

**Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO**

ENGROSSED

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

LLS NO. 06-0541.01 Thomas Morris

HOUSE BILL 06-1141

HOUSE SPONSORSHIP

Hall, and Massey

SENATE SPONSORSHIP

Grossman,

House Committees

Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE AUTHORIZATION OF AFFILIATED BUSINESS**
102 **ARRANGEMENTS RELATING TO TITLE INSURANCE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Authorizes affiliated business arrangements between title insurance companies, title insurance agents, settlement producers, and real estate brokers if the arrangement does not involve compensation for the referral of title insurance business and does not violate existing prohibitions on such entities. Prohibits title insurance companies, title insurance agents, settlement producers, and real estate brokers from requiring the use of an affiliated business arrangement or any particular

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
Amended 2nd Reading
February 13, 2006

settlement producer or provider as a condition of obtaining a settlement service. Specifies that giving or receiving, or attempting to give or receive, remuneration in any form pursuant to any agreement or understanding for the referral of title insurance business is an unfair method of competition and an unfair or deceptive act or practice.

Requires the disclosure of an affiliated business arrangement to the consumer at the time of an initial real estate contract or when the offer to purchase real property is fully executed. Requires title insurance companies, title insurance agents, and real estate brokers to disclose the existence of their affiliated business arrangements to the division of insurance or division of real estate in connection with an application for a new or renewed license.

Authorizes the commissioner of insurance and the real estate commission to promulgate rules to regulate affiliated business arrangements. Specifies that the commissioner of insurance and the real estate commission must consult with one another in the promulgation of these rules. Requires such rules to be at least as stringent as those promulgated pursuant to the federal "Real Estate Settlement Procedures Act". Authorizes the divisions of insurance and real estate to share information derived from investigations of affiliated business arrangements.

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

2 **SECTION 1.** 10-11-102 (1), Colorado Revised Statutes, is
3 amended, and the said 10-11-102 is further amended BY THE
4 ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

5 **10-11-102. Definitions.** As used in this article, unless the context
6 otherwise requires:

7 (1) ~~"Alien title insurance company" means any title insurance~~
8 ~~company incorporated or organized under the laws of any foreign nation,~~
9 ~~or of any province or territory thereof, not included under the definition~~
10 ~~of foreign title insurance company.~~ "AFFILIATED BUSINESS
11 ARRANGEMENT" MEANS AN ARRANGEMENT IN WHICH:

12 (a) (I) A SETTLEMENT PRODUCER OR AN ASSOCIATE OF SUCH
13 PRODUCER HAS EITHER AN AFFILIATE RELATIONSHIP WITH, OR A DIRECT

1 BENEFICIAL OWNERSHIP INTEREST OF MORE THAN ONE PERCENT IN, A TITLE
2 INSURANCE COMPANY OR TITLE INSURANCE AGENT; OR

3 (II) A TITLE INSURANCE COMPANY OR A TITLE INSURANCE AGENT
4 WHO HAS EITHER AN AFFILIATE RELATIONSHIP WITH, OR A DIRECT
5 BENEFICIAL OWNERSHIP INTEREST OF MORE THAN ONE PERCENT IN A
6 SETTLEMENT PRODUCER; AND

7 (b) (I) EITHER THE SETTLEMENT PRODUCER OR THE AGENT OF THE
8 SETTLEMENT PRODUCER DIRECTLY OR INDIRECTLY REFERS SETTLEMENT
9 SERVICE BUSINESS TO THAT TITLE INSURANCE COMPANY OR TITLE
10 INSURANCE AGENT OR AFFIRMATIVELY INFLUENCES THE SELECTION OF
11 THAT TITLE INSURANCE COMPANY OR TITLE INSURANCE AGENT; OR

12 (II) EITHER THE TITLE INSURANCE COMPANY OR THE TITLE
13 INSURANCE AGENT DIRECTLY OR INDIRECTLY REFERS SETTLEMENT
14 SERVICES BUSINESS TO A SETTLEMENT PRODUCER OR ASSOCIATE OR
15 AFFIRMATIVELY INFLUENCES THE SELECTION OF THE SETTLEMENT
16 PRODUCER OR ASSOCIATE.

17 (1.5) "ALIEN TITLE INSURANCE COMPANY" MEANS A TITLE
18 INSURANCE COMPANY INCORPORATED OR ORGANIZED UNDER THE LAWS OF
19 A FOREIGN NATION, OR OF ANY PROVINCE OR TERRITORY THEREOF, NOT
20 INCLUDED UNDER THE DEFINITION OF A FOREIGN TITLE INSURANCE
21 COMPANY.

22 (2.5) "ASSOCIATE" MEANS A PERSON WHO HAS ONE OR MORE OF
23 THE FOLLOWING RELATIONSHIPS WITH A PERSON IN A POSITION TO REFER
24 SETTLEMENT BUSINESS:

25 (a) A SPOUSE, PARENT, OR CHILD OF SUCH PERSON;

26 (b) A CORPORATION OR BUSINESS ENTITY THAT CONTROLS, IS
27 CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH SUCH PERSON;

1 (c) AN EMPLOYER, OFFICER, DIRECTOR, PARTNER, FRANCHISER, OR
2 FRANCHISEE OF SUCH PERSON; OR

3 (d) ANYONE WHO HAS AN AGREEMENT, ARRANGEMENT, OR
4 UNDERSTANDING WITH SUCH PERSON, THE PURPOSE OR SUBSTANTIAL
5 EFFECT OF WHICH IS TO ENABLE THE PERSON IN A POSITION TO REFER
6 SETTLEMENT BUSINESS TO BENEFIT FINANCIALLY FROM REFERRALS OF
7 SUCH BUSINESS.

8 (6.5) "SETTLEMENT PRODUCER" MEANS A PERSON WHO IS IN A
9 POSITION TO REFER BUSINESS THAT IS INCIDENT TO OR A PART OF A
10 SETTLEMENT SERVICE. "SETTLEMENT PRODUCER" INCLUDES, BUT IS NOT
11 LIMITED TO, A PERSON WHO:

- 12 (a) BUYS OR SELLS AN INTEREST IN REAL PROPERTY;
- 13 (b) MAKES LOANS SECURED BY AN INTEREST IN REAL PROPERTY;
- 14 (c) (I) ACTS AS AN AGENT, REPRESENTATIVE, ATTORNEY, OR
15 EMPLOYEE OF A PERSON WHO:

- 16 (A) BUYS OR SELLS REAL PROPERTY; OR
- 17 (B) LENDS OR BORROWS MONEYS WITH AN INTEREST IN REAL
18 ESTATE AS SECURITY.

19 (II) NOTHING IN THIS PARAGRAPH (c) SHALL BE CONSTRUED TO
20 INCLUDE A TITLE INSURANCE COMPANY OR A TITLE INSURANCE AGENT.

21 (d) IS AN ASSOCIATE OF A PERSON DESCRIBED IN THIS SUBSECTION
22 (6.5).

23 (6.7) "SETTLEMENT SERVICE" MEANS ANY SERVICE PROVIDED IN
24 CONNECTION WITH A REAL ESTATE SETTLEMENT. "SETTLEMENT SERVICES"
25 INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

- 26 (a) TITLE SEARCHES;
- 27 (b) TITLE EXAMINATIONS;

- 1 (c) THE PROVISION OF TITLE CERTIFICATES;
- 2 (d) TITLE INSURANCE;
- 3 (e) SERVICES RENDERED BY AN ATTORNEY;
- 4 (f) THE PREPARATION OF TITLE DOCUMENTS;
- 5 (g) PROPERTY SURVEYS;
- 6 (h) THE RENDERING OF CREDIT REPORTS OR APPRAISALS;
- 7 (i) PEST AND FUNGUS INSPECTIONS;
- 8 (j) SERVICES RENDERED BY A REAL ESTATE BROKER;
- 9 (k) SERVICES RENDERED BY A REAL ESTATE APPRAISER;
- 10 (l) HOME INSPECTION SERVICES;
- 11 (m) THE ORIGINATION OF A LOAN;
- 12 (n) THE TAKING OF A LOAN APPLICATION;
- 13 (o) PROCESSING OF A LOAN;
- 14 (p) UNDERWRITING AND FUNDING OF A LOAN;
- 15 (q) ESCROW HANDLING SERVICES;
- 16 (r) THE HANDLING OF THE PROCESSING; AND
- 17 (s) CLOSING OF SETTLEMENT.

18 **SECTION 2.** Article 11 of title 10, Colorado Revised Statutes, is
19 amended BY THE ADDITION OF THE FOLLOWING NEW
20 SECTIONS to read:

21 **10-11-124. Affiliated business arrangements - rules -**
22 **investigative information shared with the division of real estate.**

23 (1) (a) AN AFFILIATED BUSINESS ARRANGEMENT IS PERMITTED WHERE
24 THE PERSON REFERRING BUSINESS TO THE AFFILIATED BUSINESS
25 ARRANGEMENT RECEIVES PAYMENT ONLY IN THE FORM OF A RETURN ON
26 AN INVESTMENT AND WHERE IT DOES NOT VIOLATE THE PROVISIONS OF
27 SECTION 10-11-108 (1).

1 (b) A TITLE COMPANY OR A TITLE INSURANCE AGENT MAKING A
2 REFERRAL AS PART OF AN AFFILIATED BUSINESS ARRANGEMENT SHALL
3 DISCLOSE THE AFFILIATION IN ACCORDANCE WITH THE FEDERAL "REAL
4 ESTATE SETTLEMENT PROCEDURES ACT", 12 U.S.C. SEC. 2601 ET SEQ.

5 (c) NEITHER A TITLE INSURANCE COMPANY NOR A TITLE
6 INSURANCE AGENT SHALL REQUIRE THE USE OF AN AFFILIATED BUSINESS
7 ARRANGEMENT OR A PARTICULAR SETTLEMENT PRODUCER AS A
8 CONDITION OF OBTAINING TITLE INSURANCE SERVICES FROM THE
9 COMPANY OR AGENT. FOR THE PURPOSES OF THIS PARAGRAPH (c),
10 "REQUIRE THE USE" SHALL HAVE THE SAME MEANING AS "REQUIRED USE"
11 IN 24 CFR 3500.2 (b).

12 (2) THE COMMISSIONER MAY PROMULGATE RULES CONCERNING
13 THE CREATION AND CONDUCT OF AN AFFILIATED BUSINESS ARRANGEMENT,
14 INCLUDING, BUT NOT LIMITED TO, RULES DEFINING WHAT CONSTITUTES A
15 SHAM AFFILIATED BUSINESS ARRANGEMENT. NOTHING IN THIS
16 SUBSECTION (2) SHALL BE CONSTRUED TO INCREASE A FEE OR CREATE A
17 LICENSURE PROGRAM FOR AFFILIATED BUSINESS ARRANGEMENTS. THE
18 COMMISSIONER SHALL ADOPT THE RULES, POLICIES, OR GUIDELINES ISSUED
19 BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN
20 DEVELOPMENT CONCERNING THE FEDERAL "REAL ESTATE SETTLEMENT
21 PROCEDURES ACT", 12 U.S.C. SEC. 2601 ET SEQ. RULES ADOPTED BY THE
22 COMMISSIONER SHALL BE AT LEAST AS STRINGENT AS THE FEDERAL RULES
23 AND SHALL ENSURE THAT CONSUMERS ARE ADEQUATELY INFORMED
24 ABOUT AFFILIATED BUSINESS ARRANGEMENTS. THE COMMISSIONER SHALL
25 CONSULT WITH THE REAL ESTATE COMMISSION PURSUANT TO SECTION
26 12-61-113.2 (5), C.R.S., CONCERNING RULES THE REAL ESTATE
27 COMMISSION MAY PROMULGATE CONCERNING AFFILIATED BUSINESS

1 ARRANGEMENTS. NEITHER THE RULES PROMULGATED BY THE
2 COMMISSIONER NOR THE REAL ESTATE COMMISSION MAY CREATE A
3 CONFLICTING REGULATORY BURDEN ON AN AFFILIATED BUSINESS
4 ARRANGEMENT.

5 (3) THE DIVISION MAY SHARE INFORMATION GATHERED DURING AN
6 INVESTIGATION OF AN AFFILIATED BUSINESS ARRANGEMENT WITH THE
7 DIVISION OF REAL ESTATE.

8 **10-11-125. Fees, salaries, compensation, or other payments.**

9 (1) NOTHING IN SECTIONS 10-11-124 OR 10-11-126 SHALL BE CONSTRUED
10 TO PROHIBIT PAYMENT OF A FEE TO:

11 (a) AN ATTORNEY FOR SERVICES ACTUALLY RENDERED;

12 (b) A TITLE COMPANY TO ITS DULY APPOINTED AGENT FOR
13 SERVICES ACTUALLY PERFORMED IN THE ISSUANCE OF A POLICY OF TITLE
14 INSURANCE; OR

15 (c) A LENDER TO ITS DULY APPOINTED AGENT FOR SERVICES
16 ACTUALLY PERFORMED IN THE MAKING OF A LOAN.

17 (2) NOTHING IN SECTIONS 10-11-124 OR 10-11-126 SHALL BE
18 CONSTRUED TO PROHIBIT PAYMENT TO ANY PERSON OF:

19 (a) A BONA FIDE SALARY OR COMPENSATION OR OTHER PAYMENT
20 FOR GOODS OR FACILITIES ACTUALLY FURNISHED OR FOR SERVICES
21 ACTUALLY PERFORMED; OR

22 (b) A FEE PURSUANT TO COOPERATIVE BROKERAGE AND REFERRAL
23 ARRANGEMENTS OR AGREEMENTS BETWEEN REAL ESTATE BROKERS.

24 (3) IT SHALL NOT BE A VIOLATION OF SECTION 10-11-124:

25 (a) FOR AN AFFILIATED BUSINESS ARRANGEMENT TO REQUIRE A
26 BUYER, BORROWER, OR SELLER TO PAY FOR THE SERVICES OF ANY
27 ATTORNEY, CREDIT REPORTING AGENCY, OR REAL ESTATE APPRAISER

1 CHOSEN BY THE LENDER TO REPRESENT THE LENDER'S INTEREST IN A REAL
2 ESTATE TRANSACTION; OR

3 (b) FOR AN AFFILIATED BUSINESS ARRANGEMENT WHERE AN
4 ATTORNEY OR LAW FIRM REPRESENTS A CLIENT IN A REAL ESTATE
5 TRANSACTION AND ISSUES OR ARRANGES FOR THE ISSUANCE OF A POLICY
6 OF TITLE INSURANCE IN THE TRANSACTION DIRECTLY AS AGENT OR
7 THROUGH A SEPARATE CORPORATE TITLE INSURANCE AGENCY THAT MAY
8 BE ESTABLISHED BY THAT ATTORNEY OR LAW FIRM AND OPERATED AS AN
9 ADJUNCT TO HIS OR HER LAW PRACTICE.

10 **10-11-126. Affiliated business arrangements - enforcement -**
11 **penalties.** (1) THE COMMISSIONER SHALL HAVE THE SAME REMEDIES
12 AVAILABLE TO HIM OR HER AS THOSE AVAILABLE TO THE ADMINISTRATOR
13 OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT IN THE
14 FEDERAL "REAL ESTATE SETTLEMENT PROCEDURES ACT", 12 U.S.C. SEC.
15 2607.

16 (2) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE TO THE
17 COMMISSIONER PURSUANT TO THIS TITLE, AFTER NOTICE AND A HEARING
18 PURSUANT TO SECTION 24-4-105, C.R.S., THE COMMISSIONER MAY ASSESS
19 A PENALTY FOR A VIOLATION OF THIS ARTICLE OR A RULE PROMULGATED
20 UNDER THIS ARTICLE. THE PENALTY SHALL BE THE AMOUNT OF
21 REMUNERATION IMPROPERLY PAID AND SHALL BE PAID TO THE PERSON
22 AGGRIEVED BY THE VIOLATION OR APPORTIONED AMONG MULTIPLE
23 AGGRIEVED PERSONS AS DETERMINED BY THE COMMISSIONER.

24 (3) NO PERSON SHALL BE LIABLE FOR A VIOLATION OF SECTION
25 10-11-124 IF SUCH PERSON PROVES BY A PREPONDERANCE OF THE
26 EVIDENCE THAT SUCH VIOLATION WAS NOT INTENTIONAL AND RESULTED
27 FROM A BONA FIDE ERROR NOTWITHSTANDING MAINTENANCE OF

1 PROCEDURES THAT ARE REASONABLY ADOPTED TO AVOID SUCH ERROR.

2 **SECTION 3.** 10-2-401, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **10-2-401. License required.** (6) A TITLE INSURANCE AGENT AND
5 A TITLE INSURANCE COMPANY, AS DEFINED IN SECTION 10-11-102 (9) AND
6 (10), SHALL DISCLOSE THE NAMES OF ALL AFFILIATED BUSINESS
7 ARRANGEMENTS TO WHICH THE COMPANY OR AGENT IS A PARTY AT THE
8 TIME OF APPLICATION FOR A NEW LICENSE, ON THE CONTINUATION DUE
9 DATE OF AN EXISTING LICENSE, AND UPON A CHANGE TO ANY IDENTIFYING
10 INFORMATION, IN A FORM AND MANNER ACCEPTABLE TO THE
11 COMMISSIONER. THE DISCLOSURE SHALL INCLUDE THE PHYSICAL
12 LOCATION OF THE AFFILIATED BUSINESSES, IDENTIFY THE SETTLEMENT
13 PRODUCER WITH WHOM THE COMPANY OR AGENT IS ASSOCIATED, AND
14 IDENTIFY THE UNDERWRITER OF THE TITLE INSURANCE BUSINESS.

15 **SECTION 4.** 10-3-1104 (1), Colorado Revised Statutes, is
16 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

17 **10-3-1104. Unfair methods of competition and unfair or**
18 **deceptive acts or practices.** (1) The following are defined as unfair
19 methods of competition and unfair or deceptive acts or practices in the
20 business of insurance:

21 (ee) VIOLATING SECTION 10-11-108 (1) (c) OR (1) (d), INCLUDING
22 A VIOLATION THROUGH THE CREATION OF AN IMPROPER AFFILIATED
23 BUSINESS ARRANGEMENT.

24 **SECTION 5.** 12-61-113.2, Colorado Revised Statutes, is
25 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

26 **12-61-113.2. Affiliated business arrangements - definitions -**
27 **disclosures - enforcement and penalties - reporting - rules -**

1 **investigation information shared with the division of insurance.**

2 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
3 REQUIRES:

4 (a) "AFFILIATED BUSINESS ARRANGEMENT" MEANS AN
5 ARRANGEMENT IN WHICH:

6 (I) (A) A SETTLEMENT PROVIDER OR AN ASSOCIATE OF SUCH
7 PROVIDER HAS EITHER AN AFFILIATE RELATIONSHIP WITH OR A DIRECT
8 BENEFICIAL OWNERSHIP INTEREST OF MORE THAN ONE PERCENT IN A
9 TITLE INSURANCE COMPANY OR TITLE INSURANCE AGENT, AS DEFINED IN
10 SECTION 10-11-103 (9) AND (10), C.R.S.; OR

11 (B) A TITLE INSURANCE COMPANY OR A TITLE INSURANCE AGENT,
12 AS DEFINED IN SECTION 10-11-103 (9) AND (10), C.R.S., WHO HAS EITHER
13 AN AFFILIATE RELATIONSHIP WITH, OR A DIRECT BENEFICIAL OWNERSHIP
14 INTEREST OF MORE THAN ONE PERCENT IN A SETTLEMENT PRODUCER; AND

15 (II) (A) EITHER THE SETTLEMENT PROVIDER OR THE ASSOCIATE OF
16 THE SETTLEMENT PROVIDER DIRECTLY OR INDIRECTLY REFERS SUCH
17 BUSINESS TO A TITLE INSURANCE COMPANY OR A TITLE INSURANCE AGENT,
18 AS DEFINED IN SECTION 10-11-103 (9) AND (10), C.R.S., OR
19 AFFIRMATIVELY INFLUENCES THE SELECTION OF THAT TITLE INSURANCE
20 COMPANY OR A TITLE INSURANCE AGENT, AS DEFINED IN SECTION
21 10-11-103 (9) AND (10), C.R.S.; OR

22 (B) EITHER THE TITLE INSURANCE COMPANY OR THE TITLE
23 INSURANCE AGENT, AS DEFINED IN SECTION 10-11-103 (9) AND (10),
24 C.R.S., DIRECTLY OR INDIRECTLY REFERS SETTLEMENT SERVICES BUSINESS
25 TO A SETTLEMENT PRODUCER OR ASSOCIATE OR AFFIRMATIVELY
26 INFLUENCES THE SELECTION OF THE SETTLEMENT PRODUCER OR
27 ASSOCIATE.

1 (b) "ASSOCIATE" MEANS A PERSON WHO HAS ONE OR MORE OF THE
2 FOLLOWING RELATIONSHIPS WITH A PERSON IN A POSITION TO REFER
3 SETTLEMENT BUSINESS:

4 (I) A SPOUSE, PARENT, OR CHILD OF SUCH PERSON;

5 (II) A CORPORATION OR BUSINESS ENTITY THAT CONTROLS, IS
6 CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH SUCH PERSON;

7 (III) AN EMPLOYER, OFFICER, DIRECTOR, PARTNER, FRANCHISER,
8 OR FRANCHISEE OF SUCH PERSON, INCLUDING A BROKER ACTING AS AN
9 INDEPENDENT CONTRACTOR; OR

10 (IV) ANYONE WHO HAS AN AGREEMENT, ARRANGEMENT, OR
11 UNDERSTANDING WITH SUCH PERSON, THE PURPOSE OR SUBSTANTIAL
12 EFFECT OF WHICH IS TO ENABLE THE PERSON IN A POSITION TO REFER
13 SETTLEMENT BUSINESS TO BENEFIT FINANCIALLY FROM REFERRALS OF
14 SUCH BUSINESS.

15 (c) "SETTLEMENT PROVIDER" MEANS A PERSON WHO IS IN A
16 POSITION TO REFER BUSINESS THAT IS INCIDENT TO OR A PART OF A
17 SETTLEMENT SERVICE. "SETTLEMENT PROVIDER" INCLUDES, BUT IS NOT
18 LIMITED TO, A PERSON WHO:

19 (I) BUYS OR SELLS AN INTEREST IN REAL PROPERTY;

20 (II) MAKES LOANS SECURED BY AN INTEREST IN REAL PROPERTY;

21 (III) ACTS AS AN AGENT, REPRESENTATIVE, ATTORNEY, OR
22 EMPLOYEE OF A PERSON WHO:

23 (A) BUYS OR SELLS REAL PROPERTY; OR

24 (B) LENDS OR BORROWS MONEYS WITH AN INTEREST IN REAL
25 ESTATE AS SECURITY; OR

26 (IV) IS AN ASSOCIATE OF A PERSON DESCRIBED IN THIS PARAGRAPH

27 (c).

1 (d) "SETTLEMENT SERVICE" MEANS ANY SERVICE PROVIDED IN
2 CONNECTION WITH A REAL ESTATE SETTLEMENT INCLUDING, BUT NOT
3 LIMITED TO, THE FOLLOWING:

- 4 (I) TITLE SEARCHES;
- 5 (II) TITLE EXAMINATIONS;
- 6 (III) THE PROVISION OF TITLE CERTIFICATES;
- 7 (IV) TITLE INSURANCE;
- 8 (V) SERVICES RENDERED BY AN ATTORNEY;
- 9 (VI) THE PREPARATION OF TITLE DOCUMENTS;
- 10 (VII) PROPERTY SURVEYS;
- 11 (VIII) THE RENDERING OF CREDIT REPORTS OR APPRAISALS;
- 12 (IX) REAL ESTATE APPRAISAL SERVICES;
- 13 (X) HOME INSPECTION SERVICES;
- 14 (XI) SERVICES RENDERED BY A REAL ESTATE BROKER;
- 15 (XII) PEST AND FUNGUS INSPECTIONS;
- 16 (XIII) THE ORIGINATION OF A LOAN;
- 17 (XIV) THE TAKING OF A LOAN APPLICATION;
- 18 (XV) THE PROCESSING OF A LOAN;
- 19 (XVI) UNDERWRITING AND FUNDING OF A LOAN;
- 20 (XVII) ESCROW HANDLING SERVICES;
- 21 (XVIII) THE HANDLING OF THE PROCESSING; AND
- 22 (XIX) CLOSING OF SETTLEMENT.

23 (2) (a) AN AFFILIATED BUSINESS ARRANGEMENT IS PERMITTED
24 WHERE THE PERSON REFERRING BUSINESS TO THE AFFILIATED BUSINESS
25 ARRANGEMENT RECEIVES PAYMENT ONLY IN THE FORM OF A RETURN ON
26 AN INVESTMENT AND WHERE IT DOES NOT VIOLATE THE PROVISIONS OF
27 SECTION 12-61-113.

1 (b) IF A LICENSEE OR THE EMPLOYING BROKER OF A LICENSEE IS
2 PART OF AN AFFILIATED BUSINESS ARRANGEMENT WHEN AN OFFER TO
3 PURCHASE REAL PROPERTY IS FULLY EXECUTED, THE LICENSEE SHALL
4 DISCLOSE TO ALL PARTIES TO THE REAL ESTATE TRANSACTION THE
5 EXISTENCE OF THE ARRANGEMENT. THE DISCLOSURE SHALL BE WRITTEN,
6 SHALL BE SIGNED BY ALL PARTIES TO THE REAL ESTATE TRANSACTION,
7 AND SHALL COMPLY WITH THE FEDERAL "REAL ESTATE SETTLEMENT
8 PROCEDURES ACT", 12 U.S.C. SEC. 2601 ET SEQ.

9 (c) A LICENSEE SHALL NOT REQUIRE THE USE OF AN AFFILIATED
10 BUSINESS ARRANGEMENT OR A PARTICULAR SETTLEMENT PROVIDER AS A
11 CONDITION OF OBTAINING SERVICES FROM THAT LICENSEE FOR ANY
12 SETTLEMENT SERVICE. FOR THE PURPOSES OF THIS PARAGRAPH (c),
13 "REQUIRE THE USE" SHALL HAVE THE SAME MEANING AS "REQUIRED USE"
14 IN 24 CFR 3500.2 (b).

15 (d) NO LICENSEE SHALL GIVE OR ACCEPT ANY FEE, KICKBACK, OR
16 OTHER THING OF VALUE PURSUANT TO ANY AGREEMENT OR
17 UNDERSTANDING, ORAL OR OTHERWISE, THAT BUSINESS INCIDENT TO OR
18 PART OF A SETTLEMENT SERVICE INVOLVING AN AFFILIATED BUSINESS
19 ARRANGEMENT SHALL BE REFERRED TO ANY SETTLEMENT PROVIDER.

20 (e) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT
21 PAYMENT OF A FEE TO:

22 (I) AN ATTORNEY FOR SERVICES ACTUALLY RENDERED;

23 (II) A TITLE COMPANY TO ITS DULY APPOINTED AGENT FOR
24 SERVICES ACTUALLY PERFORMED IN THE ISSUANCE OF A POLICY OF TITLE
25 INSURANCE;

26 (III) A LENDER TO ITS DULY APPOINTED AGENT FOR SERVICES
27 ACTUALLY PERFORMED IN THE MAKING OF A LOAN.

1 (f) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT
2 PAYMENT TO ANY PERSON OF:

3 (I) A BONA FIDE SALARY OR COMPENSATION OR OTHER PAYMENT
4 FOR GOODS OR FACILITIES ACTUALLY FURNISHED OR FOR SERVICES
5 ACTUALLY PERFORMED;

6 (II) A FEE PURSUANT TO COOPERATIVE BROKERAGE AND REFERRAL
7 ARRANGEMENTS OR AGREEMENTS BETWEEN REAL ESTATE BROKERS.

8 (g) IT SHALL NOT BE A VIOLATION OF THIS SECTION FOR AN
9 AFFILIATED BUSINESS ARRANGEMENT:

10 (I) TO REQUIRE A BUYER, BORROWER, OR SELLER TO PAY FOR THE
11 SERVICES OF ANY ATTORNEY, CREDIT REPORTING AGENCY, OR REAL
12 ESTATE APPRAISER CHOSEN BY THE LENDER TO REPRESENT THE LENDER'S
13 INTEREST IN A REAL ESTATE TRANSACTION; OR

14 (II) IF AN ATTORNEY OR LAW FIRM REPRESENTS A CLIENT IN A
15 REAL ESTATE TRANSACTION AND ISSUES OR ARRANGES FOR THE ISSUANCE
16 OF A POLICY OF TITLE INSURANCE IN THE TRANSACTION DIRECTLY AS
17 AGENT OR THROUGH A SEPARATE CORPORATE TITLE INSURANCE AGENCY
18 THAT MAY BE ESTABLISHED BY THAT ATTORNEY OR LAW FIRM AND
19 OPERATED AS AN ADJUNCT TO HIS OR HER LAW PRACTICE.

20 (h) NO PERSON SHALL BE LIABLE FOR A VIOLATION OF THIS
21 SECTION IF SUCH PERSON PROVES BY A PREPONDERANCE OF THE EVIDENCE
22 THAT SUCH VIOLATION WAS NOT INTENTIONAL AND RESULTED FROM A
23 BONA FIDE ERROR NOTWITHSTANDING MAINTENANCE OF PROCEDURES
24 THAT ARE REASONABLY ADOPTED TO AVOID SUCH ERROR.

25 (3) ON AND AFTER JULY 1, 2006, A LICENSEE SHALL DISCLOSE AT
26 THE TIME THE LICENSEE ENTERS INTO OR CHANGES AN AFFILIATED
27 BUSINESS ARRANGEMENT, IN A FORM AND MANNER ACCEPTABLE TO THE

1 COMMISSION, THE NAMES OF ALL AFFILIATED BUSINESS ARRANGEMENTS
2 TO WHICH THE LICENSEE IS A PARTY. THE DISCLOSURE SHALL INCLUDE
3 THE PHYSICAL LOCATION OF THE AFFILIATED BUSINESSES.

4 (4) ON AND AFTER JULY 1, 2006, AN EMPLOYING BROKER, IN A
5 FORM AND MANNER ACCEPTABLE TO THE COMMISSION, SHALL AT LEAST
6 ANNUALLY DISCLOSE THE NAMES OF ALL AFFILIATED BUSINESS
7 ARRANGEMENTS TO WHICH THE EMPLOYING BROKER IS A PARTY. THE
8 DISCLOSURE SHALL INCLUDE THE PHYSICAL LOCATION OF THE AFFILIATED
9 BUSINESSES.

10 (5) THE COMMISSION MAY PROMULGATE RULES CONCERNING THE
11 CREATION AND CONDUCT OF AN AFFILIATED BUSINESS ARRANGEMENT,
12 INCLUDING, BUT NOT LIMITED TO, RULES DEFINING WHAT CONSTITUTES A
13 SHAM AFFILIATED BUSINESS ARRANGEMENT. THE COMMISSION MAY
14 ADOPT THE RULES, POLICIES, OR GUIDELINES ISSUED BY THE UNITED
15 STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
16 CONCERNING THE FEDERAL "REAL ESTATE SETTLEMENT PROCEDURES
17 ACT", 12 U.S.C. SEC. 2601 ET SEQ. RULES ADOPTED BY THE COMMISSION
18 SHALL BE AT LEAST AS STRINGENT AS THE FEDERAL RULES AND SHALL
19 ENSURE THAT CONSUMERS ARE ADEQUATELY INFORMED ABOUT
20 AFFILIATED BUSINESS ARRANGEMENTS. THE COMMISSION SHALL CONSULT
21 WITH THE INSURANCE COMMISSIONER PURSUANT TO SECTION 10-11-124
22 (2), C.R.S., CONCERNING RULES, POLICIES, OR GUIDELINES THE INSURANCE
23 COMMISSIONER [REDACTED] ADOPTS CONCERNING AFFILIATED BUSINESS
24 ARRANGEMENTS. NEITHER THE RULES PROMULGATED BY THE
25 COMMISSIONER NOR THE REAL ESTATE COMMISSION MAY CREATE A
26 CONFLICTING REGULATORY BURDEN ON AN AFFILIATED BUSINESS
27 ARRANGEMENT.

1 (6) THE DIVISION MAY SHARE INFORMATION GATHERED DURING AN
2 INVESTIGATION OF AN AFFILIATED BUSINESS ARRANGEMENT WITH THE
3 DIVISION OF INSURANCE.

4 **SECTION 6.** 12-61-113 (1), Colorado Revised Statutes, is
5 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

6 **12-61-113. Investigation - revocation - actions against licensee**
7 **- repeal.** (1) The commission, upon its own motion, may, and, upon the
8 complaint in writing of any person, shall, investigate the activities of any
9 licensee or any person who assumes to act in such capacity within the
10 state, and the commission, after the holding of a hearing pursuant to
11 section 12-61-114, has the power to impose an administrative fine not to
12 exceed two thousand five hundred dollars for each separate offense and
13 to censure a licensee, to place the licensee on probation and to set the
14 terms of probation, or to temporarily suspend or permanently revoke a
15 license when the licensee has performed, is performing, or is attempting
16 to perform any of the following acts and is guilty of:

17 (x) (I) VIOLATING ANY PROVISION OF SECTION 12-61-113.2.

18 (II) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE TO THE
19 COMMISSION PURSUANT TO THIS TITLE, AFTER NOTICE AND A HEARING
20 PURSUANT TO SECTION 24-4-105, C.R.S., THE COMMISSION MAY ASSESS A
21 PENALTY FOR A VIOLATION OF SECTION 12-61-113.2 OR OF ANY RULE
22 PROMULGATED PURSUANT TO SECTION 12-61-113.2. THE PENALTY SHALL
23 BE THE AMOUNT OF REMUNERATION IMPROPERLY PAID AND SHALL BE
24 TRANSMITTED TO THE STATE TREASURER AND CREDITED TO THE GENERAL
25 FUND.

26 **SECTION 7. Effective date - applicability.** This act shall take
27 effect July 1, 2006, and shall apply to acts occurring on or after said date.

1 **SECTION 8. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety.