

DEPARTMENT OF REGULATORY AGENCIES

DIVISION OF REAL ESTATE

MORTGAGE LOAN ORIGINATORS

4CCR 725-3

NOTICE OF PROPOSED RULEMAKING HEARING

March 16, 2011

3-1-2 MORTGAGE LOAN ORIGINATORS² AND MORTGAGE COMPANY DUTY
TO RESPOND AND PROVIDE REQUESTED DOCUMENTS FOR
INVESTIGATIONS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado, and to all persons who have requested to be advised of the intention of the ~~Director of the Colorado Division of Real Estate~~ Board of Mortgage Loan Originators to promulgate rules.

- Section 1. Authority
- Section 2. Scope and Purpose
- Section 3. Definitions
- Section 4. Applicability
- Section 5. 3-1-2 Mortgage Loan Originators² and Mortgage Company Duty to Respond and Provide Requested Documents for Investigations
- Section 6. Enforcement

Section 1. Authority

The statutory basis for this rule, entitled **Mortgage Loan Originators² and Mortgage Company Duty to Respond and Provide Requested Documents for Investigations**, is § 12-61-910.3, C.R.S.

The notice proposes to update rule 3-1-2. The rule establishes that mortgage loan originators and mortgage companies have a duty to respond and provide requested documentation for investigations.

Section 2. Scope and Purpose

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3-1-2 Mortgage Loan Originators² and Mortgage Company Duty to Respond and Provide Requested Documents for Investigations

Section 12-61-905(7)(b), C.R.S., states the ~~Director of the Division of Real Estate Board of Mortgage Loan Originators, 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 who assumes to act in such capacity within the state. Section 12-61-905.5(1)(k), C.R.S. requires mortgage loan originators to maintain possession, for the future use or inspection by an authorized representative of the Board, for a period of four years, of the documents prescribed by the rules of the Board. Section 12-61-905.5(1)(k)1(1)(b), C.R.S. requires mortgage ~~loan originators~~companies to maintain possession, for the future use or inspection by an authorized representative of the ~~Director Board~~, for a period of four years, of the documents or records prescribed by the rules of the ~~Director Board or to produce such documents or records upon reasonable request by the Director or by an authorized representative of the Director.~~ The purpose of this regulation is to define what documents should be retained for a period of four years and to require mortgage ~~loan originators or other persons who assume to act in such capacity within the state~~ loan originators and mortgage companies to provide a written response and all requested documents to the ~~Director Board~~ or an authorized representative of the ~~Director Board~~. Additionally, this regulation prescribes the time period in which all persons and entities shall respond to ~~Director Board~~ inquiries, including, but not limited to, document and information requests during investigations of complaints or any other investigation conducted for the purpose of determining compliance with Colorado mortgage loan originator law.

Section 3. Definitions

1. "Secure environment" means a system which implements the controlled storage and use of information.

Section 4. Applicability

This rule applies to all persons required to be licensed or registered pursuant to §§ 12-61-902 and 12-61-903, C.R.S.

~~This rule applies to mortgage loan originators as that term is defined in § 12-61-902(6), C.R.S. and includes those persons who originate a mortgage, offer to originate a mortgage, act as a mortgage loan originator, or offer to act as a mortgage loan originator. This rule applies to all individuals required to be licensed pursuant to §§ 12-61-902 and 12-61-903, C.R.S.~~

Section 5. 3-1-2 Mortgage Loan Originators' and Mortgage Company Duty to Respond and Provide Requested Documents for Investigations

1. Persons ~~who originate a mortgage, offer to originate a mortgage, act as a mortgage loan originator, or offer to act as a mortgage loan originator~~ required to be licensed or registered pursuant to §§ 12-61-902 and 12-61-903, C.R.S. shall provide the ~~Director~~

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3-1-2 Mortgage Loan Originators' and Mortgage Company Duty to Respond and Provide Requested Documents for Investigations

Board or ~~his or her authorized~~the Board's representative with all information required by this rule.

- a. Failure to provide all information requested by the ~~Director-Board~~ or ~~his or her~~ an authorized representative of the Board within a timeline established~~the time set~~ by the ~~Director-Board~~, or authorized representative of the ~~Director-Board~~, shall be grounds for disciplinary action and grounds for the imposition of fines unless the ~~Director-Board~~, or authorized representative of the ~~Director-Board~~, has granted an extension of time for the response.

- i. ~~Persons who originate a mortgage, offer to originate a mortgage, act as a mortgage loan originator or offer to act as a mortgage loan originator~~Mortgage loan originators and mortgage companies may ask for an extension of time to comply if:

1. The request is done so in writing; and
 2. The request is received by the ~~Director-Board~~ or authorized representative of the ~~Director-Board~~ prior to the expiration date defined in the notification letter sent by the ~~Director-Board~~ or authorized representative of the ~~Director-Board~~.

- ii. Any and all extensions granted are done so at the discretion of the ~~Director-Board~~ or an authorized representative of the ~~Director-Board~~.

- b. Failure to provide all requested information shall be grounds for disciplinary action and grounds for the imposition of fines regardless of whether the underlying complaint results in further investigation or subsequent action by the ~~Director-Board~~.

2. The response from the person shall contain the following:

- a. If requested in the notification letter, a complete and specific answer to the factual recitations, allegations or averments made in the complaint filed against the licensee, whether made by a member of the public or on the ~~Director's-Board's~~ own motion or by an authorized representative of the ~~Director-Board~~;
 - b. A complete and specific response to all questions, allegations or averments presented in the notification letter; and
 - c. Any and all documents or records requested in the notification letter.

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3. ~~Persons who originate a mortgage, offer to originate a mortgage, act as a mortgage loan originator, or offer to act as a mortgage loan originator~~Mortgage companies shall maintain any and all documents collected, gathered and provided for the purpose of negotiating and originating residential mortgage loans for a period of four years. Additionally, ~~persons who originate a mortgage, offer to originate a mortgage, act as a mortgage loan originator or offer to act as a mortgage loan originator~~mortgage companies shall maintain any and all documents used for the purpose of soliciting or marketing borrowers. These documents include, but are not limited to:

- a. All Uniform residential loan applications (Form 1003);
 - b. All required state and federal disclosures;
 - c. Asset statements;
 - d. Income documentation;
 - e. Verification of employment;
 - f. Verification of deposit;
 - g. Lender submission forms;
 - h. Advertisements;
 - i. Flyers;
 - j. HUD-1 Settlement Statements;
 - k. Uniform Underwriting and Transmittal Summary (Form 1008); and
 - l. Credit report.
4. All documents shall be kept in a secure environment. Electronic storage is acceptable as long as the information is accessible and kept in a secure environment.

- ~~5. The company for whom the mortgage loan originator is an officer, partner, contractor, independent contractor, member, exclusive agent or an employee may provide the requested documents to the Director. However, the mortgage loan originator is responsible for compliance with the Director's request and is subject to disciplinary action if the company fails or refuses to provide the requested documentation.~~

Section 6. Enforcement

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1. Noncompliance with this rule, whether defined or reasonably implied in the rule, may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:

- a. Revocation;
- b. Refusal to renew a license or registration;
- c. Imposition of fines; and
- d. Restitution for any financial loss.

A hearing on the above subject matter will be held on Wednesday, March 16, 2011, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250A, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

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