

## DEPARTMENT OF REGULATORY AGENCIES

### Division of Real Estate

## MORTGAGE LOAN ORIGINATORS AND MORTGAGE COMPANIES

### 4 CCR 725-3

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

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## CHAPTER 1: DEFINITIONS

### 1.1 Definitions Pertaining To Licensure

Bona Fide Nonprofit Organization: An Organization that Complies with the Following Criteria:

- A. Has the status of a tax-exempt organization under Section 501(C)(3) of the Internal Revenue Code of 1986, incorporated by reference in compliance with Section 24-4-103(12.5), C.R.S. and does not include later amendments or editions of the Code. A certified copy of the Code is readily available for public inspection at the Offices of the Board of Mortgage Loan Originators at 1560 Broadway, Suite 925, Denver, Colorado. The Internal Revenue Code of 1986 may be examined at the internet website of the Internal Revenue Service at [www.irs.gov](http://www.irs.gov) . The Internal Revenue Service may also be contacted at 1999 Broadway, Denver, Colorado 80202 or by telephone at (303) 446-1675;
- B. Promotes affordable housing or provides homeownership education, or similar services;
- C. Conducts its activities in a manner that serves public and charitable purposes, rather than commercial purposes;
- D. Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;
- E. Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients; and
- F. Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under the government housing assistance programs.

An organization claiming bona fide nonprofit status will be subject to examination by the board of mortgage loan originators upon receipt of a complaint against the organization. The purpose of the examination will be to determine whether the organization is exempt from licensure as a bona fide nonprofit organization.

Employee: an individual whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.

Housing Finance Agency: Any authority that is chartered by the State of Colorado to help meet the affordable housing needs of the residents of Colorado; is supervised directly or indirectly by the state government; is subject to audit and review by the State of Colorado; and whose activities make it eligible to be a member of the national council of state housing agencies.

Independent Contractor: an individual who performs his or her duties other than at the direction of and subject to the supervision and instruction of an individual who is licensed by the Board or is not required to be licensed based on one of the following:

- A. The individual is lawfully registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry, and who is an employee of:
  - 1. A depository institution;
  - 2. A subsidiary that is:
    - A. Owned and controlled by a depository institution; and
    - B. Regulated by a Federal banking agency; or
  - 3. An institution regulated by the Farm Credit Administration; or
- B. An individual who is an employee of a federal, state, or local government agency or housing finance agency and who acts as a loan originator only pursuant to his or her official duties as an employee of a federal, state, or local government agency or housing finance agency; or
- C. An employee of a bona fide nonprofit organization who acts as a loan originator only with respect to his or her work duties to the bona fide nonprofit organization, and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower.

Offering or Negotiating Terms of a Residential Mortgage Loan: To present for consideration to a borrower or prospective borrower particular residential mortgage loan terms, or to communicate directly or indirectly with a borrower, or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms. An individual's generic referral to or recommendation of a particular lender, in and of itself, is not offering or negotiating the terms of a residential mortgage loan.

Residential Mortgage Loan Application: a request, in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms, and the information about the borrower or prospective borrower that is customary and necessary in a decision on whether to make such an offer.

Taking a Residential Mortgage Loan Application: the receipt of a residential mortgage loan application by an individual for the purpose of facilitating a decision whether to extend an offer of residential mortgage loan terms to a borrower or prospective borrower, whether the application is received directly or indirectly from the borrower or prospective borrower. An individual's generic referral to or recommendation of a particular lender, in and of itself, is not taking a residential loan application.

## **CHAPTER 5: PROFESSIONAL STANDARDS**

### **5.1 Advertising**

Any advertisement of a residential mortgage loan product or rate offered by a mortgage loan originator as that term is defined in § 12-61-902(6), C.R.S., or mortgage company as that term is defined in § 12-61-902(5), C.R.S., shall conform to the following requirements:

- A. An advertisement shall be made only for such products and terms as are actually available at the time they are offered and, if their availability is subject to any material requirements or limitations, the advertisement shall specify those requirements or limitations;

- B. The advertisement shall contain the following, each of which must be clearly and conspicuously included in the advertisement;
  - 1. At least one (1) responsible party. The responsible party must be an individual person or a mortgage company. the responsible party must include their registration number that is approved on the Nationwide Mortgage Licensing System and Registry (NMLS);
  - 2. The mortgage company name;
  - 3. The business phone number of the responsible party; and
  - 4. The statement "regulated by the Division of Real Estate."
- C. The advertisement shall not appear to be offered by a government agency, a quasi government agency or the perspective borrower's current lender and/or loan servicer;
- D. An advertisement shall not make or omit any statement the result of which would be to present a misleading or deceptive impression to consumers;
- E. An advertisement shall otherwise comply with all applicable state and federal disclosure requirements;
- F. Advertisements shall incorporate applicable provisions of the final "interagency guidance on nontraditional mortgage product risks" released on September 29, 2006; and
- G. The responsible party must retain copies of all advertisements for a period of four (4) years, and provide said copies for inspection by an authorized representative of the Board upon request.

5.2 The Requirements Set Forth in Rule 5.1(B), Subsections One (1) Through Four (4) Shall Not Apply to:

- A. Any advertisement which indirectly promotes a credit transaction and which contains only the name of the mortgage company, the name and title of the mortgage loan originator, the contact information for the mortgage company or the mortgage loan originator, a mortgage company logo, or any license or registration numbers, such as the inscription on a coffee mug, pen, pencil, youth league jersey, sign, business card, or other promotional item; or
- B. Any rate sheet, pricing sheet, or similar proprietary information provided to real estate brokers, builders, and other commercial entities that is not intended for distribution to consumers.

## **Chapter 6: EXCEPTIONS AND BOARD REVIEW OF INITIAL DECISIONS**

### **6.1 Written form, service, and filing requirements**

- A. All designations of record, requests, exceptions and responsive pleadings ("pleadings" ) must be in written form, mailed with a certificate of mailing to the Board.
- B. All pleadings must be received by the Board by 5:00 p.m. On the date the filing is due. A pleading is considered filed upon receipt by the Board. These rules do not provide for any additional time for service by mail.
- C. Any pleadings must be served on the opposing party by mail or by hand delivery on the date

which the pleading is filed with the Board.

- D. All pleadings must be filed with the Board and not with the Office of Administrative Courts. Any designations of record, requests, exceptions or responsive pleadings filed in error with the Office of Administrative Courts will not be considered. The Board's address is:

Colorado Board of Mortgage Loan Originators

1560 Broadway, Suite 925

Denver, Colorado 80202

## 6.2 Authority to review

- A. The Board hereby preserves the Board's option to initiate a review of an initial decision on its own motion pursuant to § 24-4-105(14)(a)(ii) and (b)(iii), C.R.S. outside of the thirty day period after service of the initial decision upon the parties without requiring a vote for each case.
- B. This option to review shall apply regardless of whether a party files exceptions to the initial decision.

## 6.3 Designation of record and transcripts

- A. Any party seeking to reverse or modify the initial decision of the administrative law judge shall file with the Board a designation of the relevant parts of the record for review ("designation of record"). Designations of record must be filed with the Board within twenty days of the date on which the Board mails the initial decision to the parties' address of record with the Board.
- B. Within ten days after a party's designation of record is due, any other party may file a supplemental designation of record requesting inclusion of additional parts of the record.
- C. Even if no party files a designation of record, the record shall include the following:
1. All pleadings;
  2. All applications presented or considered during the hearing;
  3. All documentary or other exhibits admitted into evidence;
  4. All documentary or other exhibits presented or considered during the hearing;
  5. All matters officially noticed;
  6. Any findings of fact and conclusions of law proposed by any party; and
  7. Any written brief filed.
- D. Transcripts: transcripts will not be deemed part of a designation of record unless specifically identified and ordered. Should a party wish to designate a transcript or portion thereof, the following procedures will apply:
1. The designation of record must identify with specificity the transcript or portion thereof to be transcribed. For example, a party may designate the entire transcript, or

may identify witness(es) whose testimony is to be transcribed, the legal ruling or argument to be transcribed, or other information necessary to identify a portion of the transcript.

2. Any party who includes a transcript or a portion thereof as part of the designation of record must order the transcript or relevant portions by the date on which the designation of record must be filed (within twenty days of the date on which the Board mails the initial decision to the parties).
3. When ordering the transcript, the party shall request a court reporter or transcribing service to prepare the transcript within thirty days. The party shall timely pay the necessary fees to obtain and file with the Board an original transcription and one copy within thirty days.
4. The party ordering the transcript shall direct the court report or transcribing service to complete and file with the Board the transcript and one copy of the transcript within thirty days.
5. If a party designates a portion of the transcript, the opposing party may also file a supplemental designation of record, in which the opposing party may designate additional portions of the transcript.
6. An opposing party filing a supplemental designation of record designating additional portions of the transcript must order and pay for such transcripts or portions thereof within the deadlines set forth above. An opposing party must also cause the court reporter to complete and file with the Board the transcript and one copy of the transcript within thirty days.
7. Transcripts that are ordered and not filed with the Board in a timely manner by the reporter or the transcription service due to non-payment, insufficient payment or failure to direct as set forth above will not be considered by the Board.

#### 6.4 Filing of exceptions and responsive pleadings

A. Any party wishing to file exceptions shall adhere to the following timelines:

1. If no transcripts are ordered , exceptions are due within thirty days from the date on which the Board mails the initial decision to the parties. Both parties' exceptions are due on the same date.
2. If transcripts are ordered by either party , the following procedure shall apply. Upon receipt of all transcripts identified in all designations of record and supplemental designations of record, the Board shall mail notification to the parties stating that the transcripts have been received by the Board. Exceptions are due within thirty days from the date on which such notification is mailed. Both parties' exceptions are due on the same date.

B. Either party may file a responsive pleading to the other party's exceptions. All responsive pleadings shall be filed within ten days of the date on which the exceptions were filed with the Board. No other pleadings will be considered except for good cause shown.

C. The Board may in its sole discretion grant an extension of time to file exceptions or responsive pleadings, or may delegate the discretion to grant such an extension of time to the Board's designee.

## 6.5 Request for oral argument

- A. All requests for oral argument must be in writing and filed by the deadline for responsive pleadings.
- B. It is within the sole discretion of the Board to grant or deny a request for oral argument. If oral argument is granted, both parties shall have the opportunity to participate.
- C. If a request for oral argument is granted, each side shall be permitted ten minutes of oral argument unless such time is extended by the Board or its designee.

## **Chapter 7: DECLARATORY ORDERS PURSUANT TO SECTION 24-4-105(11), C.R.S.**

- 7.1 Any person may petition the Board for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the Petitioner of any statutory provisions or of any rule or order of the Board.
- 7.2 The Board will determine, in its discretion and without prior notice to Petitioner, whether to entertain any such petition. If the Board decides that it will not entertain such a petition, the Board shall promptly notify the Petitioner in writing of its decision and the reasons for that decision. A copy of the order shall be provided to the Petitioner.
- 7.3 In determining whether to entertain a petition filed pursuant to this rule, the Board may consider the following matters, among others:
  - A. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to Petitioner of any statutory provision or rule or order of the Board.
  - B. Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court involving one or more of the Petitioners.
  - C. Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court but not involving any Petitioner.
  - D. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
  - E. Whether the Petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, C.R.C.P., which will terminate the controversy or remove any uncertainty as to the applicability to the Petitioner of the statute, rule or order in question.
- 7.4 Any petition filed pursuant to this rule shall set forth the following:
  - A. The name and address of the Petitioner and whether the Petitioner holds a license or registration issued pursuant to Section 12-61-901 et. Seq. C.R.S. (as amended).
  - B. The statute, rule or order to which the petition relates.
  - C. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the Petitioner.

D. A concise statement of the legal authorities if any, and such other reasons upon which the Petitioner relies.

E. A concise statement of the declaratory order sought by the Petitioner.

7.5 If the Board determines that it will rule on the petition, the following procedures shall apply:

A. The Board may rule upon the petition without a hearing. In such case:

1. The Board may dispose of the petition on the sole basis of the matters set forth in the petition.
2. The Board may request the Petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition.
3. Any ruling of the Board will apply only to the extent of the facts presented in the petition and any amendment to the petition.
4. The Board may order the Petitioner to file a written brief, memorandum or statement of position based on the facts set forth in the petition and any amendment to the petition.
5. The Board may take administrative notice of facts pursuant to The Administrative Procedures Act, Section 24-4-105(8), C.R.S. (as amended), and may utilize its experience, technical competence and specialized knowledge in the disposition of the petition.
6. If the Board rules upon the petition without hearing, it shall promptly notify the Petitioner in writing of its decision.

B. The Board may, in its discretion, set the petition for hearing, upon due notice to Petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the Petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Board intends to inquire and whether the hearing will be evidentiary or non-evidentiary in nature. For the purpose of such a hearing, to the extent necessary, the Petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the Petitioner and any other facts the Petitioner desires the Board to consider.

7.6 The parties to any proceeding pursuant to this rule shall be the Board and the Petitioner. Any other person may seek leave of the Board to intervene in such a proceeding, and leave to intervene shall be granted at the sole discretion of the Board. A petition to intervene shall set forth the same matters as required by section 7.4 of this rule. Any reference to a "Petitioner" in this rule also refers to any person who has been granted leave to intervene by the Board.

7.7 Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to judicial review pursuant to Section 24-4-106, C.R.S. (as amended).

## **CHAPTER 8: NATIONAL MORTGAGE LICENSING SYSTEM AND REGISTRY ("NMLS")**

8.1 A mortgage loan originator may challenge information entered into the NMLS by the Division. Such challenge must be in writing and must set forth the specific information being challenge and include supporting evidence. The grounds for a challenge shall be limited to the factual accuracy

of the information pertaining to the mortgage loan originator's own license record.

8.2 A challenge submitted to appeal the underlying grounds for a disciplinary action will not be considered by the Director.

8.3 The Director, or an authorized representative of the Director, will review all information submitted by the mortgage loan originator and will determine the merits of the challenge. If the Director, or the Director's authorized representative, determines that the information submitted to the NMLS by the Division is factually incorrect, the Division will promptly submit the correct information to the NMLS.

8.4 A mortgage loan originator may appeal the Director's, or the Director's authorized representative's, decision regarding the challenge to the Board of Mortgage Loan Originators within 30 days of the decision being rendered. The decision of the Board regarding a NMLS challenge is subject to judicial review by the court of appeals by appropriate proceedings under Section 24-4-106(11), C.R.S.

#### **1-1-1 CONCERNING GOOD-FAITH TEMPORARY REGISTRATION FOR MORTGAGE BROKERS [Repealed eff. 02/14/2011]**

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

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

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

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

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

The statutory basis for this rule entitled **1-1-2 Mortgage Loan Originator Temporary License**, is section 12-61-910.3, C.R.S.

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

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

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

##### **Section 3. Applicability**

This rule applies to all individuals required to be licensed pursuant to sections 12-61-902 and 12-61-903, C.R.S.

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

1. Mortgage loan originators who demonstrate to the Board a good-faith effort to comply with the requirements pursuant to Colorado Revised Statutes 12-61-901, *et seq.*, may be issued a temporary license upon completion of the requirements set forth below:
  - a. The individual has completed all requirements required by the Nationwide Mortgage Licensing System and Registry, including payment of requisite fees, and has been approved by the Board of Mortgage Loan Originators on the Nationwide Mortgage Licensing System and Registry;
  - b. 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);
  - c. Acquisition of a surety bond as required by section 12-61-907, C.R.S., and in accordance with any rule of the Board that directly or indirectly addresses surety bond requirements;
  - d. Acquisition of the errors and omissions insurance required by section 12-61-903.5, C.R.S., and in accordance with any rule of the Board that directly or indirectly addresses errors and omissions insurance requirements;
  - e. Completion of the mortgage loan originator application; and
  - f. Payment of the application fee established by the Board.
2. Only individuals who are licensed as state-licensed loan originators may hire and sponsor unlicensed mortgage loan originators under the temporary license provision.
  - a. Licensed mortgage loan originators who employ and sponsor such a temporarily licensed mortgage loan originator shall be held responsible under all applicable provisions of law, including without limitation the Mortgage Loan Originator Licensing and Mortgage Company Registration Act and section 38-40-105, C.R.S., for the actions of the temporarily licensed mortgage loan originator to whom a temporary license has been assigned, and are personally subject to all applicable penalties under the law.
    - i. Licensed mortgage loan originators shall notify the Division of Real Estate, in a manner acceptable to the Board, of exact dates of hire and termination of employment for temporarily licensed mortgage loan originators. Sponsoring mortgage loan originators shall complete the Mortgage Loan Originator Temporary License Update Form, found on the Division of Real Estate website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm>, and forward to the Division of Real Estate, in a manner acceptable to the Board, all other information required for the possible receipt of a temporary license.
    - ii. Licensed mortgage loan originators shall be held responsible for the activity of temporarily licensed mortgage loan originators through and including the date of termination and required notification of such termination to the Division of Real Estate.
3. Temporary licenses shall expire 120 days after completion of the mortgage loan originator license application or when the temporary license is terminated by a licensed mortgage loan originator with whom the temporary licensee is operating under.
4. Individuals seeking temporary licenses shall be granted one temporary license. Additional or extended temporary licenses are prohibited.

5. Individuals seeking a temporary license shall complete the paper version of the mortgage loan originator license application posted on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm> .
6. Temporary licensees shall request on the application that the Board inactivate their temporary license upon determination by the Board that the requirements of the law have not been met. Applicants shall be notified via electronic mail, fax, or U.S. mail at the contact information provided to the Division of Real Estate in the applicant's mortgage loan originator license application.
7. Any temporary license issued by the Board shall have the same force and effect of the license required by the Mortgage Loan Originator Licensing and Mortgage Company Registration Act for the period of time it is in effect.
8. Once the applicant fully complies with the terms of the law as determined by the Board, the Board shall license the applicant in accordance with section 12-61-903, C.R.S.
9. Due to the changes defined in this rule, the names of temporary licensees will be posted to the Division of Real Estate website at <http://www.dora.state.co.us/real-estate/mortgagebrokerregistration.htm> .

This permanent rule shall be effective August 6, 2009.

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

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

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

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

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

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

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

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

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

on the part of the licensee pool.

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

### **Section 3. Applicability**

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

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

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

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

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

- a. Currently, there are two existing databases that licensees shall independently renew their license through annually. The two independent databases include:
  - i. The license database managed by the Division of Real Estate. This database may be located by visiting the Division of Real Estate website at <http://www.dora.state.co.us/real-estate/index.htm>.
  - ii. The registration database managed by the Nationwide Mortgage Licensing System and Registry. This database is located at <http://www.stateregulatoryregistry.org/NMLS/AM/Template.cfm?Section=Home3>.
- b. Mortgage loan originators renewing, reinstating or re-applying for registration through the Nationwide Mortgage Licensing System and Registry shall do so in accordance with established timelines, policies and procedures set forth by the Nationwide Mortgage Licensing System and Registry. The Nationwide Mortgage Licensing System and Registry may collect fees for the purpose of registration applications, renewal applications, reinstatement applications, credit reports, criminal background checks and for other processes associated with registration through the nationwide database.
- c. The Director shall issue or deny a license renewal or reinstatement application within thirty days after the applicant has submitted all of the information necessary for license renewal or reinstatement and after the Director has received all information necessary to make a determination regarding the applicants' compliance.
- d. Regarding the license database managed by the Division of Real Estate, mortgage loan originators may renew or reinstate their license online or may do so by submitting a paper renewal or reinstatement application. Individuals who choose to submit a paper renewal or reinstatement application shall pay an administrative fee prescribed by the Director in addition to the renewal or reinstatement fee due to the administrative burden placed on the Division of Real Estate. The fee for reinstatement is one and one half times the amount of the current renewal fee.

- e. For both databases, the license renewal period begins November 1st of each calendar year and ends December 31st of each calendar year. Individuals who renew their license shall only do so if they are compliant with all provisions of the Mortgage Loan Originator Licensing Act and all Director rules.
- f. All licenses expire at 12 midnight on December 31st of each calendar year if the licensee has not properly renewed their license.
- g. If a license has expired, individuals may choose to reinstate their mortgage loan originator license. The reinstatement period for both databases begins January 1st of each calendar year and ends on the last day of February of each calendar year. Individuals who reinstate their license shall only do so if they are compliant with all provisions of the Mortgage Loan Originator Licensing Act and all Director rules.
- h. Individuals who fail to renew or reinstate their license shall re-apply with both in order for the Division of Real Estate to review their applications and determine whether the individual is compliant with the licensing requirements.
- i. All renewal, reinstatement or application fees shall be prescribed by the Director.

### 3. Renewal Process for inactive licensees.

- a. Individuals with inactive licenses shall renew their license annually. Individuals with inactive licensees are not required to maintain compliant errors and omissions insurance or a compliant surety bond, but they are required to stay current on all continuing education requirements in order to renew their license.
- b. Mortgage loan originators may renew or reinstate their inactive license online or may do so by submitting a paper renewal or reinstatement application. Individuals who choose to submit a paper renewal or reinstatement application shall pay an administrative fee prescribed by the Director in addition to the renewal or reinstatement fee due to the administrative burden placed on the Division of Real Estate. The fee for reinstatement is one and one half times the amount of the current renewal fee.
- c. Currently, there are two existing databases that inactive licensees shall independently renew their license through annually. The two independent databases include:
  - i. The license database managed by the Division of Real Estate. This database may be located by visiting the Division of Real Estate website at <http://www.dora.state.co.us/real-estate/index.htm>.
  - ii. The registration database managed by the Nationwide Mortgage Licensing System and Registry. This database is located at <http://www.stateregulatoryregistry.org/NMLS/AM/Template.cfm?Section=Home3>.
- d. For both databases, the renewal period begins November 1 of each calendar year and ends December 31st of each calendar year. Individuals who renew their license shall only do so if they are compliant with all provisions of the Mortgage Loan Originator Licensing Act and all Director rules.
- e. All inactive licenses expire at 12 midnight on December 31st of each calendar year if the license has not been properly renewed.
- f. If a license has expired, individuals may choose to reinstate their inactive mortgage loan originator license. The reinstatement period for both databases begins January 1 of each

calendar year and ends on the last day of February of each calendar year. Individuals who reinstate their license shall only do so if they are compliant with all provisions of the Mortgage Loan Originator Licensing Act and all Director rules.

- g. Individuals who fail to renew or reinstate their inactive license shall re-apply in order for the Division of Real Estate to review their applications and determine whether the individual is compliant with the licensing requirements.
  - h. All renewal, reinstatement or application fees shall be prescribed by the Director.
  - i. The Director shall issue or deny a license renewal or reinstatement application within thirty days after the applicant has submitted all of the information necessary for license renewal or reinstatement and after the Director has received all information necessary to make a determination regarding the applicants' compliance.
4. Renewal, reinstatement or re-application fees.
- a. All fees collected for the purpose of applying for license renewal, reinstatement or re-application are non-refundable.
5. Re-application.
- a. Individuals who have taken the requisite courses and who have passed the test in accordance with Director rules within the immediately preceding three years of an application and who are compliant with the annual continuing education requirements will not need to duplicate the educational requirements upon re-application.
6. Individuals who do not have an active license are prohibited from practicing as a mortgage loan originator. Additionally, individuals who do not have an active license are prohibited from engaging in any mortgage related activities which require licensure pursuant to the Colorado Mortgage Loan Originator Licensing Act, Director rule or as prescribed by Director position statement.

#### **1-1-5 PRELIMINARY ADVISORY OPINIONS**

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 Board of Mortgage Loan Originators to promulgate rules.

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

Section 4. 1-1-5 Preliminary Advisory Opinions

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

The statutory basis for this rule, entitled **1-1-5 Preliminary Advisory Opinions**, is § 12-61-910.3, C.R.S.

The notice proposes to add rule 1-1-5. The rule establishes a preliminary advisory opinion process for individuals concerned about how existing license laws may apply to their circumstances.

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

In 2006, Colorado was one of two states, the other being Alaska, that had no regulatory oversight regarding mortgage brokers. In 2006, the Colorado General Assembly acted and passed House Bill 06-1161. In 2007, due to the state of the real estate market and the foreclosure crisis, the Colorado General Assembly enacted and passed House Bill 07-1322, Senate Bill 07-216, Senate Bill 07-085, and Senate Bill 07-203. In 2008, Congress passed the Housing and Economic Recovery Act of 2008. The Housing and Economic Recovery Act of 2008 contained the S.A.F.E. Act, which established minimum national licensing standards for mortgage loan originators and mandated states to adopt such provisions. As a result, in 2009 the Colorado General Assembly acted and passed House Bill 09-1085 to ensure compliance with the S.A.F.E. Act.

While Colorado was one of the last states to establish regulatory oversight of mortgage brokers, the registration and licensing laws have seen significant changes. The investment of time, energy and resources have increased with each passing bill. As a result, the purpose of this rule is to define a preliminary advisory process where potential applicants may have their specific circumstances reviewed by the Board or an authorized representative of the Board and be provided an opinion regarding whether or not they are likely to receive a license approval or a license denial. In doing so, potential applicants will be able to receive guidance prior to acquiring and paying for the requisite errors and omissions insurance, surety bond, finger prints for submission, completion of required educational courses and passage of the appropriate test. The purpose of this preliminary advisory rule is to define a preliminary advisory opinion process for prospective licensees.

## **Section 3. Applicability**

This rule applies to mortgage loan originators as that term is defined in § 12-61-902(6), C.R.S. This rule applies to all individuals required to be licensed pursuant to § § 12-61-902 and 12-61-903, C.R.S.

## **Section 4. 1-1-5 Preliminary Advisory Opinions**

1. Potential applicants for a state license or a registration through the Nationwide Mortgage Licensing System and Registry (the "NMLS&R" ) may submit information in order for the Board or an authorized representative of the Board to reasonably ascertain the likelihood of license or registration approval through a defined preliminary advisory opinion process.
2. Potential applicants may request a preliminary advisory opinion for any of the following reasons:
  - a. If the individual has been convicted, plead guilty or nolo contendere to any crime under Colorado law, federal law, District of Columbia law, or under the laws of any other states or territories, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, Virgin Islands and the Northern Mariana Islands;
  - b. If the individual has been enjoined in the immediately preceding five (5) years under the laws of this or any other state, District of Columbia or any other territories, Puerto Rico, Guam, American Samoa, the Trust of the Pacific Islands, Virgin Islands and the Northern Mariana Islands from in engaging in deceptive conduct relating to the origination of a mortgage loan;
  - c. If the individual has had other professional licenses, certifications or registrations issued by Colorado, the District of Columbia, any other states or territories, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, Virgin Islands and the Northern Mariana Islands revoked or suspended for fraud, theft, deceit, material misrepresentations or the breach of a fiduciary duty and such suspension or revocation denied authorization to practices as: a mortgage loan originator or similar license; real estate broker; real estate appraiser; an insurance producer; an attorney; a securities

broker-dealer; a securities sales representative; an investment advisor; or an investment advisor representative; or

- d. If the individual has been assessed a civil or criminal penalty for violating any provision of the Colorado Consumer Protection Act.
3. Individuals requesting a preliminary advisory opinion shall complete the Preliminary Advisory Worksheet posted on the Division of Real Estate website found at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm> . Additionally, individuals requesting a preliminary advisory opinion shall pay a fee identical to the license application fee for applicants as prescribed by the Director. Such fee will be applied as the license application fee if the individual chooses to apply.
4. Individuals requesting a preliminary advisory opinion shall submit all corresponding, or relevant documents related to any conduct or actions described in Section 4, subsection 2 of this rule. Incomplete requests will not be processed. The Board or an authorized representative of the Board may, at any time, request additional information regarding the preliminary advisory opinion request. Such corresponding, relevant or related documents may include, but are not limited to:
  - a. Police officer reports;
  - b. Dispositions documents;
  - c. Court documents;
  - d. Original charges documents;
  - e. Stipulated agreements; or
  - f. Final Agency Orders.
5. Additionally, individuals requesting a preliminary advisory opinion shall submit a written and signed personal explanation and detailed account of the facts and circumstances.
6. Any preliminary advisory opinion shall not be binding on the Board or limit the Board's authority to investigate a future formal application for licensure.
7. An individual seeking a preliminary advisory opinion under this rule is not an applicant for licensure and the issuance of an unfavorable opinion shall not prevent such individual from making application for licensure pursuant to the Mortgage Loan Originator Licensing Act.
8. The Board or an authorized representative of the Board will provide a favorable or an unfavorable opinion.

#### **1-1-6 RESIDENTIAL MORTGAGE LOANS [Repealed eff. 03/30/2012]**

#### **1-1-7 LOAN MODIFIER LICENSURE AND THE REQUIRED USE OF A LOAN MODIFICATION CONTRACT**

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 Board of Mortgage Loan Originators to promulgate rules.

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

Section 2. Scope and Purpose

Section 3. Applicability

Section 4. Definitions

Section 5. 1-1-7 Loan Modifier Licensure and the Required Use of a Loan Modification Contract

Section 6. Enforcement

## **Section 1. Authority**

The statutory basis for this rule, entitled **1-1-7 Loan Modifier Licensure and the Required Use of a Loan Modification Contract**, is § 12-61-910.3, C.R.S.

This notice proposes to add rule 1-1-7. The rule requires licensure for individuals who directly or indirectly take residential loan modification applications or who negotiate, offer, or attempt to negotiate or offer loan modifications. Direct managers of such individuals also must be licensed. Finally, this rule requires that individuals who offer or negotiate loan modifications use the Colorado Loan Modification Services Contract prescribed by this rule.

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

The Board of Mortgage Loan Originators finds that a rule regarding loan modifications is necessary in order to provide clarity to the industry. The Board has learned of individuals negotiating loan modification terms for borrowers and has received many inquiries regarding the applicability of current mortgage loan originator licensing law. Specifically, individuals are communicating directly with borrowers and borrowers' lenders in order to negotiate terms of a loan modification. In many instances, Colorado consumers are being charged high up front fees regardless of services rendered. The Board has also learned that consumers are being advised to cease making mortgage payments, even when they are already delinquent on payments. Additionally, there are existing loan modification services that are offered by U.S. Department of Housing and Urban Development (HUD) approved non-profit 501(c)(3) agencies which employ housing counselors around the State of Colorado. Such HUD-approved services are offered by housing counselors for free and are not associated with any compensation or other benefit from the borrower to the housing counselor. The purpose of this rule is to clearly notify loan modifiers (those who engage in the act of directly or indirectly negotiating a loan modification) of the applicability of Colorado mortgage loan originator laws and to require the use of a loan modification contract.

## **Section 3. Applicability**

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

## **Section 4. Definitions**

- A. "HUD approved housing counseling agency" means an agency which is either a private or public nonprofit organization that is exempt from taxation under section 501(A) pursuant to section 501(C), of the internal revenue code of 1996, 26, U.S.C. 501(A) and 501(C), and approved by the U.S. Department of Housing and Urban Development, in accordance with Housing Counseling Program Handbook 7610.1 and Code of Federal Regulations Title 24, Part 214.
- B. "Short sale" means the sale of a real property for less than the mortgage loan balance. In the settlement of the short sale transaction the existing mortgage is extinguished. Any deficiency created from the settlement of the transaction may be transformed into a promissory note, charged off, forgiven, or pursued as a judgment against the previous owner.

- C. "Loan modification" means a temporary or permanent change in one or more of the terms of a mortgagor's existing loan, allows the loan to be reinstated, and often results in a more affordable mortgage payment. The borrower retains ownership of the real property and the mortgage note and the deed of trust remains intact.
- D. "Loan modifier" means an individual who in the course of the person's business, vocation, or occupation offers to assist, provide, or negotiate on behalf of a borrower to facilitate the receipt of a loan modification from the borrower's current mortgage lender, generally for a fee or other thing of value.

#### **Section 5. 1-1-7 Loan Modifier Licensure and the Required Use of a Loan Modification Contract**

1. Section 12-61-902(6)(a), C.R.S. defines a mortgage loan originator as an individual who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. It is the Board's position that individuals offering or negotiating loan modifications meet the definition of a mortgage loan originator. Pursuant to section 12-61-903(1)(a), C.R.S., all persons who meet the definition of a mortgage loan originator are required to be licensed. As a result, individuals who directly or indirectly take residential loan modification applications or who negotiate, offer, or attempt to negotiate or offer loan modifications are required to be licensed as Colorado mortgage loan originators.
2. Pursuant to section 12-61-902(7), C.R.S., individuals who directly supervise individuals who take residential loan modification applications or individuals who negotiate, offer, or attempt to negotiate or offer loan modifications are required to be licensed as mortgage loan originators and as state-licensed loan originators by July 31, 2010.
3. All individuals required to be licensed shall comply with all other provisions of the Colorado Mortgage Loan Originator Licensing Act and all Board rules.
4. Individuals taking loan modification applications or offering or negotiating loan modifications are required to use a loan modification contract which complies with the Mortgage Loan Originator Licensing Act and the Foreclosure Protection Act.
5. The Board has created the Colorado Loan Modification Services Contract to ensure compliance with the aforementioned laws. This contract may be found on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm> . Loan modifiers 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 Board.
6. The Colorado Loan Modification Services Contract prescribed by this regulation shall be completed when an application is taken.
7. This rule shall not be construed to include employees of HUD approved housing counseling agencies who are providing advice or general information on loan modifications in an ancillary manner relating to their general housing counseling services or duties.
8. The Board's position on this matter shall not be construed to include employees of mortgage loan servicing companies operating on behalf of the borrowers' mortgage lenders.
9. Licensed Real Estate Brokers engaged in licensed activities when performing services within the above defined short sale transactions do not need to maintain a license as a mortgage loan originator. If a real estate broker engages in the activities of providing loan modification services (those not included in the activities of short sales) as defined above, loan modification services are defined as outside the scope of licensed real estate broker activities and therefore, separate licensure as a mortgage loan originator is required. See MLO 1.5 Position Statement.

10. As set forth in section 12-61-904(1)(d), C.R.S., an attorney who renders services in the course of practice, who is licensed in Colorado, and who is not primarily engaged in the business of negotiating residential mortgage loans or loan modifications is not required to be licensed as a mortgage loan originator, but is required to comply with all non-licensing provisions of current mortgage loan originator law set forth in sections 12-61-901 through 12-61-915, C.R.S.

## **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 following sanctions allowable under Colorado law, including, but not limited to:
- a. Cease and desist orders;
  - b. Permanent injunctions;
  - c. Revocation;
  - d. Refusal to renew a license;
  - e. Refusal to issue a license;
  - f. Imposition of fines; and
  - g. Restitution for any financial loss.

### **1-1-8 S.A.F.E. ACT COMPLIANCE RULE [Repealed eff. 05/15/2013]**

### **1-2-1 MORTGAGE BROKERS BOND REQUIREMENT [Repealed eff. 08/30/2009]**

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

#### Section 1. Authority

#### Section 2. Scope and Purpose

#### Section 3. Applicability

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

#### Section 5. Enforcement

### **Section 1. Authority**

The Board of Mortgage Loan Originators updates the following permanent rule entitled, **1-2-2 Surety Bond Requirements for Mortgage Loan Originators**, according to the authority prescribed in §§ 12-61-907 and 910.3, C.R.S.

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

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

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

### **Section 3. Applicability**

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

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

1. Mortgage loan originators are deemed compliant with the surety bond requirement if their surety bond meets the requirements defined in one of the following three options:
  - a. Option 1 - Mortgage loan originators, at a minimum, may acquire and maintain an individual surety bond if:
    - i. The surety bond is in the amount of \$25,000.00;
    - ii. The surety bond is in conformance with all relevant Colorado statutory requirements;
    - iii. The surety bond is exclusive to covering acts contemplated under current Colorado mortgage loan originator licensing laws;
    - iv. The surety bond is not applicable to any conduct or transactions outside the jurisdiction of the Board of Mortgage Loan Originators (the "Board"); and
    - v. The surety bond is identical to the individual surety bond form developed and approved by the Board. Acceptable surety bond forms may be found on the Division of Real Estate website at <http://www.dora.state.co.us/real-estate/applications/mortgagebroker/index.htm>
  - b. Option 2 – Mortgage loan originators who are employees or exclusive agents for companies with less than 20 individuals who are required to be licensed pursuant to current Colorado mortgage loan originator licensing laws and who do not work for more than one company, may, at a minimum, operate under their company's surety bond if the surety bond meets the following criteria:
    - i. The surety bond is in the amount of \$100,000.00;
    - ii. The surety bond is in conformance with all relevant Colorado statutory requirements;
    - iii. The surety bond is exclusive to covering acts of all of the company's W-2 employees or exclusive agents contemplated under current Colorado mortgage loan originator licensing laws; and
    - iv. The surety bond is identical to the company surety bond form developed and approved by the Board. Acceptable surety bond forms may be found on the Division of Real Estate website at <http://www.dora.state.co.us/real-estate/applications/mortgagebroker/index.htm>
  - c. Option 3 – Mortgage loan originators who are W-2 employees or exclusive agents for companies with 20 or more individuals who are required to be licensed pursuant to current Colorado mortgage loan originator licensing laws and who do not work for more than one company, may, at a minimum, operate under a company's surety bond if the surety bond meets the following criteria:
    - i. The surety bond is in the amount of \$200,000.00;

- ii. The surety bond is in conformance with all relevant Colorado statutory requirements;
  - iii. The surety bond is exclusive to covering acts of all of the company's W-2 employees contemplated under current Colorado mortgage loan originator licensing laws; and
  - iv. The surety bond is identical to the company surety bond form developed and approved by the Board. Acceptable surety bond forms may be found on the Division of Real Estate website at <http://www.dora.state.co.us/real-estate/applications/mortgagebroker/index.htm>
2. Regarding company surety bonds, the company shall provide the Board or an authorized representative of the Board with any and all requested surety bonds relevant to this rule or current mortgage loan originator license laws and shall verify and provide adequate proof regarding the timeline of employment for each individual operating under such company policy. Failure on the part of the company to provide such information shall result in non-compliance regarding the surety bond requirement for individual licensees operating under such company bond.
3. Mortgage loan originators shall use the Mortgage Loan Originator Licensing Update Form to ensure surety bond information is clearly and concisely disclosed and that all information required by this rule is current. 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> .
- a. Mortgage loan originators shall forward this form by mail or personal delivery to the following address:
- i. Division of Real Estate – Attn: Mortgage Loan Originator Licensing Department
- 1560 Broadway, Suite 925
- Denver, CO. 80202
4. Additionally, mortgage loan originators may update all of the information required in this rule electronically. They may access their information through the following website: [https://eservices.psiexams.com/index\\_login.jsp](https://eservices.psiexams.com/index_login.jsp) . After entering their password and username, mortgage loan originators may update all information without any fees or costs associated with such action.
5. Applicants for licensure, renewal, and reinstatement shall comply with this rule and § § 12-61-903 and 907, C.R.S., in a manner prescribed by the Board. Any licensee who so fails to obtain and maintain a surety bond in accordance with this rule or fails to provide proof of continuous coverage shall be subject to disciplinary action.

## **Section 5. Enforcement**

1. Noncompliance with this rule, whether defined or reasonably implied in the rule, may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:
- a. Revocation;
  - b. Refusal to renew a license;
  - c. Imposition of fines; and

- d. Restitution for any financial loss.

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

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

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

Section 5. Enforcement

### **Section 1. Authority**

The Board of Mortgage Loan Originators (the "Board" ) updates the following permanent rule entitled, **1-3-1 Errors and Omissions Insurance for Mortgage Loan Originators** , according to the authority prescribed in § § 12-61-903.5 and 910.3, C.R.S.

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

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

Section 12-61-903.5, C.R.S., requires the Board 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 individuals required to be licensed pursuant to § § 12-61-902 and 12-61-903, C.R.S.

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

1. Mortgage loan originators are deemed compliant with the errors and omissions insurance requirements if their errors and omissions insurance meets the requirements defined in one of the following three options:
  - a. Option 1 – Mortgage loan originators, at a minimum, may acquire and maintain individual errors and omissions insurance in their own name with the following terms of coverage:
    - i. The contract and policy are in conformance with all relevant Colorado statutory requirements;
    - ii. Coverage includes all acts for which a mortgage loan originator license is required, except those illegal, fraudulent, or other acts which are normally excluded from such coverage;
    - iii. Coverage shall encompass all types of transactions conducted by the mortgage loan originator and shall be in the individual mortgage loan originator's name;
    - iv. Coverage is for not less than \$100,000.00 for each licensed individual per covered claim, with an annual aggregate limit of not less than \$300,000.00 per licensed

individual; and

- v. Coverage contains a deductible no greater than \$1,000.00, or a deductible no greater than \$20,000.00 for policies that primarily insure reverse mortgage transactions.
- b. Option 2 – Mortgage loan originators who are employees or exclusive agents for companies with less than 20 individuals who are required to be licensed pursuant to the current Colorado mortgage loan originator licensing laws and who do not work for more than one company, may, at a minimum, operate under the company's errors and omissions insurance policy if the policy meets the following terms of coverage:
  - i. The contract and policy are in conformance with all relevant Colorado statutory requirements;
  - ii. Coverage includes all acts for which a mortgage loan originator license is required, except those illegal, fraudulent, or other acts which are normally excluded from such coverage;
  - iii. Coverage shall include all activities contemplated under current Colorado mortgage loan originator licensing laws and states this in the policy;
  - iv. Coverage shall encompass all types of transactions conducted by all of the mortgage loan originators employed at the company or by all mortgage loan originators who are exclusive agents of the company;
  - v. Coverage is for not less than \$1,000,000.00 per covered claim, with an annual aggregate limit of not less than \$2,000,000.00 that is exclusive to Colorado consumers; and
  - vi. Coverage contains a deductible no greater than \$50,000.00.
- c. Option 3 – Mortgage loan originators who are W-2 employees or exclusive agents for companies with 20 or more employees and who do not work for more than one company, may, at a minimum, operate under the company's errors and omissions insurance policy if the policy meets the following terms of coverage:
  - i. The contract and policy are in conformance with all relevant Colorado statutory requirements;
  - ii. Coverage includes all acts for which a mortgage loan originator license is required, except those illegal, fraudulent, or other acts which are normally excluded from such coverage;
  - iii. Coverage shall include all activities contemplated under current Colorado mortgage loan originator licensing laws and states this in the policy;
  - iv. Coverage shall encompass all types of transactions conducted by all of the mortgage loan originators employed at the company or by all mortgage loan originators who are exclusive agents of the company;
  - v. Coverage shall encompass all types of transactions conducted by all of the mortgage loan originators employed at the company;
  - vi. Coverage is for not less than \$1,000,000.00 per covered claim, with an annual aggregate limit of not less than \$4,000,000.00 that is exclusive to Colorado

consumers; and

vii. Coverage contains a deductible no greater than \$100,000.00.

2. Regarding company errors and omissions insurance policies, the company shall provide the Board, or an authorized representative of the Board, with any and all requested errors and omissions insurance policies relevant to this rule or current Colorado mortgage loan originator licensing laws and shall verify and provide adequate proof regarding the timeline of employment for each individual operating under such company policy. Failure on the part of the company to provide such information shall result in non-compliance regarding the errors and omissions insurance requirement for individual licensees operating under the company's errors and omissions insurance policy.
3. Mortgage Loan originators shall use the Mortgage Loan Originator Licensing Update Form to ensure their errors and omissions insurance information is current and 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> .
  - a. Mortgage loan originators may forward this form by mail or personal delivery to the following address:
    - i. Division of Real Estate – Attn: Mortgage Loan Originator Licensing Department  
  
1560 Broadway, Suite 925  
  
Denver, CO. 80202
4. Additionally, mortgage loan originators may update all of the information required in this rule electronically. They may access their information through the following website: [https://eservices.psiexams.com/index\\_login.jsp](https://eservices.psiexams.com/index_login.jsp) . After entering their password and username, mortgage loan originators may update all information without any fees or costs associated with such action.
5. For information regarding errors and omissions insurance providers, visit the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/index.htm> .
6. Applicants for licensure, renewal, and reinstatement shall comply with this rule and § 12-61-903.5, C.R.S., in a manner prescribed by the Board. Any licensee who so fails to obtain and maintain errors and omissions insurance coverage in accordance with this rule or fails to provide proof of continuous coverage shall be subject to disciplinary action.

## **Section 5. Enforcement**

1. Noncompliance with this rule, whether defined or reasonably implied in the rule, may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:
  - a. Revocation;
  - b. Refusal to renew a license;
  - c. Imposition of fines; and
  - d. Restitution for any financial loss.

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

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

Section 4. 1-4-1 Licensing Education, Examination and Continuing Education Requirements

Section 5. Continuing Education

### **Section 1. Authority**

The Board of Mortgage Loan Originators updates the following permanent rule entitled, **1-4-1 Licensing Education, Examination and Continuing Education Requirements**, according to the authority prescribed in § § 12-61-903(3), 12-61-903(8), 12-61-910.3, and 24-4-103, C.R.S.

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

The purpose of this rule is to clarify the education requirements for mortgage loan originators to first obtain their state license and then maintain that license by completing continuing education requirements. It is vital to consumer protection and to a competent mortgage loan originator practice that mortgage loan originators understand applicable State and Federal laws. Please contact the Division of Real Estate if you have any questions.

Pursuant to § 12-61-903(3)(a), C.R.S. mortgage loan originators must complete at least nine (9) hours of fundamental mortgage lending coursework and satisfactorily complete a corresponding written examination.

Additionally, in July of 2008, the Housing and Economic Recovery Act of 2008 was signed into law. Title V of the Housing and Economic Recovery Act of 2008 is the S.A.F.E. Mortgage Licensing Act. The S.A.F.E. Mortgage Licensing Act defines minimum national licensing standards for mortgage loan originators and requires states to adopt such provisions. The S.A.F.E. Mortgage Licensing Act requires that pre-licensing education and testing be developed and administered by the Nationwide Mortgage Licensing System and Registry. As a result, Colorado's education and testing requirements were updated in order to conform to provisions defined in the S.A.F.E. Mortgage Licensing Act, House Bill 09-1085 and with standards established by the Nationwide Mortgage Licensing System and Registry. Consequently, this rule outlines how existing licensees may become compliant and how new applicants will be affected.

### **Section 3. Applicability**

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

### **Section 4. 1-4-1 Licensing Education, Examination and Continuing Education Requirements**

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

- (a) All mortgage loan originators who obtain a Colorado mortgage loan originator license prior to January 1, 2009 must complete the Director developed and approved forty (40) hours of licensing education and pass a two-part written licensing examination by January 1, 2009. Individuals who fail to comply with this requirement may file for an extension. Extensions may be granted through and including March 31, 2009 and shall only be applied for beginning December 1, 2008 and ending January 30, 2009. Mortgage loan originators requesting an education extension shall:

- i. Complete the education extension form. This form may be found on the Division of Real Estate website;
  - ii. Pay a \$100.00 extension fee by money order or a cashier check;
  - iii. Request that the Director inactivate their mortgage loan originator license if they fail to pass the written examination in accordance with this rule by March 31, 2009. A licensee's inactive status will remain in effect until passage of the mortgage loan originator examination and subsequent request for activation;
  - iv. Provide the Director with an original copy of the requisite surety bond, a power of attorney and proof of errors and omissions insurance.
- (b) Individuals who fail to pass the requisite written examination by January 1, 2009 and who fail to comply with the extension process defined in this rule are subject to all forms of discipline authorized by the Mortgage Loan Originator Licensing Act. Additionally, the license renewal, reinstatement or reactivation fees for such individuals will automatically be increased by \$500.00, due to the related increase in administrative burden.
- (c) The Director has created the Mortgage Loan Originator Education Extension Form. This form may be found on the Division of Real Estate website.
- (d) On or after January 1, 2009 and prior to January 1, 2010, each individual applicant for initial licensing as a mortgage loan originator must complete, within the three years immediately preceding the date of the application, forty (40) hours of licensing education and pass a two-part exam approved by the Director of the Division of Real Estate prior to applying for a mortgage loan originator license.
- (e) For individuals licensed prior to January 1, 2010, in addition to the requirements outlined in section 4(1)(d) of this rule, you must register on the Nationwide Mortgage Licensing System and Registry and as a state-licensed loan originator. In order to do so, you must apply to Colorado through the Nationwide Mortgage Licensing System and Registry by December 17, 2010, pay the certification invoice issued by the Nationwide Mortgage Licensing System and Registry by December 31, 2010, and pass the national portion of the two-part S.A.F.E. Mortgage Loan Originator exam developed and administered by the Nationwide Mortgage Licensing System and Registry or by a company contracted by the Nationwide Mortgage Licensing System and Registry to develop and administer the two part S.A.F.E. Mortgage Loan Originator exam.
- (f) On or after January 1, 2010, each individual applicant shall complete, within the three years immediately preceding the date of their application, the twenty (20) hours of pre-licensing education requirements developed, administered, and approved by the Nationwide Mortgage Licensing System and Registry, or by a company contracted by the Nationwide Mortgage Licensing System and Registry to develop, administer, and approve the twenty (20) hours of pre-licensing education and pass the two-part S.A.F.E. Mortgage Loan Originator exam, also developed and administered by the Nationwide Mortgage Licensing System and Registry, or by a company contracted by the Nationwide Mortgage Licensing System and Registry to develop and administer the S.A.F.E. Mortgage Loan Originator exam, prior to completing the applications for a state-licensed loan originator license.

## 2. Certificate of Completion

- (a) Mortgage loan originator applicants and licensees must receive a certification of completion from their education provider evidencing the successful completion of the respective licensing education coursework before scheduling any of the requisite examinations.

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

### 3. Licensing Education Passing Score

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

### 4. Qualifying Schools

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

### 5. Forty Hour Licensing Education Requirement

- (a) Prior to January 1, 2010, mortgage loan originator applicants and licensees must successfully complete the required forty (40) hours of licensing education through classroom instruction or an equivalent distance learning course offered in a manner as prescribed by the Director. For the purposes of this rule, distance learning shall not be construed to include home or correspondent education. Rather, equivalent distant or distance learning courses shall only include online courses that ensure through security features and functionality that an individual has spent the same amount of time on the online course as they would in a traditional classroom setting. Pursuant to the requirements in Part 1 of this rule, the following licensing education must be successfully completed prior to taking the examination and applying for a license:

- i. A minimum of 19.5 hours in Federal and State Law;
- ii. A minimum of 16 hours in Mortgage 101; and
- iii. A minimum of 4.5 hours in Business and Trade Practices

#### 6. Exemption Qualifications

- (a) Prior to January 1, 2010, as prescribed by the Director or person(s) authorized by the Director, qualifying mortgage loan originator applicants who meet the following criteria are exempt from having to complete the Mortgage Lending Basics and Ethics portions of the education coursework and respective examination. To qualify for the exemption, mortgage loan originators must meet all five requirements. They are as follows:
  - i. Currently maintain a Colorado mortgage loan originator license.
  - ii. Maintain a membership with a mortgage loan originator association approved for exemption by the Division of Real Estate.
  - iii. Maintain a mortgage loan originator association designation that is current and in good standing.
  - iv. Provide the association's letter of certification to the education course provider prior to completing coursework.
  - v. Provide the association's letter of certification to an independent testing service contracted with by the Director, prior to taking the Federal and State Law exam.
- (b) Prior to January 1, 2010, those who meet the criteria for exemption must complete the Federal and State Law portion of the licensing coursework and pass the Federal and State Law portion of the exam with a score of seventy-five (75) percent or higher.

#### 7. Authority to Audit Education Provider

- (a) The Board or the Board's designee may audit any mortgage loan originator courses offered and may request from each education provider or schools offering such courses, 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 thirty (30) days after the preceding test.
- (b) After failing three (3) consecutive tests, an individual shall wait at least six (6) months before taking the test again.
- (c) Individuals who fail to maintain a valid license for a period of five (5) years or longer shall retake the test prior to re-application, not taking into account any time during which such individual was licensed.

## **Section 5. Continuing Education**

1. The continuing education requirements for individuals licensed prior to January 1, 2009, shall begin after their first license renewal. Individuals licensed prior to January 1, 2009, shall complete at least eight (8) hours of continuing education courses reviewed and approved by the Nationwide Mortgage Licensing System and Registry or by a company contracted to review and approve continuing education courses and a two hour annual Colorado specific state update course reviewed and approved by the Division of Real Estate each calendar year and prior to subsequent license and registration renewals or reinstatements.
  - (a) Passage of the national portion of the S.A.F.E. Mortgage Loan Originator examination developed and administered by the Nationwide Mortgage Licensing System and Registry or by a company contracted by the Nationwide Mortgage Licensing System and Registry to develop and administer the national portion of the S.A.F.E. Mortgage Loan Originator examination shall satisfy one year of continuing education requirements if continuing education is required in the year in which the individual has passed the national portion of the S.A.F.E. Mortgage Loan Originator exam as determined by the Nationwide Mortgage Licensing System and Registry.
2. The continuing education requirements for individuals licensed on or after January 1, 2009, shall begin after issuance of the initial license. Individuals licensed on or after January 1, 2009, shall complete at least eight (8) hours of continuing education courses reviewed and approved by the Nationwide Mortgage Licensing System and Registry or by a company contracted to review and approve continuing education courses and a two hour annual Colorado specific state update course reviewed and approved by the Division of Real Estate each calendar year and prior to license and registration renewals or reinstatements.
  - (a) Passage of the national portion of the S.A.F.E. Mortgage Loan Originator examination developed and administered by the Nationwide Mortgage Licensing System and Registry or by a company contracted by the Nationwide Mortgage Licensing System and Registry to develop and administer the national portion of the S.A.F.E. Mortgage Loan Originator examination shall satisfy one year of continuing education if continuing education is required in the year in which the individual has passed the national portion of the test as determined by the Nationwide Mortgage Licensing System and Registry.
3. For more information regarding the continuing education requirements, please review the Division of Real Estate website.
4. The Colorado Division of Real Estate will maintain a list of course providers approved to teach the Colorado two (2) hour annual update course on the Division website so interested parties may research and learn where the course is offered.
5. Licensee requirements:
  - (a) All individuals required to be licensed as state-licensed mortgage loan originators and required to complete the Colorado two (2) hour annual update course shall maintain records of completion for a period of four (4) years.
6. Colorado two (2) hour annual update course provider requirements:
  - (a) In order to provide and teach the Colorado two (2) hour annual update course, educators and trainers not exempt from the Colorado Division of Private Occupational Schools oversight, pursuant to 12-59-101, et seq., C.R.S., must be approved by the Colorado Division of Private Occupational Schools and approved by an authorized representative of the Board of Mortgage Loan Originators.

- (b) In order to provide and teach the Colorado two (2) hour annual update course, educators and trainers exempt from the Colorado Division of Private Occupational Schools oversight, pursuant to section 12-59-104, C.R.S., must be approved by an authorized representative of the Board of Mortgage Loan Originators.
- (c) If not approved by the Colorado Division of Private Occupational Schools, the trainer shall attend one train-the-trainer class, as developed and administered by the Colorado Division of Real Estate, prior to teaching the Colorado two (2) hour annual update course.
- (d) All education providers and trainers interested in teaching the Colorado two (2) hour annual update course shall apply each calendar year with the Colorado Division of Real Estate for approval in a manner prescribed by the Board of Mortgage Loan Originators; prior to teaching the course material. Educators and trainers that are exempt from the Division of Private Occupational Schools' oversight shall provide proof of such exemption.
- (e) All education providers and trainers interested in teaching the Colorado two (2) hour annual update course shall keep records of all individuals that have completed the Colorado two (2) hour annual update course and shall provide the Colorado Division of Real Estate with a quarterly list of such individuals by April 15 of each calendar year, July 15 of each calendar year, October 15 of each calendar year, January 15th of each calendar year, and in a manner prescribed by the Board of Mortgage Loan Originators. Educators are required to keep records of course attendance for a period of four (4) years.
- (f) All education providers shall provide the course material, in a manner prescribed by the Board of Mortgage Loan Originators, and applicable handouts to all students that have enrolled and completed the Colorado two (2) hour annual update course.
- (g) All education providers and trainers shall provide a certificate of completion to all individuals that have completed the Colorado two (2) hour annual update course.

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

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

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

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

The Board of Mortgage Loan Originators updates the following permanent rule entitled **1-5-1 Mortgage Loan Originator License and Registration Inactivation and Reactivation**, according to authority provided in section 12-61-910.3, C.R.S.

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

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

Section 12-61-903.3, C.R.S., allows the Board of Mortgage Loan Originators to inactivate licenses for specific reasons. The inactivation process creates an administrative burden on the Division of Real Estate, which includes ensuring the applicant is compliant with all licensing requirements. This task is

similar in nature to review of a license application, but is often less intensive procedurally. Accordingly, the purpose of this rule is to establish an administrative fee collected upon reactivation for specific circumstances.

### **Section 3. Applicability**

This rule applies to all individuals required to be licensed pursuant to sections 12-61-902 and 12-61-903, C.R.S.

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

1. If a mortgage loan originator license or registration is inactivated by the Board of Mortgage Loan Originators or an authorized representative of the Board for one or any combination of the following reasons, the mortgage loan originator shall pay an administrative fee determined by the Board, due to the related increase in administrative burden, in order to reactivate their license:
  - a. The mortgage loan originator has failed or is failing to comply with the surety bond requirements of sections 12-61-903(6) and 12-61-907, C.R.S., or any rule of the Board that directly or indirectly addresses surety bond requirements;
  - b. The mortgage loan originator has failed or is failing to comply with the errors and omissions insurance requirement in section 12-61-903.5, C.R.S., or any rule of the Board that directly or indirectly addresses errors and omissions insurance requirements;
  - c. The mortgage loan originator has failed or is failing to maintain current contact information, surety bond information, or errors and omissions insurance information as required by the Mortgage Loan Originator Licensing and Mortgage Company Registration Act, or by any rule of the Board that directly or indirectly addresses such requirements;
  - d. The mortgage loan originator has failed or is failing to respond to an investigation or examination;
  - e. The mortgage loan originator has failed or is failing to comply with any of the education or testing requirements set forth in the Mortgage Loan Originator Licensing and Mortgage Company Registration Act, or by any rule of the Board that directly or indirectly addresses education or testing requirements; or
  - f. The mortgage loan originator has failed to register with, and provide all required information to, the Nationwide Mortgage Licensing System and Registry.
2. Individuals who have an inactive license are prohibited from practicing as a mortgage loan originator. Additionally, individuals who have an inactive license are prohibited from engaging in any mortgage related activities which requires licensure pursuant to the Colorado Mortgage Loan Originator Licensing and Mortgage Company Registration Act, Board rule, or as prescribed by a Board position statement.
3. In order for an inactive mortgage loan originator license to be reactivated, the individual seeking reactivation shall provide the Division of Real Estate with proof of full compliance with current mortgage loan originator license law.
4. In order for an inactive mortgage loan originator license to be reactivated, the individual seeking reactivation must pay the requisite administrative fee. All administrative fees shall be collected in the form of a money order or a cashier's check.
5. The Board has created the Mortgage Loan Originator License Reactivation Form. This form may be

found on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm> .

## **2-1-1 GROUNDS FOR DENIAL OF LICENSE APPLICATIONS OR FOR SANCTIONS REGARDING LICENSE APPLICANTS, LICENSE RENEWALS, LICENSE REINSTATEMENTS AND LICENSEES [Repealed eff. 08/30/2009]**

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

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

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Definitions

Section 4. Applicability

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

Section 6. Enforcement

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

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

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

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

Section 12-61-904.5, C.R.S., states that mortgage loan originators shall have a duty of good faith and fair dealing in all communications and transactions with a borrower. Section 12-61-904.5(1)(b), C.R.S., requires mortgage loan originators to make a reasonable inquiry concerning the borrower's current and prospective income, existing debts and other obligations, and any other information known to the mortgage loan originator. After making such an inquiry, a mortgage loan originator must make his or her best efforts to recommend, broker, or originate a residential mortgage loan that takes into consideration the information submitted by the borrowers. Additionally, section 12-61-904.5(1)(a), C.R.S., prohibits mortgage loan originators from recommending or inducing borrowers to enter into a transaction that does not have a reasonable, tangible net benefit to the borrower, including the terms of a loan, the cost of a loan, and the borrower's circumstances. After consulting with industry leaders, the Division has learned that there is uncertainty in the marketplace regarding the impact of these new provisions, specific to mortgage products and various documentation types. Documentation types include, but are not limited to: stated income, no income verification, no income disclosure, no asset verification, and no asset disclosure.

The mortgage lending community is uncertain if the aforementioned provisions prohibit non-traditional mortgage products and documentation types, since these provisions are new and have not been interpreted by the Board of Mortgage Loan Originators. 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 Board 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 tangible net benefit.

### **Section 3. Definitions**

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

### **Section 4. Applicability**

This rule applies to all individuals required to be licensed pursuant to sections 12-61-902 and 12-61-903, C.R.S.

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

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

- ii. Condensed amortization schedule;
  - iii. Debt consolidation;
  - iv. Cash out;
  - v. Avoiding foreclosure;
  - vi. Negative amortization;
  - vii. Balloon payments;
  - viii. Variable rates;
  - ix. Interest only options;
  - x. Prepayment penalties; and
  - xi. Hybrid mortgage products.
4. The purpose or reason for a purchase or refinance transaction shall be identified by the borrower. A mortgage loan originator shall require that all borrowers describe, in writing, the reasons they are seeking a mortgage loan, a loan modification, or to refinance an existing mortgage loan.
- a. It is the responsibility of the mortgage loan originator to ensure this information is acquired and accurately documented.
  - b. Pursuant to section 12-61-904.5(1), C.R.S., a mortgage loan originator may not have demonstrated a duty of good faith and fair dealing in all communications and transactions with a borrower if it is determined that a mortgage loan originator completed the required purpose or reason for a purchase, loan modification, or refinance transaction without consulting the borrower.
5. The Board 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 Board.
- a. At the time of completing a loan application a mortgage loan originator shall complete a Tangible Net Benefit Disclosure with the borrower(s).
  - b. The Tangible Net Benefit Disclosure shall also be completed with the borrower(s) prior to the borrower(s) signing loan closing documents if the reasonable, tangible net benefit has changed.
  - c. Tangible Net Benefit disclosures shall be signed by both the mortgage loan originator and the borrower(s).
6. Mortgage loan originators shall provide completed disclosure forms to all borrowers within three (3) business days of completion. Furthermore, mortgage loan originators must be able to provide proof to the Board or an authorized representative of the Board that the disclosure forms defined in this rule were in fact provided to the borrower within three (3) business days of completion.
7. Mortgage loan originators shall be presumed compliant with this rule when using the suggested form and when disclosures meet the timelines defined in this rule.

## **Section 6. Enforcement**

1. Noncompliance with this rule, whether defined or reasonably implied in the rule, may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:
  - a. Revocation;
  - b. Refusal to renew a license;
  - c. Imposition of fines; and
  - d. Restitution for any financial loss.

### **3-1-2 MORTGAGE LOAN ORIGINATOR AND MORTGAGE COMPANY DUTIES TO RESPOND AND PROVIDE REQUESTED DOCUMENTS FOR INVESTIGATIONS**

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

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Definitions

Section 4. Applicability

Section 5. 3-1-2 Mortgage Loan Originator and Mortgage Company Duties to Respond and Provide Requested Documents for Investigations

Section 6. Enforcement

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

The statutory basis for this rule, entitled **3-1-2 Mortgage Loan Originator and Mortgage Company Duties to Respond and Provide Requested Documents for Investigations**, is section 12-61-910.3, C.R.S.

This notice proposes to update rule 3-1-2. The rule establishes that mortgage loan originators and mortgage companies have a duty to respond to and provide requested documentation for investigations conducted by the Board of Mortgage Loan Originators.

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

Section 12-61-905(7)(b), C.R.S., states that the Board of Mortgage Loan Originators may, and, upon the complaint in writing of any person, shall, investigate the activities of any licensee or any individual who assumes to act in such capacity within the state. Section 12-61-905.5(1)(k), C.R.S., requires mortgage loan originators to maintain possession of the documents prescribed by the rules of the Board, for a period of four (4) years, for the future use or inspection by an authorized representative of the Board. Section 12-61-905.1(1)(b), C.R.S., requires mortgage companies to maintain possession of the documents or records prescribed by the rules of the Board, for a period of four (4) years, for the future use or inspection by an authorized representative of the Board. The purpose of this regulation is to define what documents should be retained for a period of four years and to require mortgage loan originators

and mortgage companies to provide a written response and all requested documents to the Board or an authorized representative of the Board. Additionally, this regulation prescribes the time period in which all persons and entities shall respond to Board inquiries, including, but not limited to, document and information requests during investigations of complaints or any other investigation conducted for the purpose of determining compliance with the Mortgage Loan Originator Licensing and Mortgage Company Registration Act.

### **Section 3. Definitions**

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

### **Section 4. Applicability**

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

### **Section 5. 3-1-2 Mortgage Loan Originator and Mortgage Company Duties to Respond and Provide Requested Documents for Investigations**

1. Persons required to be licensed or registered pursuant to sections 12-61-902 and 12-61-903, C.R.S., shall provide the Board or the Board's representative with all information required by this rule.
  - a. Failure to provide all information requested by the Board or an authorized representative of the Board within a timeline established by the Board, or authorized representative of the Board, shall be grounds for disciplinary action and grounds for the imposition of fines unless the Board, or authorized representative of the Board, has granted an extension of time for the response.
    - i. Mortgage loan originators and mortgage companies may ask for an extension of time to comply if:
      1. The request is done so in writing; and
      2. The request is received by the Board or an authorized representative of the Board prior to the expiration date defined in the notification letter sent by the Board or an authorized representative of the Board.
    - ii. Any and all extensions granted are done so at the discretion of the Board or an authorized representative of the Board.
  - b. Failure to provide all requested information shall be grounds for disciplinary action and grounds for the imposition of fines regardless of whether the underlying complaint results in further investigation or subsequent action by the Board.
2. The response from the person shall contain the following:
  - a. If requested in the notification letter, the mortgage loan originator shall provide 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, on the Board's own motion, or by an authorized representative of the Board;
  - b. The mortgage loan originator shall provide 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. Mortgage companies shall maintain any and all documents collected, gathered, and provided for the purpose of negotiating and originating residential mortgage loans for a period of four (4) years. Additionally, mortgage companies shall maintain any and all documents used for the purpose of soliciting or marketing borrowers that were directed, made, or caused to be made by the mortgage company. 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 mortgage loan originators shall maintain any and all documents used for the purpose of soliciting or marketing borrowers that were directed, made or caused to be made by the mortgage loan originator.
5. All documents required in this rule shall be kept in a secure environment. Electronic storage is acceptable as long as the information is accessible and kept in a secure environment.

## **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 or registration;
  - c. Imposition of fines; and
  - d. Restitution for any financial loss.

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

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

#### Section 1. Authority

#### Section 2. Scope and Purpose

#### Section 3. Definitions

#### Section 4. Applicability

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

#### Section 6. Enforcement

### **Section 1. Authority**

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

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

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

In order to implement and enforce Colorado mortgage loan originator laws, the Board must have the ability to correspond or request documentation from licensees. Furthermore, licensees are responsible for maintaining specific requirements for licensing. These include, but are not limited to a surety bond and errors and omissions insurance. All licensees are responsible for maintaining such requirements.

The purpose of this rule is to ensure that licensees maintain current contact information and all information required for licensing to ensure the Board may adequately protect Colorado consumers.

### **Section 3. Definitions**

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

### **Section 4. Applicability**

This rule applies to all individuals required to be licensed pursuant to sections 12-61-902 and 12-61-903, C.R.S.

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

1. Individuals required to be licensed as state licensed loan originators shall maintain all current contact information and all information required for licensing, in a manner acceptable to the Board, including on the Division of Real Estate database and on the Nationwide Mortgage Licensing System and Registry. 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 required to be licensed as a state licensed loan originator shall update the Board within thirty (30) days of any changes to the information defined in this rule on both the Division of Real Estate database and on the Nationwide Mortgage Licensing System and Registry.
5. The Director has created the Mortgage Loan Originator Licensing Update Form to ensure this information is clearly and concisely disclosed. This form may be found on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm> . Mortgage loan originators shall use this form to ensure all information defined in this rule is current.
  - a. Mortgage loan originators shall forward this form by mail or personal delivery to the following address:
    - i. Division of Real Estate – Attn: Mortgage Loan Originator Licensing Department

1560 Broadway, Suite 925

Denver, CO 80202

6. All individuals required to be licensed as state licensed loan originators shall maintain all information prescribed in this rule on the Nationwide Mortgage Licensing System and Registry and in conformance to procedures developed by the Nationwide Mortgage Licensing System and Registry.
7. Additionally, mortgage loan originators may update all of the information required in this rule electronically. They may access their information through the following website: [https://eservices.psiexams.com/index\\_login.jsp](https://eservices.psiexams.com/index_login.jsp) . After entering their password and username, mortgage loan originators may update all information without any fees or costs associated with such action.

## **Section 6. Enforcement**

1. Noncompliance with this rule, whether defined or reasonably implied in the rule, may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:
  - a. Revocation;
  - b. Refusal to renew a license;
  - c. Imposition of fines; and
  - d. Restitution for any financial loss.

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

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

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Definitions

Section 4. Applicability

Section 5. 3-1-4 Prepayment Penalties

Section 6. Enforcement

### **Section 1. Authority**

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

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

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

The Board 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 Board updates this rule in order to address the high rate of foreclosures in Colorado resulting from particular prepayment penalties.

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

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

### **Section 4. Applicability**

This rule applies to mortgage loan originators as that term is defined in § 12-61-902(6), C.R.S. This rule applies to all individuals required to be licensed pursuant to § 12-61-902 and 12-61-903, C.R.S.

### **Section 5. 3-1-4 Prepayment Penalties.**

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

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

## **3-1-5 RESPONSIBILITY TO SUBMIT NMLS CALL REPORTS**

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 Board of Mortgage Loan Originators to promulgate rules.

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

Section 4. 3-1-5 Responsibility to Submit NMLS Call Reports

Section 5. Enforcement

### **Section 1. Authority**

The statutory authorities for this rule, entitled 3-1-5 Responsibility to Submit NMLS Call Reports, are § § 12-61-903 (10) and 12-61-910.3, C.R.S.

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

Title V, section 1505(e), U.S.C. states that each mortgage loan originator licensee shall submit to the Nationwide Mortgage Licensing System and Registry (the "NMLS") reports of condition, which shall be in such form and shall contain such information as the NMLS may require.

### **Section 3. Applicability**

This rule applies to all state-licensed mortgage companies and all individuals required to be licensed pursuant to § § 12-61-902 and 12-61-903, C.R.S.

#### **Section 4. 3-1-5 Responsibility to Submit NMLS Call Reports**

1. Beginning January 1, 2012, all mortgage companies and mortgage loan originators must submit the NMLS Mortgage Call Report on a calendar quarterly basis in such form and shall contain such information as the NMLS may require.
2. A mortgage company must identify the applicable NMLS Mortgage Call Report. This includes, but is not limited to, the Standard Section and The Expanded Section of the NMLS Mortgage Call Report. The mortgage company must identify and complete the report on behalf of all employed mortgage loan originators or other mortgage loan originators that operate through their company.
3. If a mortgage company does not submit the NMLS Mortgage Call Report on behalf of their employed mortgage loan originators or other mortgage loan originators that operate through their company, an individualized NMLS Mortgage Call Report, as prescribed the NMLS, is required to be submitted by the individual mortgage loan originator.
4. The quarterly report is due within 45 days of the end of the quarter and the financial condition report of the Standard Section is due annually 90 days from the company's fiscal year end.
5. Mortgage companies and mortgage loan originators must comply with any rules, policies and procedures relating to the submission of a Mortgage Call Report that are prescribed by the NMLS.
6. Failure to properly submit a NMLS Mortgage Call Report in a timely manner prescribed by the NMLS shall prevent the mortgage company and/or the individual mortgage loan originator from renewing their NMLS registration and state license.

#### **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; and
  - c. Imposition of fines

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

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

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

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

Section 5. Enforcement

## **Section 1. Authority**

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

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

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

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

## **Section 3. Applicability**

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

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

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

## **Section 5. Enforcement**

1. Noncompliance with this rule, whether defined or reasonably implied in the rule, may result in the

imposition of any of the sanctions allowable under Colorado law, including, but not limited to:

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

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

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

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Definitions

Section 4. Applicability

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

Section 6. Enforcement

### **Section 1. Authority**

The Board of Mortgage Loan Originators adopts the following permanent rule entitled **5-1-2 Mortgage Loan Originator Disclosures**, according to its statutory authority in section 12-61-910.3, C.R.S.

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

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

Section 12-61-914, C.R.S., requires mortgage loan originators, within three (3) business days after receipt of a loan application or any money 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 Board 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, as set forth in section 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.

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

This rule applies to mortgage loan originators as that term is defined in section 12-61-902(6), C.R.S., and includes those persons who originate a mortgage, offer to originate a mortgage, act as a mortgage loan originator, or offer to act as a mortgage loan originator.

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

1. Section 12-61-914 (1), C.R.S., requires that specific disclosures, set forth in section 12-61-914(2), C.R.S., be disclosed within three (3) business days after receipt of a loan application or any money 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 Board has determined that the Truth in Lending Act Disclosure form is an acceptable manner in which to disclose the requirements set forth in section 12-61-914(2)(a), C.R.S.
  - b. Requirements defined in section 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 money from a borrower;
    - ii. If, after the initial written disclosure is provided, a mortgage loan originator enters into a lock-in agreement, then within three (3) business days thereafter, including

Saturdays, and prior to the borrower signing loan closing documents; and

- iii. If, after a mortgage loan originator enters into a lock-in agreement, the annual percentage rate increases from the annual percentage rate disclosed earlier by more than 1/8 of one (1) percentage point, then 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. Due to the 2010 changes to the HUD Good Faith Estimate Disclosure form, the Board has determined that this form no longer meets the requirements set forth in section 12-61-914(2)(b), C.R.S. As a result, the Board requires that all mortgage loan originators create and implement a form that itemizes the disclosure of all third-party fees and costs. The disclosure shall include mortgage loan originator and borrower signatures and dates in which the disclosure was completed and signed. A complete disclosure form shall be completed according to the following timelines outlined below.

- i. Requirements defined in section 12-61-914(2)(b), C.R.S., shall be disclosed:

- 1. Within three (3) business days after receipt of a loan application or any money from a borrower;
- 2. If, after the initial written disclosure is provided, a mortgage loan originator enters into a lock-in agreement, then within three (3) business days thereafter, including Saturdays, and prior to the borrower signing loan closing documents; and
- 3. If, after a mortgage loan originator enters into a lock-in agreement, the annual percentage rate increases from the annual percentage rate disclosed earlier by more than 1/8 of one (1) percentage point, then within three (3) business days of such change and prior to the borrower signing loan closing documents.

4. A mortgage loan originator shall not charge any fee that inures to the benefit of the mortgage loan originator and the mortgage company for which they are an officer, partner, member, exclusive agent, contractor, independent contractor, or employee if such fee exceeds the fee disclosed on the previous written disclosure unless:

- a. The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and
- b. The mortgage loan originator has provided to the borrower, no less than three (3) 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.

5. Section 12-61-914(2)(c), C.R.S., states that mortgage loan originators shall disclose the amount of any commission or other compensation to be paid to the mortgage loan originator, including the manner in which such commission or other compensation is calculated and the relationship of such commission or other compensation to the cost of the loan received by the borrower.

- a. Mortgage loan originators shall disclose compensation pursuant to provisions and timelines defined in the Real Estate Settlement Procedures Act, Real Estate Settlement

Procedures Act Regulations, the Dodd-Frank Wall Street Reform and Consumer Protection Act, or according to any regulation adopted by the Consumer Financial Protection Bureau.

- b. To view any of the aforementioned laws, regulations or provisions, interested parties may visit the Division of Real Estate for access at: [http://www.dora.state.co.us/real-estate/mortgage/mortgage\\_industry\\_links.htm](http://www.dora.state.co.us/real-estate/mortgage/mortgage_industry_links.htm).
6. 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 loan originator or lender, and, if a lock-in agreement has not been entered, disclosure in a form acceptable to the Board that the disclosed interest rate and terms are subject to change. Section 12-61-914(2)(g), C.R.S. states the mortgage loan originator shall disclose whether and under what conditions any lock-in fees are refundable to the borrower.
- a. The Board has created the Colorado Lock-in Disclosure Form to ensure this information is clearly and concisely disclosed. This disclosure may be found on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm> . Mortgage loan originators shall use this form or alternate form, if alternate form clearly includes all information required on the suggested form, as determined by the Board.
  - b. This form or alternate form shall be used when disclosing lock-in agreements, or when the mortgage loan originator has not entered into a lock-in agreement, to borrowers on residential mortgage loan transactions.
    - i. Mortgage loan originators shall disclose the amount of the teaser rate, payment rate or interest rate and also disclose the type of rate. Examples of the type of rate include, but are not limited to:
      - 1. Teaser rate;
      - 2. Payment rate; or
      - 3. Interest rate.
    - ii. When disclosing the payment type, mortgage loan originators shall define if the payment type is a negative amortization payment, interest only payment or principal and interest payment.
  - c. The lock-in agreement disclosure shall be completed and disclosed:
    - i. Within three (3) business days after receipt of a loan application or any moneys from a borrower;
    - ii. If, after the initial written disclosure is provided, a mortgage loan originator enters into a lock-in agreement, within three (3) business days thereafter, including Saturdays and prior to the borrower signing loan closing documents, the mortgage broker shall deliver or send by first-class mail to the borrower, the written lock-in disclosure created by the Board;
    - iii. If, after a mortgage loan originator enters into a lock-in agreement, the annual percentage rate increases from the annual percentage rate disclosed earlier by more than 1/8 of one (1) percentage point, within three (3) business days of such change and prior to the borrower signing loan closing documents; and

- iv. If, after the mortgage loan originator enters into a lock-in agreement, there is a change to any of the information provided on the lock-in disclosure form, including but not limited to a lock-in extension.
- 7. Individuals who originate a mortgage or act as a mortgage loan originator are required to keep records of the disclosures required in this rule for a period of four (4) years, for the purposes of inspection by the Board or authorized representative of the Board.
  - a. All documents shall be kept in a secure environment. Electronic storage is acceptable as long as the information is accessible and kept in a secure environment.
  - b. The company for whom the mortgage loan originator is an officer, partner, contractor, independent contractor, member, exclusive agent, or an employee may provide the requested documents to the Board. However, the mortgage loan originator is responsible for compliance with the Board's request and is subject to disciplinary action if the company fails or refuses to provide the requested documentation.
- 8. Mortgage loan originators shall provide completed disclosure forms to all borrowers within three (3) business days of completion. Furthermore, mortgage loan originators must be able to provide proof to the Board or an authorized representative of the Board that the disclosure forms defined in this rule were in fact provided to the borrower within three (3) business days of completion.

## **Section 6. Enforcement**

- 1. Noncompliance with this rule, whether defined or reasonably implied in the rule, may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:
  - a. Revocation;
  - b. Refusal to renew a license;
  - c. Imposition of fines; and
  - d. Restitution for any financial loss.

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

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

Section 1. Authority

Section 2. Scope and Purpose

Section 3. Applicability

Section 4. 7-1-1 Dual Status Disclosure

Section 5. Enforcement

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

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

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

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

Colorado statutes require mortgage loan originators, before providing mortgage services to the borrower, to disclose all material facts associated with the transaction. The Board has determined that individuals who operate with dual status licenses as real estate brokers and mortgage loan originators on the same transaction 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 the borrower's right to shop for alternate services.

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

## **Section 3. Applicability**

This rule applies to all individuals required to be licensed pursuant to sections 12-61-902 and 12-61-903, C.R.S.

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

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

## **Section 5. Enforcement**

1. Noncompliance with this rule, whether defined or reasonably implied in the rule, may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:
  - a. Revocation;
  - b. Refusal to renew a license;
  - c. Imposition of fines; and
  - d. Restitution for any financial loss.

### **8-1-1 MORTGAGE LOAN ORIGINATOR ADVERTISING [Repealed eff. 05/15/2013]**

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#### **Editor's Notes**

#### **History**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mortgage Loan Originator Immediate and Automatic Temporary License emer. rule eff. 08/05/2009;  
expired 11/05/2009.

Mortgage Loan Originator License Inactivation and Reactivation emer. rule eff. 08/05/2009.

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

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

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

Rule 1-1-5 eff. 11/30/2009.

Rule 5-1-2 eff. 06/14/2010.

Rules 1-1-5, 5-1-1, 8-1-1 eff. 02/14/2011; Repealed 1-1-1 eff. 02/14/2011.

Rules 1-2-2, 1-3-1, 1-4-1, 3-1-4 eff. 03/17/2011.

Rules 1-5-1, 3-1-1, 3-1-3, 7-1-1 eff. 04/14/2011.

Rules 1-1-2, 3-1-2, 5-1-2 eff. 05/15/2011.

Rules 1-1-6, 1-1-7, 3-1-5 eff. 08/14/2011.

Rule 8-1-1 eff. 10/15/2011.

Rule 1-1-6 Repealed eff. 03/30/2012.

Rule 1-4-1 eff. 5/15/2012.

Rules 1-1-8, 8-8-1 eff. 07/15/2012.

Chapters 6 – 7 eff. 01/14/2013.

Chapters 1, 5, 8 eff. 05/15/2013; chapters 1-1-8, 8-1-1 repealed eff. 05/15/2013.