

## **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.]*

### **Rule A Mortgage Brokers – Bond Requirement**

#### **A. Alternatives to Surety Bonds**

Prior to registration, an applicant for registration shall post with the Director of the Division of Real Estate a surety bond, or an alternative authorized by Article 35 of Title 11, C.R.S., of twenty-five thousand dollars (\$25,000.00).

If the mortgage broker posts an alternative to a surety bond, it shall be in the form of a savings account or deposit in or a certificate of deposit issued by a state or national bank doing business in this state or by a savings account or deposit in or a certificate of deposit issued by a state or federal savings and loan association doing business in this state in the amount of twenty-five thousand dollars (\$25,000.00) net of any penalty or withdrawal or liquidation. The savings account, deposit or certificate of deposit shall be assigned to the Director of the Division of Real Estate for the use of the People of the State of Colorado in the form and manner approved by the Director. The assignment shall be for a period ending six (6) years after the revocation, expiration or surrender of a registration or on such earlier date as may be determined by the Director.

If the alternative to the surety bond is in an interest-bearing instrument, the mortgage broker may receive interest thereon. The alternative to a surety bond must consist of assets that may be immediately liquidated by the Division of Real Estate upon the entering of a judgment from a court of competent jurisdiction pursuant to section §12-61-907 (2), C.R.S.

### **REGULATION 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.

### **RULE 1-1-2 MORTGAGE BROKER 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. Rules Regarding a Mortgage Broker Temporary License

#### Section 5. Effective Date

### Section 1. Authority

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

The notice proposes to add rule 1-1-2. The rule establishes a temporary license for mortgage brokers.

### 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 brokers to hire unlicensed mortgage brokers 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 governs individuals who broker a mortgage, offer to broker a mortgage, act as a mortgage broker or offer to act as a mortgage broker and is not intended for individuals who remain exempt from licensing pursuant to § 12-61-904, C.R.S. (2007).

### Section 4. Rules Regarding a Mortgage Broker Temporary License

1. Mortgage brokers 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 \$25,000.00 surety bond as required by § 12-61-907, C.R.S. or the alternative to the surety bond as defined by rule;
  - c. Acquisition of the errors and omissions insurance required by § 12-61-903.5, C.R.S. and in compliance with the terms and conditions defined by rule;
  - d. On or after January 1, 2009, completion of the required pre-licensing education and the required written examination required by the Director;
  - e. Completion of the mortgage broker application; and
  - f. Payment of the fee established by the Director for the issuance of a license.
2. Only individuals who hold and maintain a mortgage broker license may hire unlicensed mortgage brokers under the temporary license provision.
  - a. Licensed mortgage brokers who employ such an unlicensed mortgage broker shall be held responsible under all applicable provisions of law, including without limitation this part 9 and section 38-40-105, C.R.S., for the actions of the unlicensed mortgage broker to whom a temporary license has been assigned.
    - i. Licensed mortgage brokers 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 brokers.

- ii. Licensed mortgage brokers shall be held responsible for the activity of an unlicensed mortgage broker through and including the date of termination and required notification of such termination to the Division of Real Estate.
  - b. Temporary licenses shall expire 120 days after completion of the mortgage broker license application or when the temporary license is terminated by a licensed mortgage broker with whom the temporary licensee is operating under.
  - c. Individuals seeking temporary licenses shall be granted one temporary license. Additional or extended temporary licenses shall be prohibited.
- 3. Temporary licenses 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 mortgage broker license application.
  - 4. Temporary licenses issued by the Director will remain in effect for 120 days after completion of the mortgage broker license application, unless the Director issues the applicant a full license, or unless the Director determines the license to be expired for failure to comply with the requirements to obtain a temporary license, set forth in this regulation.
  - 5. 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.
  - 6. Once the applicant fully complies with the terms of the new law as determined by the Director, the Director shall license 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.

## **Section 5. Effective Date**

This permanent rule becomes effective January 1, 2008.

## **RULE 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. Rules Regarding Mortgage Broker Requirements

Section 6. Effective Date

## **Section 1. Authority**

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

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

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

Section 12-61-904.5, C.R.S., states that mortgage brokers 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 brokers 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 broker and, after making such inquiry, to make his or her best efforts to recommend, broker, or originate a residential mortgage loan that takes into consideration the information submitted by the borrowers. Additionally, section 12-61-904.5(1)(a), C.R.S., prohibits mortgage brokers 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 broker section under forms; the form(s) may be examined at any state publications depository library.

## **Section 4. Applicability**

This rule governs individuals who broker a mortgage, offer to broker a mortgage broker, act as a mortgage broker, or offer to act as a mortgage broker pursuant to §§ 12-61-902(2) and (5), C.R.S.

## **Section 5. Rules Regarding Reasonable Inquiry and Tangible Net Benefit**

Mortgage Broker – 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 broker to recommend appropriate products.
  - a. Mortgage brokers 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 broker to interview and discuss current and prospective income, including the income's source and likely continuance, with borrowers, and may not require the mortgage broker to verify such income.
  - c. Mortgage brokers have a duty to recommend mortgage products based on the information provided by the borrower.
2. Mortgage brokers 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 broker 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 brokers shall take into account and discuss with prospective borrowers. If applicable, the required considerations for mortgage brokers 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 broker shall require that all borrowers describe, in writing, the reasons they are seeking a mortgage loan or to refinance an existing mortgage loan.
- a. It is the responsibility of the mortgage broker to ensure this information is acquired and accurately documented.

- b. Pursuant to § 12-61-904.5(1), C.R.S., a mortgage broker 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 broker completed the required purpose or reason for a purchase 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 broker 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 broker and the borrowers.
  - d. Mortgage brokers shall be presumed compliant with this rule when using the suggested form and when disclosures meet the timelines defined in this rule.

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

This permanent rule becomes effective January 1, 2008.

### **RULE 3-1-2 MORTGAGE BROKERS' 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. Rules Regarding Mortgage Brokers' 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 Brokers' Duty to Respond and Provide Requested Documents for Investigations**, is § 12-61-910.3, C.R.S.

The notice proposes to add rule 3-1-2. The rule establishes that mortgage brokers 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 brokers 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 brokers 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 broker law.

## **Section 3. Definitions**

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

## **Section 4. Applicability**

This rule governs persons who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker.

## **Section 5. Rules Regarding Mortgage Brokers' Duty to Respond and Provide Requested Documents for Investigations**

1. Persons who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker 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 broker a mortgage, offer to broker a mortgage, act as a mortgage broker or offer to act as a mortgage broker 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 broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker 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 broker a mortgage, offer to broker a mortgage, act as a mortgage broker or offer to act as a mortgage broker 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 broker is an officer, partner, contractor, independent contractor, member, exclusive agent or an employee may provide the requested documents to the Director. However, the mortgage broker 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 March 1, 2008.

### **RULE 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. 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 add rule 3-1-3. The rule defines the requirement for mortgage brokers 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 brokers 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 broker laws, the Director must have the ability to correspond or request documentation from mortgage brokers. Furthermore, mortgage brokers are responsible for maintaining specific requirements for licensing. These include, but are not limited to a surety bond and errors and omissions insurance. Mortgage brokers are responsible for

maintaining such requirements.

The purpose of this rule is to ensure that mortgage brokers 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 broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker are officers, partners, members, managers, owners, exclusive agents, contractors, independent contractors or employees.

### **Section 4. Applicability**

This rule governs individuals who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker.

### **Section 5. Rules Regarding Mortgage Brokers Maintaining Current Contact Information and All Information Required for Licensing**

1. Individuals who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker 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 broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker 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 Broker 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 brokers shall use this form to ensure all information defined in this rule is current.
- a. Mortgage brokers 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 brokers 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 brokers 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 March 1, 2008.

## **RULE 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. Rules Regarding Prepayment Penalties

Section 6. Enforcement

Section 7. Effective Date

## **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 brokers 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 all mortgage brokers as that term is defined in § 12-61-902(5), C.R.S. and includes those persons who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker.

#### **Section 5. Rules Regarding Prepayment Penalties**

1. Mortgage brokers 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.

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

This permanent rule shall be effective March 1, 2008.

#### **RULE 5-1-1 MORTGAGE BROKER 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. Rules Regarding Mortgage Broker Contracts

Section 5. Enforcement

Section 6. Effective Date

### **Section 1. Authority**

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

The notice proposes to add rule 5-1-1. The rule defines the requirement for mortgage brokers 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 broker and a borrower to be in writing and to contain the entire agreement of the parties. This section also requires mortgage brokers to have a written correspondent or loan broker 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 governs individuals who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker.

### **Section 4. Rules Regarding Mortgage Broker Contracts**

1. Section 12-61-913(1), C.R.S. states that every contract between a mortgage broker 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 broker 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 broker shall have a written correspondent or loan broker agreement with a lender before any solicitation of, or contracting with, any member of the public.
  - a. Mortgage brokers 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 broker 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 broker 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 broker 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 is effective March 1, 2008.

## **Mortgage Broker Disclosures [Emer. Rule eff. 10/26/2007]**

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Definitions

Section 4. Applicability

Section 5. Rules Regarding Mortgage Broker Disclosures

Section 6. Effective Date

### **Section 1. Authority**

The Director of the Division of Real Estate adopts the following emergency rule entitled, Mortgage Broker Disclosures, 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 Colorado Division of Real Estate 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. would be contrary to the public interest.

Section 12-61-914, C.R.S. requires mortgage brokers, 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. Some of these details include, but are not limited to: the annual percentage rate; finance charge; amount financed; total amount of all payments; third party costs; terms of a lock-in agreement;



transfer of documents; and that moneys paid by the borrower are held in a trust account. The Director has learned that uncertainty exists in the mortgage industry regarding how and when to provide these details.

The purpose of this rule is to ensure that all required 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 payment or interest rate used to determine a borrower's monthly payment.
- D. "Payment Type" means principal and interest, interest only or negative amortization.
- E. "Fixed Term" means the length of time an interest or payment rate is fixed and will not adjust.
- F. "Index" means the index for the adjustable rate mortgage.
- G. "Initial Adjustment Cap" means the limit on how much the interest or payment rate can change at the first adjustment period.
- H. "Life Cap" means the limit on how much the interest or payment rate can change over the life of the loan.
- I. "Front End Compensation" means 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.
- J. "Back End Compensation" means the 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 emergency rule governs individuals who broker a mortgage or act as a mortgage broker pursuant to § § 12-61-902(2) and (5), C.R.S.

### **Section 5. Rules Regarding Mortgage Broker Disclosures**


#### **Mortgage Broker – 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. Regarding non-traditional mortgage products with multiple payment options, the requirements set forth in § 12-61-914(2)(a), C.R.S. shall be disclosed for each payment or interest rate option available.
  - c. 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 written disclosure is provided, a mortgage broker enters into a lock-in agreement, then no less than three business days thereafter, including Saturdays; and
    - iii. If the annual percentage rate varies from the annual percentage rate disclosed earlier by more than  $\frac{1}{8}$  of 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 written disclosure is provided, a mortgage broker enters into a lock-in agreement, then no less than three business days thereafter, including Saturdays; and
    - iii. If the annual percentage rate varies from the annual percentage rate disclosed earlier by more than  $\frac{1}{8}$  of 1 percentage point, within three (3) business days of such change and prior to the borrower signing loan closing documents.
  - c. A mortgage broker shall not charge any fee that exceeds the fee disclosed on the written disclosure unless the mortgage broker 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 brokers shall disclose the amount of any commission or other compensation to be paid to the mortgage broker, 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 brokers 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 brokers 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 transaction. [e.g., on a \$100,000.00 loan, mortgage brokers 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. 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 brokers 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.



**Colorado Mortgage Broker Compensation Disclosure Form**  
Pursuant to § 12-61-914(2)(c) and 4, Colorado Revised Statutes

Mortgage Broker: \_\_\_\_\_  
 Borrower: \_\_\_\_\_ Co-Borrower: \_\_\_\_\_  
 Property Address: \_\_\_\_\_  
 Loan Number: \_\_\_\_\_  
 Date: \_\_\_\_\_

This disclosure provides information about the total compensation and commission that is paid, including compensation paid by the funding lender, as the result of the closing of your mortgage loan. This disclosure is based on information currently available.

The compensation is also included in the cost of your proposed loan. The cost of the proposed loan is described on the Good Faith Estimate of Settlement Costs and the Truth in Lending disclosures that will be disclosed after application and before closing. You should review these documents and discuss them with me and/or another mortgage broker of your choice to help you understand and compare the cost of your loan with loans offered by others. To learn more about mortgage transactions and financing, please visit the Division of Real Estate's website at [www.dora.state.co.us/real-estate](http://www.dora.state.co.us/real-estate).

- I, the mortgage broker, am: (check if applicable)  
☐ An employee of a company that may make you a mortgage loan or may arrange to make you a mortgage loan. Company: \_\_\_\_\_  
☐ An individual who may be paid as an independent contractor for my services in originating a mortgage loan. Other (describe): \_\_\_\_\_
- (Check if applicable):  
☐ The total compensation paid may be calculated in part based upon the interest rate and fees charged on your loan. This means, in some cases, that if your loan's interest rate and fees increase, the compensation will increase as a result.  
☐ I am paid by a salary or other method that is not affected directly by your loan's interest rate and fees.
- (Check if applicable):  
☐ The front end compensation is \$ \_\_\_\_\_. The back end compensation is \$ \_\_\_\_\_. The total compensation for this transaction is \$ \_\_\_\_\_.  
☐ At this time, the compensation cannot be determined. As a result, my good faith estimate of the front end compensation is \$ \_\_\_\_\_ to \$ \_\_\_\_\_. My good faith estimate of the back end compensation is \$ \_\_\_\_\_ to \$ \_\_\_\_\_. My good faith estimate of the total compensation for this transaction is \$ \_\_\_\_\_ to \$ \_\_\_\_\_.  
☐ I may receive other forms of compensation related to this transaction. Other compensation may include: \_\_\_\_\_
- You may decide to pay upfront closing costs in cash at closing, or from the proceeds of your loan. If you pay these costs at closing, this may generally result in a lower interest rate. In some circumstances, you may also decide to pay the closing costs by agreeing to a slightly higher interest rate and having the closing costs paid by the mortgage lender. Also, in some circumstances, a property seller or third party may agree to pay your upfront closing costs.

I've acknowledged receipt of this disclosure:

Primary Borrower _____	Date _____	Co-Borrower _____	Date _____
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Mortgage Broker Printed Name \_\_\_\_\_ Mortgage Broker Signature \_\_\_\_\_ Registration or License Number \_\_\_\_\_ Date \_\_\_\_\_

Colorado Mortgage Broker Compensation Disclosure Form Revised 10/26/2007

- i. 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 written disclosure is provided, a mortgage broker enters into a lock-in agreement, then no less than three (3) business days thereafter, including Saturdays; and
  3. If the annual percentage rate varies from the annual percentage rate disclosed earlier by more than 1/8 of 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 broker 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 brokers shall use this form or alternate form, if alternate form clearly includes all information required on the suggested form, as determined by the Director.

  
**Colorado Lock-in Disclosure Form**  
Pursuant to sections 12-61-914(2)(b)(i) and (3), Colorado Revised Statutes

THIS FORM DESCRIBES HOW YOU MAY BE OFFERED A LOCK-IN. A LOCK-IN IS AN ARRANGEMENT IN WHICH AN INVESTOR RESERVES AN INTEREST RATE DURING THE LOAN APPLICATION PROCESS FOR A SPECIFIC PERIOD OF TIME WHILE YOUR LOAN APPLICATION IS BEING APPROVED AND CLOSED. WHETHER YOUR LOAN WILL ACTUALLY BE APPROVED AND WILL CLOSE DURING THE TIME PERIOD DEPENDS ON A NUMBER OF CONDITIONS, SOME OF THEM BEYOND THE CONTROL OF YOUR MORTGAGE BROKER. TO LEARN MORE ABOUT LOCK-IN AGREEMENTS, PLEASE REVIEW THE FOLLOWING WEBSITE:  
<http://www.coloradorealestate.gov/pubs/lock-in-disc-form.htm>  
If applicable, mortgage brokers shall include the co-borrower.

Borrower First Name	Borrower Last Name	Date
Co-Borrower First Name	Co-Borrower Last Name	Date
Property Address	City	State      Postal Code

Check applicable boxes:

☐ I **HAVE** ENTERED INTO A LOCK-IN AGREEMENT WITH YOUR MORTGAGE LENDER

☐ I **HAVE NOT** ENTERED INTO A LOCK-IN AGREEMENT WITH YOUR MORTGAGE LENDER AND THE RATES AND TERMS ARE SUBJECT TO CHANGE

☐ THERE IS **NO** LOCK-IN FEE ASSOCIATED WITH THIS LOCK

☐ THERE **IS** A LOCK-IN FEE ASSOCIATED WITH THIS LOCK

☐ LOCK-IN FEES ARE **NOT** REFUNDABLE

☐ LOCK-IN FEES **ARE** REFUNDABLE


LOCK-IN FEES ARE REFUNDABLE UNDER THE FOLLOWING TERMS AND CONDITIONS:

\_\_\_\_\_

\_\_\_\_\_

The following shall be completed, pursuant to § 12-61-914(2)(d), (i) and (3), C.R.S., once the interest or payment rate for a loan has been locked. If multiple payment options exist, all options shall be disclosed on this form. All interest or payment rates shall be disclosed in the area marked rate. Teaser rates shall be disclosed with terms consistent upon termination of the teaser period. Pursuant to § 12-61-904.5, C.R.S., mortgage brokers are not fulfilling their duty of good faith and fair dealing if teaser rates are not disclosed as such and without the disclosure of the impact once teaser terms are terminated. When disclosing payment type, indicate if the rate is a principle and interest, interest only, or negative amortization payment.

Colorado Lock-in Disclosure Form      Page 1 of 2      Revised Date 10/26/2007

  
**Colorado Division of Real Estate**  
**Lock-in Disclosure Form**

**Interest/Payment Rate:**

Rate	Pre-Payment Penalty (Yes or No)	If Yes, Enter the Length and Cost of the Pre-Payment Penalty				
Date of Lock-in	Expiration of Lock-in	Payment Type	Fixed Term	Index	Initial Adjustment Cap	Life Cap

**Interest/Payment Rate:**

Rate	Pre-Payment Penalty (Yes or No)	If Yes, Enter the Length and Cost of the Pre-Payment Penalty				
Date of Lock-in	Expiration of Lock-in	Payment Type	Fixed Term	Index	Initial Adjustment Cap	Life Cap

**Interest/Payment Rate:**

Rate	Pre-Payment Penalty (Yes or No)	If Yes, Enter the Length and Cost of the Pre-Payment Penalty				
Date of Lock-in	Expiration of Lock-in	Payment Type	Fixed Term	Index	Initial Adjustment Cap	Life Cap

**Interest/Payment Rate:**

Rate	Pre-Payment Penalty (Yes or No)	If Yes, Enter the Length and Cost of the Pre-Payment Penalty				
Date of Lock-in	Expiration of Lock-in	Payment Type	Fixed Term	Index	Initial Adjustment Cap	Life Cap

Mortgage Broker Printed Name \_\_\_\_\_ Mortgage Broker Signature \_\_\_\_\_

Mortgage Broker Registration or License Number \_\_\_\_\_ Date \_\_\_\_\_

Colorado Lock-in Disclosure Form      Page 2 of 2      Revised Date 10/26/2007

- b. This form or alternate form shall be used when disclosing lock-in agreements, or when the mortgage broker has not entered into a lock-in agreement, to borrowers on residential mortgage loan transactions.

- c. 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 broker enters into a lock-in agreement, then no less than 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 the annual percentage rate varies from the annual percentage rate disclosed earlier by more than 1/8 of 1 percentage point, within three (3) business days of such change and prior to the borrower signing loan closing documents.

6. Individuals who broker a mortgage or act as a mortgage broker 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.

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

This emergency rule is effective October 26, 2007.

### **ERRORS AND OMISSIONS INSURANCE FOR MORTGAGE BROKERS [Emer. Rule eff. 12/26/2007]**

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

Section 4. Rules Regarding Errors and Omissions Insurance for Mortgage Brokers

Section 5. Effective Date

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

The Director of the Division of Real Estate adopts the following emergency rule entitled, **Errors and Omissions Insurance for Mortgage Brokers**, 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 Colorado Division of Real Estate 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.

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. Additionally, the Director, Erin Toll, has met with the Insurance Commissioner, Marcy Morrison, to ensure that errors and omissions policies and rates can be reviewed and processed in an expedited manner. This shall not be construed as normal practice for the Division of Insurance. The Insurance Commissioner has agreed to expedite the requisite errors and omissions policies to further protect the Colorado consumer, allow mortgage brokers the ability to fulfill the required insurance coverage and allow carriers sufficient time to provide information on required errors and omissions coverage to interested mortgage brokers.

The Director adopted an emergency rule on November 13, 2007 that defined errors and omissions coverage for mortgage brokers. After consulting with industry leaders, the Director has learned that providers are struggling to review and provide errors and omissions coverage prior to January 1, 2008. The delays are specific to subprime and reverse mortgage transactions. Accordingly, the Director establishes compliance through a good-faith effort to acquire the requisite coverage through and including January 31, 2008. Additionally, the Director has learned that a \$5,000.00 deductible is a deterrent for mortgage brokers who primarily transact subprime mortgage loans. As a result, the Director has increased the deductible from \$5,000.00 to \$10,000.00 in this rule.

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 emergency rule governs individuals who broker a mortgage or act as a mortgage broker pursuant to § 12-61-902(2) and (5), C.R.S.

### **Section 4. Rules Regarding Errors and Omissions Insurance for Mortgage Brokers**

1. Mortgage brokers, at a minimum, shall maintain the following terms of coverage:
  - a. The contract and policy are in conformance with all relevant Colorado statutory requirements.
  - b. Coverage includes all acts for which a mortgage broker license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.
  - c. Coverage shall encompass all types of transactions conducted by the mortgage broker.
  - d. 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.
  - e. Coverage contains a deductible no greater than \$10,000.00.
2. Through and including January 31, 2008, mortgage brokers may also comply with the errors and omissions requirement if:
  - a. They are an officer, partner, member, exclusive agent, contractor, independent contractor or employee of a mortgage company that maintains errors and omissions insurance and such coverage includes the individual licensee's activities as a mortgage broker; or
  - b. They have demonstrated a good-faith effort to acquire the requisite errors and omissions coverage defined in this rule. A good-faith effort means that the following has been completed:
    - i. The mortgage broker has submitted any and all documents or paperwork required by the errors and omissions provider necessary to complete an application for the coverage defined in this rule;
    - ii. The mortgage broker has sought errors and omissions insurance from a company that can actually provide the requisite coverage;
    - iii. The mortgage broker is merely waiting for the insurance provider to review their submitted documents; and
    - iv. The mortgage broker maintains proof of their good-faith effort to acquire the requisite

errors and omissions insurance and shall present such proof to the Director if requested.

- c. Mortgage brokers who fail to provide the Director proof of their good-faith effort upon request and in the timeframe established within the request, shall be deemed out of compliance with Colorado law and are subject to disciplinary action.
3. 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>.
4. 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 errors and omissions coverage or to provide proof of continuous coverage shall be subject to disciplinary action.

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

This emergency rule is effective December 26, 2007.

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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. Reg 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.