

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.

1-1-2 MORTGAGE BROKER TEMPORARY LICENSE [Eff. 01/01/2008]

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.

1-2-1 MORTGAGE BROKERS BOND REQUIREMENT [Eff. 1/30/09]

1. When is a surety bond required

Prior to registration or licensure, an applicant 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).

- a. If the mortgage broker posts an alternative to a surety bond, said bond 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.
- b. If the alternative to the surety bond is 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.

1-3-1 ERRORS AND OMISSIONS INSURANCE FOR MORTGAGE BROKERS [Eff. 4/1/08]

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

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

Section 5. Enforcement

Section 6. Effective Date

Section 1. Authority

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

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

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 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 4. Rules Regarding Errors and Omissions Insurance for Mortgage Brokers

1. Mortgage brokers, at a minimum, shall acquire and 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. This rule does not prohibit the use of group policies that may be administered by associations or companies for the benefit of volume discounts. While this rule allows group policies, each individual required to be licensed must acquire and maintain the coverage defined in this rule on an individual basis and shall present proof of such coverage to the Director or authorized representative of the Director upon request.
3. 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
4. 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. After entering their password and username, mortgage brokers 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 errors and omissions coverage or 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.

Section 6. Effective Date

This permanent rule is effective April 1, 2008.

1-4-1 MORTGAGE BROKER LICENSING EDUCATION [Eff. 03/02/2009]

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

Section 4. 1-4-1 Mortgage Broker Licensing Education Rules

Section 1. Authority

The Director of the Division of Real Estate adopts the following permanent rule entitled, **1-4-1 Mortgage Broker Licensing Education**, according to her authority as found in §§ 12-61-910.3, and 24-4-103, C.R.S.

Section 2. Scope and Purpose

Pursuant to § 12-61-903(3)(a), mortgage brokers must complete no less than 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.

The purpose of this rule is to clarify the education requirements for licensed mortgage brokers. The purpose is also to ensure compliance with education standards. It is vital to consumer protection and to competent mortgage broker practice that mortgage brokers understand applicable State and Federal Law.

Section 3. Applicability

This rule applies to each individual mortgage broker applicant and each individual mortgage broker who currently maintains a mortgage broker license through the Colorado Division of Real Estate.

Section 4. 1-4-1 Mortgage Broker Licensing Education Rules.

1. Applicant and Licensee Education Requirements

- (a) All mortgage brokers who obtain a Colorado mortgage broker license prior to January 1, 2009 must complete the 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 brokers 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 broker 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 broker 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 Broker 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 Broker 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, each individual applicant for initial licensing as a mortgage broker must complete, within the three years immediately preceding the date of the application, 40 hours of licensing education and pass a two-part exam prior to applying for a mortgage broker license.

2. Certificate of Completion

- (a) Mortgage broker 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 the exam.
- (b) Mortgage broker applicants and licensees must ensure that their education provider files a certification 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) The mortgage broker 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 and after January 1, 2009, 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.

4. Qualifying Schools

- (a) Mortgage broker applicants and licensees must receive the required 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.

5. Forty Hour Licensing Education Requirement

- (a) Mortgage broker 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) As prescribed by the Director or person(s) authorized by the Director, qualifying mortgage broker 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 brokers must meet all five requirements. They are as follows:
 - i. Currently maintain a Colorado mortgage broker license.
 - ii. Maintain a membership with a mortgage broker association approved for exemption by the Division of Real Estate.

- iii. Maintain a mortgage broker 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) 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 persons, contractors or organizations authorized by the Director, may audit courses and may request from each education provider and schools offering the approved mortgage broker 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, not taking into account any time during which such individual was licensed.

9. Penalties

- (a) Individuals who violate this rule shall be subject to disciplinary action pursuant to § 12-61-905, C.R.S. Disciplinary action includes, but is not limited to:
- i. Revocation;
 - ii. Refusal to renew a license;
 - iii. Fines;
 - iv. Denial of license; and
 - v. Restitution for any financial loss.

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

Section 4. Rules Regarding Mortgage Broker Education Extension and Testing Modifications

Section 5. Effective Date

Section 1. Authority

The Director of the Division of Real Estate adopts the following emergency rule entitled, **Mortgage Broker Education Extension and Testing Modifications**, according to her authority as found in §§ 12-61-903(10), 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.

In June of 2007, Governor Bill Ritter Jr. signed four (4) mortgage broker bills into law. Included in these four (4) bills was Senate Bill 07-203. This law effectively changed the regulatory framework for mortgage brokers from registration to licensing and, among other things, added education and testing requirements. In September of 2007, the Director appointed a 10 person Mortgage Broker Education Task Force. The education task force began meeting immediately in order to assist the Director in the development and creation of the education and testing requirements. As a result, the Director ensured that education and testing were available for mortgage brokers beginning April 1, 2008. The Director provided the mortgage broker industry nine (9) months to complete the requisite education and pass the test.

Unfortunately, many mortgage brokers have failed to comply with the education and written examination requirements. As a result, this has created a tremendous administrative burden on the Division of Real Estate. Accordingly, the Director adopts the following rule which increases the passing percentage rate for the written examination from 70% to 75%, defines strict retesting standards and establishes an extension process requiring payment of an administrative fee of \$100.00. The following rule also duly notifies mortgage brokers that failure to comply with the education and written examination requirements and failing to apply for and complete the extension process will, at a minimum, result in an increase of such mortgage brokers' license renewal fees by \$500.00 due to the related increased administrative burden.

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 each individual mortgage broker applicant and each individual mortgage broker who currently maintains a mortgage broker license through the Colorado Division of Real Estate.

Section 4. Rules Regarding A Mortgage Broker Education Extension and Testing Modifications.

1. All mortgage brokers who obtain a Colorado mortgage broker license prior to January 1, 2009 must complete the 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. Mortgage brokers requesting an education extension shall:

- a. 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> ;
 - b. Pay a \$100.00 extension fee by money order or a cashier check;
 - c. Request that the Director inactivate their mortgage broker 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 broker examination and subsequent request for activation; and
 - d. 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.
2. 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 Broker 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.
 3. The mortgage broker 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 and after January 1, 2009, 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.
 4. Retesting Standards. On and after January 1, 2009, any individual may retake a test three (3) consecutive times with each consecutive taking occurring at least 30 days after the preceding test. After failing three (3) consecutive tests, an individual shall wait at least six (6) months before taking the test again.
 5. In Rule 1-4-1, entitled *Mortgage Broker Licensing Education*, The Director authorized equivalent distant or distance learning courses. This 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.

Section 4. Enforcement

Individuals who violate this rule shall be subject to disciplinary action pursuant to § 12-61-905, C.R.S. Disciplinary action includes, but is not limited to:

- a. Revocation;
- b. Refusal to renew a license;
- c. Denial of a license application;
- d. Fines; and

- e. Restitution for any financial loss

Section 5. Effective Date

This emergency rule shall be effective December 1, 2008.

2-1-1 GROUND FOR DENIAL OF LICENSE APPLICATIONS OR FOR SANCTIONS REGARDING LICENSE APPLICANTS, LICENSE RENEWALS, LICENSE REINSTATEMENTS AND LICENSEES

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

Section 4. 2-1-1 Grounds for Denial of License Applications or for Sanctions Regarding License Applicants, License Renewals, License Reinstatements and Licensees

Section 1. Authority

The Director of the Division of Real Estate adopts the following permanent rule entitled, **2-1-1 Grounds for Denial of License Applications or for Sanctions Regarding License Applicants, License Renewals, License Reinstatements and Licensees**, according to her authority as found in § § 12-61-903(10) and 12-61-910.3, C.R.S.

The notice proposes to add rule 2-1-1. The rule clarifies grounds for license denials or for sanctions regarding license applicants, license renewals, license reinstatements and licensees.

Section 2. Scope and Purpose

The Director has learned of uncertainty regarding two sections of the Mortgage Broker Licensing Act and to whom these sections apply. Specifically, there is confusion regarding whether § § 12-61-905(1) and 12-61-905.5(1), C.R.S., governing “Powers and Duties of the Director” and “Disciplinary Actions-grounds-procedures-rules” respectively, apply to license applicants, individuals seeking license renewals or reinstatements, and licensees.

The purpose of this rule is to clearly notify individuals seeking mortgage broker licensure, current licensees and the mortgage broker industry that a violation of or failure to comply with any provisions contained in § § 12-61-905 or 12-61-905.5, C.R.S., is grounds for license application denial and for sanctions.

Section 3. Applicability

This rule applies to 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. This rule applies to all individuals required to be licensed pursuant to § § 12-61-902(2) and 12-61-903(1)(a), C.R.S. This rule applies to all mortgage broker license applicants who apply for such license pursuant to the Mortgage Broker Licensing Act, § 12-61-903, C.R.S.

Section 4. 2-1-1 Grounds for Denial of License Applications or for Sanctions Regarding License Applicants, License Renewals, License Reinstatements and Licensees

- (1) The Director shall exercise his or her authority to deny a license applied for, refuse to renew, refuse to reinstate, or revoke a license for a violation of § 12-61-911(1)(m), C.R.S., as incorporated by §

12-61-905(1)(f), C.R.S.

(2) The Director has authority to restrict or deny a license applied for pursuant to § 12-61-905.5(1), C.R.S. and § 24-4-104(11), C.R.S.

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. *Eff 01/01/2008*

Section 1. Authority *Eff 01/01/2008*

Section 2. Scope and Purpose *Eff 01/01/2008*

Section 3. Definitions *Eff 01/01/2008*

Section 4. Applicability *Eff 01/01/2008*

Section 5. Rules Regarding Mortgage Broker Requirements *Eff 01/01/2008*

Section 6. Effective Date *Eff 01/01/2008*

Section 1. Authority

The statutory basis for this rule, entitled **Reasonable Inquiry and Tangible Net Benefit**, is § 12-61-910.3, C.R.S. *Eff 01/01/2008*

The notice proposes to add rule 3-1-1. *Eff 01/01/2008*

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. *Eff 01/01/2008*

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. *Eff 01/01/2008*

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. *Eff 01/01/2008*

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 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 *Eff 01/01/2008*

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. *Eff 01/01/2008*
 - 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. *Eff 01/01/2008*
 - 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. *Eff 01/01/2008*
 - c. Mortgage brokers have a duty to recommend mortgage products based on the information provided by the borrower. *Eff 01/01/2008*
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> . *Eff 01/01/2008*
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. *Eff 01/01/2008*
 - 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: *Eff 01/01/2008*

- i. Lower payments; *Eff 01/01/2008*
 - ii. Condensed amortization schedule; *Eff 01/01/2008*
 - iii. Debt consolidation; *Eff 01/01/2008*
 - iv. Cash out; *Eff 01/01/2008*
 - v. Avoiding foreclosure; *Eff 01/01/2008*
 - vi. Negative amortization; *Eff 01/01/2008*
 - vii. Balloon payments; *Eff 01/01/2008*
 - viii. Variable rates; *Eff 01/01/2008*
 - ix. Interest only options; *Eff 01/01/2008*
 - x. Prepayment penalties; and *Eff 01/01/2008*
 - xi. Hybrid mortgage products. *Eff 01/01/2008*
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. *Eff 01/01/2008*
- a. It is the responsibility of the mortgage broker to ensure this information is acquired and accurately documented. *Eff 01/01/2008*
 - 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. *Eff 01/01/2008*
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. *Eff 01/01/2008*
- a. At the time of completing a loan application a mortgage broker shall complete a Tangible Net Benefit Disclosure with the borrower(s). *Eff 01/01/2008*
 - 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. *Eff 01/01/2008*
 - c. Tangible Net Benefit disclosures shall be signed by both the mortgage broker and the borrowers. *Eff 01/01/2008*
 - 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. *Eff 01/01/2008*

Section 6. Effective Date

This permanent rule becomes effective January 1, 2008. *Eff 01/01/2008*

3-1-2 MORTGAGE BROKERS' DUTY TO RESPOND AND PROVIDE REQUESTED DOCUMENTS FOR INVESTIGATIONS [Eff. 03/01/2008]

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.

3-1-3 MAINTAINING CURRENT CONTACT INFORMATION AND ALL INFORMATION REQUIRED FOR LICENSING [Eff. 03/01/2008]

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. 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.

3-1-4 PREPAYMENT PENALTIES [Eff. 03/01/2008]

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.

5-1-1 MORTGAGE BROKER CONTRACTS [Eff. 03/01/2008]

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.

5-1-2 MORTGAGE BROKER 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. Rules Regarding Mortgage Broker Disclosures

Section 6. Enforcement

Section 1. Authority

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

The notice proposes to add rule 5-1-2. The rule establishes disclosures for mortgage brokers.

Section 2. Scope and Purpose

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. 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 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 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. 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 broker 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 broker 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 broker 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 broker 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 broker shall not charge any fee that inures to the benefit of the mortgage broker 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 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 total compensation of 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. Mortgage brokers 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 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.

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 broker 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 broker enters into a lock-in agreement, the annual percentage rate increases from the annual percentage rate disclosed earlier by more than $\frac{1}{8}$ 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 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.

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.

i. Mortgage brokers 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 brokers 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 brokers shall include the type and amount of the index at the time the disclosure is completed.

iv. When disclosing prepayment penalties, mortgage brokers 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 brokers shall include the dollar amount of the penalty at the time the disclosure is completed.
- c. If a mortgage broker 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 broker 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 broker 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 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.
- 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 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.

7-1-1 DUAL STATUS DISCLOSURE [Eff. 03/02/2009]

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 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 add rule 7-1-1. The rule requires mortgage brokers 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 brokers, 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 brokers shall disclose this fact to the borrower. Additionally, this rule creates a new disclosure form that notifies borrowers of an individual's dual status and of their right to shop for alternate services.

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

Section 3. 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 4. Rules Regarding 7-1-1 Dual Status Disclosure

1. Colorado law, specifically section 12-61-912, C.R.S., provides that a mortgage broker shall not act as a loan originator in any transaction in which (a) the mortgage broker 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 broker 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 broker must maintain his or her mortgage broker business activities and mortgage broker business records separate and apart from the real estate broker activities.
2. The Director prohibits individuals from acting as a mortgage broker 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 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.
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 broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker shall maintain the disclosure form defined by this rule for a period of four years.

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 BROKER 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. Rules Regarding Mortgage Broker Advertising

Section 6. Enforcement

Section 1. Authority

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

The notice proposes to add rule 8-1-1. The rule establishes advertising guidelines for individuals who broker a mortgage or act as a mortgage broker.

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 brokers. 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 brokers 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 broker a mortgage or act as a mortgage broker 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 residential mortgage loan product that allows the borrower to defer repayment of principal or interest. This includes all interest only products, payment option adjustable rate mortgages, and negative amortization mortgages, with the exception of a reverse mortgage and home equity line of credit, other than a simultaneous second-lien loan.
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" subject to the Truth in Lending Act 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 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 Mortgage Broker Advertising

1. Mortgage brokers 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 brokers 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 brokers 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.
3. Individuals who broker a mortgage or act as a mortgage broker 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. 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 broker license is applicable, advertisements shall contain the license number for the responsible mortgage broker. If a mortgage broker 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. To check the license status of your mortgage broker, visit <http://www.dora.state.co.us/real-estate/index.htm>.

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.

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.

Emer. Rule 1-3-1 eff. 03/26/2008.

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

Emer. Rule 1-4-1 Eff. 5/2/2008.

Emer. Rule Grounds for Denial eff. 07/28/2008.

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

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

Emer. Rule 2-1-1 eff. 10/28/2008.

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

Emer. Rule Mortgage Broker Education Extension eff. 12/01/2008.

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

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