

## **DEPARTMENT OF REGULATORY AGENCIES**

### **Division of Real Estate**

## **RULES REGARDING MORTGAGE BROKERS**

### **4 CCR 725-3**

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

#### **1-1-1 CONCERNING GOOD-FAITH TEMPORARY REGISTRATION FOR MORTGAGE BROKERS. [Eff. 09/30/2007]**

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

Section 4. Definitions

Section 5. Rules Regarding Registration

#### **Section 1 Authority**

This regulation is promulgated by the Director of the Division of Real Estate under the authority of § 12-61-910.3, C.R.S., (2007).

#### **Section 2 Scope and Purpose**

The purpose of this regulation is to specify the requirements of a good-faith temporary registration.

#### **Section 3 Applicability**

This rule governs individuals who broker a mortgage or act as a mortgage broker and is not intended for individuals who remain exempt from registration pursuant to § 12-61-904, C.R.S. (2007).

#### **Section 4 Definitions**

A. "Good-Faith Effort" is defined as complying with the provisions as set forth below in this rule.

#### **Section 5. Rules Regarding Registration**

1. Mortgage brokers demonstrating to the Director a good-faith effort to comply with newly enacted HB07-1322, § 12-61-901, *et seq.*, C.R.S. shall be issued a Good-Faith Temporary Registration upon compliance with the requirements set forth below.
  - A. Prior to submitting an application, a set of fingerprints for a criminal history record check must be submitted to the Colorado Bureau of Investigation (CBI);
  - B. Acquisition of a \$25,000.00 surety bond as required by § 12-61-907, C.R.S;
  - C. Completion of the mortgage broker application; and

- D. Payment of the \$200.00 application fee.
2. Good-Faith Temporary registrations will expire upon determination by the Director that the requirements of the law have not been met. Applicants shall be notified via e-mail, fax or U.S. mail to the contact information provided to the Division of Real Estate in the applicant's application.
  3. Good-Faith Temporary registrations issued by the Director will remain in effect until December 31, 2007, unless the Director issues the applicant a full registration upon the applicant's compliance with all terms of the applicable registration law, or unless the Director determines the registration to be expired for failure to comply with the requirements to obtain a Good Faith Temporary Registration, as set forth in this regulation.
  4. Any temporary registration issued by the Director shall have the same force and effect of the registration required by § 12-61-901, *et seq.*, for the period of time it is in effect.
  5. Once the applicant fully complies with the terms of the new law as determined by the Director, the Director shall register the applicant in accordance with § 12-61-903, C.R.S. The date this occurs will be the applicant's anniversary date for purposes of compliance with the licensing and education requirements of § 12-61-903, C.R.S.

## **MORTGAGE LOAN ORIGINATOR IMMEDIATE AND AUTOMATIC TEMPORARY LICENSE**

### Section 1. Authority

### Section 2. Scope and Purpose

### Section 3. Applicability

### Section 4. Mortgage Loan Originator Immediate and Automatic Temporary License

### Section 5. Effective Date

#### **Section 1. Authority**

The Director of the Division of Real Estate adopts the following emergency rule entitled, Mortgage Loan Originator Immediate and Automatic Temporary License, according to her authority as found in §§ 12-61-910.3 and 24-4-103(6), C.R.S.

#### **Section 2. Scope and Purpose**

The Director finds that immediate adoption of this rule is imperatively necessary for the preservation of public health, safety or welfare and that compliance with the rulemaking requirements of § 24-4-103, C.R.S., applicable to non-emergency rules, would be contrary to the public interest.

The Director has learned that individuals required to be newly licensed pursuant to the passage of House Bill 09-1085 may need additional time in order to comply. In an effort to avoid the contraction of mortgage related credit, it is necessary to adopt this rule. The purpose of this rule is to provide an immediate and automatic temporary license to individuals who have not been required to be licensed in the past, but are now required to do so pursuant to House Bill 09-1085. Affected individuals include those working for affiliates of depository institutions and individuals who engage in chattel financing relating to residential real estate.

Without the immediate adoption of this emergency rule, the public's interest is not served. Wherefore, the Director, pursuant to § 24-4-103(6), C.R.S. has an obvious and stated need to adopt this rule.

### **Section 3. Applicability**

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 4. Mortgage Loan Originator Immediate and Automatic Temporary License**

1. The following mortgage loan originators shall be granted an immediate and automatic temporary license beginning on the effective date of this rule:
  - a. Mortgage loan originators or individuals required to be licensed pursuant to the Colorado Mortgage Loan Originator Licensing Act, Director rule or as prescribed by the Director by position statement that are employees or exclusive agents for affiliates of 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; or
  - b. Mortgage loan originators or individuals required to be licensed pursuant to the Colorado Mortgage Loan Originator Licensing Act, Director rule or as prescribed by the Director by position statement that are engaged in taking a residential loan application or offering or negotiating terms for chattel loans related to residential real estate.
2. Automatic and immediate temporary licenses granted pursuant to this rule shall expire ninety (90) days from the effective date of this rule.
3. The issuance of this temporary license is automatic in nature and is applicable to all individuals who meet the requirements defined in subsection 1 of section 4 of this rule without any posting or actual issuance of a license by the Director of the Division of Real Estate.
4. Temporary licenses pursuant to this rule shall have the same force and effect of the license required by § 12-61-901, *et seq.*, C.R.S. for the period of time it is in effect.

### **Section 5. Effective Date**

This emergency rule shall be effective August 5, 2009.

### **1-1-2 MORTGAGE LOAN ORIGINATOR TEMPORARY LICENSE**

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 to promulgate rules.

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

Section 4. 1-1-2 Mortgage Loan Originator Temporary License

Section 5. Effective Date

## **Section 1. Authority**

The statutory basis for this rule, entitled Mortgage Loan Originator Temporary License, is § 12-61-910.3, C.R.S.

The notice proposes to update rule 1-1-2. The rule establishes a temporary license for mortgage loan originators.

## **Section 2. Scope and Purpose**

Section 12-61-905(10), C.R.S. requires the Director of the Division of Real Estate to promulgate rules that allow licensed mortgage loan originators to hire unlicensed mortgage loan originators under temporary licenses. The purpose of this regulation is to define the parameters under which an individual may receive a temporary license.

## **Section 3. Applicability**

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 4. 1-1-2 Mortgage Loan Originator Temporary License**

1. Mortgage loan originators demonstrating to the Director a good-faith effort to comply with the requirements pursuant to § 12-61-901, *et seq.*, C.R.S. may be issued a temporary license upon completion of the requirements set forth below.
  - a. Prior to submitting an application, a set of fingerprints for a criminal history record check must be submitted to the Colorado Bureau of Investigation (CBI);
  - b. Acquisition of a surety bond as required by § 12-61-907, C.R.S. and in accordance with any rule of the Director that directly or indirectly addresses surety bond requirements;
  - c. Acquisition of the errors and omissions insurance required by § 12-61-903.5, C.R.S. and in accordance with any rule of the Director that directly or indirectly addresses errors and omissions insurance requirements;
  - d. Completion of the mortgage loan originator application; and
  - e. Payment of the application fee established by the Director.
2. Only individuals who hold and maintain a mortgage broker or mortgage loan originator license may hire and sponsor unlicensed mortgage brokers or mortgage loan originators under the temporary license provision.
  - a. Licensed mortgage loan originators who employ and sponsor such an unlicensed mortgage loan originator shall be held responsible under all applicable provisions of law, including without limitation this part 9 and § 38-40-105, C.R.S., for the actions of the unlicensed mortgage loan originator to whom a temporary license has been assigned, and are personally subject to all applicable penalties under the law.
    - i. Licensed mortgage loan originators shall notify the Division of Real Estate, in a manner acceptable to the Director, of exact dates of hire and termination of employment for unlicensed mortgage loan originators. Sponsoring mortgage brokers or

mortgage loan originators shall complete the Mortgage Broker Temporary License Update Form, found on the Division of Real Estate website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm> , and forward to the Division of Real Estate, in a manner acceptable to the Director, all other information required for the possible receipt of a temporary license.

- ii. Licensed mortgage loan originators shall be held responsible for the activity of an unlicensed mortgage brokers or mortgage loan originators through and including the date of termination and required notification of such termination to the Division of Real Estate.
3. Temporary licenses shall expire 120 days after completion of the mortgage loan originator license application or when the temporary license is terminated by a licensed mortgage broker or licensed mortgage loan originator with whom the temporary licensee is operating under.
4. Individuals seeking temporary licenses shall be granted one temporary license. Additional or extended temporary licenses shall be prohibited.
5. Individuals seeking a temporary license shall complete the paper version of the mortgage broker or mortgage loan originator license application posted on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm> .
6. Temporary licensees shall request on the application that the Director inactivate their temporary license upon determination by the Director that the requirements of the law have not been met. Applicants shall be notified via e- mail, fax or U.S. mail to the contact information provided to the Division of Real Estate in the applicant's mortgage loan originator license application.
7. Any temporary license issued by the Director shall have the same force and effect of the license required by § 12-61-901, *et seq.* , C.R.S. for the period of time it is in effect.
8. Once the applicant fully complies with the terms of the law as determined by the Director, the Director shall license the applicant in accordance with § 12-61-903, C.R.S.
9. Due to the changes defined in this rule, the names of temporary licensees will be posted to the Division of Real Estate website at <http://www.dora.state.co.us/real-estate/mortgagebrokerregistration.htm> .

## **Section 5. Effective Date**

This permanent rule shall be effective August 6, 2009.

## **1-1-4 MORTGAGE LOAN ORIGINATOR LICENSE RENEWAL, REINSTATEMENT AND RE-APPLICATION**

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 to promulgate rules.

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

## Section 4. 1-1-4 Mortgage Loan Originator License Renewal, Reinstatement and Re-Application

### Section 1. Authority

The statutory basis for this rule, entitled 1-1-4 Mortgage Loan Originator License Renewal, Reinstatement and Re-Application, is § 12-61-910.3, C.R.S.

The notice proposes to add rule 1-1-4. The rule defines the license renewal process for mortgage loan originators.

### Section 2. Scope and Purpose

Due to the three year license cycle that has been in place, there has been no need to date to define the renewal process. As a result of the S.A.F.E. Act and subsequent passage of House Bill 09-1085, the license cycle has been changed from a three year cycle to an annual cycle. As a result, mortgage loan originators must renew their licenses annually. Additionally, licensees are now required to be registered with the Nationwide Mortgage Licensing System and Registry. The Director of the Division of Real Estate has determined that it is most appropriate to mimic timelines and processes associated with the Nationwide Mortgage Licensing System and Registry. Failing to do so would cause tremendous confusion on the part of the licensee pool.

The purpose of this rule is to clearly define the transition from a three year license cycle to an annual license cycle and to define the license renewal process.

### Section 3. Applicability

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 4. 1-1-4 Mortgage Loan Originator License Renewal, Reinstatement and Re-Application.

#### 1. Transitioning from a three year license cycle to an annual license cycle.

- a. For licensees whose licenses are set to expire at any point in 2009, the Director will administratively change the expiration date to December 31, 2009.
- b. For licensees whose licenses are set to expire on or after January 1, 2010, the Director will administratively change the expiration date to December 31, 2010.

#### 2. Renewal Process for active licensees.

- a. Currently, there are two existing databases that licensees shall independently renew their license through annually. The two independent databases include:
  - i. The license database managed by the Division of Real Estate. This database may be located by visiting the Division of Real Estate website at <http://www.dora.state.co.us/real-estate/index.htm>.
  - ii. The registration database managed by the Nationwide Mortgage Licensing System and Registry. This database is located at <http://www.stateregulatoryregistry.org/NMLS/AM/Template.cfm?Section=Home3>.
- b. Mortgage loan originators renewing, reinstating or re-applying for registration through the

Nationwide Mortgage Licensing System and Registry shall do so in accordance with established timelines, policies and procedures set forth by the Nationwide Mortgage Licensing System and Registry. The Nationwide Mortgage Licensing System and Registry may collect fees for the purpose of registration applications, renewal applications, reinstatement applications, credit reports, criminal background checks and for other processes associated with registration through the nationwide database.

- c. The Director shall issue or deny a license renewal or reinstatement application within thirty days after the applicant has submitted all of the information necessary for license renewal or reinstatement and after the Director has received all information necessary to make a determination regarding the applicants' compliance.
  - d. Regarding the license database managed by the Division of Real Estate, mortgage loan originators may renew or reinstate their license online or may do so by submitting a paper renewal or reinstatement application. Individuals who choose to submit a paper renewal or reinstatement application shall pay an administrative fee prescribed by the Director in addition to the renewal or reinstatement fee due to the administrative burden placed on the Division of Real Estate. The fee for reinstatement is one and one half times the amount of the current renewal fee.
  - e. For both databases, the license renewal period begins November 1st of each calendar year and ends December 31st of each calendar year. Individuals who renew their license shall only do so if they are compliant with all provisions of the Mortgage Loan Originator Licensing Act and all Director rules.
  - f. All licenses expire at 12 midnight on December 31st of each calendar year if the licensee has not properly renewed their license.
  - g. If a license has expired, individuals may choose to reinstate their mortgage loan originator license. The reinstatement period for both databases begins January 1st of each calendar year and ends on the last day of February of each calendar year. Individuals who reinstate their license shall only do so if they are compliant with all provisions of the Mortgage Loan Originator Licensing Act and all Director rules.
  - h. Individuals who fail to renew or reinstate their license shall re-apply with both in order for the Division of Real Estate to review their applications and determine whether the individual is compliant with the licensing requirements.
  - i. All renewal, reinstatement or application fees shall be prescribed by the Director.
3. Renewal Process for inactive licensees.
- a. Individuals with inactive licenses shall renew their license annually. Individuals with inactive licensees are not required to maintain compliant errors and omissions insurance or a compliant surety bond, but they are required to stay current on all continuing education requirements in order to renew their license.
  - b. Mortgage loan originators may renew or reinstate their inactive license online or may do so by submitting a paper renewal or reinstatement application. Individuals who choose to submit a paper renewal or reinstatement application shall pay an administrative fee prescribed by the Director in addition to the renewal or reinstatement fee due to the administrative burden placed on the Division of Real Estate. The fee for reinstatement is one and one half times the amount of the current renewal fee.
  - c. Currently, there are two existing databases that inactive licensees shall independently renew

their license through annually. The two independent databases include:

- i. The license database managed by the Division of Real Estate. This database may be located by visiting the Division of Real Estate website at <http://www.dora.state.co.us/real-estate/index.htm> .
    - ii. The registration database managed by the Nationwide Mortgage Licensing System and Registry. This database is located at <http://www.stateregulatoryregistry.org/NMLS/AM/Template.cfm?Section=Home3> .
  - d. For both databases, the renewal period begins November 1 of each calendar year and ends December 31st of each calendar year. Individuals who renew their license shall only do so if they are compliant with all provisions of the Mortgage Loan Originator Licensing Act and all Director rules.
  - e. All inactive licenses expire at 12 midnight on December 31st of each calendar year if the license has not been properly renewed.
  - f. If a license has expired, individuals may choose to reinstate their inactive mortgage loan originator license. The reinstatement period for both databases begins January 1 of each calendar year and ends on the last day of February of each calendar year. Individuals who reinstate their license shall only do so if they are compliant with all provisions of the Mortgage Loan Originator Licensing Act and all Director rules.
  - g. Individuals who fail to renew or reinstate their inactive license shall re-apply in order for the Division of Real Estate to review their applications and determine whether the individual is compliant with the licensing requirements.
  - h. All renewal, reinstatement or application fees shall be prescribed by the Director.
  - i. The Director shall issue or deny a license renewal or reinstatement application within thirty days after the applicant has submitted all of the information necessary for license renewal or reinstatement and after the Director has received all information necessary to make a determination regarding the applicants' compliance.
4. Renewal, reinstatement or re-application fees.
- a. All fees collected for the purpose of applying for license renewal, reinstatement or re-application are non-refundable.
5. Re-application.
- a. Individuals who have taken the requisite courses and who have passed the test in accordance with Director rules within the immediately preceding three years of an application and who are compliant with the annual continuing education requirements will not need to duplicate the educational requirements upon re-application.
6. Individuals who do not have an active license are prohibited from practicing as a mortgage loan originator. Additionally, individuals who do not have an active license are prohibited from engaging in any mortgage related activities which require licensure pursuant to the Colorado Mortgage Loan Originator Licensing Act, Director rule or as prescribed by Director position statement.

#### **1-2-1 MORTGAGE BROKERS BOND REQUIREMENT – [REPEALED]**



[Repealed 08/30/2009]

## **1-2-2 SURETY BOND REQUIREMENTS FOR MORTGAGE LOAN ORIGINATORS**

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

Section 4. 1-2-2 Surety Bond Requirements for Mortgage Loan Originators

Section 5. Enforcement

### **Section 1. Authority**

The Director of the Division of Real Estate adopts the following permanent rule entitled, **1-2-2 Surety Bond Requirements for Mortgage Loan Originators**, according to her authority as found in §§ 12-61-907 and 910.3, C.R.S.

The notice proposes to add rule 1-2-2. The rule establishes surety bond requirements for mortgage loan originators.

### **Section 2. Scope and Purpose**

The purpose of this rule is to define the surety bond requirements for mortgage loan originators or any other individual required to be licensed pursuant to § 12-61-902 and § 12-61-903, C.R.S.

### **Section 3. Applicability**

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 4. 1-2-2 Surety Bond Requirements for Mortgage Loan Originators**

1. Mortgage loan originators are deemed compliant with the surety bond requirement if their surety bond meets the requirements defined in one of the following three options:
  - a. Option 1 – Mortgage loan originators, at a minimum, may acquire and maintain an individual surety bond if:
    - i. The surety bond is in the amount of \$25,000.00;
    - ii. The surety bond is in conformance with all relevant Colorado statutory requirements;
    - iii. The surety bond is exclusive to covering acts contemplated under current Colorado mortgage loan originator licensing laws;
    - iv. The surety bond is not applicable to any conduct or transactions outside the jurisdiction of the Director of the Colorado Division of Real Estate; and
    - v. The surety bond is identical to the individual surety bond form developed and approved by the Director. Acceptable surety bond forms may be found on the

Division of Real Estate website at <http://www.dora.state.co.us/real-estate/applications/mortgagebroker/index.htm>

- b. Option 2 – Mortgage loan originators who are employees or exclusive agents for companies with less than 20 individuals who are required to be licensed pursuant to the Mortgage Loan Originator Licensing Act and who do not work for more than one company, at a minimum, may operate under the companies surety bond if the surety bond meets the following criteria:
    - i. The surety bond is in the amount of \$100,000.00;
    - ii. The surety bond is in conformance with all relevant Colorado statutory requirements;
    - iii. The surety bond is exclusive to covering acts of all of the company's W-2 employees or exclusive agents contemplated under current Colorado mortgage loan originator licensing laws; and
    - iv. The surety bond is identical to the company surety bond form developed and approved by the Director. Acceptable surety bond forms may be found on the Division of Real Estate website at <http://www.dora.state.co.us/real-estate/applications/mortgagebroker/index.htm>
  - c. Option 3 – Mortgage loan originators who are W-2 employees or exclusive agents for companies with 20 or more individuals who are required to be licensed pursuant to the Mortgage Loan Originator Licensing Act and who do not work for more than one company, at a minimum, may operate under the companies surety bond if the surety bond meets the following criteria:
    - i. The surety bond is in the amount of \$200,000.00;
    - ii. The surety bond is in conformance with all relevant Colorado statutory requirements;
    - iii. The surety bond is exclusive to covering acts of all of the company's W-2 employees contemplated under current Colorado mortgage loan originator licensing laws; and
    - iv. The surety bond is identical to the company surety bond form developed and approved by the Director. Acceptable surety bond forms may be found on the Division of Real Estate website at <http://www.dora.state.co.us/real-estate/applications/mortgagebroker/index.htm>
2. The Director has created the Mortgage Loan Originator Licensing Update Form to ensure surety bond information is clearly and concisely disclosed. This form may be found on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm> . Mortgage loan originators shall use this form to ensure all information defined in this rule is current.
- a. Mortgage loan originators shall forward this form by mail or personal delivery to the following address:
    - i. Division of Real Estate – Attn: Mortgage Loan Originator Licensing Department  
  
1560 Broadway, Suite 925  
  
Denver, CO. 80202

3. Additionally, mortgage loan originators may update all of the information required in this rule electronically. They may access their information through the following website: [https://eservices.psiexams.com/index\\_login.jsp](https://eservices.psiexams.com/index_login.jsp) . After entering their password and username, mortgage loan originators may update all information without any fees or costs associated with such action.
4. Applicants for licensure, renewal and reinstatement shall comply with this rule and § 12-61-903 and 907, C.R.S. in a manner prescribed by the Director. Any licensee who so fails to obtain and maintain a surety bond in accordance with this regulation or fails to provide proof of continuous coverage shall be subject to disciplinary action.

## **Section 5. Enforcement**

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;
  - c. Imposition of fines; and
  - d. Restitution for any financial loss.

## **1-3-1 ERRORS AND OMISSIONS INSURANCE FOR MORTGAGE LOAN ORIGINATORS**

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

Section 4. 1-3-1 Errors and Omissions Insurance for Mortgage Loan Originators

Section 5. Enforcement

### **Section 1. Authority**

The Director of the Division of Real Estate adopts the following permanent rule entitled, **1-3-1 Errors and Omissions Insurance for Mortgage Loan Originators** , according to her authority as found in § 12-61-903.5 and 910.3, C.R.S.

The notice proposes to add rule 1-3-1. The rule establishes errors and omissions coverage for mortgage loan originators.

### **Section 2. Scope and Purpose**

Section 12-61-903.5, C.R.S. requires the Director to determine the terms and conditions of coverage required, including the minimum limits of coverage, the permissible deductible and permissible exemptions. The purpose of this rule is to define the requisite errors and omissions coverage.

### **Section 3. Applicability**

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 4. 1-3-1 Errors and Omissions Insurance for Mortgage Loan Originators**

1. Mortgage loan originators are deemed compliant with the errors and omissions insurance requirements if their errors and omissions insurance meets the requirements defined in one of the following three options:
  - a. Option 1 – Mortgage loan originators, at a minimum, may acquire and maintain individual errors and omissions insurance in their own name with the following terms of coverage:
    - i. The contract and policy are in conformance with all relevant Colorado statutory requirements;
    - ii. Coverage includes all acts for which a mortgage loan originator license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage;
    - iii. Coverage shall encompass all types of transactions conducted by the mortgage broker and shall be in the individual mortgage loan originators' name;
    - iv. Coverage is for not less than \$100,000.00 for each licensed individual per covered claim, with an annual aggregate limit of not less than \$300,000.00 per licensed individual; and
    - v. Coverage contains a deductible no greater than \$1,000.00 or a deductible no greater than \$20,000.00 for policies insuring primarily reverse mortgage transactions.
  - b. Option 2 – Mortgage loan originators who are employees or exclusive agents for companies with less than 20 individuals who are required to be licensed pursuant to the Mortgage Loan Originator Licensing Act and who do not work for more than one company, at a minimum, may operate under the companies errors and omissions insurance policy if the policy meets the following terms of coverage:
    - i. The contract and policy are in conformance with all relevant Colorado statutory requirements;
    - ii. Coverage includes all acts for which a mortgage loan originator license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage;
    - iii. Coverage shall include all activities contemplated under current Colorado mortgage loan originator licensing laws and states this in the policy;
    - iv. Coverage shall encompass all types of transactions conducted by all of the mortgage loan originators employed at the company or by all mortgage loan originators who are exclusive agents of the company;
    - v. Coverage is for not less than \$1,000,000.00 per covered claim, with an annual aggregate limit of not less than \$2,000,000.00 that is exclusive to Colorado consumers; and
    - vi. Coverage contains a deductible no greater than \$50,000.00.

- c. Option 3 – Mortgage loan originators who are W-2 employees or exclusive agents for companies with 20 or more employees and who do not work for more than one company, at a minimum, may operate under the companies errors and omissions insurance policy if the policy meets the following terms of coverage:
  - i. The contract and policy are in conformance with all relevant Colorado statutory requirements;
  - ii. Coverage includes all acts for which a mortgage loan originator license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage;
  - iii. Coverage shall include all activities contemplated under current Colorado mortgage loan originator licensing laws and states this in the policy;
  - iv. Coverage shall encompass all types of transactions conducted by all of the mortgage loan originators employed at the company or by all mortgage loan originators who are exclusive agents of the company;
  - v. Coverage shall encompass all types of transactions conducted by all of the mortgage loan originators employed at the company;
  - vi. Coverage is for not less than \$1,000,000.00 per covered claim, with an annual aggregate limit of not less than \$4,000,000.00 that is exclusive to Colorado consumers; and
  - vii. Coverage contains a deductible no greater than \$100,000.00.
- 2. Regarding company errors and omissions insurance policies, the company shall provide the Director or an authorized representative of the Director with any and all requested errors and omissions insurance policies relevant to this rule or the Mortgage Loan Originator Licensing Act and shall verify and provide adequate proof regarding the timeline of employment for each individual operating under such company policy. Failure on the part of the company to provide such information shall result in non-compliance regarding the errors and omissions insurance requirement for individual licensees operating under such a company policy.
- 3. The Director has created the Mortgage Loan Originator Licensing Update Form to ensure errors and omissions insurance information is clearly and concisely disclosed. This form may be found on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm> . Mortgage loan originators shall use this form to ensure all information defined in this rule is current.
  - a. Mortgage loan originators shall forward this form by mail or personal delivery to the following address:
    - i. Division of Real Estate – Attn: Mortgage Loan Originator Licensing Department  
  
1560 Broadway, Suite 925  
  
Denver, CO. 80202
- 4. Additionally, mortgage loan originators may update all of the information required in this rule electronically. They may access their information through the following website: [https://eservices.psiexams.com/index\\_login.jsp](https://eservices.psiexams.com/index_login.jsp) . After entering their password and username, mortgage loan originators may update all information without any fees or costs associated with

such action.

5. For information regarding errors and omissions insurance providers, visit the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/index.htm> .
6. Applicants for licensure, renewal and reinstatement shall comply with this rule and § 12-61-903.5, C.R.S. in a manner prescribed by the Director. Any licensee who so fails to obtain and maintain errors and omissions coverage in accordance with this regulation or fails to provide proof of continuous coverage shall be subject to disciplinary action.

## **Section 5. Enforcement**

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;
  - c. Imposition of fines; and
  - d. Restitution for any financial loss.

## **1-4-1 LICENSING EDUCATION, EXAMINATION AND CONTINUING EDUCATION REQUIREMENTS**

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

Section 4. Licensing Education and Examination

Section 5. Continuing Education

### **Section 1. Authority**

The Director of the Division of Real Estate updates the following permanent rule entitled, **1-4-1 Licensing Education, Examination and Continuing Education Requirements** , according to her authority as found in § § 12-61-903(3), 12-61-903(8), 12-61-910.3, and 24-4-103, C.R.S.

### **Section 2. Scope and Purpose**

Pursuant to § 12-61-903(3)(a), mortgage loan originators must complete at least nine hours of fundamental mortgage lending coursework and satisfactorily complete a corresponding written examination. The Director shall approve the fundamental mortgage lending coursework and the written examination.

Additionally, in July of 2008, the Housing and Economic Recovery Act of 2008 was signed into law. Title V of the Economic Recovery Act of 2008 is the S.A.F.E. Mortgage Licensing Act. The S.A.F.E. Mortgage Licensing Act defines minimum national licensing standards for mortgage loan originators and requires states to adopt such provisions. The S.A.F.E. Mortgage Licensing Act requires that pre-licensing education and testing be developed and administered by the Nationwide Mortgage Licensing System and Registry. As a result, the education and testing requirements need to be updated in order to conform to provisions defined in the S.A.F.E. Mortgage Licensing Act, House Bill 09-1085 and with standards

established by the Nationwide Mortgage Licensing System and Registry. Furthermore, this rule is imperative as it details how existing licensees may become compliant and how new applicants will be affected.

The purpose of this rule is to clarify the education requirements for individuals required to be licensed as state-licensed loan originators. The purpose is also to ensure compliance with education standards. It is vital to consumer protection and to competent mortgage loan originator practice that mortgage loan originators understand applicable State and Federal Law.

### **Section 3. Applicability**

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 4. Licensing Education and Examination**

#### **1. Applicant and Licensee Education Requirements**

- (a) All mortgage loan originators who obtain a Colorado mortgage loan originator license prior to January 1, 2009 must complete the Director developed and approved 40 hours of licensing education and pass a two-part written licensing examination by January 1, 2009. Individuals who fail to comply with this requirement may file for an extension. Extensions may be granted through and including March 31, 2009 and shall only be applied for beginning December 1, 2008 and ending January 30, 2009. Mortgage loan originators requesting an education extension shall:
  - i. Complete the education extension form created by the Director of the Division of Real Estate. This form may be found on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm> ;
  - ii. Pay a \$100.00 extension fee by money order or a cashier check;
  - iii. Request that the Director inactivate their mortgage loan originator license if they fail to pass the written examination in accordance with this rule by March 31, 2009, such inactive status remaining in effect until passage of the mortgage loan originator examination and subsequent request for activation; and
  - iv. Provide the Director with an original copy of the requisite surety bond, with the accompanying power of attorney and proof of the requisite errors and omissions insurance.
- (b) Individuals who fail to pass the requisite written examination by January 1, 2009 and who fail to comply with the extension process defined in this rule are subject to all forms of discipline authorized by the Mortgage Loan Originator Licensing Act. Additionally, the license renewal, reinstatement or reactivation fees for such individuals will automatically be increased by \$500.00, due to the related increase in administrative burden.
- (c) The Director has created the Mortgage Loan Originator Education Extension Form. This form may be found on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm> .
- (d) On or after January 1, 2009 and prior to January 1, 2010, each individual applicant for initial licensing as a mortgage loan originator must complete, within the three years

immediately preceding the date of the application, 40 hours of licensing education and pass a two-part exam approved by the Director of the Division of Real Estate prior to applying for a mortgage loan originator license.

- (e) Additionally, in order to register on the Nationwide Mortgage Licensing System and Registry and in order to be licensed as a state-licensed loan originator, all individuals licensed prior to January 1, 2010, in addition to the requirements defined in section 4(1)(d) of this regulation, shall pass the national portion of the two part S.A.F.E. Mortgage Loan Originator exam developed and administered by the Nationwide Mortgage Licensing System and Registry or by a company contracted by the Nationwide Mortgage Licensing System and Registry to develop and administer the two part S.A.F.E. Mortgage Loan Originator exam.
- (f) On or after January 1, 2010, each individual applicant shall complete, within the three years immediately preceding the date of the applications, the 20 hours of pre-licensing education requirements developed, administered and approved by the Nationwide Mortgage Licensing System and Registry or by a company contracted by the Nationwide Mortgage Licensing System and Registry to develop, administer and approve the 20 hours of pre-licensing education and pass the two-part S.A.F.E. Mortgage Loan Originator exam also developed and administered by the Nationwide Mortgage Licensing System and Registry or by a company contracted by the Nationwide Mortgage Licensing System and Registry to develop and administer the S.A.F.E. Mortgage Loan Originator exam prior to completing the applications for a state-licensed loan originator license.

## 2. Certificate of Completion

- (a) Mortgage loan originator applicants and licensees must receive a certification of completion from their education provider evidencing the successful completion of the respective licensing education coursework before scheduling any of the requisite examinations.
- (b) Prior to January 1, 2010, mortgage loan originator applicants and licensees must ensure that their education provider files a certificate of completion with the examination provider establishing the successful completion of the respective licensing education coursework before scheduling the exam. The education provider must file the certificate of completion with the approved examination provider electronically or in such manner as prescribed by the Director.

## 3. Licensing Education Passing Score

- (a) Prior to January 1, 2010, the mortgage loan originator written licensing examination consists of two parts. The two parts include the Federal, State and Consumer Protection Laws portion and the Mortgage Lending Basics and Ethics portion. On or after January 1, 2009 and prior to January 1, 2010, an individual shall not be considered to have passed the written test unless the individual achieves a test score of not less than seventy-five (75) percent correct answers on both the Federal and State Law portion of the exam and the Mortgage Lending Basics portion of the exam. If the applicant fails one of the two parts, the applicant may reschedule with the examination provider to retake only the portion of the exam that they failed. In no event is a passing score accepted beyond one year (365 days) from the date of the passing score.
- (b) On or after January 1, 2010, the S.A.F.E. Mortgage Loan Originator examination developed and administered by the Nationwide Mortgage Licensing System and Registry or by a company contracted by the Nationwide Mortgage Licensing System and Registry to develop and administer the S.A.F.E. Mortgage Loan Originator examination consists of two parts. These two parts include a national component and a Colorado state specific component. On or after January 1, 2010, an individual shall pass the test in accordance



with policies and procedures developed and administered by the Nationwide Mortgage Licensing System and Registry and in compliance with the S.A.F.E. Mortgage Licensing Act.

#### 4. Qualifying Schools

- (a) Prior to January 1, 2010, applicants and licensees must complete the requisite 40 hours of licensing education, approved by the Director, from any accredited degree-granting college or university or any private occupational school that has a certificate of approval from the Division of Private Occupational Schools in accordance with the provisions of article 59 of title 12, Colorado Revised Statutes.
- (b) On or after January 1, 2010, applicants must complete the requisite 20 hours of licensing education from an educational provider approved by the Nationwide Mortgage Licensing System and Registry or by a company contracted by the Nationwide Mortgage Licensing System and Registry to approve educational providers.

#### 5. Forty Hour Licensing Education Requirement

- (a) Prior to January 1, 2010, mortgage loan originator applicants and licensees must successfully complete the required forty hours of licensing education through classroom instruction or an equivalent distance learning course offered in a manner as prescribed by the Director. For the purposes of this rule, distance learning shall not be construed to include home or correspondent education. Rather, equivalent distant or distance learning courses shall only include online courses that ensure through security features and functionality that an individual has spent the same amount of time on the online course as they would in a traditional classroom setting. Pursuant to the requirements in Part 1 of this rule, the following licensing education must be successfully completed prior to taking the examination and applying for a license:
  - i. A minimum of 19.5 hours in Federal and State Law;
  - ii. A minimum of 16 hours in Mortgage 101; and
  - iii. A minimum of 4.5 hours in Business and Trade Practices

#### 6. Exemption Qualifications

- (a) Prior to January 1, 2010, as prescribed by the Director or person(s) authorized by the Director, qualifying mortgage loan originator applicants who meet the following criteria are exempt from having to complete the Mortgage Lending Basics and Ethics portion of the education coursework and respective examination. To qualify for the exemption, mortgage loan originators must meet all five requirements. They are as follows:
  - i. Currently maintain a Colorado mortgage loan originator license.
  - ii. Maintain a membership with a mortgage loan originator association approved for exemption by the Division of Real Estate.
  - iii. Maintain a mortgage loan originator association designation that is current and in good standing.
  - iv. Provide the association's letter of certification to the education course provider prior to completing coursework.

- v. Provide the association's letter of certification to an independent testing service contracted with by the Director, prior to taking the Federal and State Law exam.
- (b) Prior to January 1, 2010, those who meet the criteria for exemption must complete the Federal and State Law portion of the licensing coursework and pass the Federal and State Law portion of the exam with a score of 75 percent or higher.

#### 7. Authority to Audit Education Provider

- (a) The Director or a Director's designee may audit courses and may request from each education provider and schools offering the approved mortgage loan originator courses pursuant to requirements in part 5 of this rule, all related instructional materials, student attendance records and other information that may be necessary for an audit. The purpose of the audit is to ensure that education providers and schools adhere to the approved course of study, offer course material and instructions consistent with acceptable education standards and instruct in such a manner that the desired learning objectives are met. Failure to comply with this rule may result in the withdrawal of course approval.

#### 8. Retesting

- (a) An individual may retake a test three (3) consecutive times with each consecutive taking occurring at least 30 days after the preceding test.
- (b) After failing three (3) consecutive tests, an individual shall wait at least six (6) months before taking the test again.
- (c) Individuals who fail to maintain a valid license for a period of five (5) years or longer shall retake the test prior to re-application, not taking into account any time during which such individual was licensed.

### Section 5. Continuing Education

1. The continuing education requirements for individuals licensed prior to January 1, 2009, shall begin after their first license renewal. Individuals licensed prior to January 1, 2009, shall complete at least 8 hours of continuing education courses reviewed and approved by the Nationwide Mortgage Licensing System and Registry or by a company contracted to review and approve continuing education courses and a two hour annual Colorado specific state update course reviewed and approved by the Division of Real Estate each calendar year and prior to subsequent license and registration renewals.
  - a. Passage of the national portion of the S.A.F.E. Mortgage Loan Originator examination developed and administered by the Nationwide Mortgage Licensing System and Registry or by a company contracted by the Nationwide Mortgage Licensing System and Registry to develop and administer the national portion of the S.A.F.E. Mortgage Loan Originator examination shall satisfy one year of continuing education requirements if continuing education is required in the year in which the individual has passed the national portion of the S.A.F.E. Mortgage Loan Originator exam as determined by the Nationwide Mortgage Licensing System and Registry.
2. The continuing education requirements for individuals licensed on or after January 1, 2009, shall begin after issuance of the initial license. Individuals licensed on or after January 1, 2009, shall complete at least 8 hours of continuing education courses reviewed and approved by the Nationwide Mortgage Licensing System and Registry or by a company contracted to review and approve continuing education courses and a two hour annual Colorado specific state update

course reviewed and approved by the Division of Real Estate each calendar year and prior to license and registration renewals.

- a. Passage of the national portion of the S.A.F.E. Mortgage Loan Originator examination developed and administered by the Nationwide Mortgage Licensing System and Registry or by a company contracted by the Nationwide Mortgage Licensing System and Registry to develop and administer the national portion of the S.A.F.E. Mortgage Loan Originator examination shall satisfy one year of continuing education if continuing education is required in the year in which the individual has passed the national portion of the test as determined by the Nationwide Mortgage Licensing System and Registry.

3. For more information regarding the continuing education requirements, please review the Division of Real Estate website at <http://www.dora.state.co.us/real-estate/mortgagebrokerregistration.htm> .

## **1-5-1 MORTGAGE LOAN ORIGINATOR LICENSE INACTIVATION AND REACTIVATION**

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

Section 4. 1-5-1 Mortgage Loan Originator License Inactivation and Reactivation

### **Section 1. Authority**

The Director of the Division of Real Estate adopts the following permanent rule entitled, **1-5-1 Mortgage Loan Originator License Inactivation** and Reactivation, according to her authority as found in §12-61-910.3, C.R.S.

The notice proposes to add rule 1-5-1. The rule requires administrative fees to be collected when a mortgage loan originator seeks to reactivate their license after it has been inactivated for specific reasons.

### **Section 2. Scope and Purpose**

Section 12-61-903.3 allows the Director of the Division of Real Estate to inactivate licenses for specific reasons. The inactivation process creates an administrative burden on the Division of Real Estate. Accordingly, the purpose of this rule is to establish an administrative fee collected upon reactivation for specific circumstances.

### **Section 3. Applicability**

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 4. 1-5-1 Mortgage Loan Originator License Inactivation and Reactivation**

1. If a mortgage loan originator license is inactivated by the Director or an authorized representative of the Director for one or any combination of the following reasons, the mortgage loan originator shall pay an administrative fee determined by the Director, due to the related increase in administrative burden, in order to reactivate their license:

- a. The mortgage loan originator has failed or is failing to comply with the surety bond

requirements of section 12-61-903(6), C.R.S. section 12-61-907, C.R.S. or any rule of the Director that directly or indirectly addresses surety bond requirements;

- b. The mortgage loan originator has failed or is failing to comply with the errors and omissions insurance requirement in section 12-61-903.5, C.R.S. or any rule of the Director that directly or indirectly addresses errors and omissions insurance requirements;
  - c. The mortgage loan originator has failed or is failing to 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. The mortgage loan originator has failed or is failing to respond to an investigation or examination;
  - e. The mortgage loan originator has failed or is failing to 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. The mortgage loan originator has failed or is failing to register with and provide all required information to the Nationwide Mortgage Licensing System and Registry.
- 2. Individuals who have an inactive license are prohibited from practicing as a mortgage loan originator. Additionally, individuals who have an inactive license are prohibited from engaging in any mortgage related activities which requires licensure pursuant to the Colorado Mortgage Loan Originator Licensing Act, Director rule or as prescribed by Director position statement.
  - 3. In order for an inactive mortgage loan originator license to be reactivated, the individual seeking reactivation shall provide the Division of Real Estate with proof of full compliance with current mortgage loan originator license law.
  - 4. All administrative fees shall be collected in the form of a money order or a cashier's check.
  - 5. The Director has created the Mortgage Loan Originator License Reactivation Form. This form may be found on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm> .

## **2-1-1 GROUNDS FOR DENIAL OF LICENSE APPLICATIONS OR FOR SANCTIONS REGARDING LICENSE APPLICANTS, LICENSE RENEWALS, LICENSE REINSTATEMENTS AND LICENSEES – [REPEALED]**

Repealed 08/30/2009

## **3-1-1 REASONABLE INQUIRY AND TANGIBLE NET BENEFIT**

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 to promulgate rules.

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Definitions

Section 4. Applicability

Section 5. 3-1-1 Reasonable Inquiry and Tangible Net Benefit

Section 6. Enforcement

### **Section 1. Authority**

The statutory basis for this rule, entitled **3-1-1 Reasonable Inquiry and Tangible Net Benefit**, is § 12-61-910.3, C.R.S.

The notice proposes to update rule 3-1-1.

### **Section 2. Scope and Purpose**

Section 12-61-904.5, C.R.S., states that mortgage loan originators shall have a duty of good faith and fair dealing in all communications and transactions with a borrower. Section 12-61-904.5(1)(b), C.R.S., requires mortgage loan originators to make a reasonable inquiry concerning the borrower's current and prospective income, existing debts and other obligations, and any other information known to the mortgage loan originator 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 borrowers. Additionally, section 12-61-904.5(1)(a), C.R.S., prohibits mortgage loan originators from recommending or inducing borrowers 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. After consulting with industry leaders, the Division has learned that there is uncertainty in the marketplace regarding the impact of these new provisions, specific to mortgage products and various documentation types. Documentation types include, but are not limited to: stated income; no income verification; no income disclosure; no asset verification; and no asset disclosure.

The mortgage lending community is uncertain if the aforementioned provisions prohibit non-traditional mortgage products and documentation types, since these provisions are new and have not been interpreted by the Division of Real Estate. This uncertainty could negatively impact the availability of mortgage credit to consumers. Due to the recent rise in foreclosures, the decline of the subprime market, and the closing of lenders on a national scale, the Division must adopt rules to clarify the new provisions in an effort to limit further reductions in mortgage credit. The purpose of this rule is to clarify uncertainties regarding reasonable inquiry and reasonable, tangible net benefit.

### **Section 3. Definitions**

A. "Uniform Residential Loan Application" shall mean the Freddie Mac Form 65 or the Fannie Mae Form 1003 used in residential loan transactions on properties of four or fewer units. The Uniform Residential Loan Application forms defined in this rule are those editions of the forms that are current and effective on January 1, 2008 and do not include any later amendments or editions. The forms are available for inspection at the Division of Real Estate at 1560 Broadway, Suite 925, Denver, Colorado, 80202. These forms are posted on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/index.htm> in the mortgage loan originator section under forms; the form(s) may be examined at any state publications depository library.

### **Section 4. Applicability**

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. 3-1-1 Reasonable Inquiry and Tangible Net Benefit**

1. Section 12-61-904.5(1)(b), C.R.S. does not prohibit specific mortgage products or documentation types. This provision requires the mortgage loan originator to recommend appropriate products.
  - a. Mortgage loan originators shall only recommend appropriate products after reasonable inquiry has been made in order to understand borrower's current and prospective financial status.
  - b. Reasonable inquiry requires the mortgage loan originator to interview and discuss current and prospective income, including the income's source and likely continuance, with borrowers, and may not require the mortgage loan originator to verify such income.
  - c. Mortgage loan originators have a duty to recommend mortgage products based on the information provided by the borrower.
2. Mortgage loan originators shall be deemed in compliance with Colorado law, § 12-61-904.5(1)(b), C.R.S., concerning reasonable inquiry, upon interviewing and discussing, with all applicable borrowers, all sections contained in the uniform residential loan application and upon completion of a Tangible Net Benefit Disclosure. The Tangible Net Benefit Disclosure is posted on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm> .
3. A mortgage loan originator must first make a reasonable inquiry, in order to determine the reasonable, tangible net benefit for a borrower. The reasonable, tangible net benefit standard in § 12-61-904.5(1)(a), C.R.S., is inherently dependent upon the totality of facts and circumstances relating to a specific transaction. While the refinancing of certain home loans may clearly provide a reasonable, tangible net benefit, others may require closer scrutiny or consideration to determine whether a particular loan provides the requisite benefit to the borrower.
  - a. When determining reasonable, tangible net benefit, there are many considerations mortgage loan originators shall take into account and discuss with prospective borrowers. If applicable, the required considerations for mortgage loan originators determining the requisite benefit shall include, but are not limited to:
    - i. Lower payments;
    - ii. Condensed amortization schedule;
    - iii. Debt consolidation;
    - iv. Cash out;
    - v. Avoiding foreclosure;
    - vi. Negative amortization;
    - vii. Balloon payments;
    - viii. Variable rates;
    - ix. Interest only options;
    - x. Prepayment penalties; and

xi. Hybrid mortgage products.

4. The purpose or reason for a purchase or refinance transaction shall be identified by the borrower. A mortgage loan originator shall require that all borrowers describe, in writing, the reasons they are seeking a mortgage loan, a loan modification or to refinance an existing mortgage loan.
  - a. It is the responsibility of the mortgage loan originator to ensure this information is acquired and accurately documented.
  - b. Pursuant to § 12-61-904.5(1), C.R.S., a mortgage loan originator may not have demonstrated a duty of good faith and fair dealing in all communications and transactions with a borrower if it is determined that a mortgage loan originator completed the required purpose or reason for a purchase, loan modification or refinance transaction without consulting the borrower.
5. The Division developed a suggested disclosure form regarding reasonable, tangible net benefit. Alternate disclosures are acceptable if they include all information required on the suggested form, as determined by the Director.
  - a. At the time of completing a loan application a mortgage loan originator shall complete a Tangible Net Benefit Disclosure with the borrower(s).
  - b. The Tangible Net Benefit Disclosure shall also be completed with the borrower(s) prior to the borrower(s) signing loan closing documents if the reasonable, tangible net benefit has changed.
  - c. Tangible Net Benefit disclosures shall be signed by both the mortgage loan originator and the borrowers.
6. Mortgage loan originators shall provide completed disclosure forms to all borrowers within 72 hours of completion. Furthermore, mortgage loan originators must be able to provide proof to the Director or an authorized representative of the Director that the disclosure forms defined in this rule were in fact provided to the borrower within 72 hours of completion.
7. Mortgage loan originators shall be presumed compliant with this rule when using the suggested form and when disclosures meet the timelines defined in this rule.

## **Section 6. Enforcement**

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;
  - c. Imposition of fines; and
  - d. Restitution for any financial loss.

### **3-1-2 MORTGAGE LOAN ORIGINATORS' 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 to promulgate rules.

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Definitions

Section 4. Applicability

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

Section 6. Enforcement

Section 7. Effective Date

**Section 1. Authority**

The statutory basis for this rule, entitled **Mortgage Loan Originators' 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 have a duty to respond and provide requested documentation for investigations.

**Section 2. Scope and Purpose**

Section 12-61-905(7)(b), C.R.S., states the Director of the Division of Real Estate, 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 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. 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 to provide a written response and all requested documents to the Director or an authorized representative of the Director. Additionally, this regulation prescribes the time period in which all persons and entities shall respond to Director 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 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' 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 and all individuals required to be licensed shall provide the Director or his or her authorized representative with all information required by this rule.
  - a. Failure to provide all information requested by the Director or his or her authorized representative within the time set by the Director, or authorized representative of the Director, shall be grounds for disciplinary action and grounds for the imposition of fines unless the Director, or authorized representative of the Director, 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 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 or authorized representative of the Director prior to the expiration date defined in the notification letter sent by the Director or authorized representative of the Director.
    - ii. Any and all extensions granted are done so at the discretion of the Director or authorized representative of the Director.
  - 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.
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 own motion or by an authorized representative of the Director;
  - 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.
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 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 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**

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;
  - c. Imposition of fines; and
  - d. Restitution for any financial loss.

#### **Section 7. Effective Date**

This permanent rule shall be effective August 6, 2009.

### **3-1-3 MAINTAINING CURRENT CONTACT INFORMATION AND ALL INFORMATION REQUIRED FOR LICENSING**

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 to promulgate rules.

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Definitions

Section 4. Applicability

Section 5. 3-1-3 Maintaining Current Contact Information and All Information Required for Licensing

Section 6. Enforcement

Section 7. Effective Date

## **Section 1. Authority**

The statutory basis for this rule, entitled **Maintaining Current Contact Information and All Information Required for Licensing**, is §12-61-910.3, C.R.S.

The notice proposes to update rule 3-1-3. The rule defines the requirement for mortgage loan originators to maintain contact information and all information required for licensing.

## **Section 2. Scope and Purpose**

The Director of the Division of Real Estate is required to license and discipline mortgage loan originators who are negotiating or originating, or offering or attempting to negotiate or originate mortgage transactions for Colorado borrowers. In order to implement and enforce Colorado mortgage loan originator laws, the Director must have the ability to correspond or request documentation from mortgage loan originators. Furthermore, mortgage loan originators are responsible for maintaining specific requirements for licensing. These include, but are not limited to a surety bond and errors and omissions insurance. Mortgage loan originators are responsible for maintaining such requirements.

The purpose of this rule is to ensure that mortgage loan originators maintain current contact information and all information required for licensing to ensure the Director may adequately protect the Colorado consumer.

## **Section 3. Definitions**

1. "Address" means the street address, city, state and postal code.
2. "Physical Address" means the physical location of the property.
3. "Business Name" means the company for which individuals who originate a mortgage, offer to originate a mortgage, act as a mortgage loan originator, or offer to act as a mortgage loan originator are officers, partners, members, managers, owners, exclusive agents, contractors, independent contractors or employees.

## **Section 4. Applicability**

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. 3-1-3 Maintaining Current Contact Information and All Information Required for Licensing**

1. Individuals who originate a mortgage, offer to originate a mortgage, act as a mortgage loan originator, or offer to act as a mortgage loan originator and all individuals required to be licensed shall

maintain all current contact information and all information required for licensing, in a manner acceptable to the Director. Failure to maintain the information identified in this rule shall be grounds for disciplinary action.

2. Contact information shall include, but is not limited to:

- a. E-mail address;
- b. Legal first, middle and last names;
- c. Physical home address;
- d. Home phone number;
- e. Business address;
- f. Business phone number; and
- g. Business name.

3. Information required for licensing includes, but is not limited to:

- a. Surety bond company;
- b. Surety bond number;
- c. Surety bond effective date;
- d. Errors and omissions insurance provider;
- e. Errors and omissions policy number;
- f. Errors and omissions effective and expiration date; and
- g. Convictions, pleas of guilt or nolo contendere for all crimes.

4. Individuals who originate a mortgage, offer to originate a mortgage, act as a mortgage loan originator, or offer to act as a mortgage originator and all individuals required to be licensed shall update the Director within thirty (30) days of any changes to the information defined in this rule.

5. The Director has created the Mortgage Loan Originator Licensing Update Form to ensure this information is clearly and concisely disclosed. This form may be found on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm> . Mortgage loan originators shall use this form to ensure all information defined in this rule is current.

a. Mortgage loan originators shall forward this form by mail or personal delivery to the following address:

i. Division of Real Estate – Attn: Mortgage Broker Licensing Department

1560 Broadway, Suite 925

Denver, CO. 80202

6. Additionally, mortgage loan originators may update all of the information required in this rule

electronically. They may access their information through the following website:  
[https://eservices.psiexams.com/index\\_login.jsp](https://eservices.psiexams.com/index_login.jsp) . After entering their password and username, mortgage loan originators may update all information without any fees or costs associated with such action.

## **Section 6. Enforcement**

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;
  - c. Imposition of fines; and
  - d. Restitution for any financial loss.

## **Section 7. Effective Date**

This permanent rule shall be effective August 6, 2009.

### **3-1-4 PREPAYMENT PENALTIES**

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 to promulgate rules.

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Definitions

Section 4. Applicability

Section 5. 3-1-4 Prepayment Penalties

Section 6. Enforcement

### **Section 1. Authority**

The statutory basis for this rule, entitled **Prepayment Penalties** , is § 12-61-910.3, C.R.S.

The notice proposes to add rule 3-1-4. The rule addresses mortgage transactions that contain specific prepayment penalty terms.

### **Section 2. Scope and Purpose**

The Director has learned that some extended prepayment penalties lead to higher rates of foreclosure. Specifically, prepayment penalties which extend past the adjustment date of a mortgage loan often severely restrict the ability of the borrower to refinance or sell their property. Additionally, in higher rate environments, borrowers often have only two viable options, to absorb a much higher monthly payment or lose their home through foreclosure proceedings. The Director adopts this rule in order to address the

high rate of foreclosures in Colorado resulting from particular prepayment penalties.

Pursuant to § 12-61-904.5(1), C.R.S, mortgage loan originators have a duty of good faith and fair dealing in all communications and transactions with a borrower. This duty includes, but is not limited to making a reasonable inquiry into a borrower's ability to repay a loan and recommending or inducing a borrower to enter into only those transactions that have a reasonable, tangible net benefit to the borrower.

The purpose of this rule is to establish a presumption that transactions including a prepayment penalty that extends past the adjustment date of any teaser rate, payment rate or interest rate included in a mortgage loan does not provide a reasonable, tangible net benefit to the borrower.

### **Section 3. Definitions**

1. "Adjustable rate mortgage" means a mortgage in which the teaser rate, payment rate or the interest rate changes periodically and in some cases, may adjust according to corresponding fluctuations in an index.
2. "Adjustment date" means the date the teaser rate, payment rate or interest rate changes on an adjustable rate mortgage.
3. "Interest rate" means the rate used to calculate a borrower's monthly interest payment.
4. "Payment rate" means the rate used to determine a borrower's monthly payment.
5. "Teaser rate" means a temporary and often low introductory rate on an adjustable rate mortgage.
6. "Prepayment Penalty" means a fee assessed pursuant to the terms of the loan on a borrower who repays all or part of the principal of a loan before it is due. Prepayment penalties do not include interest payments of thirty (30) days or less that may be assessed pursuant to the terms of some FHA or VA loans. Prepayment penalties for the purpose of this rule do not include termination fees of \$500.00 or less that are associated with home equity lines of credit.

### **Section 4. Applicability**

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. 3-1-4 Prepayment Penalties.**

1. Mortgage loan originators who recommend or induce a borrower into a transaction that contains a prepayment penalty which extends past the adjustment date for any type of an adjustable rate mortgage shall be presumed to have violated their duty of good faith and fair dealing requirement pursuant to section 12-61-904.5, C.R.S. This includes, but is not limited to:
  - a. Prepayment penalties that extend past the adjustment date of any teaser rate used to calculate a borrower's monthly mortgage payment;
  - b. Prepayment penalties that extend past the adjustment date of any interest rate used to calculate a borrower's monthly mortgage payment;
  - c. Prepayment penalties that extend past the adjustment date of any payment rate used to calculate a borrower's monthly mortgage payment; and

- d. Prepayment penalties that extend past the adjustment date of any like tool or instrument, similar to the teaser rate, payment rate or interest rate defined in this rule, used to calculate a borrower's monthly mortgage payment.
2. Information provided to consumers should clearly explain the ramifications of prepayment penalties. Borrowers should be informed of the existence of any prepayment penalty, how it will be calculated and when it may be imposed. A prepayment penalty disclosure form may be prescribed by the Director, completion of which will constitute compliance with this section 5(2).

## **Section 6. Enforcement**

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;
  - c. Imposition of fines; and
  - d. Restitution for any financial loss.

### **5-1-1 MORTGAGE LOAN ORIGINATOR CONTRACTS**

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 to promulgate rules.

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

Section 4. 5-1-1 Mortgage Loan Originator Contracts

Section 5. Enforcement

Section 6. Effective Date

#### **Section 1. Authority**

The statutory basis for this rule, entitled **Mortgage Loan Originator Contracts**, is § 12-61-910.3, C.R.S.

The notice proposes to update rule 5-1-1. The rule defines the requirement for mortgage loan originators to have contracts with borrowers and with mortgage lenders.

#### **Section 2. Scope and Purpose**

Section 12-61-913, C.R.S., requires contracts between a mortgage loan originator and a borrower to be in writing and to contain the entire agreement of the parties. This section also requires mortgage loan originators to have a written correspondent or loan originator agreement with a lender before any solicitation of, or contracting with, any member of the public. The purpose of this regulation is to define

compliance with the contractual requirements.

### **Section 3. Applicability**

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 4. 5-1-1 Mortgage Loan Originator Contracts**

1. Section 12-61-913(1), C.R.S. states that every contract between a mortgage loan originator and a borrower shall be in writing and shall contain the entire agreement of the parties.
  - a. Section 12-61-913(1), C.R.S. does not require a contract between a mortgage loan originator and a borrower. Rather, that if a contract does exist, such contract shall be in writing.
2. Section 12-61-913(2), C.R.S., states a mortgage loan originator shall have a written correspondent or loan originator agreement with a lender before any solicitation of, or contracting with, any member of the public.
  - a. Mortgage loan originators are compliant with § 12-61-913(2), C.R.S. if they adhere to one of the following requirements:
    - i. They individually have a written correspondent or loan originator agreement with a lender before any solicitation of, or contracting with, any member of the public;
    - ii. They are an officer, partner, member, exclusive agent, or employee of a company that has a written correspondent or loan originator agreement with a lender before any solicitation of, or contracting with, any member of the public;
    - iii. They are acting as an independent contractor and maintain a contractual agreement with a company that has a written correspondent or loan originator agreement with a lender before any solicitation of, or contracting with, any member of the public; or
    - iv. They are an employee of a lender before any solicitation of, or contracting with, any member of the public.

### **Section 5. Enforcement**

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;
  - c. Imposition of fines; and
  - d. Restitution for any financial loss.

### **Section 6. Effective Date**

This permanent rule shall be effective August 6, 2009.



## **5-1-2 MORTGAGE LOAN ORIGINATOR DISCLOSURES**

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 to promulgate rules.

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Definitions

Section 4. Applicability

Section 5. 5-1-2 Mortgage Loan Originator Disclosures

Section 6. Enforcement

### **Section 1. Authority**

The Director of the Division of Real Estate adopts the following permanent rule entitled, **5-1-2 Mortgage Loan Originator Disclosures**, according to her authority as found in § 12-61-910.3, C.R.S.

The notice proposes to update rule 5-1-2. The rule establishes disclosures for mortgage loan originators.

### **Section 2. Scope and Purpose**

Section 12-61-914, C.R.S. requires mortgage loan originators, within three business days after receipt of a loan application or any moneys from a borrower, to disclose specific details of a loan transaction to the borrower. These details include, but are not limited to: the annual percentage rate; finance charge; amount financed; total amount of all payments; third party costs; and terms of a lock-in agreement. The Director has learned that uncertainty exists in the mortgage industry regarding how and when to provide such disclosures.

The purpose of this rule is to ensure that disclosures, set forth in § 12-61-914, C.R.S., are met and that borrowers are provided with accurate and clear disclosures regarding their mortgage loan transaction.

### **Section 3. Definitions**

- A. "Truth-in-Lending Disclosure" means the disclosure form established by the Truth in Lending Act, specific to regulation Z, appendices H-2, H-3, H-4(a), (b), (c) and (d).
- B. "Good Faith Estimate Disclosure" means the disclosure form established in the Real Estate Settlement Procedures Act, part 3500, appendix C.
- C. "Rate" means the teaser rate, payment rate or interest rate used to determine a borrower's monthly payment or deferred interest specific to reverse mortgage transactions.
- D. "Teaser rate" means a temporary and often low introductory rate on an adjustable rate mortgage.
- E. "Payment rate" means the rate used to determine a borrower's monthly payment.
- F. "Interest rate" means the rate used to calculate a borrower's monthly interest payment.

- G. "Payment Type" means principal and interest, interest only or negative amortization.
- H. "Fixed Term" means the length of time a teaser rate, payment rate or interest rate is fixed and will not adjust.
- I. "Index" means the index for an adjustable rate mortgage.
- J. "Initial Adjustment Cap" means the limit on how much the interest or payment rate can change at the first adjustment period.
- K. "Life Cap" means the limit on how much the interest or payment rate can change over the life of the loan.
- L. "Front End Compensation" means the total compensation charged to the borrower that inures to the benefit of the mortgage broker and the mortgage company for which the mortgage broker is an officer, partner, member, contractor, independent contractor, exclusive agent or employee.
- M. "Back End Compensation" means the total compensation paid by the funding lender that inures to the benefit of the mortgage broker and the mortgage company for which the mortgage broker is an officer, partner, member, contractor, independent contractor, exclusive agent or employee.

#### **Section 4. Applicability**

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. 5-1-2 Mortgage Loan Originator Disclosures**

1. Section 12-61-914 (1), C.R.S., requires that specific disclosures, set forth in § 12-61-914(2), C.R.S., be disclosed within three (3) business days after receipt of a loan application or any moneys from a borrower.
2. Section 12-61-914 (2)(a), C.R.S., states the written disclosures shall contain 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 such an increase.
  - a. The Director has determined that the Truth in Lending Disclosure form is an acceptable manner in which to disclose the requirements set forth in § 12-61-914(2)(a), C.R.S.
  - b. Requirements defined in § 12-61-914(2)(a), C.R.S., shall be disclosed:
    - i. Within three (3) business days after receipt of a loan application or any moneys from a borrower;
    - ii. If, after the initial written disclosure is provided, a mortgage loan originator enters into a lock-in agreement, within three (3) business days thereafter, including Saturdays, and prior to the borrower signing loan closing documents; and
    - iii. If, after a mortgage loan originator enters into a lock-in agreement, the annual

percentage rate increases from the annual percentage rate disclosed earlier by more than 1/8 of one (1) percentage point, within three (3) business days of such change and prior to the borrower signing loan closing documents.

3. Section 12-61-914(2)(b), C.R.S. states the disclosure shall contain 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.
  - a. The Director has determined the Good Faith Estimate Disclosure form is an acceptable manner in which to disclose the requirements set forth in § 12-61-914(2)(b), C.R.S.
  - b. Requirements defined in § 12-61-914(2)(b), C.R.S., shall be disclosed:
    - i. Within three (3) business days after receipt of a loan application or any moneys from a borrower;
    - ii. If, after the initial written disclosure is provided, a mortgage loan originator enters into a lock-in agreement, within three (3) business days thereafter, including Saturdays, and prior to the borrower signing loan closing documents; and
    - iii. If, after a mortgage loan originator enters into a lock-in agreement, the annual percentage rate increases from the annual percentage rate disclosed earlier by more than 1/8 of one (1) percentage point, within three (3) business days of such change and prior to the borrower signing loan closing documents.
  - c. A mortgage loan originator shall not charge any fee that inures to the benefit of the mortgage loan originator and the mortgage company for which they are an officer, partner, member, exclusive agent, contractor, independent contractor or employee if such fee exceeds the fee disclosed on the previous written disclosure unless:
    - i. The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and
    - ii. The mortgage loan originator has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear and written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.
4. Section 12-61-914(2)(c), C.R.S. states that mortgage loan originators shall disclose the amount of any commission or other compensation to be paid to the mortgage loan originator, including the manner in which such commission or other compensation is calculated and the relationship of such commission or other compensation to the cost of the loan received by the borrower.
  - a. Mortgage loan originators shall disclose to the borrower all of the front end and back end compensation for the transaction. Annual salaries are not required to be disclosed.
  - b. Only when the dollar amount of compensation cannot be determined, may mortgage loan originators disclose a range. Such range shall be disclosed in a dollar amount and the range shall not exceed one (1) percentage point of the loan amount for the total compensation of the transaction. [e.g., on a \$100,000.00 loan, mortgage loan originators may disclose \$1,000.00 to \$2,000.00, \$1,800.00 to \$2,800.00, or \$3,000.00 to \$4,000.00. This is not meant as a compensation cap and is only provided as an example of the range.]

- c. Mortgage loan originators shall be deemed compliant if the actual compensation is less than the amount disclosed to the borrower.
  - d. The Director has created the Colorado Compensation Disclosure Form to ensure this information is clearly and concisely disclosed. This disclosure may be found on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm> . Mortgage loan originators shall use this form or an alternate form, if such alternate form clearly includes all information required on the suggested form, as determined by the Director.
  - i. The compensation disclosure shall be completed and disclosed:
    - 1. Within three (3) business days after receipt of a loan application or any moneys from a borrower;
    - 2. If, after the initial written disclosure is provided, a mortgage loan originator enters into a lock-in agreement, within three (3) business days thereafter, including Saturdays, and prior to the borrower signing loan closing documents; and
    - 3. If, after a mortgage loan originator enters into a lock-in agreement, the annual percentage rate increases from the annual percentage rate disclosed earlier by more than 1/8 of one (1) percentage point, within three (3) business days of such change and prior to the borrower signing loan closing documents.
5. Section 12-61-914(2)(d), C.R.S., states the written disclosure, if applicable, shall contain 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 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. Section 12-61-914(2)(g), C.R.S. states the mortgage loan originator shall disclose whether and under what conditions any lock-in fees are refundable to the borrower.
- a. The Director has created the Colorado Lock-in Disclosure Form to ensure this information is clearly and concisely disclosed. This disclosure may be found on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm> . Mortgage loan originators shall use this form or alternate form, if alternate form clearly includes all information required on the suggested form, as determined by the Director.
  - b. This form or alternate form shall be used when disclosing lock-in agreements, or when the mortgage loan originator has not entered into a lock-in agreement, to borrowers on residential mortgage loan transactions.
    - i. Mortgage loan originators shall disclose the amount of the teaser rate, payment rate or interest rate and also disclose the type of rate. Examples of the type of rate include, but are not limited to:
      - 1. Teaser rate;
      - 2. Payment rate; or
      - 3. Interest rate.
    - ii. When disclosing the payment type, mortgage loan originators shall define if the

payment type is a negative amortization payment, interest only payment or principal and interest payment.

- iii. When disclosing the index, mortgage loan originators shall include the type and amount of the index at the time the disclosure is completed.
- iv. When disclosing prepayment penalties, mortgage loan originators shall include:
  - 1. Whether or not a prepayment penalty is included;
  - 2. The length of the prepayment penalty; and
  - 3. The cost of the prepayment penalty. Mortgage loan originators shall include the dollar amount of the penalty at the time the disclosure is completed.
- c. If a mortgage loan originator is completing the lock-in disclosure form for a mortgage product with multiple payment options, all payment options shall be separately and clearly disclosed on the second page of the lock-in disclosure.
- d. The lock-in agreement disclosure shall be completed and disclosed:
  - i. Within three (3) business days after receipt of a loan application or any moneys from a borrower;
  - ii. If, after the initial written disclosure is provided, a mortgage loan originator enters into a lock-in agreement, within three (3) business days thereafter, including Saturdays and prior to the borrower signing loan closing documents, the mortgage broker shall deliver or send by first-class mail to the borrower, the written lock-in disclosure created by the Director; and
  - iii. If, after a mortgage loan originator enters into a lock-in agreement, the annual percentage rate increases from the annual percentage rate disclosed earlier by more than 1/8 of one (1) percentage point, within three (3) business days of such change and prior to the borrower signing loan closing documents.
- 6. Individuals who originate a mortgage or act as a mortgage loan originator are required to keep records of the disclosures required in this rule, for a period of four years, for the purposes of inspection by the Director or authorized representative of the Director.
  - a. 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.
  - b. 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.
- 7. Mortgage loan originators shall provide completed disclosure forms to all borrowers within 72 hours of completion. Furthermore, mortgage loan originators must be able to provide proof to the Director or an authorized representative of the Director that the disclosure forms defined in this rule were in fact provided to the borrower within 72 hours of completion.

## **Section 6. Enforcement**

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;
  - c. Imposition of fines; and
  - d. Restitution for any financial loss.

## **7-1-1 DUAL STATUS DISCLOSURE**

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 to promulgate rules.

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

Section 4. 7-1-1 Dual Status Disclosure

Section 5. Enforcement

### **Section 1. Authority**

The statutory basis for this rule, entitled **7-1-1 Dual Status Disclosure**, is § 12-61-910.3, C.R.S.

The notice proposes to update rule 7-1-1. The rule requires mortgage loan originators to inform borrowers if they are also acting as the real estate broker on their transaction.

### **Section 2. Scope and Purpose**

Colorado statutes require mortgage loan originators, before providing mortgage services to the borrower, to disclose all facts material to the transaction. The Director has determined that individuals who operate with dual status licenses as real estate brokers and mortgage loan originators shall disclose this fact to the borrower. Additionally, this rule creates a new disclosure form that notifies borrowers of an individuals dual status and of their right to shop for alternate services.

The purpose of this rule is to clearly notify mortgage loan originators that their dual status as a real estate broker and a mortgage loan originator must be disclosed to the borrower. Furthermore, this rule establishes a disclosure form mortgage loan originators may use to disclose such relevant information.

### **Section 3. Applicability**

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 4. 7-1-1 Dual Status Disclosure**

1. Colorado law, specifically section 12-61-912, C.R.S., provides that a mortgage loan originator shall not act as a loan originator in any transaction in which (a) the mortgage 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, unless the mortgage loan originator first makes a full and fair disclosure to the borrower of all material features of the loan product and all facts material to the transaction, in addition to any other disclosures required by law. Additionally, the mortgage loan originator must maintain his or her mortgage loan originator business activities and mortgage loan originator business records separate and apart from the real estate broker activities.
2. The Director prohibits individuals from acting as a mortgage loan originator and real estate broker or real estate salesperson, on the same transaction, unless they comply with this rule.
3. The Director has determined that dual status is a material fact to real estate transactions and shall be disclosed to the borrower(s).
4. The Director has created the Colorado Dual Status Disclosure Form to ensure this information is clearly and concisely disclosed. This disclosure may be found on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm> . Mortgage loan originators shall use this form or an alternate form, if such alternate form clearly includes all information required on the suggested form, as determined by the Director.
5. The Colorado Dual Status Disclosure form shall be completed and disclosed within three (3) business days after receipt of a loan application or any moneys from a borrower.
6. 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 shall maintain the disclosure form defined by this rule for a period of four years.
7. Mortgage loan originators shall provide completed disclosure forms to all borrowers within 72 hours of completion. Furthermore, mortgage loan originators must be able to provide proof to the Director or an authorized representative of the Director that the disclosure forms defined in this rule were in fact provided to the borrower within 72 hours of completion.

## **Section 5. Enforcement**

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;
  - c. Imposition of fines; and
  - d. Restitution for any financial loss.

## **8-1-1 MORTGAGE LOAN ORIGINATOR ADVERTISING**

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 to promulgate rules.

### **Section 1. Authority**

Section 2. Scope and Purpose

Section 3. Definitions

Section 4. Applicability

Section 5. 8-1-1 Mortgage Loan Originator Advertising

Section 6. Enforcement

## **Section 1. Authority**

The Director of the Division of Real Estate adopts the following rule entitled, **8-1-1 Mortgage Loan Originator Advertising**, according to her authority as found in § 12-61-910.3, C.R.S.

The notice proposes to update rule 8-1-1. The rule establishes advertising guidelines for mortgage loan originators.

## **Section 2. Scope and Purpose**

Section 12-61-910.4, C.R.S., states the Director shall adopt rules regarding the marketing of nontraditional mortgages by mortgage loan originators. In adopting such rules, the Director is required to incorporate appropriate provisions of the final "Interagency Guidance on Nontraditional Mortgage Product Risks" released on September 29, 2006.

Section 12-61-911(1)(j), C.R.S., in summary, prohibits mortgage loan originators from failing to comply with the Truth in Lending Act. The Truth in Lending Act defines specific requirements for advertising.

The purpose of this rule is to ensure that individuals who originate a mortgage or act as a mortgage loan originator are familiar with all current regulations that address advertising and to ensure the advertising of nontraditional mortgage products is addressed.

## **Section 3. Definitions**

1. "Interest Only Mortgage Loan" means a nontraditional mortgage on which, for a specified number of years the borrower is required to pay only the interest due on the loan, during which time, the rate may fluctuate or may be fixed. After the interest only period, the rate may be fixed or fluctuate, based on the prescribed index, and payments include both the principal and interest.
2. "Nontraditional Mortgage" means any mortgage product other than a 30-year fixed rate mortgage.
3. "Payment Option Arm" means a nontraditional adjustable rate mortgage that allows the borrower to choose from a number of different payment options. For example, each month, the borrower may choose a minimum payment option based on a "start" or introductory interest rate, an interest only payment option based on the fully indexed interest rate, or a fully amortizing principal and interest payment option based on a 15 year or 30 year loan term, plus any required escrow payments. The minimum payment option can be less than the interest accruing on the loan, resulting in negative amortization. After a specified number of years, or if the loan reaches a certain negative amortization cap, the required monthly payment amount is recast to require payments that will fully amortize the outstanding balance over the remaining loan term.
4. "Reduced Documentation" means a loan feature that is commonly referred to as "low doc/no doc," "no income/no asset," "stated income," or "stated assets." For mortgage loans with this feature, an institution sets reduced or minimal documentation standards to substantiate the borrower's income and assets.



5. "Simultaneous Second Lien Loan" means a lending arrangement where either a closed end second lien or a home equity line of credit is originated simultaneously with the first lien mortgage loan, typically in lieu of a higher down payment.
6. *Advertisement*: An "advertisement" is *any commercial message* that promotes consumer credit. "Advertisements" may appear:
  - a. In newspapers, magazines, leaflets, flyers, catalogs, direct mail literature, or other printed material;
  - b. On radio, television, or a public address system;
  - c. On an inside or outside sign or display, or a window display;
  - d. In point-of-sale literature, price tags, signs, and billboards; or
  - e. Online, such as on the Internet.
7. "Annual Percentage Rate" means the charge for credit, stated as a percentage, and expressed as an annualized rate as defined by the Truth in Lending Act.
8. "Closed-end credit" includes all consumer credit that does not fit the definition of open-end credit. Closed-end credit consists of both sales credit and loans. In a typical closed-end credit transaction, credit is advanced for a specific time period, and the "amount financed," "finance charge," and "schedule of payments" are agreed upon by the lender and the customer.
9. "Consumer credit" may be either closed-end or open-end credit. It is credit that is extended primarily for personal, family, or household purposes. It excludes business and agricultural loans, and loans exceeding \$25,000 that are not secured by real property or a dwelling. It also must be extended by a "creditor".
10. "Credit Sale" is a transaction in which the seller is also the creditor, at least initially. Often, the seller-creditor will later assign the installment sales contract to another entity, such as a finance company or a bank.
11. "Creditor" is a person or organization (a) that regularly extends consumer credit for which a finance charge is required or that is repayable in more than four installments even without a finance charge, and (b) to whom the obligation is initially payable—for example, the finance company, bank, automobile dealer or other lender identified on the face of the credit agreement. A person or organization is considered to extend credit "regularly," if it has extended credit more than 25 times during the preceding year or more than 5 times for transactions secured by dwellings.
12. "Downpayment" is an amount paid to reduce the cash price of goods or services purchased in a credit sale transaction. The value of a trade-in is included in the downpayment. It can include a "pick-up" or deferred downpayment that is not subject to a finance charge and is due no later than the second regularly scheduled payment. The downpayment does not include any prepaid finance charges such as points.
13. "Finance Charge" is the dollar amount charged for credit. It includes interest and other costs, such as service charges, transaction charges, buyer's points, loan fees, and mortgage insurance. It also includes the premiums for credit life, accident, and health insurance, if required, and for property insurance, unless the buyer may select the insurer.
14. "Terms of Repayment" generally refers to the payment schedule, including the number, timing, and amount of the payments, including any final "balloon" payment, scheduled to repay the debt.

## **Section 4. Applicability**

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. 8-1-1 Mortgage Loan Originator Advertising**

1. Mortgage loan originators shall comply with all advertising provisions, regulations and official staff commentary of the Truth in Lending Act (Regulation Z). Such provisions, regulations and official staff commentary include:
  - a. Section 226.16; and
  - b. Supplement I of Part 226 – Official Staff interpretations.
2. Mortgage loan originators may review the Truth in Lending Act (Regulation Z) on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/index.htm> . Additionally, mortgage loan originators may also review the Truth in Lending Act (Regulation Z) at [http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=635f26c4af3e2fe4327fd25ef4cb5638&tpl=/ecfrbrowse/Title12/12cfr226\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=635f26c4af3e2fe4327fd25ef4cb5638&tpl=/ecfrbrowse/Title12/12cfr226_main_02.tpl) .
3. Individuals who originate a mortgage or act as a mortgage loan originator may advertise only credit terms that are actually available to the consumer. "Bait and switch" credit or promotions are not allowed. For example, no advertisement may state that a specific installment payment or a specific downpayment can be arranged unless the creditor is prepared to make those arrangements. However, you may advertise terms that will be offered only for a limited time or terms that will become available at a known future date.
4. If you advertise closed-end credit with a "triggering term," you also must disclose other major terms, including the annual percentage rate. This rule is intended to ensure that all important terms of a credit plan, not just the most attractive ones, appear in an ad. The triggering terms for closed-end credit are:
  - a. The amount of the downpayment expressed as either a percentage or dollar amount, in a "credit sale" transaction. Examples include, but are not limited to:
    - i. "10% down"
    - ii. "\$10,000 down"
    - iii. "90% financing"
  - b. The amount of any payment expressed as either a percentage or dollar amount. Examples include, but are not limited to:
    - i. "Monthly payments less than \$650 on all our loan plans"
    - ii. "Pay \$300.00 per \$100,000 amount borrowed"
    - iii. "\$650 per month"
  - c. The number of payments or the period of repayment. Examples include, but are not limited to:

- i. "Up to thirty years to pay"
    - ii. "180 months to pay"
    - iii. "30-year mortgages available"
  - d. The amount of any finance charge. Examples include, but are not limited to:
    - i. "Financing costs less than \$1,000 per year"
    - ii. "Less than \$1200 interest"
  - e. Some statements about credit terms are too general to trigger additional disclosures. Examples of terms that do not trigger the required disclosures are:
    - i. "No downpayment"
    - ii. "Easy monthly payments"
    - iii. "Loans available at 5% below our standard APR"
    - iv. "Low downpayment accepted"
    - v. "Pay weekly"
    - vi. "Terms to fit your budget"
    - vii. "Financing available."
  - f. General statements, such as "take years to pay" or "no closing costs," do not trigger further disclosures because they do not state or suggest the period of repayment or downpayment cost. The more specific the statement, the more likely it is to trigger additional disclosures.
5. If your ad for closed-end credit uses a triggering term, it also must include the following information:
- a. The amount or percentage of the down-payment;
  - b. The terms of repayment; and
  - c. The "annual percentage rate," using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact also must be stated.
6. If your ad shows the finance charge as a rate, that rate must be stated as an "annual percentage rate," using that term or the abbreviation "APR." Your ad must state the annual percentage rate, even if it is the same as the simple interest rate. Disclosure of the annual percentage rate shall be disclosed as clearly and conspicuously as any interest rate in the advertisement. If you want to show only a rate, and the APR is stated in the ad, no other credit information need be included: the "triggering term" requirement does not apply because the rate and APR are not triggering terms. Thus, an advertisement could simply state, "Assume 10% annual percentage rate" or "10% annual percentage rate mortgages available."
- a. You must state the annual percentage rate accurately. For example, some transactions include other components in the finance charge besides interest, such as "points" and mortgage

insurance premiums paid by the buyer. As a result, the annual percentage rate may be higher than the simple interest rate, because the APR reflects the total cost of credit, including interest and other credit charges.

- b. As long as you include the annual percentage rate in the ad, you also may state a simple annual rate or a periodic rate or both, applicable to an unpaid balance. However, the simple annual or periodic rate may not be more conspicuous in the advertisement than the annual percentage rate. For example, an advertisement may include the interest rate together with the annual percentage rate, as long as the interest rate is not more prominent than the APR.
7. Ads for variable-rate credit must state that the rate may increase or that it is subject to change, but need not explain how changes will be made.
- a. The following statement would satisfy this requirement.
    - i. 8.5% annual percentage rate subject to increase or decrease.
  - b. By contrast, an ad that promotes "9% APR graduated payment adjustable mortgages" (graduated payment mortgages plus an adjustable rate feature) would not comply with the law, because it does not state clearly that the rate may change.
8. The annual percentage rate in variable-rate financing ads must be accurate. To help calculate the APR, keep two principles in mind. First, remember there is only one APR per loan, regardless of how many interest rates may apply during the term of the loan. Second, assume that any "index" rates, such as the prime rate or the 6-month Treasury bill, used to determine future interest rate changes will remain constant during the life of the loan.
9. Special rules apply when you advertise a loan in which the seller or a third party "buys down" the interest rate during the early years of the loan.
- a. To comply with this requirement, you must determine the accurate annual percentage rate. First, ascertain whether the lower rates are stated as part of the credit contract between the consumer and the creditor. If so, you should take the buydown into account in calculating the annual percentage rate for the advertisement.
  - b. If the lower rates are not part of the credit contract, the advertised annual percentage rate should not reflect the buydown. For example, suppose the seller agrees with the consumer to place funds in an escrow account. This escrow account will be drawn upon by the creditor to reduce the consumer's monthly payments during the term of the loan, but the consumer's credit obligation is not changed to reflect the lower effective rate and payments. In this situation, you should not consider the buydown in calculating the APR. Assuming the reduced rates are part of the credit contract between the consumer and lender, your ad might read as follows:
    - i. This buydown reduces your interest rate from 10½% to 8½% for the first year of your loan. APR 10½%.
  - c. If the interest rates in the buydown are not part of the credit agreement between the consumer and lender, because, for example, they are included in a separate contract between the consumer and the builder/seller, you still may show the reduced interest rates in the ad. But, if you do so, you must include all the rates, the limited terms to which they apply, and the annual percentage rate for the loan. The annual percentage rate that you disclose will not be based on the reduced interest rates, and therefore will be higher than those rates, as in the following example:

- i. With this buydown, your interest rate for the first year of your loan is only 8½%. Rate for remainder of term is 10½%. 10¾% APR.
  - d. If you show this information, you also may show the effect of a buydown on the monthly payments without triggering other disclosures. For example, an ad that states the above information also may say "with this buydown, your monthly payment for the first year of the mortgage will be only \$615," or "save more than \$100 per month the first year!" The use of these terms does not trigger disclosure of other information, other than the APR. But, if the ad shows the full term of the loan, such as "30-year financing", other required disclosures—namely, the downpayment, the terms of repayment, and the APR—must be shown, because the time period is a triggering term.
10. Adjustable rate mortgages (ARMs) often have a first-year "discount" or "teaser" feature in which the initial rate is substantially reduced. In these loans, the first year's rate is not computed in the same way as the rate for later years. Often, the "spread" or "margin" that is normally added to an "index", such as the one-year Treasury-note rate, to determine changes in the interest rate in the future is not included in the first year of a discounted ARM offered by a creditor.
- a. Special rules, similar to those for buydowns, apply to advertising a discounted variable rate. An ad for this type of plan can show the simple interest rate during the discount period, as long as it also shows the annual percentage rate. However, in contrast to buydowns, the ad need not show the simple interest rate applicable after the discount period. For example, a plan with a low first year's interest rate (8%), but with a 10.25% rate in subsequent years, and additional credit costs, could be advertised as follows:
    - i. 8% first-year financing. APR 10.41%. APR subject to increase after closing.
  - b. As in buydowns, the annual percentage rate in discounted plans is a composite figure that must take into account the interest rates that are known at closing. In the above example, the disclosed APR must reflect the 8% rate for the first year, as well as, for example, the 10.25% rate applicable for the remainder of the term, plus any additional credit costs, such as buyer's points.
  - c. An ad for a discounted variable-rate loan, like an ad for a buydown, may show the effect of the discount on the payment schedule during the discount period without triggering other disclosures. An example of a disclosure that complies with Regulation Z is:
    - i. Interest rate only 8% first year. APR 10.50% subject to increase.

With this discount, your monthly payments for the first year will be only \$587.

11. In some transactions, particularly some graduated payment loans, the consumer's payments for the first few years of the loan may be based on an interest rate lower than the rate for which the consumer is liable. This situation is referred to as "negative amortization." As with buydowns, special rules apply when you advertise the "effective" or "payment" rates for these transactions.
- a. Specifically, you may advertise these effective rates if you show the following information:
    - i. The "effective" or "payment" rate;
    - ii. The term of the reduced payments;
    - iii. The "note rate" at which interest is actually accruing; and
    - iv. The annual percentage rate.

b. The advertised annual percentage rate must take into account the interest for which the consumer is liable, even though it is not paid by the consumer during the period of reduced payments.

c. This type of financing could be advertised as:

i. An effective first-year rate of only 1½ percent.

Interest being charged at 10½ percent. 10¾% APR.

d. In contrast to an ad for a buydown or a discounted variable rate, an ad for an "effective" or "payment" rate may not show the monthly payments without triggering the other disclosures. You can, however, show the range of payments without showing all the intermediate payment amounts.

e. In addition to the information about the interest rate and APR, a complying ad for a "payment rate" plan also could state:

i. Payments begin at \$557.92 for the first year, ranging to

\$800.96 in years six through remainder of loan term.

12. The ad need not show all the different payments required during the life of the loan, if you advertise a mortgage in which the payments vary because:

a. Payments include mortgage insurance premiums payable monthly or annually; or

b. The loan has a "graduated payment" feature.

c. These advertisements must state:

i. the number and timing of payments,

ii. the largest and smallest payments, and

iii. the fact that the other payments will vary between those amounts.

d. The following example, based upon a condominium with a \$65,000 sale price, illustrates the terms of an advertisement for a loan with mortgage insurance.

i. This example would comply with the disclosure requirements, assuming the information is printed clearly and conspicuously:

1. Downpayment \$15,000; 9.5% APR

2. 360 monthly payments

3. Payments 1-120 vary from \$303.94 to \$405.96

4. Remaining 240 payments are \$436.35.

13. When an advertisement promotes a variable-rate loan that is not a "discount" or a "buydown" and has no other special features, the advertisement contains triggering terms that require disclosure of the "terms of repayment", which include the payment amounts. In this ad, only one payment amount need be disclosed to comply with the law.

- a. To determine the proper payment disclosure, calculate the payment based on the interest rate that will be in effect initially during the loan, using the best information available at the time you run the ad. For example, suppose you want to determine the payments for a 30-year variable-rate mortgage in which rate changes will be based on the one-year Treasury bill index, and in which there is no discount and no additional "margin" added to the index.
- b. If that index is at 9.5% at the time you run the ad, you could disclose the payment amounts by developing an example, using 360 monthly payments based on the 9.5% rate.
- c. If you wish to offer a \$100,000 condominium with a 20% downpayment, leaving an amount financed of \$80,000, with no mortgage insurance and with all prepaid finance charges paid by the seller, the ad could state:
  - i. Payments as low as \$673 monthly. 30-year loan.

20% down. 9.5% APR subject to increase

14. When an advertisement requiring disclosure of the payment schedule promotes a discounted variable-rate loan, rather than a variable rate plan with no special features, the advertised payment schedule must show all payment amounts that can be determined before consummation of the loan. For example, if the discounted rate is applicable for only one year, the advertisement should show a payment for the first year based on the reduced interest rate in effect for that year. If the interest rate is subject to annual increases thereafter, the advertisement must show a second payment amount based upon the interest rate that would have been in effect at consummation, except for the discount feature of the loan.
  - a. Thus, for example, the payment schedule portion of an advertisement for a discounted variable-rate loan with a one-year discount might state:
    - i. 1st year monthly payments are \$585 and 2nd and subsequent years' monthly payments are \$700.
  - b. If the reduced rate plan has limits or "caps" on the amount that the interest rate or payments may increase in any year, the payment schedule must also show the effect of those caps. Suppose the plan has a cap that limits interest rate increases each year to 2%. Also suppose that interest rates for the loan are determined by the Treasury bill rate plus a 2% margin and that the Treasury bill rate at the time of your ad is 10%. The rate determined by this formula would be 12%, 10% plus the 2% margin. The creditor, however, has set the first-year rate at only 9% and the second-year rate can be no more than 11% because of the cap. In a 30-year loan for \$100,000 with no other credit charges, your payment disclosures for this loan might read:
    - i. 1st year's monthly payment are \$ 804.62; 2nd year's monthly payments are \$ 950.09; and 3rd year and subsequent year's monthly payments are \$1024.34.
15. All advertisements shall have at least one (1) responsible individual who is accountable. If a mortgage loan originator license is applicable, advertisements shall contain the license number for the responsible mortgage loan originator. If a mortgage loan originator license is not applicable, then the responsible party shall be identified by name in each advertisement.
16. All advertisements shall clearly and conspicuously provide the following information:
  - a. Mortgage company name;

- b. License number or name of the responsible party;
  - c. Business address of mortgage company; and
  - d. Business phone number.
17. All advertisements shall include the following statement:
- a. Check the license status of your mortgage loan originator at <http://www.dora.state.co.us/real-estate/index.htm> .
18. Advertisements containing an interest rate, payment rate, teaser rate or an annual percentage rate must be reasonably available on the day of the advertisement or the day the advertisement is received.
19. Advertisements containing an interest rate, payment rate, teaser rate or annual percentage rate must include all material terms and conditions specific to the rates advertised. Material terms and conditions include, but are not limited:
- a. Credit score;
  - b. Debt to income ratios;
  - c. Loan to value; and
  - d. Occupancy type.
20. Advertisements promoting non-traditional mortgage products, as defined in this rule, must clearly demonstrate the type of product advertised.

## **Section 6. Enforcement**

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;
  - c. Imposition of fines; and
  - d. Restitution for any financial loss.

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## **Editor's Notes**

### **History**

Mortgage Broker Registration emer. rule eff. 06/01/2007.

Good-Faith Temporary Registration for Mortgage Brokers emer. rule eff. 08/31/2007.

Rule 1-1-1 eff. 09/30/2007.



Reasonable Inquiry and Tangible Net Benefit emer. rule eff. 09/04/2007.

Mortgage Broker Disclosures emer. rule eff. 10/26/2007.

Errors and Omissions Insurance for Mortgage Brokers emer rule eff. 11/13/2007.

Mortgage Brokers Duty to Respond and Provide Requested Documents for Investigations eff. 11/29/2007.

Reasonable Inquiry and Tangible Net Benefit emer. rule eff. 12/04/2007.

Rules 1-1-2 and 3-1-1 eff. 1/30/2008.

Prepayment Penalties emer. rule eff. 12/14/2007.

Prepayment Penalties emer. rule eff. 12/26/2007.

Errors and Omissions Insurance for Mortgage Brokers emer rule eff. 12/26/2007.

Rules 3-1-2, 3-1-3, 3-1-4, 5-1-1 eff. 03/01/2008.

Mortgage Broker Disclosures emer. rule eff. 01/25/2008.

Rule 1-3-1 emer. rule eff. 03/26/2008.

Rules 1-3-1, 5-1-2, 8-1-1 eff. 04/01/2008.

Rule 1-4-1 emer. rule eff. 5/2/2008.

Grounds for Denial emer. rule eff. 07/28/2008.

Rule 1-4-1 Emer. rule eff. 07/30/2008 (See Emer. Rule in August 2008 Register).

Rule 1-4-1 eff. 08/30/2008.

Rule 2-1-1 emer. rule eff. 10/28/2008.

Rule 2-1-1 eff. 12/30/2008.

Mortgage Broker Education Extension emer. rule eff. 12/01/2008; expired 03/01/2009.

Rule 1-2-1 eff. 01/30/2009.

Increasing the Errors and Omissions Insurance Deductible for Reverse Mortgage Transactions emer. rule: eff. 02/02/2009; expired 05/02/2009.

Rules 1-4-1; 7-1-1 eff. 03/02/2009.

Temporary Licenses – Repealing the Education and Testing Requirements emer. rule: eff. 04/17/2009; expired 7/17/2009.

Increasing the Errors and Omissions Insurance Deductible for Reverse Mortgage Transactions emer. rule: eff. 05/12/2009; expired 8/12/2009.

Mortgage Loan Originator Immediate and Automatic Temporary License; Mortgage Loan Originator License Inactivation and Reactivation emer. rules eff. 08/05/2009.

Rules 1-1-2, 1-2-1, 1-4-1, 2-1-1, 3-1-2, 3-1-3, 3-1-4, 5-1-1 eff. 08/30/2009.

Rules 1-2-2, 1-3-1, 1-5-1, 3-1-1, 5-1-2, 7-1-1, 8-1-1 eff. 09/30/2009.

Rules 1-1-4, 1-4-1 eff. 10/30/2009.