

## 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 Address : The street address, city, state and postal code.
- 1.2 Adjustable Rate Mortgage: 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.
- 1.3 Adjustment Date: The date the teaser rate, payment rate, or interest rate changes on an adjustable rate mortgage.
- 1.4 Advertisement: Any commercial message that promotes consumer credit. Advertisements may appear:
- A. In newspapers, magazines, leaflets, flyers, catalogs, direct mail literature, or other printed material;
  - B. On radio, television, or a public address system;
  - C. On an inside or outside sign or display, or a window display;
  - D. In point-of-sale literature, price tags, signs, and billboards; or
  - E. Online, such as on the internet.
- 1.5 Bona Fide Nonprofit Organization: An organization that complies with the following criteria:
- A. Has the status of 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 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.
- 1.6 Business Day: All calendar days except Sundays and federal holidays.
- 1.7 Business Name: 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.
- 1.8 Consumer Credit: may be either closed-end or open-end credit. It is credit that is extended primarily for personal, family, or household purposes. It excludes business and agricultural loans, and loans exceeding \$25,000 that are not secured by real property or a dwelling. It also must be extended by a "creditor".
- 1.9 Creditor: Is a person or organization (a) that regularly extends consumer credit for which a finance charge is required or that is repayable in more than four installments even without a finance charge, and (b) to whom the obligation is initially payable—for example, the finance company, bank, automobile dealer or other lender identified on the face of the credit agreement. A person or organization is considered to extend credit "regularly," if it has extended credit more than 25 times during the preceding year or more than 5 times for transactions secured by dwellings.
- 1.10 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.
- 1.11 Finance Charge: The dollar amount charged for credit. It includes interest and other costs, such as service charges, transaction charges, buyer's points, loan fees, and mortgage insurance. It also includes the premiums for credit life, accident, and health insurance, if required, and for property insurance, unless the buyer may select the insurer.
- 1.12 Fixed Term: The length of time a teaser rate, payment rate, or interest rate, is fixed and will not adjust.
- 1.13 Good Faith Estimate Disclosure: Is the Disclosure form established in the Real Estate Settlement Procedures Act, Part 3500, Appendix C.
- 1.14 Housing Finance Agency: An 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.
- 1.15 HUD Approved Housing Counseling Agency: is 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.
- 1.16 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.
- 1.17 Index: The index for an adjustable rate mortgage.
- 1.18 Initial Adjustment Cap: The limit on how much the interest or payment rate can change at the first adjustment period.
- 1.19 Interest Rate: The rate used to calculate a borrower's monthly interest payment.
- 1.20 Life Cap: The limit on how much the interest or payment rate can change over the life of the loan.
- 1.21 Loan Modification: 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.
- 1.22 Loan Modifier: 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.
- 1.23 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.
- 1.24 Payment Rate: The rate used to determine a borrower's monthly payment.
- 1.25 Payment Type: Is the principal and interest, interest only or negative amortization.
- 1.26 Physical Address: The physical location of the property.

- 1.27 Prepayment Penalty: 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.
- 1.28 Rate: The teaser rate, payment rate or interest rate used to determine a borrower's monthly payment or deferred interest specific to reverse mortgage transactions.
- 1.29 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.
- 1.30 Safe and Secure Manner: Reasonable measures are taken to minimize the risk of loss, damage, or theft.
- 1.31 Short Sale: 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.
- 1.32 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.
- 1.33 Teaser Rate: A temporary and often low introductory rate on an adjustable rate mortgage.
- 1.34 Truth-in-Lending Disclosure: Is 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).
- 1.35 Uniform Residential Loan Application: Is the Freddie Mac form 65 or the Fannie Mae form 1003 used in residential loan transactions on properties of four or fewer units.

## **CHAPTER 2: REQUIREMENTS FOR LICENSURE**

- 2.1 An applicant for licensure as a Colorado mortgage loan originator shall successfully complete the requirements set forth below:
- A. Submit a set of fingerprints for a criminal history check to the Colorado Bureau of Investigations (CBI) within 1 year immediately preceding the date of application;
  - B. Register with the Nationwide Mortgage Licensing System and Registry in accordance with policies and procedures established by the Nationwide Mortgage Licensing System and Registry. This includes, but is not limited to completion of the correct registration application, authorization for the registry to pull a credit report and payment of any fees associated with registration;
  - C. Submit fingerprints to the Nationwide Mortgage Licensing System and Registry in accordance with policies and procedures established by the Nationwide Mortgage Licensing System and Registry;

- D. Complete the 20 hours of pre-licensing education reviewed and approved by the Nationwide Mortgage Licensing System and Registry or by a company contracted by the Nationwide Mortgage Licensing System and Registry for the review and approval of pre-licensing courses;
- E. Successful completion of the S.A.F.E. Mortgage Loan Originator examination, developed by the Nationwide Mortgage Licensing System and Registry which will consist of two parts. These two parts include a national component and a Colorado state specific component. 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;
- F. Acquisition of a surety bond as required by § 12-61-907, C.R.S. and in accordance with any rule of the Board that directly or indirectly addresses surety bond requirements;
- G. Acquisition of the errors and omissions insurance required by § 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;
- H. Completion of the Colorado Division of Real Estate specific Mortgage Loan Originator Application; and
- I. Payment of the application fee established by the Board and is non-refundable.

## 2.2 Authority to audit education provider

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. Failure to comply with this rule may result in the withdrawal of course approval.

## 2.3 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.

## 2.4 Temporary license

Mortgage loan originators demonstrating to the Board a good-faith effort to comply with the requirements pursuant to § 12-61-901, et seq., C.R.S. may be issued a temporary license upon completion of the requirements set forth below:

- A. The individual has completed all requirements set forth 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 § 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 § 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 Colorado Division of Real Estate specific Mortgage Loan Originator Application; and
  - F. Payment of the application fee established by the Board and is non-refundable.
- 2.5 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 this Part 9 and § 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.
  - B. 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, 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.
  - C. 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.
- 2.6 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.
- 2.7 Individuals seeking temporary licenses shall be granted one temporary license. Additional or extended temporary licenses shall be prohibited.
- 2.8 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.
- 2.9 Any temporary license issued by the Board shall have the same force and effect of the license required by § 12-61-901, et seq., C.R.S. for the period of time it is in effect.
- 2.10 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 § 12-61-903, C.R.S.
- 2.11 Preliminary advisory opinion

Potential applicants for a state license or a registration through the Nationwide Mortgage Licensing System and Registry 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.

2.12 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 in a domestic, foreign or military court.
- B. If the individual has been enjoined in the immediately preceding five (5) years under domestic or foreign laws from 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 foreign countries, 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.

2.13 Individuals requesting a preliminary advisory opinion shall complete the Preliminary Advisory Application located on the Division of Real Estate's website.

2.14 Individuals requesting a preliminary advisory opinion shall submit all corresponding, or relevant documents related to any conduct or actions as set forth in Rule 2.12. 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.

2.15 Individuals requesting a preliminary advisory opinion shall submit a written and signed personal explanation and detailed account of the facts and circumstances.

2.16 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.

2.17 An individual seeking a preliminary advisory opinion 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.

2.18 The Board or an authorized representative of the Board will provide a favorable or an unfavorable opinion.

2.19 Surety bond

Mortgage loan originators are deemed compliant with the surety bond requirement if their surety bond meets the requirements defined in one of the following options:

A. Mortgage loan originators, at a minimum, may acquire and maintain an individual surety bond if:

1. The surety bond is in the amount of \$25,000.00;
2. The surety bond is in conformance with all relevant Colorado statutory requirements;
3. The surety bond is exclusive to covering acts contemplated under current Colorado mortgage loan originator licensing laws;
4. The surety bond is not applicable to any conduct or transactions outside the jurisdiction of the Board; and
5. The surety bond is identical to the individual surety bond form developed and approved by the Board.

B. Mortgage loan originators who are W-2 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:

1. The surety bond is in the amount of \$100,000.00;
2. The surety bond is in conformance with all relevant Colorado statutory requirements;
3. 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
4. The surety bond is identical to the individual surety bond form developed and approved by the Board.

C. 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:

1. The surety bond is in the amount of \$200,000.00;
2. The surety bond is in conformance with all relevant Colorado statutory requirements;
3. 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



4. The surety bond is identical to the company surety bond form developed and approved by the Board.

2.20 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 Rule 2.19 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.

2.21 Mortgage loan originators shall be required to provide proof of continuous surety bond coverage and that all required information is current. The mortgage loan originator may update all required information electronically on the Division of Real Estate's website.

2.22 Any licensee who so fails to obtain and maintain a surety bond in accordance with Board Rules or fails to provide proof of continuous coverage shall be subject to disciplinary action.

2.23 Errors and omissions insurance

Mortgage loan originators may obtain errors and omissions coverage from the qualified insurance carrier contracted with the Board of Mortgage Loan Originators to offer licensees and license applicants a group policy of insurance or licensees and applicants may obtain errors and omissions coverage independent of the group plan. 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 options:

- A. 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:
  1. The contract and policy are in conformance with all relevant Colorado statutory requirements;
  2. 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;
  3. Coverage shall encompass all types of transactions conducted by the mortgage loan originator and shall be in the individual mortgage loan originator's name;
  4. 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
  5. 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. 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:
  1. The contract and policy are in conformance with all relevant Colorado statutory requirements;

2. 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;
  3. Coverage shall include all activities contemplated under current Colorado mortgage loan originator licensing laws and states this in the policy;
  4. 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;
  5. 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
  6. Coverage contains a deductible no greater than \$50,000.00.
- C. 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:
1. The contract and policy are in conformance with all relevant Colorado statutory requirements;
  2. 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;
  3. Coverage shall include all activities contemplated under current Colorado mortgage loan originator licensing laws and states this in the policy;
  4. 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;
  5. Coverage shall encompass all types of transactions conducted by all of the mortgage loan originators employed at the company;
  6. 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
  7. Coverage contains a deductible no greater than \$100,000.00.

2.24 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 Rule 2.23 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.

- 2.25 Mortgage loan originators shall be required to provide proof of continuous errors and omissions insurance coverage and that all required information is current. The mortgage loan originator may update all required information electronically on the Division of Real Estate's website.
- 2.26 Any licensee who so fails to obtain and maintain an errors and omissions insurance coverage in accordance with Board rules or fails to provide proof of continuous coverage shall be subject to disciplinary action.

### **CHAPTER 3: CONTINUING EDUCATION REQUIREMENTS**

- 3.1 The continuing education requirements for licensed individuals shall begin after issuance of the initial license. Individuals 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 (2) 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.
- 3.2 Completion of the 20 hours of pre-licensing education approved by the Nationwide Mortgage Licensing System and Registry in the same year in which the license was approved, shall satisfy the continuing education requirements in that calendar year.
- 3.3 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.
- 3.4 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 educators and trainers 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 list of such individuals in a manner prescribed by the Board of Mortgage Loan Originators. Educators and trainers 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.

### 3.5 Authority to audit education provider

The Board or the Board's designee may audit any Colorado specific state Update Course reviewed and approved by the Division of Real Estate 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. Failure to comply with this rule may result in the withdrawal of course approval.

## **CHAPTER 4: RENEWAL, REINSTATEMENT, INACTIVATION, SUSPENSION, SURRENDER OR REVOCATION OF A LICENSE OR REGISTRATION**

### 4.1 Renewal process for active licensees.

- A. There are two existing databases that licensees shall independently renew their license through annually. The two independent databases include:
  - 1. The license database managed by the Division of Real Estate. This database may be located by visiting the Division of Real Estate's website.
  - 2. The registration database managed by the Nationwide Mortgage Licensing System and Registry.
- 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 Board 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 Board 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.
- 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 Board 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 Board Rules.
- H. Individuals who fail to renew or reinstate their license shall re-apply in the manner set forth in Rule 4.3.
- I. All renewal, reinstatement or application fees shall be prescribed by the Board. All fees collected for the purpose of applying for license renewal, reinstatement or re-application are non-refundable.

#### 4.2 Renewal process for inactive licensees.

- A. Individuals with inactive licenses shall renew their license annually in the manner set forth in Rule 4.1. Individuals with inactive licenses 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. The fee for reinstatement is one and one half times the amount of the current renewal fee.

#### 4.3 Re-application.

- A. Individuals who fail to maintain a valid license for a period of up to five (5) years after the date of license expiration and who are compliant with the annual continuing education requirements will need to complete the following:
  - 1. Register with the Nationwide Mortgage Licensing System and Registry in accordance with policies and procedures established by the Nationwide Mortgage Licensing System and Registry. This includes, but is not limited to completion of the correct registration application, authorization for the registry to pull a credit report and payment of any fees associated with registration;
  - 2. Submit fingerprints to the Nationwide Mortgage Licensing System and Registry in accordance with policies and procedures established by the Nationwide Mortgage Licensing System and Registry;
  - 3. Obtain a compliant surety bond. Surety bond requirements are defined in section 12-61-907, C.R.S. and by Board Rule;
  - 4. Obtain compliant errors and omissions insurance. Errors and omission insurance requirements are defined in Section 12-61-903.5, C.R.S. and by Board Rule; and
  - 5. Complete the Colorado Division of Real Estate specific license application and pay the application fee.
- B. Individuals who fail to maintain a valid license for a period of up to five (5) years after the date of license expiration and who are not compliant with the annual continuing education requirements will need to complete the following:
  - 1. Comply with all requirements set forth in section (a), subsection (1) to (5) of this Rule, and

2. Complete the 20 hours of pre-licensing education reviewed and approved by the Nationwide Mortgage Licensing System and Registry or by a company contracted by the Nationwide Mortgage Licensing System and Registry for the review and approval of pre-licensing courses;
- C. Individuals who fail to maintain a valid license for a period of more than five (5) years after the date of license expiration will need to complete the following:
1. Comply with all requirements set forth in section (b), subsection (1) and (2) of this Rule; and
  2. Retake the S.A.F.E. Mortgage Loan Originator examination, developed by the Nationwide Mortgage Licensing System and Registry which will consist of two parts. These two parts include a national component and a Colorado state specific component. 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;
- 4.4 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 and Mortgage Company Registration Act, Board rule or as prescribed by Board position statement.
- 4.5 Renewal process for mortgage companies.
- A. Mortgage companies shall renew the registration on the Nationwide Mortgage Licensing System and Registry.
  - B. Mortgage companies 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 Board shall issue or deny a registration renewal application within thirty days after the applicant has submitted all of the information necessary for license renewal or reinstatement and after the board has received all information necessary to make a determination regarding the applicants' compliance.
  - D. The registration renewal period begins November 1st of each calendar year and ends December 31st of each calendar year. Mortgage companies that renew or reinstate their license shall only do so if they are compliant with all provisions of the mortgage loan originator licensing and mortgage company registration act and all Board rules.
  - E. All registrations expire at 12 midnight on December 31st of each calendar year if the licensee has not properly renewed their license.
  - F. If a license has expired, mortgage companies may choose to reinstate their registration. The reinstatement period for reinstatement begins January 1st of each calendar year and ends on the last day of February of each calendar year. Mortgage companies that reinstate their registration shall only do so if they are compliant with all provisions of the

mortgage loan originator licensing and mortgage company registration act and all Board Rules.

G. Mortgage companies that fail to renew or reinstate their registration shall re-apply on the Nationwide Mortgage Licensing System and Registry in order for the Division of Real Estate to review their applications and determine whether the mortgage company is compliant with the registration requirements.

H. All renewal, reinstatement or application fees shall be prescribed by the Board and are non-refundable.

4.6 Mortgage companies that do not have an approved registration are prohibited from acting through employees or other individuals who takes residential loan applications or offers or negotiates terms of a residential mortgage loan. Additionally, mortgage companies that do not have an approved registration are prohibited from engaging in any mortgage related conduct that requires a registration pursuant to the mortgage loan originator licensing and mortgage company registration act, Board Rule or as prescribed by the Board by Position Statement.

#### 4.7 Mortgage loan originator license inactivation and reactivation

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 in order to reactivate their license:

A. The mortgage loan originator has failed or is failing to comply with the surety bond requirements of section 12-61-903(6), C.R.S. Section 12-61-907, C.R.S. or any rule of the 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 this Part 9 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 this Part 9 or in any rule of the Board that directly or indirectly addresses education or testing requirements; or

F. The mortgage loan originator has failed or is failing to register with and provide all required information to the Nationwide Mortgage Licensing System and Registry.

4.8 Individuals who have an inactive license or registration are prohibited from practicing as a mortgage loan originator. Additionally, individuals who have an inactive license or registration 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 Board position statement.

4.9 In order for an inactive mortgage loan originator license or registration 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.

4.10 The Board has created the mortgage loan originator license reactivation form and this form may be found on the Division of Real Estate's website.

## 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* ("Interagency Guidance") released on September 29, 2006, incorporated by reference in compliance with Section 24-4-103(12.5), C.R.S., and does not include any later amendments or editions of the final guidance. A certified copy of the Interagency Guidance is readily available for public inspection at the offices of the Board of Mortgage Loan Originators at 1560 Broadway, Suite 925, Denver, Colorado. The Interagency Guidance released by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift supervision, and the National Credit Union Administration can be examined at the internet website of the federal register (volume 71, number 192, page 58609-58618) at [www.federalregister.gov](http://www.federalregister.gov). Reference copies of the federal register publications may also be found at the Colorado Supreme Court, located at 101 w. Colfax, Denver, Colorado 80202 or by telephone at (303) 837-3720; 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.

5.3 Loan Modifier Licensure

- A. Individuals, not otherwise exempt from Part 9, 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 a Colorado Mortgage Loan Originator.
- B. All individuals required to be licensed shall comply with all other provisions of the Colorado Mortgage Loan Originator Licensing Act and all Board Rules.

5.4 Required Use of a Loan Modification Contract

- A. 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.
- B. 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. 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.
- C. The Colorado Loan Modification Services contract prescribed by this rule shall be completed at time of application.

5.5 The Requirements Set Forth in Rules 5.3 and 5.4 Shall Not Apply to:

- A. 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.
- B. Employees of mortgage loan servicing companies operating on behalf of the borrowers' mortgage lenders.
- C. Licensed Real Estate Brokers engaged in licensed activities when performing services within the 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, 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.

- D. An attorney, as set forth in Section 12-61-904(1)(d), C.R.S., 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.

## 5.6 Reasonable Inquiry

- A. A mortgage loan originator shall only recommend appropriate products after reasonable inquiry has been made in order to understand borrower's current and prospective financial status.
- B. Reasonable inquiry requires the mortgage loan originator to interview and discuss current and prospective income, including the income's source and likely continuance, with borrowers, and may not require the mortgage loan originator to verify such income.
- C. A mortgage loan originator has a duty to recommend mortgage products based on the information provided by the borrower.
- D. A mortgage loan originator shall be deemed in compliance with this rule and Colorado law, § 12-61-904.5(1)(b), C.R.S., concerning reasonable inquiry, upon interviewing and discussing, with all applicable borrowers, all sections contained in the uniform residential loan application and upon completion of a tangible net benefit disclosure. The tangible net benefit disclosure is posted on the Division of Real Estate's website.

## 5.7 Tangible Net Benefit

The reasonable, Tangible Net Benefit Standard in § 12-61-904.5(1)(a), R.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 a mortgage loan originator shall take into account and discuss with prospective borrowers. If applicable, the required considerations for a mortgage loan originator determining the requisite benefit shall include, but are not limited to:
  - 1. Lower payments;
  - 2. Condensed amortization schedule;
  - 3. Debt consolidation;
  - 4. Cash out;
  - 5. Avoiding foreclosure;
  - 6. Negative amortization;
  - 7. Balloon payments;
  - 8. Variable rates;

- 9. Interest only options;
  - 10. Prepayment penalties; and
  - 11. Hybrid mortgage products.
- B. 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.
- 1. It is the responsibility of the mortgage loan originator to ensure this information is acquired and accurately documented.
  - 2. Pursuant to § 12-61-904.5(1), C.R.S., a mortgage loan originator may not have demonstrated a duty of good faith and fair dealing in all communications and transactions with a borrower if it is determined that a mortgage loan originator completed the required purpose or reason for a purchase, loan modification or refinance transaction without consulting the borrower.

#### 5.8 Tangible Net Benefit Disclosure Form

The Board developed a 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 the mortgage loan originator shall complete a Tangible Net Benefit Disclosure with the borrower(s).
- B. The Tangible Net Benefit Disclosure shall also be completed with the borrower(s) prior to the borrower(s) signing loan closing documents if the reasonable, tangible net benefit has changed.
- C. Tangible Net Benefit Disclosures shall be signed by both the mortgage loan originator and the borrowers.
- D. A mortgage loan originator shall provide copies of completed disclosure forms to all borrowers within three (3) business days after receipt of a loan application or any moneys from a borrower. Furthermore, the mortgage loan originator 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 after receipt of a loan application, any moneys from a borrower or any subsequent changes to any loan terms requiring re-disclosure.

#### 5.9 Mortgage Loan Originator and Mortgage Company Duty to Respond and Provide Requested Documents for Investigations

- A. Persons required to be licensed or mortgage companies required to be registered pursuant to § § 12-61-903 and 12-61-903.1, C.R.S., shall provide the Board or the Board's representative with all information required by this rule.
  - 1. 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.

- a. The mortgage loan originator and mortgage company may ask for an extension of time to comply if:
  - i. The request is done so in writing; and
  - ii. The request is received by the Board or authorized representative of the Board prior to the expiration date defined in the notification letter sent by the Board or authorized representative of the Board.
- b. Any and all extensions granted are done so at the discretion of the Board or an authorized representative of the Board.

2. 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.

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

1. 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 or on the Board's own motion or by an authorized representative of the Board;
2. The mortgage loan originator shall provide a complete and specific response to all questions, allegations or averments presented in the notification letter; and
3. Any and all documents or records requested in the notification letter.

C. Mortgage companies shall maintain any and all documents collected, gathered and provided for the purpose of negotiating and originating residential mortgage loans for a period of four years. Additionally, 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:

1. All uniform residential loan applications (form 1003);
2. All required state and federal disclosures;
3. Asset statements;
4. Income documentation;
5. Verification of employment;
6. Verification of deposit;
7. Lender submission forms;
8. Advertisements;

9. Flyers;
10. HUD-1 settlement statements;
11. Uniform underwriting and transmittal summary(form 1008); and
12. Credit report.

D. The mortgage loan originator 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.

E. All documents required in this rule shall be kept in a safe and secure manner. Electronic storage is acceptable as long as the information is accessible and kept in a safe and secure manner.

#### 5.10 Mortgage Loan Originators Maintaining Current Contact Information and All Information Required for Licensing

A. Individuals required to be licensed as a state licensed loan originator 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.

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

1. E-mail address;
2. Legal first, middle and last names;
3. Physical home address;
4. Home phone number;
5. Business address;
6. Business phone number; and
7. Business name.

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

1. Surety bond company;
2. Surety bond number;
3. Surety bond effective date;
4. Errors and omissions insurance provider;
5. Errors and omissions policy number;
6. Errors and omissions effective and expiration date; and

7. Convictions, pleas of guilt or nolo contendere for all crimes.

D. 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.

#### 5.11 Mortgage Loan Originator Contracts

All contracts between a mortgage loan originator and a borrower shall be in writing and shall contain the entire agreement of the parties. 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.

#### 5.12 Mortgage Loan Originator Agreements

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 originator is compliant with this rule and § 12-61-913(2), C.R.S., if they adhere to one of the following requirements:

- A. 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;
- B. 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;
- C. 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
- D. They are an employee of a lender before any solicitation of, or contracting with, any member of the public.

#### 5.13 Mortgage Loan Originator Disclosures

Pursuant to Section 12-61-914(1), C.R.S., requires that specific disclosures, set forth in § 12-61-914(2), C.R.S., be disclosed within three (3) business days after receipt of a loan application or any moneys from a borrower.

5.14 Disclosure requirements (information commonly found in the Truth in Lending Disclosure form) as defined in Section 12-61-914(2)(a), C.R.S., shall be disclosed:

- A. Within three (3) business days after receipt of a loan application or any moneys from a borrower;
- B. If, after the initial written disclosure is provided, a mortgage loan originator enters into a lock-in agreement, within three (3) business days thereafter and prior to the borrower signing loan closing documents; and
- C. 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.

The Truth in Lending Disclosure form is an acceptable manner in which to disclose the requirements set forth in this rule.

- 5.15 Disclosure requirements (information commonly found in the pre-2010 HUD Good Faith Estimate Disclosure form) as defined in Section 12-61-914(2)(b), C.R.S., shall be disclosed in the manner set forth in Rule 5.14, Sections (a) through (c); and

The mortgage loan originator must 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.

- 5.16 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 (3) three business days and 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.

- 5.17 Compensation disclosure requirements as defined in Section 12-61-914(2)(c), C.R.S., shall be disclosed pursuant to provisions and timelines defined in applicable Federal laws or according to any regulation adopted by the consumer financial protection bureau.

- 5.18 Lock-in Disclosure requirements as defined in section 12-61-914(2)(d), C.R.S., shall be disclosed:

- A. Within three (3) business days after receipt of a loan application or any moneys from a borrower;
- B. If, after the initial written disclosure is provided, a mortgage loan originator enters into a lock-in agreement, within three (3) business days thereafter and prior to the borrower signing loan closing documents, the mortgage loan originator shall deliver or send by first-class mail to the borrower, the written Lock-in Disclosure.
- C. 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
- D. 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.

- 5.19 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. A mortgage loan originator may use an alternate form if the alternate form clearly includes all information required on the Colorado Lock-in Disclosure form, as determined by the Board.

- 5.20 The Colorado Lock-in Disclosure form or alternate form shall be used when disclosing the secured rate of interest for the perspective borrower or disclosing that the interest rate is not secured and is subject to change.

- A. The mortgage loan originator 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.
- B. 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.

5.21 Individuals who originate a mortgage or act as a mortgage loan originator are required to keep records of the disclosures, set forth in 12-61-914(2), C.R.S., for a period of four years, for the purposes of inspection by the Board or authorized representative of the Board.

- A. All documents shall be kept in a safe and secure manner. Electronic storage is acceptable as long as the information is accessible and kept in a safe and secure manner.
- 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.
- C. The mortgage loan originator 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 after receipt of a loan application, any moneys from the borrower or any subsequent changes to any loan terms requiring re-disclosure.

#### 5.22 Dual Status Disclosure

The Board prohibits individuals from acting as a mortgage loan originator and a Real Estate Broker, on the same transaction, unless they comply with the requirements set forth in this rule.

- A. Dual status is a material fact to real estate transactions and shall be disclosed to the borrower(s).
- B. 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. A mortgage loan originator 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.
- C. 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.
- D. Persons who originate a mortgage, offer to originate a mortgage, act as a mortgage loan originator, or offer to act as a mortgage loan originator shall maintain the disclosure form defined by this rule for a period of four years.



- E. The mortgage loan originator 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 after receipt of a loan application, any moneys from the borrower or any subsequent changes to any loan terms requiring re-disclosure.

## 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: NATIONWIDE 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.

### **8.5 Call Reports**

All mortgage companies must submit the NMLS Mortgage Call Report on a calendar quarterly basis, as set forth below, and shall contain such information as the NMLS may require.

- A. 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.
- B. 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.
- C. Mortgage companies must comply with any rules, policies and procedures relating to the submission of a Mortgage Call Report that are prescribed by the NMLS.

8.6 Failure to properly submit a NMLS Mortgage Call report in a timely manner prescribed by the NMLS shall prevent the mortgage company from renewing their NMLS registration.

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

**1-1-2 MORTGAGE LOAN ORIGINATOR TEMPORARY LICENSE [Repealed eff. 01/14/2014]**

**1-1-4 MORTGAGE LOAN ORIGINATOR LICENSE RENEWAL, REINSTATEMENT AND RE-APPLICATION [Repealed eff. 01/14/2014]**

**1-1-5 PRELIMINARY ADVISORY OPINIONS [Repealed eff. 01/14/2014]**

**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 [Repealed eff. 11/14/2013]**

**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 [Repealed eff. 01/14/2014]**

**1-3-1 ERRORS AND OMISSIONS INSURANCE FOR MORTGAGE LOAN ORIGINATORS [Repealed eff. 01/14/2014]**

**1-4-1 LICENSING EDUCATION, EXAMINATION AND CONTINUING EDUCATION REQUIREMENTS [Repealed eff. 01/14/2014]**

**1-5-1 MORTGAGE LOAN ORIGINATOR LICENSE AND REGISTRATION INACTIVATION AND REACTIVATION [Repealed eff. 01/14/2014]**

**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 [Repealed eff. 11/14/2013]**

**3-1-2 MORTGAGE LOAN ORIGINATOR AND MORTGAGE COMPANY DUTIES TO RESPOND AND PROVIDE REQUESTED DOCUMENTS FOR INVESTIGATIONS [Repealed eff. 11/14/2013]**

**3-1-3 MAINTAINING CURRENT CONTACT INFORMATION AND ALL INFORMATION REQUIRED FOR LICENSING [Repealed eff. 11/14/2013]**

**3-1-4 PREPAYMENT PENALTIES [Repealed eff. 01/10/2014]**

**3-1-5 RESPONSIBILITY TO SUBMIT NMLS CALL REPORTS [Repealed eff. 11/14/2013]**

**5-1-1 MORTGAGE LOAN ORIGINATOR CONTRACTS [Repealed eff. 11/14/2013]**

**5-1-2 MORTGAGE LOAN ORIGINATOR DISCLOSURES [Repealed eff. 11/14/2013]**

**7-1-1 DUAL STATUS DISCLOSURE [Repealed eff. 11/14/2013]**

## **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. 05/2/2008.

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 07/17/2009.

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.

Chapters 1, 5.3 – 5.22, 8.5 – 8.6 eff. 11/14/2013; chapters 1-1-7, 3-1-1, 3-1-2, 3-1-3, 3-1-5, 5-1-1, 5-1-2, 7-1-1 repealed eff. 11/14/2013.

Chapter 3-1-4 repealed eff. 01/10/2014.



Chapters 2 – 5 eff. 01/14/2014; chapters 1-1-2, 1-1-4, 1-1-5, 1-2-2, 1-3-1, 1-4-1, 1-5-1 repealed eff. 01/14/2014.