

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



HOUSE BILL 09-1085

BY REPRESENTATIVE(S) Rice, Hullinghorst, Massey, Priola, Ryden, Sonnenberg, Stephens, Todd, Labuda;
also SENATOR(S) Heath, Newell.

CONCERNING THE REGULATION OF MORTGAGE LOAN ORIGINATORS, AND, IN CONNECTION THEREWITH, MODIFYING THE "MORTGAGE BROKER LICENSING ACT" TO CONFORM TO THE FEDERAL "SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008", EXEMPTING CERTAIN FINANCIAL INSTITUTIONS FROM THE LIST OF PROHIBITED PRACTICES UNDER THE ACT, AND MAKING AN APPROPRIATION.

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

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

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

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

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

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

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

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

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

(4.5) "FEDERAL BANKING AGENCY" MEANS THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, THE COMPTROLLER OF THE CURRENCY, THE DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION, THE NATIONAL CREDIT UNION ADMINISTRATION, OR THE FEDERAL DEPOSIT INSURANCE CORPORATION.

(4.7) "INDIVIDUAL" MEANS A NATURAL PERSON.

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

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

(I) THE RECEIPT, COLLECTION, DISTRIBUTION, AND ANALYSIS OF

INFORMATION COMMONLY USED FOR THE PROCESSING OR UNDERWRITING OF A RESIDENTIAL MORTGAGE LOAN; AND

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

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

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

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

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

(I) TAKES A RESIDENTIAL MORTGAGE LOAN APPLICATION; OR

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

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

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

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

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

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

(V) A PERSON THAT ONLY PERFORMS THE SERVICES AND ACTIVITIES OF A DEALER, AS DEFINED IN SECTION 24-32-3302, C.R.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DUE AND OWING TO THE MORTGAGE LENDER.

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

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

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

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

(II) REGULATED BY A FEDERAL BANKING AGENCY;

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

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

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

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

(b) ON AND AFTER JANUARY 1, 2010, a licensed mortgage ~~broker~~ LOAN ORIGINATOR shall apply for license renewal in accordance with

subsection (4) of this section every ~~three years~~ CALENDAR YEAR AS DETERMINED BY THE DIRECTOR BY RULE.

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

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

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

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

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

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

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

(b) The director may contract with one or more independent testing services to develop, administer, and grade the examinations required by paragraph (a) of this subsection (3) and to maintain and administer licensee

records. The contract may allow the testing service to recover from applicants its costs incurred in connection with these functions. The director may contract separately for these functions and may allow the costs to be collected by a single contractor for distribution to other contractors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CRIMINAL HISTORY RECORD CHECK; AND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) RESPOND TO AN INVESTIGATION OR EXAMINATION;

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

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

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

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

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

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

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

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

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

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

(c) PAY APPLICABLE LICENSE RENEWAL FEES.

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

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

(a) Employees of an agency of the federal government, of the

Colorado government, or of any of Colorado's political subdivisions;

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

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

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

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

(f) A person who:

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

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

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

(g) A LOAN PROCESSOR OR UNDERWRITER WHO IS NOT AN INDEPENDENT CONTRACTOR AND WHO DOES NOT REPRESENT TO THE PUBLIC THAT THE INDIVIDUAL CAN OR WILL PERFORM ANY ACTIVITIES OF A MORTGAGE LOAN ORIGINATOR. AS USED IN THIS PARAGRAPH (g), "REPRESENT TO THE PUBLIC" MEANS COMMUNICATING, THROUGH

ADVERTISING OR OTHER MEANS OF COMMUNICATING OR PROVIDING INFORMATION, INCLUDING THE USE OF BUSINESS CARDS, STATIONERY, BROCHURES, SIGNS, RATE LISTS, OR OTHER PROMOTIONAL ITEMS, THAT THE INDIVIDUAL IS ABLE TO PROVIDE A PARTICULAR SERVICE OR ACTIVITY FOR A CONSUMER.

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

12-61-904.5. Originator's relationship to borrower - rules. (1) A mortgage ~~broker~~ LOAN ORIGINATOR shall have a duty of good faith and fair dealing in all communications and transactions with a borrower. Such duty includes, but is not limited to:

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

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

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

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

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

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

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

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

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

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

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

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

(III) A real estate salesperson;

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

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

(VI) An attorney;

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) NOT PASSED A WRITTEN EXAMINATION THAT MEETS THE

REQUIREMENTS SET FORTH IN SECTION 12-61-903 AND ANY APPLICABLE RULES OF THE DIRECTOR.

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

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

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

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

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

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

(6) (a) The director or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing or investigation conducted by the director or an administrative law judge. THE DIRECTOR MAY REQUEST ANY INFORMATION RELEVANT TO THE

INVESTIGATION, INCLUDING, BUT NOT LIMITED TO, INDEPENDENT CREDIT REPORTS OBTAINED FROM A CONSUMER REPORTING AGENCY DESCRIBED IN THE FEDERAL "FAIR CREDIT REPORTING ACT", 15 U.S.C. SEC. 1681a (p).

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

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

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

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

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

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

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

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

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

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

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

12-61-905.5. Disciplinary actions - grounds - procedures - rules.

(1) The director, upon his or her own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any mortgage ~~broker, and~~ LOAN ORIGINATOR. The director has the power to impose an administrative fine in accordance with section 12-61-905, ~~and to~~ DENY A LICENSE, censure a licensee, ~~to~~ place the licensee on probation and ~~to~~ set the terms of probation, ORDER RESTITUTION, ORDER THE PAYMENT OF ACTUAL DAMAGES, or ~~to~~ suspend or revoke a license when the director finds that the

licensee OR APPLICANT has performed, is performing, or is attempting to perform any of the following acts:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(u) Exercising an option to purchase in any agreement authorizing or employing such licensee to sell, buy, or exchange real estate for compensation or commission except when such licensee, prior to or coincident with election to exercise such option to purchase, reveals in

writing to the licensee's principal or employer the full amount of the licensee's profit and obtains the written consent of such principal or employer approving the amount of such profit;

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

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

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

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

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

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

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

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

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

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

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

(9) When the director or the division becomes aware of facts or

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

12-61-905.6. Hearing - administrative law judge - review - rules.

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

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

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

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

(5) In a judicial review proceeding, the court may stay the execution

or effect of any final order of the director; but a hearing shall be held affording the parties an opportunity to be heard for the purpose of determining whether the public health, safety, and welfare would be endangered by staying the director's order. If the court determines that the order should be stayed, it shall also determine at the hearing the amount of the bond and adequacy of the surety, which bond shall be conditioned upon the faithful performance by such petitioner of all obligations as a mortgage ~~broker~~ LOAN ORIGINATOR and upon the prompt payment of all damages arising from or caused by the delay in the taking effect of or enforcement of the order complained of and for all costs that may be assessed or required to be paid in connection with such proceedings.

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

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

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

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

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

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

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

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

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

(3) FOR THE 2009-10 FISCAL YEAR, THE DIVISION IS AUTHORIZED TO EXPEND UP TO ONE HUNDRED TWELVE THOUSAND DOLLARS OR SUCH OTHER AMOUNT AS MAY BE APPROPRIATED BY THE GENERAL ASSEMBLY FROM THE MORTGAGE LOAN ORIGINATOR LICENSING CASH FUND FOR PURPOSES OF

PAYING THE DEVELOPMENT COSTS ASSESSED BY THE CONFERENCE OF STATE BANK SUPERVISORS, OR ITS SUCCESSOR ORGANIZATION, FOR PARTICIPATING IN THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY. HOWEVER, THE DIRECTOR SHALL USE HIS OR HER DISCRETION IN DETERMINING WHETHER EXPENDITURE OF THESE MONEYS IS NECESSARY FOR COMPLIANCE WITH THE FEDERAL "SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008" OR PARTICIPATION IN THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.

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

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

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

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

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

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

civil procedure.

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

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

(a) Consider additional, appropriate property information;

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

(c) Correct errors in the appraisal report.

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

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

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

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

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

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

(c) Obtain property by fraud or misrepresentation;

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

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

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

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

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

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

(j) Fail to comply with any requirement of the federal "Truth in

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) This subsection (3) shall not require a real estate broker OR SALESPERSON licensed under part 1 of this article who also acts as a mortgage ~~broker~~ LOAN ORIGINATOR to maintain a physical separation within the office facility for the conduct of its real estate BROKER OR SALES and mortgage ~~broker~~ LOAN ORIGINATOR activities if the director determines that maintaining such physical separation would constitute an undue financial

hardship upon the mortgage ~~broker~~ LOAN ORIGINATOR and is unnecessary for the protection of the public.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) SUBPOENA, DISCOVERY, OR ADMISSION INTO EVIDENCE IN ANY PRIVATE CIVIL ACTION OR ADMINISTRATIVE PROCESS, UNLESS WITH RESPECT TO A PRIVILEGE HELD BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY REGARDING THE INFORMATION OR MATERIAL, THE PERSON TO

WHOM THE INFORMATION OR MATERIAL PERTAINS WAIVES THE PRIVILEGE, IN WHOLE OR IN PART.

12-61-917. Mortgage call reports - reports of violations. (1) THE DIRECTOR MAY REQUIRE EACH LICENSEE TO SUBMIT TO THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY MORTGAGE CALL REPORTS, WHICH SHALL BE IN THE FORM AND CONTAIN THE INFORMATION REQUIRED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.

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

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

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

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

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

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (42) The following agencies, functions, or both, shall terminate on July 1, 2011:

(k) The ~~registration~~ LICENSING of mortgage ~~brokers~~ LOAN

ORIGINATORS pursuant to part 9 of article 61 of title 12, C.R.S.;

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

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

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

(I) A mortgage broker OR MORTGAGE LOAN ORIGINATOR;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the mortgage loan originator licensing cash fund created in section 12-61-908,

Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of real estate, for the fiscal year beginning July 1, 2009, the sum of two hundred two thousand six hundred thirty-six dollars (\$202,636) and 1.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

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

section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO