

DEPARTMENT OF REGULATORY AGENCIES

DIVISION OF REAL ESTATE

MORTGAGE LOAN ORIGINATORS

4CCR 725-3

NOTICE OF PROPOSED RULEMAKING HEARING

March 16, 2011

5-1-2 MORTGAGE LOAN ORIGINATOR DISCLOSURES

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado, and to all persons who have requested to be advised of the intention of the ~~Director of the Colorado Division of Real Estate~~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 ~~Director of the Division of Real Estate~~Board of Mortgage Loan Originators adopts the following permanent rule entitled, **5-1-2 Mortgage Loan Originator Disclosures**, according to ~~her authority~~as authority as found in § 12-61-910.3, C.R.S.

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

Section 2. Scope and Purpose

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

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

Section 3. Definitions

- A. "Truth-in-Lending Disclosure" means the disclosure form established by the Truth in Lending Act, specific to regulation Z, appendices H-2, H-3, H-4(a), (b), (c) and (d).
- B. "Good Faith Estimate Disclosure" means the disclosure form established in the Real Estate Settlement Procedures Act, part 3500, appendix C.
- C. "Rate" means the teaser rate, payment rate or interest rate used to determine a borrower's monthly payment or deferred interest specific to reverse mortgage transactions.
- D. "Teaser rate" means a temporary and often low introductory rate on an adjustable rate mortgage.
- E. "Payment rate" means the rate used to determine a borrower's monthly payment.
- F. "Interest rate" means the rate used to calculate a borrower's monthly interest payment.
- G. "Payment Type" means principal and interest, interest only or negative amortization.
- H. "Fixed Term" means the length of time a teaser rate, payment rate or interest rate is fixed and will not adjust.
- I. "Index" means the index for an adjustable rate mortgage.
- J. "Initial Adjustment Cap" means the limit on how much the interest or payment rate can change at the first adjustment period.
- K. "Life Cap" means the limit on how much the interest or payment rate can change over the life of the loan.
- L. ~~"Front End Compensation" means the total compensation charged to the borrower that inures to the benefit of the mortgage loan originator and the mortgage company for which the mortgage loan originator is an officer, partner, member, contractor, independent contractor, exclusive agent or employee.~~

~~M. “Back-End Compensation” means the total compensation paid by the funding lender that inures to the benefit of the mortgage loan originator and the mortgage company for which the mortgage loan originator is an officer, partner, member, contractor, independent contractor, exclusive agent or employee.~~

Section 4. Applicability

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

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

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

1. Section 12-61-914 (1), C.R.S., requires that specific disclosures, set forth in § 12-61-914(2), C.R.S., be disclosed within three (3) business days after receipt of a loan application or any moneys from a borrower.
2. Section 12-61-914 (2)(a), C.R.S., states the written disclosures shall contain the annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest, and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan. If the interest rate is variable, the written disclosure shall clearly describe the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from such an increase.
 - a. The ~~Director~~ Board has determined that the Truth in Lending Disclosure form is an acceptable manner in which to disclose the requirements set forth in § 12-61-914(2)(a), C.R.S.
 - b. Requirements defined in § 12-61-914(2)(a), C.R.S., shall be disclosed:
 - i. Within three (3) business days after receipt of a loan application or any moneys from a borrower;
 - ii. If, after the initial written disclosure is provided, a mortgage loan originator enters into a lock-in agreement, within three (3) business days thereafter, including Saturdays, and prior to the borrower signing loan closing documents; and
 - iii. If, after a mortgage loan originator enters into a lock-in agreement, the annual percentage rate increases from the annual percentage rate disclosed earlier by more than 1/8 of one (1) percentage point, within

three (3) business days of such change and prior to the borrower signing loan closing documents.

3. Section 12-61-914(2)(b), C.R.S. states the disclosure shall contain the itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan.
 - a. Due to the 2010 changes to the HUD Good Faith Estimate Disclosure form, the ~~Director Board~~ has determined this form no longer meets the requirements set forth in § 12-61-914(2)(b), C.R.S. As a result, the ~~Director 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 completed disclosure form shall be completed according to the following timelines
 - i. Requirements defined in § 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 moneys from a borrower;
 2. If, after the initial written disclosure is provided, a mortgage loan originator enters into a lock-in agreement, within three (3) business days thereafter, including Saturdays, and prior to the borrower signing loan closing documents; and
 3. If, after a mortgage loan originator enters into a lock-in agreement, the annual percentage rate increases from the annual percentage rate disclosed earlier by more than 1/8 of one (1) percentage point, within three (3) business days of such change and prior to the borrower signing loan closing documents.
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 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 ~~to the borrower all of the front end and back end compensation for the transaction. Annual salaries are not required to be disclosed.~~ 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.
- c. ~~Only when the dollar amount of compensation cannot be determined, may mortgage loan originators disclose a range. Such range shall be disclosed in a dollar amount and the range shall not exceed one (1) percentage point of the loan amount for the total compensation of the transaction. [e.g., on a \$100,000.00 loan, mortgage loan originators may disclose \$1,000.00 to \$2,000.00, \$1,800.00 to \$2,800.00, or \$3,000.00 to \$4,000.00. This is not meant as a compensation cap and is only provided as an example of the range.]~~
- d. ~~Mortgage loan originators shall be deemed compliant if the actual compensation is less than the amount disclosed to the borrower.~~
- e. ~~The Director has created the Colorado Compensation Disclosure Form to ensure this information is clearly and concisely disclosed. This disclosure may be found on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm>. Mortgage loan originators shall use this form or an alternate form, if such alternate form clearly includes all information required on the suggested form, as determined by the Director.~~
 - i. ~~The compensation disclosure shall be completed and disclosed:~~
 - 1. ~~Within three (3) business days after receipt of a loan application or any moneys from a borrower;~~

~~2. If, after the initial written disclosure is provided, a mortgage loan originator enters into a lock-in agreement, within three (3) business days thereafter, including Saturdays, and prior to the borrower signing loan closing documents; and~~

~~3. If, after a mortgage loan originator enters into a lock-in agreement, the annual percentage rate increases from the annual percentage rate disclosed earlier by more than 1/8 of one (1) percentage point, within three (3) business days of such change and prior to the borrower signing loan closing documents.~~

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

Section 6. Enforcement

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

A hearing on the above subject matter will be held on Wednesday, March 16, 2011, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250A, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.