

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

PREAMENDED

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

LLS NO. 09-0342.01 Christy Chase

HOUSE BILL 09-1085

HOUSE SPONSORSHIP

Rice,

SENATE SPONSORSHIP

Heath,

House Committees

Business Affairs and Labor
Appropriations

Senate Committees

Business, Labor and Technology
Appropriations

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 DEALER, AS DEFINED IN SECTION 24-32-3302, C.R.S.

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

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

25 ~~(b) The loan proceeds are obtained by the lender from its own~~
26 ~~funds or from a line of credit made available to the lender from a bank or~~
27 ~~other entity who regularly loans money to lenders for the purpose of~~

1 ~~funding mortgage loans.~~

2 (6.3) "NATIONWIDE MORTGAGE LICENSING SYSTEM AND
3 REGISTRY" MEANS A MORTGAGE LICENSING SYSTEM DEVELOPED
4 PURSUANT TO THE FEDERAL "SECURE AND FAIR ENFORCEMENT FOR
5 MORTGAGE LICENSING ACT OF 2008", 12 U.S.C. SEC. 5101 ET SEQ., TO
6 TRACK THE LICENSING AND REGISTRATION OF MORTGAGE LOAN
7 ORIGINATORS AND THAT IS ESTABLISHED AND MAINTAINED BY:

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

11 (b) THE SECRETARY OF THE UNITED STATES DEPARTMENT OF
12 HOUSING AND URBAN DEVELOPMENT.

13 (6.5) "NONTRADITIONAL MORTGAGE PRODUCT" MEANS A
14 MORTGAGE PRODUCT OTHER THAN A THIRTY-YEAR, FIXED-RATE
15 MORTGAGE.

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

20 (7.5) "PERSON" MEANS A NATURAL PERSON, CORPORATION,
21 COMPANY, LIMITED LIABILITY COMPANY, PARTNERSHIP, FIRM,
22 ASSOCIATION, OR OTHER LEGAL ENTITY.

23 (7.7) "REAL ESTATE BROKERAGE ACTIVITY" MEANS AN ACTIVITY
24 THAT INVOLVES OFFERING OR PROVIDING REAL ESTATE BROKERAGE
25 SERVICES TO THE PUBLIC, INCLUDING, WITHOUT LIMITATION:

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

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

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

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

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

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

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

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

26 (11) "STATE-LICENSED LOAN ORIGINATOR" MEANS AN INDIVIDUAL
27 WHO IS:

1 (a) A MORTGAGE LOAN ORIGINATOR OR ENGAGES IN THE
2 ACTIVITIES OF A MORTGAGE LOAN ORIGINATOR;

3 (b) NOT AN EMPLOYEE OF A DEPOSITORY INSTITUTION OR A
4 SUBSIDIARY THAT IS:

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

6 (II) REGULATED BY A FEDERAL BANKING AGENCY;

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

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

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

16 **12-61-903. License required - rules.** (1) (a) On or after January
17 ~~1, 2008~~ THE EFFECTIVE DATE OF THIS SUBSECTION (1), AS AMENDED,
18 unless licensed by the director, ~~a person~~ AN INDIVIDUAL shall not ~~broker~~
19 ORIGINATE a mortgage, offer to ~~broker~~ ORIGINATE a mortgage, act as a
20 mortgage ~~broker~~ LOAN ORIGINATOR, or offer to act as a mortgage ~~broker~~
21 LOAN ORIGINATOR. ON OR AFTER JULY 31, 2010, UNLESS LICENSED BY
22 THE DIRECTOR AND REGISTERED WITH THE NATIONWIDE MORTGAGE
23 LICENSING SYSTEM AND REGISTRY AS A STATE-LICENSED LOAN
24 ORIGINATOR, AN INDIVIDUAL SHALL NOT ORIGINATE OR OFFER TO
25 ORIGINATE A MORTGAGE OR ACT OR OFFER TO ACT AS A MORTGAGE LOAN
26 ORIGINATOR.

27 (b) ON AND AFTER JANUARY 1, 2010, a licensed mortgage ~~broker~~

1 LOAN ORIGINATOR shall apply for license renewal in accordance with
2 subsection (4) of this section every ~~three years~~ CALENDAR YEAR AS
3 DETERMINED BY THE DIRECTOR BY RULE.

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

10 (1.5) AN INDEPENDENT CONTRACTOR MAY NOT ENGAGE IN
11 RESIDENTIAL MORTGAGE LOAN ORIGINATION ACTIVITIES AS A LOAN
12 PROCESSOR OR UNDERWRITER UNLESS THE INDEPENDENT CONTRACTOR IS
13 A STATE-LICENSED LOAN ORIGINATOR.

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

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

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

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

23 (3) (a) In addition to the requirements imposed by subsection (2)
24 of this section, on or after ~~January 1, 2009~~ THE EFFECTIVE DATE OF THIS
25 SUBSECTION (3), AS AMENDED, each individual applicant for initial
26 licensing as a mortgage ~~broker~~ LOAN ORIGINATOR shall have satisfactorily
27 completed ~~within the three years immediately preceding the date of the~~

1 application, a mortgage lending fundamentals course approved by the
2 director and consisting of at least nine hours of classroom instruction in
3 subjects related to mortgage lending. In addition, the applicant shall have
4 satisfactorily completed a written examination approved by the director.

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

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

17 (4) An applicant for license renewal shall submit to the director
18 the following:

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

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

24 (5) (a) Prior to submitting an application for a license, an
25 applicant shall submit a set of fingerprints to the Colorado bureau of
26 investigation. Upon receipt of the applicant's fingerprints, the Colorado
27 bureau of investigation shall use the fingerprints to conduct a state and

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

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

17 (5.5) (a) ON AND AFTER JANUARY 1, 2010, IN CONNECTION WITH
18 AN APPLICATION FOR A LICENSE AS A MORTGAGE LOAN ORIGINATOR, THE
19 APPLICANT SHALL FURNISH INFORMATION CONCERNING THE APPLICANT'S
20 IDENTITY TO THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND
21 REGISTRY. THE APPLICANT SHALL FURNISH, AT A MINIMUM, THE
22 FOLLOWING:

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

27 (II) PERSONAL HISTORY AND EXPERIENCE, IN A FORM PRESCRIBED

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

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

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

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

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

16 (5.7) ANY INDIVIDUAL WHO OBTAINS A LICENSE PURSUANT TO THIS
17 PART 9 PRIOR TO JANUARY 1, 2010, SHALL FURNISH AT LEAST THE
18 FOLLOWING INFORMATION CONCERNING THE INDIVIDUAL'S IDENTITY TO
19 THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY:

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

24 (b) PERSONAL HISTORY AND EXPERIENCE IN A FORM PRESCRIBED
25 BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY,
26 INCLUDING SUBMISSION OF AUTHORIZATION FOR THE NATIONWIDE
27 MORTGAGE LICENSING SYSTEM AND REGISTRY TO OBTAIN:

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

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

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

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

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

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

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

25 (b) Continuing professional education requirements shall be
26 determined by the director BY RULE; except that licensees shall ~~not~~ be
27 required to complete ~~more than nine~~ AT LEAST EIGHT credit hours of

1 continuing education ~~within a three-year period~~ EACH YEAR. The director
2 may contract with one or more independent service providers to develop,
3 review, or approve continuing education courses. The contract may allow
4 the independent service provider to recover from licensees its costs
5 incurred in connection with these functions. The director may contract
6 separately for these functions and may allow the costs to be collected by
7 a single contractor for distribution to other contractors.

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

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

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

24 (11) IN ORDER TO FULFILL THE PURPOSES OF THIS PART 9, THE
25 DIRECTOR MAY ESTABLISH RELATIONSHIPS OR CONTRACTS WITH THE
26 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY OR OTHER
27 ENTITIES DESIGNATED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM

1 AND REGISTRY TO COLLECT AND MAINTAIN RECORDS AND PROCESS
2 TRANSACTION FEES OR OTHER FEES RELATED TO LICENSEES OR OTHER
3 PERSONS SUBJECT TO THIS PART 9.

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

9 **12-61-903.3 License or registration inactivation.** (1) THE
10 DIRECTOR MAY INACTIVATE A STATE LICENSE OR A REGISTRATION WITH
11 THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY WHEN A
12 LICENSEE HAS FAILED TO:

13 (a) COMPLY WITH THE SURETY BOND REQUIREMENTS OF SECTIONS
14 12-61-903 (6) AND 12-61-907;

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

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

23 (d) RESPOND TO AN INVESTIGATION OR EXAMINATION;

24 (e) COMPLY WITH ANY OF THE EDUCATION OR TESTING
25 REQUIREMENTS SET FORTH IN THIS PART 9 OR IN ANY RULE OF THE
26 DIRECTOR THAT DIRECTLY OR INDIRECTLY ADDRESSES EDUCATION OR
27 TESTING REQUIREMENTS; OR

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

3 **12-61-903.5. Errors and omissions insurance - duties of the**
4 **director - certificate of coverage - when required - group plan made**
5 **available - effect - rules.** (1) (a) Every licensee under this part 9 ~~except~~
6 ~~an inactive mortgage broker or an attorney licensee who maintains a~~
7 ~~policy of professional malpractice insurance that provides coverage for~~
8 ~~errors and omissions for activities as a licensee under this part 9;~~ shall
9 maintain errors and omissions insurance to cover all activities
10 contemplated under this part 9.

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

13 (I) A MORTGAGE LOAN ORIGINATOR WITH AN INACTIVE LICENSE OR
14 REGISTRATION; OR

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

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

25 **12-61-903.7. License renewal.** (1) IN ORDER FOR A LICENSED
26 MORTGAGE LOAN ORIGINATOR TO RENEW A LICENSE ISSUED PURSUANT TO
27 THIS PART 9, THE MORTGAGE LOAN ORIGINATOR SHALL:

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

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

6 (c) PAY APPLICABLE LICENSE RENEWAL FEES.

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

14 **12-61-904. Exemptions.** (1) Except as otherwise provided in
15 section 12-61-911, this part 9 shall not apply to the following:

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

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

20 (c) A bank, savings bank, savings and loan association, building
21 and loan association, industrial bank, industrial loan company, credit
22 union, or bank or savings association holding company organized under
23 the laws of any state, the District of Columbia, a territory or protectorate
24 of the United States, or the United States, subject to regulation and
25 supervision by a federal banking agency, or an operating subsidiary ~~or~~
26 ~~affiliate of such entities~~, or an employee or exclusive agent of any of such
27 entities, including, without limitation, a subsidiary ~~or affiliate of such~~

1 ~~entities~~ THAT IS OWNED OR CONTROLLED BY A DEPOSITORY INSTITUTION;

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

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

7 (f) A person who:

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

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

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

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

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

1 **12-61-904.5. Originator's relationship to borrower - rules.**

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

4 Such duty includes, but is not limited to:

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

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

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

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

24 (3) A violation of this section constitutes a deceptive trade
25 practice under the "Colorado Consumer Protection Act", article 1 of title
26 6, C.R.S.

27 **12-61-905. Powers and duties of the director.** (1) The director

1 shall MAY deny AN APPLICATION FOR A LICENSE, refuse to renew, or
2 revoke the license of an applicant OR LICENSEE who has:

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

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

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

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

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

16 (III) A real estate salesperson;

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

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

20 (VI) An attorney;

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

23 (VIII) A securities sales representative, as defined by section
24 11-51-201 (14), C.R.S.;

25 (IX) An investment advisor, as defined by section 11-51-201
26 (9.5), C.R.S.; or

27 (X) An investment advisor representative, as defined by section

1 11-51-201 (9.6), C.R.S.;

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

6 (e) Been found to have violated the provisions of section
7 12-61-910.2; or

8 (f) Been found to have violated the provisions of section
9 12-61-911;

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

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

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

24 (j) [REDACTED] NOT DEMONSTRATED FINANCIAL RESPONSIBILITY,
25 CHARACTER, AND GENERAL FITNESS TO COMMAND THE CONFIDENCE OF
26 THE COMMUNITY AND TO WARRANT A DETERMINATION THAT THE
27 INDIVIDUAL WILL OPERATE HONESTLY, FAIRLY, AND EFFICIENTLY,

1 CONSISTENT WITH THE PURPOSES OF THIS PART 9;

2

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

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

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

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

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

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

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

1 revocation.

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

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

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

27 (c) THE LICENSEE OR INDIVIDUAL WHO, AFTER AN INVESTIGATION

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

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

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

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

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

23 (c) All fines collected pursuant to this subsection (7) shall be
24 transferred to the state treasurer, who shall credit such moneys to the
25 mortgage broker LOAN ORIGINATOR licensing cash fund created in section
26 12-61-908.

27 (8) The director shall keep records of the persons INDIVIDUALS

1 licensed as mortgage ~~brokers~~ LOAN ORIGINATORS and of disciplinary
2 proceedings. The records kept by the director shall be open to public
3 inspection in a reasonable time and manner determined by the director.

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

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

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

24 **12-61-905.5. Disciplinary actions - grounds - procedures -**
25 **rules.** (1) The director, upon his or her own motion, may, and, upon the
26 complaint in writing of any person, shall, investigate the activities of any
27 mortgage ~~broker~~, and LOAN ORIGINATOR. The director has the power to

1 impose an administrative fine in accordance with section 12-61-905, ~~and~~
2 ~~to~~ DENY A LICENSE, censure a licensee, ~~to~~ place the licensee on probation
3 and ~~to~~ set the terms of probation, ORDER RESTITUTION, ORDER THE
4 PAYMENT OF ACTUAL DAMAGES, or ~~to~~ suspend or revoke a license when
5 the director finds that the licensee OR APPLICANT has performed, is
6 performing, or is attempting to perform any of the following acts:

7 (a) Knowingly making any misrepresentation or knowingly
8 making use of any false or misleading advertising;

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

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

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

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

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

26 (g) In the case of a licensee in the employ of another mortgage
27 ~~broker~~ LOAN ORIGINATOR, failing to place, as soon after receipt as is

1 practicably possible, in the custody of that licensed mortgage
2 ~~broker-employer~~ LOAN ORIGINATOR-EMPLOYER any deposit money or
3 other money or fund entrusted to the employee by any person dealing with
4 the employee as the representative of that licensed mortgage
5 ~~broker-employer~~ LOAN ORIGINATOR-EMPLOYER;

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

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

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

25 (k) Failing to maintain possession, for future use or inspection by
26 an authorized representative of the director, for a period of four years, of
27 the documents or records prescribed by the rules of the director or to

1 produce such documents or records upon reasonable request by the
2 director or by an authorized representative of the director;

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

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

19 (n) Conviction of, entering a plea of guilty to, or entering a plea
20 of nolo contendere to any crime in article 3 of title 18, C.R.S., in parts 1
21 to 4 of article 4 of title 18, C.R.S., in article 5 of title 18, C.R.S., in part
22 3 of article 8 of title 18, C.R.S., in article 15 of title 18, C.R.S., in article
23 17 of title 18, C.R.S., or any other like crime under Colorado law, federal
24 law, or the laws of other states. A certified copy of the judgment of a
25 court of competent jurisdiction of such conviction or other official record
26 indicating that such plea was entered shall be conclusive evidence of such
27 conviction or plea in any hearing under this part 9.

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

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

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

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

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

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

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

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

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

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

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

22 (3) Upon request of the director, when any mortgage ~~broker~~ LOAN
23 ORIGINATOR is a party to any suit or proceeding, either civil or criminal,
24 arising out of any transaction involving a residential mortgage loan and
25 ~~when such~~ THE mortgage ~~broker~~ LOAN ORIGINATOR participated in ~~such~~
26 THE transaction in his or her capacity as a licensed mortgage ~~broker~~, it
27 ~~shall be the duty of such~~ LOAN ORIGINATOR, THE mortgage ~~broker~~ to LOAN

1 ORIGINATOR SHALL supply to the director a copy of the complaint,
2 indictment, information, or other initiating pleading and the answer filed,
3 if any, and to advise the director of the disposition of the case and of the
4 nature and amount of any judgment, verdict, finding, or sentence that may
5 be made, entered, or imposed therein.

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

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

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

25 (7) All administrative fines collected pursuant to this section shall
26 be transmitted to the state treasurer, who shall credit the same to the
27 mortgage broker LOAN ORIGINATOR licensing cash fund created in section

1 12-61-908.

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

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

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

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

27 (2) Proceedings shall be held in the county where the director has

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

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

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

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

1 conditioned upon the faithful performance by such petitioner of all
2 obligations as a mortgage ~~broker~~ LOAN ORIGINATOR and upon the prompt
3 payment of all damages arising from or caused by the delay in the taking
4 effect of or enforcement of the order complained of and for all costs that
5 may be assessed or required to be paid in connection with such
6 proceedings.

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

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

26 (2) Any person who willfully fails or neglects to appear and testify
27 or to produce books, papers, or records required by subpoena, duly served

1 upon him or her in any matter conducted under this part 9, is guilty of a
2 misdemeanor and, upon conviction thereof, shall be punished by a fine of
3 one hundred dollars or imprisonment in the county jail for not more than
4 thirty days for each such offense, or by both such fine and imprisonment.
5 Each day such person so refuses or neglects constitutes a separate offense.

6 **12-61-906. Immunity.** A person participating in good faith in the
7 filing of a complaint or report or participating in an investigation or
8 hearing before the director or an administrative law judge pursuant to this
9 part 9 shall be immune from any liability, civil or criminal, that otherwise
10 might result by reason of such action.

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

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

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

24 **12-61-908. Fees - cash fund - created.** (1) The director may set
25 the fees for issuance and renewal of licenses under this part 9. The fees
26 shall be set in amounts that offset the direct and indirect costs of
27 implementing this part 9 and section 38-40-105, C.R.S. The moneys

1 collected pursuant to this section shall be transferred to the state treasurer,
2 who shall credit them to the mortgage ~~broker~~ LOAN ORIGINATOR licensing
3 cash fund.

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

9 (3) FOR THE 2009-2010 FISCAL YEAR, THE DIVISION IS AUTHORIZED
10 TO EXPEND UP TO ONE HUNDRED TWELVE THOUSAND DOLLARS OR SUCH
11 OTHER AMOUNT AS MAY BE APPROPRIATED BY THE GENERAL ASSEMBLY
12 FROM THE MORTGAGE LOAN ORIGINATOR LICENSING CASH FUND FOR
13 PURPOSES OF PAYING THE DEVELOPMENT COSTS ASSESSED BY THE
14 CONFERENCE OF STATE BANK SUPERVISORS, OR ITS SUCCESSOR
15 ORGANIZATION, FOR PARTICIPATING IN THE NATIONWIDE MORTGAGE
16 LICENSING SYSTEM AND REGISTRY. HOWEVER, THE DIRECTOR SHALL USE
17 HIS OR HER DISCRETION IN DETERMINING WHETHER EXPENDITURE OF
18 THESE MONEYS IS NECESSARY FOR COMPLIANCE WITH THE FEDERAL
19 "SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF
20 2008" OR PARTICIPATION IN THE NATIONWIDE MORTGAGE LICENSING
21 SYSTEM AND REGISTRY.

22 **12-61-909. Attorney general - district attorney - jurisdiction.**
23 The attorney general shall have concurrent jurisdiction with the district
24 attorneys of this state to investigate and prosecute allegations of criminal
25 violations of this part 9.

26 **12-61-910. Violations - injunctions.** (1) (a) Any ~~natural person,~~
27 ~~firm, partnership, limited liability company, or association or any~~

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

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

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

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

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

25 **12-61-910.2. Prohibited conduct - influencing a real estate**
26 **appraisal.** (1) A mortgage ~~broker~~ LOAN ORIGINATOR shall not, directly
27 or indirectly, compensate, coerce, or intimidate an appraiser, or attempt,

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

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

11 **12-61-910.3. Rule-making authority.** The director shall have the
12 authority to promulgate rules as necessary to enable the director to carry
13 out the director's duties under this part 9.

14 **12-61-910.4. Nontraditional mortgage products - consumer
15 protections - rules - incorporation of federal interagency guidance.**
16 The director shall adopt rules governing the marketing of nontraditional
17 ~~mortgages~~ MORTGAGE PRODUCTS by mortgage ~~brokers~~ LOAN
18 ORIGINATORS. In adopting such rules, the director shall incorporate
19 appropriate provisions of the final "Interagency Guidance on
20 Nontraditional Mortgage Product Risks" released on September 29, 2006,
21 by the office of the comptroller of the currency and the office of thrift
22 supervision in the federal department of the treasury, the board of
23 governors of the federal reserve system, the federal deposit insurance
24 corporation, and the national credit union administration, as such
25 publication may be amended.

26 **12-61-911. Prohibited conduct - fraud - misrepresentation -
27 conflict of interest - rules.** (1) A mortgage ~~broker~~ LOAN ORIGINATOR,

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

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

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

6 (c) Obtain property by fraud or misrepresentation;

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

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

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

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

24 (h) Negligently make any false statement or knowingly and
25 willfully make any omission of material fact in connection with any
26 reports filed by a mortgage broker LOAN ORIGINATOR or in connection
27 with any investigation conducted by the division;

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

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

23 (k) Fail to pay a third-party provider, no later than thirty days after
24 the recording of the loan closing documents or ninety days after
25 completion of the third-party service, whichever comes first, unless
26 otherwise agreed or unless the third-party service provider has been
27 notified in writing that a bona fide dispute exists regarding the

1 performance or quality of the third-party service;

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

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

7 **12-61-911.5. Acts of employee - mortgage loan originator's**
8 **liability.** An unlawful act or violation of this part 9 upon the part of an
9 AGENT OR employee ~~officer, or member~~ of a licensed mortgage ~~broker~~
10 LOAN ORIGINATOR shall not be cause for disciplinary action against a
11 mortgage ~~broker~~ LOAN ORIGINATOR unless it appears that the mortgage
12 ~~broker~~ LOAN ORIGINATOR knew or should have known of the unlawful act
13 or violation or had been negligent in the supervision of the AGENT OR
14 employee.

15 **12-61-912. Dual status as real estate broker - requirements.**

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

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

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

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

1 (3) (a) A real estate broker OR SALESPERSON licensed under part
2 1 of this article who also acts as a mortgage ~~broker~~ LOAN ORIGINATOR
3 shall carry on such mortgage ~~broker~~ LOAN ORIGINATOR business activities
4 and shall maintain such person's mortgage ~~broker~~ LOAN ORIGINATOR
5 business records separate and apart from the real estate broker OR SALES
6 activities conducted pursuant to part 1 of this article. Such activities shall
7 be deemed separate and apart even if they are conducted at an office
8 location with a common entrance and mailing address if:

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

11 (II) Each business is physically separated within the office facility;
12 and

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

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

23 **12-61-913. Written contract required - effect.** (1) Every
24 contract between a mortgage ~~broker~~ LOAN ORIGINATOR and a borrower
25 shall be in writing and shall contain the entire agreement of the parties.

26 (2) A mortgage ~~broker~~ LOAN ORIGINATOR shall have a written
27 correspondent or loan ~~broker~~ agreement with a lender before any

1 solicitation of, or contracting with, any member of the public.

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

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

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

25 (b) The itemized costs of any credit report, appraisal, title report,
26 title insurance policy, mortgage insurance, escrow fee, property tax,
27 insurance, structural or pest inspection, and any other third-party

1 provider's costs associated with the residential mortgage loan;

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

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

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

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

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

26 (3) If, after the written disclosure is provided under this section,
27 a mortgage ~~broker~~ LOAN ORIGINATOR enters into a lock-in agreement with

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

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

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

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

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

26 **12-61-915. Fee, commission, or compensation - when**
27 **permitted - amount.** (1) Except as otherwise permitted by subsection

1 (2) or (3) of this section, a mortgage ~~broker~~ LOAN ORIGINATOR shall not
2 receive a fee, commission, or compensation of any kind in connection
3 with the preparation OR negotiation ~~or brokering~~ of a residential mortgage
4 loan unless a borrower actually obtains a loan from a lender on the terms
5 and conditions agreed to by the borrower and mortgage ~~broker~~ LOAN
6 ORIGINATOR.

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

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

23 **12-61-916. Confidentiality.** (1) EXCEPT AS OTHERWISE
24 PROVIDED IN THE FEDERAL "SECURE AND FAIR ENFORCEMENT FOR
25 MORTGAGE LICENSING ACT OF 2008", 12 U.S.C. SEC. 5111, THE
26 REQUIREMENTS UNDER ANY FEDERAL LAW OR LAW OF THIS STATE
27 REGARDING PRIVACY OR CONFIDENTIALITY OF ANY INFORMATION OR

1 MATERIAL PROVIDED TO THE NATIONWIDE MORTGAGE LICENSING SYSTEM
2 AND REGISTRY, AND ANY PRIVILEGE ARISING UNDER FEDERAL OR STATE
3 LAW, INCLUDING THE RULES OF ANY FEDERAL OR STATE COURT WITH
4 RESPECT TO SUCH INFORMATION OR MATERIAL, SHALL APPLY TO THE
5 INFORMATION OR MATERIAL AFTER IT HAS BEEN DISCLOSED TO THE
6 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY. THE
7 INFORMATION OR MATERIAL MAY BE SHARED WITH ALL STATE AND
8 FEDERAL REGULATORY OFFICIALS WITH MORTGAGE INDUSTRY OVERSIGHT
9 AUTHORITY WITHOUT THE LOSS OF PRIVILEGE OR CONFIDENTIALITY
10 PROTECTIONS PROVIDED BY FEDERAL OR STATE LAW.

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

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

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

22 (b) SUBPOENA, DISCOVERY, OR ADMISSION INTO EVIDENCE IN ANY
23 PRIVATE CIVIL ACTION OR ADMINISTRATIVE PROCESS, UNLESS WITH
24 RESPECT TO A PRIVILEGE HELD BY THE NATIONWIDE MORTGAGE LICENSING
25 SYSTEM AND REGISTRY REGARDING THE INFORMATION OR MATERIAL, THE
26 PERSON TO WHOM THE INFORMATION OR MATERIAL PERTAINS WAIVES THE
27 PRIVILEGE, IN WHOLE OR IN PART.

1 **12-61-917. Mortgage call reports - reports of violations.**

2 (1) THE DIRECTOR MAY REQUIRE EACH LICENSEE TO SUBMIT TO THE
3 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY MORTGAGE
4 CALL REPORTS, WHICH SHALL BE IN THE FORM AND CONTAIN THE
5 INFORMATION REQUIRED BY THE NATIONWIDE MORTGAGE LICENSING
6 SYSTEM AND REGISTRY.

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

10 **12-61-918. Unique identifier - clearly displayed.** ANY LICENSEE
11 ORIGINATING A RESIDENTIAL MORTGAGE LOAN SHALL SHOW HIS OR HER
12 UNIQUE IDENTIFIER CLEARLY ON ALL RESIDENTIAL MORTGAGE LOAN
13 APPLICATION FORMS, SOLICITATIONS, OR ADVERTISEMENTS, INCLUDING
14 BUSINESS CARDS OR WEB SITES, AND ANY OTHER DOCUMENTS AS SPECIFIED
15 BY THE DIRECTOR BY RULE OR ORDER.

16 **12-61-919. Repeal of part.** (1) THIS PART 9 IS REPEALED,
17 EFFECTIVE JULY 1, 2011.

18 (2) PRIOR TO ITS REPEAL, THE DEPARTMENT OF REGULATORY
19 AGENCIES SHALL REVIEW THE LICENSING OF MORTGAGE LOAN
20 ORIGINATORS IN ACCORDANCE WITH SECTION 24-34-104, C.R.S. THE
21 DEPARTMENT SHALL INCLUDE IN ITS REVIEW OF MORTGAGE LOAN
22 ORIGINATORS AN ANALYSIS OF THE NUMBER AND TYPES OF COMPLAINTS
23 MADE ABOUT MORTGAGE LOAN ORIGINATORS AND WHETHER THE
24 LICENSING OF MORTGAGE LOAN ORIGINATORS CORRELATES WITH PUBLIC
25 PROTECTION FROM FRAUDULENT ACTIVITIES IN THE RESIDENTIAL
26 MORTGAGE LOAN INDUSTRY.

27 **SECTION 2.** 24-34-104 (42) (k), Colorado Revised Statutes, is

1 amended to read:

2 **24-34-104. General assembly review of regulatory agencies**
3 **and functions for termination, continuation, or reestablishment.**

4 (42) The following agencies, functions, or both, shall terminate on July
5 1, 2011:

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

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

10 **12-61-113. Investigation - revocation - actions against licensee**
11 **- repeal.** (1) The commission, upon its own motion, may, and, upon the
12 complaint in writing of any person, shall, investigate the activities of any
13 licensee or any person who assumes to act in such capacity within the
14 state, and the commission, after the holding of a hearing pursuant to
15 section 12-61-114, has the power to impose an administrative fine not to
16 exceed two thousand five hundred dollars for each separate offense and
17 to censure a licensee, to place the licensee on probation and to set the
18 terms of probation, or to temporarily suspend or permanently revoke a
19 license when the licensee has performed, is performing, or is attempting
20 to perform any of the following acts and is guilty of:

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

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

27 **SECTION 4.** 38-40-105 (1) (f), (1.5) and (7), Colorado Revised

1 Statutes, are amended to read:

2 **38-40-105. Prohibited acts by participants in certain mortgage**
3 **loan transactions - unconscionable acts and practices - definitions.**

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

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

13 (1.5) (a) ~~A mortgage broker or the broker's agent shall provide the~~
14 ~~borrower with draft copies of the mortgage loan agreement and all other~~
15 ~~documents material to the transaction, completed to the extent possible in~~
16 ~~accordance with good-faith estimates, at least one business day before~~
17 ~~closing. There shall be no blank spaces remaining on the agreement form~~
18 ~~and no change to any material term of the agreement or of any~~
19 ~~accompanying document during this time.~~

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

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

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

27 (b) "Dwelling" has the meaning set forth in section 5-1-301, (18);

1 C.R.S.

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

4 (d) "Mortgage lender" has the meaning set forth in section
5 12-61-902, ~~(6)~~, C.R.S.

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

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

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

14 **SECTION 5. Appropriation.** In addition to any other
15 appropriation, there is hereby appropriated, out of any moneys in the
16 mortgage loan originator licensing cash fund created in section
17 12-61-908, Colorado Revised Statutes, not otherwise appropriated, to the
18 department of regulatory agencies, for allocation to the division of real
19 estate, for the fiscal year beginning July 1, 2009, the sum of two hundred
20 two thousand six hundred thirty-six dollars (\$202,636) cash funds and 1.0
21 FTE, or so much thereof as may be necessary, for the implementation of
22 this act. ==

23 **SECTION 6. Act subject to petition - effective date.** This act
24 shall take effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly that is
26 allowed for submitting a referendum petition pursuant to article V,
27 section 1 (3) of the state constitution, (August 4, 2009, if adjournment

1 sine die is on May 6, 2009); except that, if a referendum petition is filed
2 against this act or an item, section, or part of this act within such period,
3 then the act, item, section, or part, if approved by the people, shall take
4 effect on the date of the official declaration of the vote thereon by
5 proclamation of the governor.