOR
8 REQUESTING INFORMATION FROM OR DISTRIBUTING INFORMATION TO THE
9 DEPARTMENT OF JUSTICE, A GOVERNMENT AGENCY, OR ANY OTHER
10 SOURCE.

11 **12-61-903.3 License or registration inactivation.** (1) THE
12 DIRECTOR MAY INACTIVATE A STATE LICENSE OR A REGISTRATION WITH
13 THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY WHEN A
14 LICENSEE HAS FAILED TO:

15 (a) COMPLY WITH THE SURETY BOND REQUIREMENTS OF SECTIONS
16 12-61-903 (6) AND 12-61-907;

17 (b) COMPLY WITH THE ERRORS AND OMISSIONS INSURANCE
18 REQUIREMENT IN SECTION 12-61-903.5 OR ANY RULE OF THE DIRECTOR
19 THAT DIRECTLY OR INDIRECTLY ADDRESSES ERRORS AND OMISSIONS
20 INSURANCE REQUIREMENTS;

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

25 (d) RESPOND TO AN INVESTIGATION OR EXAMINATION;

26 (e) COMPLY WITH ANY OF THE EDUCATION OR TESTING
27 REQUIREMENTS SET FORTH IN THIS PART 9 OR IN ANY RULE OF THE

1 DIRECTOR THAT DIRECTLY OR INDIRECTLY ADDRESSES EDUCATION OR
2 TESTING REQUIREMENTS; OR

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

5 **12-61-903.5. Errors and omissions insurance - duties of the**
6 **director - certificate of coverage - when required - group plan made**

7 **available - effect - rules.** (1) (a) Every licensee under this part 9 ~~except~~
8 ~~an inactive mortgage broker or an attorney licensee who maintains a~~
9 ~~policy of professional malpractice insurance that provides coverage for~~
10 ~~errors and omissions for activities as a licensee under this part 9;~~ shall
11 maintain errors and omissions insurance to cover all activities
12 contemplated under this part 9.

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

15 (I) A MORTGAGE LOAN ORIGINATOR WITH AN INACTIVE LICENSE OR
16 REGISTRATION; OR

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

21 (2) The director shall determine the terms and conditions of
22 coverage required under this section, including the minimum limits of
23 coverage, the permissible deductible, and permissible exemptions. Each
24 licensee SUBJECT TO THE REQUIREMENTS OF THIS SECTION shall maintain
25 evidence of coverage, in a manner satisfactory to the director,
26 demonstrating continuing compliance with the required terms.

27 **12-61-903.7. License renewal.** (1) IN ORDER FOR A LICENSED

1 MORTGAGE LOAN ORIGINATOR TO RENEW A LICENSE ISSUED PURSUANT TO
2 THIS PART 9, THE MORTGAGE LOAN ORIGINATOR SHALL:

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

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

8 (c) PAY APPLICABLE LICENSE RENEWAL FEES.

9 (2) IF A LICENSED MORTGAGE LOAN ORIGINATOR FAILS TO SATISFY
10 THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION FOR LICENSE
11 RENEWAL, THE MORTGAGE LOAN ORIGINATOR'S LICENSE SHALL EXPIRE.
12 THE DIRECTOR SHALL ADOPT RULES TO ESTABLISH PROCEDURES FOR THE
13 REINSTATEMENT OF AN EXPIRED LICENSE CONSISTENT WITH THE
14 STANDARDS ESTABLISHED BY THE NATIONWIDE MORTGAGE LICENSING
15 SYSTEM AND REGISTRY.

16 **12-61-904. Exemptions.** (1) Except as otherwise provided in
17 section 12-61-911, this part 9 shall not apply to the following:

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

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

22 (c) A bank, savings bank, savings and loan association, building
23 and loan association, industrial bank, industrial loan company, credit
24 union, or bank or savings association holding company organized under
25 the laws of any state, the District of Columbia, a territory or protectorate
26 of the United States, or the United States, subject to regulation and
27 supervision by a federal banking agency, or an operating subsidiary or

1 ~~affiliate of such entities, or an~~ employee or exclusive agent of any of such
2 entities, including, without limitation, a subsidiary ~~or affiliate of such~~
3 ~~entities~~ THAT IS OWNED OR CONTROLLED BY A DEPOSITORY INSTITUTION;

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

7 (e) (Deleted by amendment, L. 2007, p. 1716, § 2, effective June
8 1, 2007, and p. 1734, § 6, effective January 1, 2008.)

9 (f) A person who:

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

12 (II) Does not solicit borrowers in Colorado for the purpose of
13 making residential mortgage loans; and

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

18 (g) A LOAN PROCESSOR OR UNDERWRITER WHO IS NOT AN
19 INDEPENDENT CONTRACTOR AND WHO DOES NOT REPRESENT TO THE
20 PUBLIC THAT THE INDIVIDUAL CAN OR WILL PERFORM ANY ACTIVITIES OF
21 A MORTGAGE LOAN ORIGINATOR. AS USED IN THIS PARAGRAPH (g),
22 "REPRESENT TO THE PUBLIC" MEANS COMMUNICATING, THROUGH
23 ADVERTISING OR OTHER MEANS OF COMMUNICATING OR PROVIDING
24 INFORMATION, INCLUDING THE USE OF BUSINESS CARDS, STATIONERY,
25 BROCHURES, SIGNS, RATE LISTS, OR OTHER PROMOTIONAL ITEMS, THAT THE
26 INDIVIDUAL IS ABLE TO PROVIDE A PARTICULAR SERVICE OR ACTIVITY FOR
27 A CONSUMER.

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

3 **12-61-904.5. Originator's relationship to borrower - rules.**

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

6 Such duty includes, but is not limited to:

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

11 (b) The duty to make a reasonable inquiry concerning the
12 borrower's current and prospective income, existing debts and other
13 obligations, and any other RELEVANT information ~~known to the mortgage~~
14 ~~broker~~ and, after making such inquiry, to make his or her best efforts to
15 recommend, broker, or originate a residential mortgage loan that takes
16 into consideration the information submitted by the borrower, BUT THE
17 MORTGAGE LOAN ORIGINATOR SHALL NOT BE DEEMED TO VIOLATE THIS
18 SECTION IF THE BORROWER CONCEALS OR MISREPRESENTS RELEVANT
19 INFORMATION; and

20 (c) The duty not to commit any ~~unconscionable act or practice~~
21 ~~listed~~ ACTS, PRACTICES, OR OMISSIONS in VIOLATION OF section
22 38-40-105, ~~(1.7)~~; C.R.S.

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

26 (3) A violation of this section constitutes a deceptive trade
27 practice under the "Colorado Consumer Protection Act", article 1 of title

1 6, C.R.S.

2 **12-61-905. Powers and duties of the director.** (1) The director
3 ~~shall~~ MAY deny AN APPLICATION FOR A LICENSE, refuse to renew, or
4 revoke the license of an applicant OR LICENSEE who has:

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

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

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

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

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

18 (III) A real estate salesperson;

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

20 (V) An insurance producer, as defined by section 10-2-103 (6),

21 C.R.S.;

22 (VI) An attorney;

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

25 (VIII) A securities sales representative, as defined by section
26 11-51-201 (14), C.R.S.;

27 (IX) An investment advisor, as defined by section 11-51-201

1 (9.5), C.R.S.; or

2 (X) An investment advisor representative, as defined by section
3 11-51-201 (9.6), C.R.S.;

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

8 (e) Been found to have violated the provisions of section
9 12-61-910.2; or

10 (f) Been found to have violated the provisions of section
11 12-61-911;

12 (g) HAD A MORTGAGE LOAN ORIGINATOR LICENSE OR SIMILAR
13 LICENSE REVOKED IN ANY OTHER JURISDICTION; EXCEPT THAT A
14 REVOCATION THAT WAS SUBSEQUENTLY FORMALLY NULLIFIED SHALL NOT
15 BE DEEMED A REVOCATION FOR PURPOSES OF THIS SECTION;

16 (h) AT ANY TIME PRECEDING THE DATE OF APPLICATION FOR A
17 LICENSE OR REGISTRATION, BEEN CONVICTED OF, OR PLED GUILTY OR NOLO
18 CONTENDERE TO, A FELONY IN A DOMESTIC, FOREIGN, OR MILITARY COURT
19 IF THE FELONY INVOLVED AN ACT OF FRAUD, DISHONESTY, BREACH OF
20 TRUST, OR MONEY LAUNDERING; EXCEPT THAT, IF THE INDIVIDUAL
21 OBTAINS A PARDON OF THE CONVICTION, THE INDIVIDUAL SHALL NOT BE
22 DEEMED CONVICTED FOR PURPOSES OF THIS PARAGRAPH (h);

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

26 (j) [REDACTED] NOT DEMONSTRATED FINANCIAL RESPONSIBILITY,
27 CHARACTER, AND GENERAL FITNESS TO COMMAND THE CONFIDENCE OF

1 THE COMMUNITY AND TO WARRANT A DETERMINATION THAT THE
2 INDIVIDUAL WILL OPERATE HONESTLY, FAIRLY, AND EFFICIENTLY,
3 CONSISTENT WITH THE PURPOSES OF THIS PART 9;

4

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

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

11 (2) The director may investigate the activities of a licensee or
12 other person that present grounds for disciplinary action under this part
13 9 or that violate section 12-61-910 (1).

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

20 (b) The director shall suspend the license of a mortgage ~~broker~~
21 LOAN ORIGINATOR who fails to maintain the bond required by section
22 12-61-907 until the licensee complies with such section.

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

27 (5) (a) Except as provided in paragraph (b) of this subsection (5),

1 ~~a person~~ AN INDIVIDUAL whose license has been revoked shall not be
2 eligible for licensure for two years after the effective date of the
3 revocation.

4 (b) If the director or an administrative law judge determines that
5 an application contained a misstatement of fact or omitted a required
6 disclosure due to an unintentional error, the director shall allow the
7 applicant to correct the application. Upon receipt of the corrected and
8 completed application, the director or administrative law judge shall not
9 bar the applicant from being licensed on the basis of the unintentional
10 misstatement or omission.

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

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

1 administrative law judge may apply for such order.

2 (c) THE LICENSEE OR INDIVIDUAL WHO, AFTER AN INVESTIGATION
3 UNDER THIS PART 9, IS FOUND TO BE IN VIOLATION OF A PROVISION OF THIS
4 PART 9 SHALL BE RESPONSIBLE FOR PAYING ALL REASONABLE AND
5 NECESSARY COSTS OF THE DIVISION ARISING FROM SUBPOENAS OR
6 REQUESTS ISSUED PURSUANT TO THIS SUBSECTION (6), INCLUDING COURT
7 COSTS FOR AN ACTION BROUGHT PURSUANT TO PARAGRAPH (b) OF THIS
8 SUBSECTION (6).

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

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

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

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

25 (c) All fines collected pursuant to this subsection (7) shall be
26 transferred to the state treasurer, who shall credit such moneys to the
27 mortgage broker LOAN ORIGINATOR licensing cash fund created in section

1 12-61-908.

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

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

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

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

26 **12-61-905.5. Disciplinary actions - grounds - procedures -**
27 **rules.** (1) The director, upon his or her own motion, may, and, upon the

1 complaint in writing of any person, shall, investigate the activities of any
2 mortgage broker, and LOAN ORIGINATOR. The director has the power to
3 impose an administrative fine in accordance with section 12-61-905, and
4 to DENY A LICENSE, censure a licensee, to place the licensee on probation
5 and to set the terms of probation, ORDER RESTITUTION, ORDER THE
6 PAYMENT OF ACTUAL DAMAGES, or to suspend or revoke a license when
7 the director finds that the licensee OR APPLICANT has performed, is
8 performing, or is attempting to perform any of the following acts:

9 (a) Knowingly making any misrepresentation or knowingly
10 making use of any false or misleading advertising;

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

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

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

20 (e) Acting for more than one party in a transaction without
21 disclosing any actual or potential conflict of interest or without disclosing
22 to all parties any fiduciary obligation or other legal obligation of the
23 mortgage broker LOAN ORIGINATOR to any party;

24 (f) Representing or attempting to represent a mortgage broker
25 LOAN ORIGINATOR other than the licensee's PRINCIPAL OR employer
26 without the express knowledge and consent of that PRINCIPAL OR
27 employer;

1 (g) In the case of a licensee in the employ of another mortgage
2 ~~broker~~ LOAN ORIGINATOR, failing to place, as soon after receipt as is
3 practicably possible, in the custody of that licensed mortgage
4 ~~broker-employer~~ LOAN ORIGINATOR-EMPLOYER any deposit money or
5 other money or fund entrusted to the employee by any person dealing with
6 the employee as the representative of that licensed mortgage
7 ~~broker-employer~~ LOAN ORIGINATOR-EMPLOYER;

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

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

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

27 (k) Failing to maintain possession, for future use or inspection by

1 an authorized representative of the director, for a period of four years, of
2 the documents or records prescribed by the rules of the director or to
3 produce such documents or records upon reasonable request by the
4 director or by an authorized representative of the director;

5 (l) Paying a commission or valuable consideration for performing
6 any of the functions of a mortgage ~~broker~~ LOAN ORIGINATOR, as described
7 in this part 9, to any person WHO IS not licensed under this part 9 ~~except~~
8 ~~that a licensed mortgage broker may pay a finder's fee or a share of any~~
9 ~~commission on a cooperative sale when such payment is made to a~~
10 ~~mortgage broker licensed in another state or country. If such state or~~
11 ~~country does not license mortgage brokers, then the payee shall be a~~
12 ~~citizen or resident of said state or country and represent that the payee is~~
13 ~~in the mortgage brokerage business in said state or country OR IS NOT~~
14 ~~REGISTERED IN COMPLIANCE WITH THE FEDERAL "SECURE AND FAIR~~
15 ~~ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008", 12 U.S.C. SEC.~~
16 ~~5101 ET SEQ.;~~

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

21 (n) Conviction of, entering a plea of guilty to, or entering a plea
22 of nolo contendere to any crime in article 3 of title 18, C.R.S., in parts 1
23 to 4 of article 4 of title 18, C.R.S., in article 5 of title 18, C.R.S., in part
24 3 of article 8 of title 18, C.R.S., in article 15 of title 18, C.R.S., in article
25 17 of title 18, C.R.S., or any other like crime under Colorado law, federal
26 law, or the laws of other states. A certified copy of the judgment of a
27 court of competent jurisdiction of such conviction or other official record

1 indicating that such plea was entered shall be conclusive evidence of such
2 conviction or plea in any hearing under this part 9.

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

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

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

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

13 (s) Procuring, or attempting to procure, a mortgage ~~broker's~~ LOAN
14 ORIGINATOR'S license or renewing, reinstating, or reactivating, or
15 attempting to renew, reinstate, or reactivate, a mortgage ~~broker's~~ LOAN
16 ORIGINATOR'S license by fraud, misrepresentation, or deceit or by making
17 a material misstatement of fact in an application for such license;

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

23 (u) Exercising an option to purchase in any agreement authorizing
24 or employing such licensee to sell, buy, or exchange real estate for
25 compensation or commission except when such licensee, prior to or
26 coincident with election to exercise such option to purchase, reveals in
27 writing to the licensee's principal or employer the full amount of the

1 licensee's profit and obtains the written consent of such principal or
2 employer approving the amount of such profit;

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

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

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

14 (2) ~~If a firm, partnership, limited liability company, association,~~
15 ~~or corporation operating under the license of a mortgage broker~~
16 ~~designated and licensed as a representative of said firm, partnership,~~
17 ~~limited liability company, association, or corporation is guilty of any of~~
18 ~~the acts set out in subsection (1) of this section, the director may suspend~~
19 ~~or revoke the right of the firm, partnership, limited liability company,~~
20 ~~association, or corporation to conduct its business under the license of~~
21 ~~said mortgage broker, whether or not the designated mortgage broker had~~
22 ~~personal knowledge thereof and whether or not the director suspends or~~
23 ~~revokes the individual license of said mortgage broker.~~

24 (3) Upon request of the director, when any mortgage ~~broker~~ LOAN
25 ORIGINATOR is a party to any suit or proceeding, either civil or criminal,
26 arising out of any transaction involving a residential mortgage loan and
27 ~~when such~~ THE mortgage ~~broker~~ LOAN ORIGINATOR participated in such

1 THE transaction in his or her capacity as a licensed mortgage broker, it
2 shall be the duty of such LOAN ORIGINATOR, THE mortgage broker to LOAN
3 ORIGINATOR SHALL supply to the director a copy of the complaint,
4 indictment, information, or other initiating pleading and the answer filed,
5 if any, and to advise the director of the disposition of the case and of the
6 nature and amount of any judgment, verdict, finding, or sentence that may
7 be made, entered, or imposed therein.

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

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

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

27 (7) All administrative fines collected pursuant to this section shall

1 be transmitted to the state treasurer, who shall credit the same to the
2 mortgage broker LOAN ORIGINATOR licensing cash fund created in section
3 12-61-908.

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

7 (b) If a person's AN INDIVIDUAL'S license was suspended or
8 revoked due to conduct that resulted in financial loss to another person,
9 no new license shall be granted, nor shall a suspended license be
10 reinstated, until full restitution has been made to the person suffering such
11 financial loss. The amount of restitution shall include interest, reasonable
12 attorney fees, and costs of any suit or other proceeding undertaken in an
13 effort to recover the loss.

14 (9) When the director or the division becomes aware of facts or
15 circumstances that fall within the jurisdiction of a criminal justice or other
16 law enforcement authority upon investigation of the activities of a
17 licensee, the director or division shall, in addition to the exercise of its
18 authority under this part 9, refer and transmit such information, which
19 may include originals or copies of documents and materials, to one or
20 more criminal justice or other law enforcement authorities for
21 investigation and prosecution as authorized by law.

22 **12-61-905.6. Hearing - administrative law judge - review -**
23 **rules.** (1) Except as otherwise provided in this section, all proceedings
24 before the director with respect to disciplinary actions and denial of
25 licensure under this part 9, at the discretion of the director, may be
26 conducted by an AUTHORIZED REPRESENTATIVE OF THE DIRECTOR OR AN
27 administrative law judge pursuant to sections 24-4-104 and 24-4-105,

1 C.R.S.

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

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

18 (4) The decision of the director in any disciplinary action or denial
19 of licensure under this section is subject to judicial review ~~under section~~
20 ~~24-4-106, C.R.S.~~ BY THE COURT OF APPEALS. In order to effectuate the
21 purposes of this part 9, the director has the power to promulgate rules
22 pursuant to article 4 of title 24, C.R.S.

23 (5) In a judicial review proceeding, the court may stay the
24 execution or effect of any final order of the director; but a hearing shall
25 be held affording the parties an opportunity to be heard for the purpose
26 of determining whether the public health, safety, and welfare would be
27 endangered by staying the director's order. If the court determines that

1 the order should be stayed, it shall also determine at the hearing the
2 amount of the bond and adequacy of the surety, which bond shall be
3 conditioned upon the faithful performance by such petitioner of all
4 obligations as a mortgage ~~broker~~ LOAN ORIGINATOR and upon the prompt
5 payment of all damages arising from or caused by the delay in the taking
6 effect of or enforcement of the order complained of and for all costs that
7 may be assessed or required to be paid in connection with such
8 proceedings.

9 (6) In any hearing conducted by the director OR AN AUTHORIZED
10 REPRESENTATIVE OF THE DIRECTOR in which there is a possibility of the
11 denial, suspension, or revocation of a license because of the conviction
12 of a felony or of a crime involving moral turpitude, the director OR HIS OR
13 HER AUTHORIZED REPRESENTATIVE shall be governed by section
14 24-5-101, C.R.S.

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

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

8 **12-61-906. Immunity.** A person participating in good faith in the
9 filing of a complaint or report or participating in an investigation or
10 hearing before the director or an administrative law judge pursuant to this
11 part 9 shall be immune from any liability, civil or criminal, that otherwise
12 might result by reason of such action.

13 **12-61-907. Bond required.** (1) Before receiving a license, an
14 applicant shall post with the director a surety bond ~~or an alternative~~
15 ~~authorized by article 35 of title 11, C.R.S.,~~ IN THE AMOUNT of twenty-five
16 thousand dollars OR SUCH OTHER AMOUNT AS MAY BE PRESCRIBED BY THE
17 DIRECTOR BY RULE. A licensed mortgage ~~broker~~ LOAN ORIGINATOR shall
18 maintain ~~such~~ THE REQUIRED bond at all times.

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

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

26 **12-61-908. Fees - cash fund - created.** (1) The director may set
27 the fees for issuance and renewal of licenses under this part 9. The fees

1 shall be set in amounts that offset the direct and indirect costs of
2 implementing this part 9 and section 38-40-105, C.R.S. The moneys
3 collected pursuant to this section shall be transferred to the state treasurer,
4 who shall credit them to the mortgage ~~broker~~ LOAN ORIGINATOR licensing
5 cash fund.

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

11 **12-61-909. Attorney general - district attorney - jurisdiction.**

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

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

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

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

3 (3) The director may request that an action be brought in the name
4 of the people of the state of Colorado by the attorney general or the
5 district attorney of the district in which the violation is alleged to have
6 occurred to enjoin a person from engaging in or continuing the violation
7 or from doing any act that furthers the violation. In such an action, an
8 order or judgment may be entered awarding such preliminary or final
9 injunction as is deemed proper by the court. The notice, hearing, or
10 duration of an injunction or restraining order shall be made in accordance
11 with the Colorado rules of civil procedure.

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

14 **12-61-910.2. Prohibited conduct - influencing a real estate**
15 **appraisal.** (1) A mortgage ~~broker~~ LOAN ORIGINATOR shall not, directly
16 or indirectly, compensate, coerce, or intimidate an appraiser, or attempt,
17 directly or indirectly, to compensate, coerce, or intimidate an appraiser,
18 for the purpose of influencing the independent judgment of the appraiser
19 with respect to the value of a dwelling offered as security for repayment
20 of a RESIDENTIAL mortgage loan. This prohibition shall not be construed
21 as prohibiting a mortgage ~~broker~~ LOAN ORIGINATOR from requesting an
22 appraiser to:

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

27 **12-61-910.3. Rule-making authority.** The director shall have the

1 authority to promulgate rules as necessary to enable the director to carry
2 out the director's duties under this part 9.

3 **12-61-910.4. Nontraditional mortgage products - consumer**
4 **protections - rules - incorporation of federal interagency guidance.**

5 The director shall adopt rules governing the marketing of nontraditional
6 ~~mortgages~~ MORTGAGE PRODUCTS by mortgage ~~brokers~~ LOAN
7 ORIGINATORS. In adopting such rules, the director shall incorporate
8 appropriate provisions of the final "Interagency Guidance on
9 Nontraditional Mortgage Product Risks" released on September 29, 2006,
10 by the office of the comptroller of the currency and the office of thrift
11 supervision in the federal department of the treasury, the board of
12 governors of the federal reserve system, the federal deposit insurance
13 corporation, and the national credit union administration, as such
14 publication may be amended.

15 **12-61-911. Prohibited conduct - fraud - misrepresentation -**
16 **conflict of interest - rules.** (1) A mortgage ~~broker~~ LOAN ORIGINATOR,

17 including a mortgage ~~broker~~ LOAN ORIGINATOR otherwise exempted from
18 this part 9 by section 12-61-904 (1) (b), ~~or (1) (c)~~, shall not:

- 19 (a) Directly or indirectly employ any scheme, device, or artifice
20 to defraud or mislead borrowers or lenders or to defraud any person;
- 21 (b) Engage in any unfair or deceptive practice toward any person;
- 22 (c) Obtain property by fraud or misrepresentation;
- 23 (d) Solicit or enter into a contract with a borrower that provides
24 in substance that the mortgage ~~broker~~ LOAN ORIGINATOR may earn a fee
25 or commission through the mortgage ~~broker's~~ LOAN ORIGINATOR'S "best
26 efforts" to obtain a loan even though no loan is actually obtained for the
27 borrower;

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

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

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

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

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

19 (j) Fail to comply with any requirement of the federal "Truth in
20 Lending Act", 15 U.S.C. sec. 1601 and Regulation Z, 12 CFR 226; the
21 "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601
22 and Regulation X, 24 CFR 3500; the "Equal Credit Opportunity Act", 15
23 U.S.C. sec. 1691 and Regulation B, CFR 202.9, 202.11, and 202.12; Title
24 V, Subtitle A of the financial modernization act of 1999 (known as the
25 "Gramm-Leach-Bliley Act"), 12 U.S.C. secs. 6801 to 6809; the federal
26 trade commission's privacy rules, 16 CFR 313-314, mandated by the
27 "Gramm-Leach-Bliley Act"; the "Home Mortgage Disclosure Act of

1 1975", 12 U.S.C. sec. 2801 et seq. and Regulation C, home mortgage
2 disclosure; the "Federal Trade Commission Act", 12 CFR 203, 15 U.S.C.
3 sec. 45(a); the "Telemarketing and Consumer Fraud and Abuse
4 Prevention Act", 15 U.S.C. secs. 6101 to 6108; and the federal trade
5 commission telephone sales rule, 16 CFR 310, as amended, in any
6 advertising of residential mortgage loans or any other applicable
7 mortgage ~~broker~~ LOAN ORIGINATOR activities covered by the acts. The
8 director may adopt rules requiring mortgage ~~brokers~~ LOAN ORIGINATORS
9 to comply with other applicable federal statutes and regulations. ~~in any~~
10 ~~advertising of residential mortgage loans, or any other mortgage broker~~
11 ~~activity.~~

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

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

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

23 **12-61-911.5. Acts of employee - mortgage loan originator's**
24 **liability.** An unlawful act or violation of this part 9 upon the part of an
25 AGENT OR employee ~~officer, or member~~ of a licensed mortgage ~~broker~~
26 LOAN ORIGINATOR shall not be cause for disciplinary action against a
27 mortgage ~~broker~~ LOAN ORIGINATOR unless it appears that the mortgage

1 ~~broker~~ LOAN ORIGINATOR knew or should have known of the unlawful act
2 or violation or had been negligent in the supervision of the AGENT OR
3 employee.

4 **12-61-912. Dual status as real estate broker - requirements.**

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

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

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

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

17 (3) (a) A real estate broker OR SALESPERSON licensed under part
18 1 of this article who also acts as a mortgage ~~broker~~ LOAN ORIGINATOR
19 shall carry on such mortgage ~~broker~~ LOAN ORIGINATOR business activities
20 and shall maintain such person's mortgage ~~broker~~ LOAN ORIGINATOR
21 business records separate and apart from the real estate broker OR SALES
22 activities conducted pursuant to part 1 of this article. Such activities shall
23 be deemed separate and apart even if they are conducted at an office
24 location with a common entrance and mailing address if:

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

27 (II) Each business is physically separated within the office facility;

1 and

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

4 (b) This subsection (3) shall not require a real estate broker OR
5 SALESPERSON licensed under part 1 of this article who also acts as a
6 mortgage ~~broker~~ LOAN ORIGINATOR to maintain a physical separation
7 within the office facility for the conduct of its real estate BROKER OR
8 SALES and mortgage ~~broker~~ LOAN ORIGINATOR activities if the director
9 determines that maintaining such physical separation would constitute an
10 undue financial hardship upon the mortgage ~~broker~~ LOAN ORIGINATOR
11 and is unnecessary for the protection of the public.

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

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

18 **12-61-914. Written disclosure of fees and costs - contents -**
19 **limits on fees - lock-in agreement terms - rules.** (1) Within three
20 business days after receipt of a loan application or any moneys from a
21 borrower, a mortgage ~~broker~~ LOAN ORIGINATOR shall provide to each
22 borrower a full written disclosure containing an itemization and
23 explanation of all fees and costs that the borrower is required to pay in
24 connection with obtaining a residential mortgage loan, ~~and~~ specifying the
25 fee or fees that inure to the benefit of the mortgage ~~broker~~ LOAN
26 ORIGINATOR. A good-faith estimate of a fee or cost shall be provided if
27 the exact amount of the fee or cost is not determinable. Except as

1 required by paragraph (c) of subsection (2) of this section, this subsection
2 (1) shall not be construed to require disclosure of the distribution or
3 breakdown of loan fees, discounts, or points between the mortgage broker
4 LOAN ORIGINATOR and any MORTGAGE lender or investor.

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

6 (a) The annual percentage rate, finance charge, amount financed,
7 total amount of all payments, number of payments, amount of each
8 payment, amount of points or prepaid interest, and the conditions and
9 terms under which any loan terms may change between the time of
10 disclosure and closing of the loan. If the interest rate is variable, the
11 written disclosure shall clearly describe the circumstances under which
12 the rate may increase, any limitation on the increase, the effect of an
13 increase, and an example of the payment terms resulting from an increase.

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

18 (c) If applicable, the amount of any commission or other
19 compensation to be paid to the mortgage broker LOAN ORIGINATOR,
20 including the manner in which ~~such~~ THE commission or other
21 compensation is calculated and the relationship of ~~such~~ THE commission
22 or other compensation to the cost of the loan received by the borrower;

23 (d) If applicable, the cost, terms, duration, and conditions of a
24 lock-in agreement and whether a lock-in agreement has been entered,
25 whether the lock-in agreement is guaranteed by the mortgage broker
26 LOAN ORIGINATOR or lender, and, if a lock-in agreement has not been
27 entered, disclosure in a form acceptable to the director that the disclosed

1 interest rate and terms are subject to change;

2 (e) A statement that, if the borrower is unable to obtain a loan for
3 any reason, the mortgage ~~broker~~ LOAN ORIGINATOR must, within five days
4 after a written request by the borrower, give copies of each appraisal, title
5 report, and credit report paid for by the borrower to the borrower and
6 transmit the appraisal, title report, or credit report to any other mortgage
7 ~~broker~~ LOAN ORIGINATOR or lender to whom the borrower directs the
8 documents to be sent;

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

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

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

25 (4) (a) Except as otherwise provided in paragraph (b) of this
26 subsection (4), a mortgage ~~broker~~ LOAN ORIGINATOR shall not charge any
27 fee that inures to the benefit of the mortgage ~~broker~~ LOAN ORIGINATOR

1 and that exceeds the fee disclosed on the written disclosure pursuant to
2 this section unless:

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

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

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

15 **12-61-915. Fee, commission, or compensation - when**
16 **permitted - amount.** (1) Except as otherwise permitted by subsection
17 (2) or (3) of this section, a mortgage ~~broker~~ LOAN ORIGINATOR shall not
18 receive a fee, commission, or compensation of any kind in connection
19 with the preparation OR negotiation ~~or brokering~~ of a residential mortgage
20 loan unless a borrower actually obtains a loan from a lender on the terms
21 and conditions agreed to by the borrower and mortgage ~~broker~~ LOAN
22 ORIGINATOR.

23 (2) If the mortgage ~~broker~~ LOAN ORIGINATOR has obtained for the
24 borrower a written commitment from a lender for a loan on the terms and
25 conditions agreed to by the borrower and the mortgage ~~broker~~ LOAN
26 ORIGINATOR, and the borrower fails to close on the loan through no fault
27 of the mortgage ~~broker~~ LOAN ORIGINATOR, the mortgage ~~broker~~ LOAN

1 ORIGINATOR may charge a fee, not to exceed three hundred dollars, for
2 services rendered, preparation of documents, or transfer of documents in
3 the borrower's file that were prepared or paid for by the borrower if the
4 fee is not otherwise prohibited by the federal "Truth in Lending Act", 15
5 U.S.C. sec. 1601, and Regulation Z, 12 CFR 226, as amended.

6 (3) A mortgage ~~broker~~ LOAN ORIGINATOR may solicit or receive
7 fees for third-party provider goods or services in advance. Fees for any
8 goods or services not provided shall be refunded to the borrower, and the
9 mortgage ~~broker~~ LOAN ORIGINATOR may not charge more for the goods
10 and services than the actual costs of the goods or services charged by the
11 third-party provider.

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

27 (2) THE DIRECTOR MAY ENTER INTO AGREEMENTS WITH OTHER

1 GOVERNMENT AGENCIES, THE CONFERENCE OF STATE BANK SUPERVISORS,
2 THE AMERICAN ASSOCIATION OF RESIDENTIAL MORTGAGE REGULATORS,
3 OR OTHER ASSOCIATIONS REPRESENTING GOVERNMENT AGENCIES AS
4 ESTABLISHED BY RULE.

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

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

11 (b) SUBPOENA, DISCOVERY, OR ADMISSION INTO EVIDENCE IN ANY
12 PRIVATE CIVIL ACTION OR ADMINISTRATIVE PROCESS, UNLESS WITH
13 RESPECT TO A PRIVILEGE HELD BY THE NATIONWIDE MORTGAGE LICENSING
14 SYSTEM AND REGISTRY REGARDING THE INFORMATION OR MATERIAL, THE
15 PERSON TO WHOM THE INFORMATION OR MATERIAL PERTAINS WAIVES THE
16 PRIVILEGE, IN WHOLE OR IN PART.

17 **12-61-917. Mortgage call reports - reports of violations.**

18 (1) THE DIRECTOR MAY REQUIRE EACH LICENSEE TO SUBMIT TO THE
19 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY MORTGAGE
20 CALL REPORTS, WHICH SHALL BE IN THE FORM AND CONTAIN THE
21 INFORMATION REQUIRED BY THE NATIONWIDE MORTGAGE LICENSING
22 SYSTEM AND REGISTRY.

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

26 **12-61-918. Unique identifier - clearly displayed.** ANY LICENSEE
27 ORIGINATING A RESIDENTIAL MORTGAGE LOAN SHALL SHOW HIS OR HER

1 UNIQUE IDENTIFIER CLEARLY ON ALL RESIDENTIAL MORTGAGE LOAN
2 APPLICATION FORMS, SOLICITATIONS, OR ADVERTISEMENTS, INCLUDING
3 BUSINESS CARDS OR WEB SITES, AND ANY OTHER DOCUMENTS AS SPECIFIED
4 BY THE DIRECTOR BY RULE OR ORDER.

5 **12-61-919. Repeal of part.** (1) THIS PART 9 IS REPEALED,
6 EFFECTIVE JULY 1, 2011.

7 (2) PRIOR TO ITS REPEAL, THE DEPARTMENT OF REGULATORY
8 AGENCIES SHALL REVIEW THE LICENSING OF MORTGAGE LOAN
9 ORIGINATORS IN ACCORDANCE WITH SECTION 24-34-104, C.R.S. THE
10 DEPARTMENT SHALL INCLUDE IN ITS REVIEW OF MORTGAGE LOAN
11 ORIGINATORS AN ANALYSIS OF THE NUMBER AND TYPES OF COMPLAINTS
12 MADE ABOUT MORTGAGE LOAN ORIGINATORS AND WHETHER THE
13 LICENSING OF MORTGAGE LOAN ORIGINATORS CORRELATES WITH PUBLIC
14 PROTECTION FROM FRAUDULENT ACTIVITIES IN THE RESIDENTIAL
15 MORTGAGE LOAN INDUSTRY.

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

18 **24-34-104. General assembly review of regulatory agencies
19 and functions for termination, continuation, or reestablishment.**

20 (42) The following agencies, functions, or both, shall terminate on July
21 1, 2011:

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

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

26 **12-61-113. Investigation - revocation - actions against licensee
27 - repeal.** (1) The commission, upon its own motion, may, and, upon the

1 complaint in writing of any person, shall, investigate the activities of any
2 licensee or any person who assumes to act in such capacity within the
3 state, and the commission, after the holding of a hearing pursuant to
4 section 12-61-114, has the power to impose an administrative fine not to
5 exceed two thousand five hundred dollars for each separate offense and
6 to censure a licensee, to place the licensee on probation and to set the
7 terms of probation, or to temporarily suspend or permanently revoke a
8 license when the licensee has performed, is performing, or is attempting
9 to perform any of the following acts and is guilty of:

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

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

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

18 **38-40-105. Prohibited acts by participants in certain mortgage**
19 **loan transactions - unconscionable acts and practices - definitions.**

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

26 (f) ~~To knowingly facilitate the consummation of a mortgage loan~~
27 ~~transaction that violates, or that is connected with a violation of,~~

1 subsection (1.5) of this section.

2 (1.5) (a) A mortgage broker or the broker's agent shall provide the
3 borrower with draft copies of the mortgage loan agreement and all other
4 documents material to the transaction, completed to the extent possible in
5 accordance with good-faith estimates, at least one business day before
6 closing. There shall be no blank spaces remaining on the agreement form
7 and no change to any material term of the agreement or of any
8 accompanying document during this time.

9 (b) As used in this subsection (1.5), "documents material to the
10 transaction" include, without limitation, the deed of conveyance, except
11 in the case of a refinancing, the loan agreement, and the title documents
12 if requested by the borrower.

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

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

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

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

20 (d) "Mortgage lender" has the meaning set forth in section
21 12-61-902, (6), C.R.S.

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

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

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

3 **SECTION 5. Appropriation.** In addition to any other
4 appropriation, there is hereby appropriated, out of any moneys in the
5 mortgage loan originator licensing cash fund created in section
6 12-61-908, Colorado Revised Statutes, not otherwise appropriated, to the
7 department of regulatory agencies, for allocation to the division of real
8 estate, for the fiscal year beginning July 1, 2009, the sum of ninety
9 thousand six hundred thirty-six dollars (\$90,636) and 1.0 FTE, or so
10 much thereof as may be necessary, for the implementation of this act.

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