

2009 Real Estate Legislative Update

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There was limited activity in the real estate area in the 2009 legislative session; there were a couple of pretty contentious proposals relating to construction contracts and construction defect liability issues, but neither made it out of the 2009 session. With respect to those signed by the governor, there were two main bills relating to the mortgage crisis, which are as follows:

1. **HB 09-1085 – Mortgage Loan Originators**

Amends the Mortgage Broker Act to rename it the Mortgage Loan Originator Licensing Act and modifies it to conform with the federal “Secure and Fair Enforcement for Mortgage Licensing Act of 2008” (“SAFE Act”).

The bill renames “mortgage brokers” to “mortgage loan originators.”

Excludes from the act: (i) a loan processor or underwriter who is not an independent contractor and who performs clerical or support duties in connection with a residential mortgage loan application but does not offer or negotiate the terms of the loan; (ii) a person engaged only in real estate brokerage activities; (iii) a person engaged only in extensions of credit relating to time share plans, or (iv) an individual servicing a mortgage loan.

Beginning January 1, 2010, requires annual renewals of mortgage loan originator licenses. Also requires state-licensed mortgage loan originators to register with the nationwide mortgage licensing system and registry established pursuant to the SAFE Act on or after July 31, 2010. Loan originators are required to obtain a unique identifier through the registry for use on residential mortgage loan application forms, solicitations or advertisements, business cards or web sites, and other residential mortgage loan-related documents as specified by the Director of the Division of Real Estate. Requires loan originator applicants (on and after January 1, 2010) and licensees (prior to January 1, 2010) to furnish information concerning the applicant’s identity to the nationwide mortgage licensing system and registry, including, at a minimum, the following: (i) fingerprints for submittal to the FBI or CBI for a fingerprint-based criminal history record check and (ii) personal history and experience information, including authorization for the nationwide mortgage licensing system and registry to obtain an independent credit report and administrative, civil or criminal information. Applicants on and after January 1, 2010 are responsible for the costs associated with the criminal history record check. Extends the period within which the Director is to issue or deny a license from 21 days to 60 days after the applicant has submitted required information to the Director and the nationwide mortgage licensing system and registry.

Allows the Director of the Division of Real Estate to authorize the use of the criminal background check provided by the nationwide mortgage licensing system and registry, instead of the criminal history record check otherwise required by the act, if the Director determines that the background check screens applicants in a manner that is sufficient to protect Colorado consumers.

Establishes a minimum requirement of 8 credit hours of continuing education per year in order for a licensee to renew his or her license.

Authorizes the Director to inactivate a state license or a registration with the nationwide mortgage licensing system and registry when a licensee fails to: (i) comply with the surety bond requirements, (ii) maintain errors and omissions insurance coverage, (iii) provide current contact, surety bond, and insurance coverage information, (iv) respond to an investigation or examination, (v) comply with education or testing requirements, or (vi) register with and provide all required information to the nationwide mortgage licensing system and registry.

Exempts inactive licensees and licensed attorneys with active malpractice insurance from the errors and omissions insurance requirement.

Establishes criteria for license renewal, including continued compliance with the requirements of the act, satisfaction of continuing education requirements, and payment of applicable fees; failure to satisfy the requirements results in license expiration.

Authorizes the Director to deny a license application or refuse to renew or to revoke the license of an applicant who has: (i) had a similar license revoked in another jurisdiction, (ii) been convicted of or pled guilty or nolo contendere to a felony involving fraud, dishonesty, breach of trust, or money laundering, (iii) been convicted or pled guilty or nolo contendere to a felony within 7 years immediately preceding the date of application, (iv) failed to demonstrate financial responsibility, character, and general fitness to command confidence of the public, (v) failed to complete the educational requirements set forth in the act, or (vi) failed the required written examination.

Retains the confidentiality of information or material provided to the nationwide mortgage licensing system and registry, even when the information or material is shared with other regulatory entities, and, absent a waiver, protects the information or material from disclosure to the public or discovery or admission into evidence in a civil or administrative action.

Authorizes the director to require licensees to submit to the nationwide mortgage licensing system and registry mortgage call reports.

Adds a sunset date of July 1, 2011, and requires the Department of Regulatory Agencies to review prior to the act's repeal the licensing of mortgage loan originators, including an analysis of the number and types of complaints made about mortgage loan originators and whether the licensing of mortgage loan originators correlates to protection of the public from fraudulent activities in the residential mortgage loan industry. Effective August 5, 2009, unless the subject

of a referendum petition.

2. **HB 09-1276 – Residential Property Foreclosures**

Requires the Division to set qualifications for, train, and retain foreclosure counselors for the foreclosure deferment program. Requires foreclosing lenders to notify the public trustee if the property is a primary residence property falling within the scope of the statute, at the time of submitting the notice of election and demand to the public trustee's office; if the lender later learns the property is qualifying property, the lender must notice the public trustee of that fact and request that the trustee rerecord the notice of election and demand and all deadlines for the foreclosure will be based on that re-recording date. The public trustee is restricted from publishing the combined notice for the foreclosure until the notice regarding the property being a primary residence subject to the statutes has been provided.

Property that is owned by an eligible borrower (meaning a grantor under a deed of trust that is a first lien with an original principal amount of \$500,000 or less) that is the residence of that borrower on the date the notice of election and demand is filed and was occupied as that borrower's primary residence on such date and was occupied as the primary residence within 90 days after the date of the deed of trust and which is intended to continue to be such person's residence is subject to the foreclosure deferment provisions.

Within 15 days after filing the foreclosure documents with the public trustee and the trustee's determination that the file is complete, the foreclosing lender or its attorney is required to post a dated notice on the front door of the property that is the subject of a notice of election and demand that provides information regarding how to pursue a mortgage foreclosure deferment, including the description of the foreclosure deferment opportunity and procedures, the number of the Colorado foreclosure hotline and address of the HUD website for approved housing counselor agencies in Colorado and the deadline for contacting a foreclosure counselor for a foreclosure deferment, which deadline is 20 days after the posting of the notice. The notice must be in English and Spanish, on a single piece of paper, with at least 14 point bold faced type. Requires the Division of Housing to make available a standard form in English and Spanish that meets these requirements within 30 days after the law becomes effective.

The lender is required to submit a compliance affidavit to the public trustee within 20 days after submittal of the foreclosure packet to the trustee, or the trustee will continue the sale. The affidavit must include the foreclosure case number, borrower's name and address, address of the property where the posting was made and the date of the posting.

Requires the borrower to contact a foreclosure counselor within 20 days after posting of the notice. The foreclosure counselor will notify the lender promptly after contact from the borrower, including notice of the date of contact. The foreclosure counselor will provide the borrower with information regarding the Federal "Making Home Affordable" program and advise the borrower whether they would benefit from the program. Within 10 days after receipt of notice of the counselor contact by the borrower, the lender will deliver written notice to the counselor and the borrower of the address for payments if the borrower qualifies for a

foreclosure deferment and how payments may be made electronically. The foreclosure counselor will determine within 30 days after initial contact from the borrower if the borrower is qualified for a foreclosure deferment and certify the determination to the borrower and holder. If the borrower is qualified, the foreclosure counselor will notify the public trustee of that fact within the same 30 day period.

If the public trustee receives such a certification, the trustee will cancel remaining publications of the combined notice and continue the sale until receipt of a certification that the deferment has been terminated or, if no certification is received, for 90 days or until the next scheduled sale date after the end of the 90 day period. Once the deferment period ends, the public trustee will begin publication for that sale within 20 days thereafter.

Specifies criteria for the foreclosure counselor to consider when determining whether an eligible borrower is eligible for a loan deferment with the holder of the loan, including household expenses and income, nature of the loan, and other relevant factors. Analysis is to include whether the lender is likely to receive greater revenue from a loan modification than from a completed foreclosure.

Borrowers are ineligible if they have abandoned the property, provided materially false information to obtain the credit (the fact that the loan was a stated income alone is not enough to establish that the borrower submitted materially false information), engaged in gross waste of the property, been cited for major code violations or has used the property for illegal purposes, is in bankruptcy or within the preceding 24 months has been discharged from a chapter 7 or chapter 13 bankruptcy in which the property was part of the bankruptcy estate or received a prior foreclosure deferment for the same debt.

Requires a holder to negotiate in good faith with a borrower that a foreclosure counselor has determined is eligible for a loan deferment.

Requires the borrower to make payments equal to 2/3 of the required monthly payment under the loan (excluding taxes and insurance) plus the amount of the tax and insurance escrow required to be paid under the loan during the 90-day deferment period. First payment required within 5 days after the foreclosure counselor's certification of qualification for a deferment, with remaining payments required every 30 days thereafter during the deferment period. Allows for electronic payments. Acceptance of these payments by the lender is not a waiver of default or modification of amounts due under the loan.

Lender can seek early termination of the foreclosure deferment if the borrower has abandoned the property, failed to perform the foreclosure deferment requirements, conveyed, transferred or further encumbered the property in violation of the deed of trust, a foreclosure has been initiated by a different party on another lien encumbering the property or the borrower has filed bankruptcy. Counselor must make a determination with respect to the lender's request within 10 days after receipt of the request.

Grants foreclosure counselors immunity from liability. Effective as of June 2, 2009; applies to all foreclosures commenced by filing a notice of election and demand 60 days on and after such date. Includes sunset provision effective June 30, 2011.

Other Real Estate Legislation:

A. HOUSE BILLS

1. HB 09-1183 – Violations of Laws Related to Real Estate Appraisers

This bill increases the penalties for violations laws related to real estate appraisers; a first violation is now a class 1 misdemeanor and any subsequent violation within five years of the date of the first conviction is a class 5 felony. The previously regulation only included misdemeanor penalties for violations. This bill takes effect on August 5, 2009 unless a referendum petition is filed against this act or a portion thereof within such period.

2. HB 09-1199 – Healthy Forests and Vibrant Communities Act of 2009

Creates the Colorado Healthy Forests and Vibrant Communities Act of 2009.

Directs the Colorado State Forest Service to:

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- (i) Adopt standards for community wildfire protection plans (CWPPs) adopted by local communities pursuant to the federal "Healthy Forests Restoration Act of 2003" to promote greater consistency among CWPPs and facilitate the adoption of CWPPS by local communities, and to provide technical assistance to such local communities.
- (ii) Reduce wildfire risks by supporting the implementation of risk mitigation treatments that focus on protecting lives, homes, and essential community infrastructure and by improving inventory and monitoring of forest conditions, including by implementing a cost-share grant program and by hiring additional temporary field capacity.
- (iii) Support communities and land managers in moving from wildfire risk reduction to long-term ecological restoration.
- (iv) Support local business development and job creation through the implementation of forest treatments, including by administering a revolving loan fund to support woody biomass utilization, marketing timber products, and supporting the increased use of woody biomass in bio-heating.
- (v) Issue a statewide request for proposals for loans to businesses to provide start-up capital for new facilities or equipment to harvest, remove, use, and market beetle-killed or other timber taken from private, federal, state, county, or municipal forest lands as part of a wildfire risk reduction or fuels mitigation treatment.

(vi) Improve outreach and technical assistance by adding full-time temporary staff and GIS capacity to assist with risk assessments and planning and by developing a web-based clearinghouse for technical assistance and funding resources.

Creates the healthy forests and vibrant communities fund. Transfers \$2,950,000 from the operational account of the severance tax trust fund to the fund for purposes of the act. Transfers \$50,000 each year from the account to the wildland-urban interface training fund for training for directors of fire protection districts. Directs the air quality control commission to work with key regulatory and management entities, including the forest service and representatives of local health departments to identify barriers to the increased use of prescribed fire and recommend solutions to address those barriers. Immediately effective.

3. HB 09-1287 – Changes to the Colorado Probate Code

Modifications to the Colorado Probate Code incorporating revisions from the National Conference of Commissioners on Uniform State Laws. The changes were discussed at length in the trusts and estates section, so will not be addressed at any length here. Of note for real estate practitioners changes include allowing notarized wills as an alternative to wills witnessed by two witnesses and a rebuttable presumption that a notarized will meets the requirements for execution of a will. Allows for reformation of a governing instrument, even if unambiguous, to conform to the terms of the transferor's intent if proved by clear and convincing evidence that the transferor's intent and the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement. Also provides that a court may, to achieve the transferor's tax objectives, modify the terms of a governing instrument in a manner that is not contrary to the transferor's probable intention and such modification may have retroactive effect. Provisions relating to governing instruments applicable to those instruments executed by decedents dying on or after July 1, 2010.

B. SENATE BILLS

1. SB 09-024 – Division of Wildlife Responsibilities With Respect to Game Damage Issues

Restricts liability to the state for damages caused by wildlife if a claimant charges a fee in excess of \$500 per person, per season, for the purposes of big game hunting access on or across the claimant's property (prior fee threshold was \$100).

Provides that every landowner is eligible to receive sufficient and appropriate temporary game damage previsions materials if (i) the landowner does not unreasonably restrict hunting of species likely to cause damage on land under the landowner's control or restrict hunting of species likely to cause damage on any other lands by restricting access across the lands under the landowner's control; and (ii) the landowner (a) does not charge more than \$500 per person, per season for big game hunting access on or across the landowner's property or (b) charges a fee in excess of \$500 per person, per season but has requested and been denied game damage

prevention materials from the habitat partnership program pursuant to CRS Section 33-1-110(8) and the division of wildlife has determined that excessive game damage is occurring or may continue to occur in the future.

The Division of Wildlife is required to respond to inquiring landowners regarding game damage within 2 business days of the damage inquiry. Within 5 business days after receipt of a request for game damage prevention materials, the Division of Wildlife is required to consult with the landowner to discuss appropriate mitigation materials. Game damage prevention materials may be temporary or permanent. Temporary materials are to be delivered to the landowner within 15 business days after the consultation, unless otherwise agreed to by the Division of Wildlife and the landowner. Permanent materials, if the landowner is eligible to receive them, must be provided within 45 days of the initial request from the landowner. If provided, the landowner is required to keep the materials in good repair throughout their normal life, if not destroyed or damaged by wildlife.

If the Division of Wildlife fails to provide such materials within the applicable periods, the Division of Wildlife is responsible for supplying and erecting the materials and the State of Colorado is liable for damages incurred on and after the date by which the Division of Wildlife should have provided the materials. If the Division of Wildlife installs the materials, it is required to maintain workers' compensation insurance for the workers performing such installation or cause the contractor performing such installation to carry such insurance.

If the materials provided to the landowner fail to prevent the game damage due to insufficiency of materials or inappropriateness of the materials, or insufficient or inappropriate erection of the materials by the Division of Wildlife, the state is liable for damages caused thereby.

Allows for issuance of permits to property owner designees to kill a specified number of the species causing the damage and to encourage issuance of such permits on request from a property owner whenever the wildlife is causing excessive damage exceeds the wildlife objective for such species for such geographical area for the current year. Provides for annual reports to the legislature regarding game damage and game damage prevention issues.

Appropriates from the wildlife cash fund \$1,450,000 per year for game damage claims and prevention and \$600,000 per year for administrative implementation and administration with respect thereto. Bill is immediately effective.

2. SB 09-087 – Increased Accountability Requirements for Special Districts

Provides for the State's Division of Local Governments to post on its website in plain English (i) the audit requirements for special districts, including information on where a copy of the audit report is available for inspection, and (ii) the budget adoption process and requirements for special districts, including information on where a copy of the budget is available for inspection, and for the posting of district election results on the official web site for the Colorado Secretary of State. Also allows the Division to establish a standard form for annual reports that may be used by the boards of special districts.

Requires recording, on or before January 1, 2010, of a current, accurate map of the boundaries of each special district in the county clerk and recorder's office of each county in which the district or any portion thereof is located.

Requires a designated election official for a metropolitan district which has more than \$25,000 of annual revenue or more than \$1,000 of authorized debt per eligible elector, to request from the county clerk and recorder for any county in which part or all of the district is located, at least 60 days prior to a metropolitan district election, a list of the names and addresses of registered electors of the county who are also registered electors of the metropolitan district and who have applied to the county clerk for permanent mail in voter status. Such request will include a certification that the district has provided the county clerk and recorder with a current, accurate map of its boundaries as required by the bill. The clerk and recorder's office is required to provide a list of the registered electors within the district, unless the election official failed to certify that the current, accurate map of the district has been recorded, in which case the clerk and recorder's office will provide the official with a list of all registered electors in the county who have requested permanent mail-in voter status (without a breakdown as to whether they are within the metropolitan district or not). The election official may notify the clerk and recorder of any errors in the list within 10 days after receipt, in which case the clerk may provide an updated list. The official must then mail mail-in ballots to all eligible electors on the list provided by the clerk and recorder.

Requires annual notice (sent not later than January 15 of each year) from the board of a special district to the eligible electors of such district of

- (i) the address and telephone number of the principal business office of the district,
- (ii) the name and business telephone number of the manager or other primary contact of the district,
- (iii) the names of the board members, indicating the members whose positions are up for election at the next regular special district election,
- (iv) the times and places for regular board meetings for the district and the place where meeting notices will be posted,
- (v) the current mill levy for the district and total ad valorem tax revenue received by the district during the prior year,
- (vi) the date of the next regular election,
- (vii) information on procedures and time requirements for self-nomination for elections,
- (viii) a statement that an application to request permanent mail-in voter status may be obtained from the county clerk and recorder, on-line from the Colorado Secretary of State and may be returned to the county clerk and recorder of the county or counties where the district is wholly or partially located, and
- (ix) the address of any website where the special district's election results will be posted.

Such notice can be sent by mailing to each household where one or more eligible electors of the district resides; by including the notice as a prominent part of a newsletter, annual report, billing insert, billing statement, letter, voter information card, notice of election or other informational mailing sent by the district to eligible electors; posting on the website of the district (provided

there is a link to the district's website on the Division's official website); by mailing or electronically transmitting the notice to the statewide association of special districts, provided the district is a member of such association and the association posts the notice on a publicly accessible section of the website; or, for districts with fewer than 1000 eligible electors wholly located in a county of fewer than 30,000 residents, posting the notice in at least 3 public places within the limits of the district and in the office of the county clerk and recorder for such county, with the notices remaining posted through the Tuesday after the first Monday of the following May. Districts are also required to record copies of the notice in the county where the district is located and file them with the Division and make a copy available for public inspection at the principal offices of the district. Districts with overlapping boundaries can combine notices so long as the information regarding each district is separately displayed and identified.

Requires 72 hours prior notice of a special meeting (previously required 3 days prior notice) and amends the Special Taxing District Disclosure Statement required to be included in residential real property contracts.

Bill takes effect on September 1, 2009.

3. SB 09-101 – Creation of Historic Preservation Commissions

Restricts a city that is not a "certified local government" that receives money from the state historical fund for historic preservation purposes from expending those funds and requires instead that the city form an independent restoration and preservation commission for the purpose of spending such monies. A "certified local government" is a local government certified by the state's historic preservation officer pursuant to 16 U.S.C. Section 470a(c)(1). Establishes the makeup of such commission (7 members, 2 of which are required to be architects, 2 of which are required to be experts in historic preservation, 2 of which are required to have a degree in either urban planning or landscape architecture and 1 member of the community) and selection process for commission members (expert members are to be selected by the city's governing body from nominees submitted by the applicable expert association for the category, community member appointed by the governing body of the city). Provides for city's establishment of term lengths for commission members. Members are to be unpaid, but entitled to reimbursement for expenses; commission costs to be paid from the city's share of preservation and restoration funds. Commission may adopt rules, bylaws and shall appoint chairperson and officers. Commission only to act at semi-monthly meetings to be held at times determined by the governing body of the city or at meetings for which not less than 5 days notice has been given. Official decisions of the commission are deemed final agency action and subject to judicial review; decisions are not appealable to the city's governing body. Effective August 1, 2009.

4. SB 09-158 – Analysis of Conservation Programs on Private Lands

Provides for a study by the Department of Natural Resources with respect to federal and state conservation programs implemented on private lands within the state, including the types of lands desirable for the programs, the cost to administer such programs and the value of the

programs to public and private interests, for purposes of legislative evaluation and possible supplementation with additional state or federal programs. Review of federal and state “landowner incentive conservation programs” (meaning programs that provide monetary compensation for conservation) that are currently existing or adopted prior to February 1, 2010 is required. Provides for consultation with affected groups, including federal agencies, state agencies, landowners, conservation groups, and the state’s agricultural industry task force. Report submittal required by February 1, 2010. Provides for creation by the Commissioner of Agriculture of a task force for purpose of consulting with the Department of Natural Resources regarding landowner incentive conservation programs; task force to be formed on or before October 1, 2009. Allows for restriction of access to gathered materials which identify private lands by landowner or parcel. Effective on August 5, 2009, unless subject of referendum petition.

5. **SB 09-173 – Creation of Regional Tourism Projects**

Creates the Colorado Regional Tourism Act.

Creates a mechanism for a local government to undertake a regional tourism project to attract out-of-state visitors, to create a regional tourism zone in which the project will be built, and to create a regional tourism authority or to designate other financing entities with the power to receive and utilize the increment of revenues derived from the state sales tax collected in the zone that is above a designated base amount (state sales tax increment revenue) to be used to finance eligible improvements related to the project.

Allows any local government to apply to the office of economic development and the Colorado economic development commission to undertake a project, and in connection with the project, to form a zone and an authority or to designate a metropolitan district or urban renewal authority as the approved financing entity. Specifies the information that a local government is required to include in the application for a project and the criteria that the project is required to satisfy to be approved.

Requires the director of the office of economic development (director) to review each application for a project and to make an initial determination regarding whether the application meets the specified criteria. Requires the director to forward each application to the commission with a recommendation regarding whether the project should be approved. Directs the commission to review each application and to approve or reject the project. As part of the approval of a project, allows the commission to authorize the collection and use of the state sales tax increment revenue for a designated number of years. If requested by the local government, allows the commission to authorize the creation of an authority to receive and spend state sales tax increment revenue. Specifies that an authority shall be governed by a board consisting of a certain number of members appointed by the commission and a certain number of members appointed by the local government. Specifies the powers of the authority and the manner in which the state sales tax increment revenue shall be divided and used. Requires that work on a project commence within a certain period after the commission has approved the project. On an annual basis, requires the financing entity for a project to submit a report containing specified

information to the commission. Authorizes an urban renewal authority or a metropolitan district to receive and disburse the state sales tax increment revenue generated within a zone and to act as the financing entity for the zone. Effective immediately.

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 09-1085

BY REPRESENTATIVE(S) Rice, Hulinghorst, Massey, Priola, Ryden, Sonnenberg, Stephens, Todd, Labuda;
also SENATOR(S) Heath, Newell.

CONCERNING THE REGULATION OF MORTGAGE LOAN ORIGINATORS, AND, IN CONNECTION THEREWITH, MODIFYING THE "MORTGAGE BROKER LICENSING ACT" TO CONFORM TO THE FEDERAL "SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008", EXEMPTING CERTAIN FINANCIAL INSTITUTIONS FROM THE LIST OF PROHIBITED PRACTICES UNDER THE ACT, AND MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 9 of article 61 of title 12, Colorado Revised Statutes, is amended to read:

12-61-901. Short title. This part 9 shall be known and may be cited as the "Mortgage ~~Broker~~ LOAN ORIGINATOR Licensing Act".

12-61-902. Definitions. As used in this part 9, unless the context otherwise requires:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(1) "Affiliate" means a person who, directly or indirectly, through intermediaries controls, is controlled by, or is under the common control of another person addressed by this part 9.

(1.5) "Borrower" means any person who consults with or retains a mortgage ~~broker~~ LOAN ORIGINATOR in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

(2) ~~"Broker a mortgage" means to directly or indirectly act as a mortgage broker.~~ "DEPOSITORY INSTITUTION" HAS THE SAME MEANING AS SET FORTH IN THE "FEDERAL DEPOSIT INSURANCE ACT", 12 U.S.C. SEC. 1813 (c), AND INCLUDES A CREDIT UNION.

(3) "Director" means the director of the division of real estate.

(4) "Division" means the division of real estate.

(4.3) "DWELLING" SHALL HAVE THE SAME MEANING AS SET FORTH IN THE FEDERAL "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1602 (v).

(4.5) "FEDERAL BANKING AGENCY" MEANS THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, THE COMPTROLLER OF THE CURRENCY, THE DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION, THE NATIONAL CREDIT UNION ADMINISTRATION, OR THE FEDERAL DEPOSIT INSURANCE CORPORATION.

(4.7) "INDIVIDUAL" MEANS A NATURAL PERSON.

(4.9) (a) "LOAN PROCESSOR OR UNDERWRITER" MEANS AN INDIVIDUAL WHO PERFORMS CLERICAL OR SUPPORT DUTIES AT THE DIRECTION OF, AND SUBJECT TO SUPERVISION BY, A STATE-LICENSED LOAN ORIGINATOR OR A REGISTERED LOAN ORIGINATOR.

(b) AS USED IN THIS SUBSECTION (4.9), "CLERICAL OR SUPPORT DUTIES" INCLUDES DUTIES PERFORMED AFTER RECEIPT OF AN APPLICATION FOR A RESIDENTIAL MORTGAGE LOAN, INCLUDING:

(I) THE RECEIPT, COLLECTION, DISTRIBUTION, AND ANALYSIS OF

INFORMATION COMMONLY USED FOR THE PROCESSING OR UNDERWRITING OF A RESIDENTIAL MORTGAGE LOAN; AND

(II) COMMUNICATING WITH A BORROWER TO OBTAIN THE INFORMATION NECESSARY TO PROCESS OR UNDERWRITE A LOAN, TO THE EXTENT THAT THE COMMUNICATION DOES NOT INCLUDE OFFERING OR NEGOTIATING LOAN RATES OR TERMS OR COUNSELING CONSUMERS ABOUT RESIDENTIAL MORTGAGE LOAN RATES OR TERMS.

(5) "MORTGAGE LENDER" MEANS A LENDER WHO IS IN THE BUSINESS OF MAKING RESIDENTIAL MORTGAGE LOANS IF:

(a) THE LENDER IS THE PAYEE ON THE PROMISSORY NOTE EVIDENCING THE LOAN; AND

(b) THE LOAN PROCEEDS ARE OBTAINED BY THE LENDER FROM ITS OWN FUNDS OR FROM A LINE OF CREDIT MADE AVAILABLE TO THE LENDER FROM A BANK OR OTHER ENTITY WHO REGULARLY LOANS MONEY TO LENDERS FOR THE PURPOSE OF FUNDING MORTGAGE LOANS.

~~(5)~~ (6) (a) "Mortgage ~~broker~~ LOAN ORIGINATOR" means an individual who:

(I) TAKES A RESIDENTIAL MORTGAGE LOAN APPLICATION; OR

(II) OFFERS OR negotiates ~~originates, or offers or attempts to negotiate or originate for a borrower, and for a commission or other thing of value,~~ TERMS OF a residential mortgage loan. ~~to be consummated and funded by a mortgage lender.~~

(b) "MORTGAGE LOAN ORIGINATOR" DOES NOT INCLUDE:

(I) AN INDIVIDUAL ENGAGED SOLELY AS A LOAN PROCESSOR OR UNDERWRITER;

(II) A PERSON THAT ONLY PERFORMS REAL ESTATE BROKERAGE OR SALES ACTIVITIES AND IS LICENSED OR REGISTERED PURSUANT TO PART 1 OF THIS ARTICLE, UNLESS THE PERSON IS COMPENSATED BY A MORTGAGE LENDER OR A MORTGAGE LOAN ORIGINATOR;

(III) A PERSON SOLELY INVOLVED IN EXTENSIONS OF CREDIT RELATING TO TIME SHARE PLANS, AS DEFINED IN 11 U.S.C. SEC. 101 (53D);

(IV) AN INDIVIDUAL WHO IS SERVICING A MORTGAGE LOAN; OR

(V) A PERSON THAT ONLY PERFORMS THE SERVICES AND ACTIVITIES OF A DEALER, AS DEFINED IN SECTION 24-32-3302, C.R.S.

~~(6) "Mortgage lender" means a lender who is in the business of making residential mortgage loans if:~~

~~(a) The lender is the payee on the promissory note evidencing the loan; and~~

~~(b) The loan proceeds are obtained by the lender from its own funds or from a line of credit made available to the lender from a bank or other entity who regularly loans money to lenders for the purpose of funding mortgage loans.~~

(6.3) "NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY" MEANS A MORTGAGE LICENSING SYSTEM DEVELOPED PURSUANT TO THE FEDERAL "SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008", 12 U.S.C. SEC. 5101 ET SEQ., TO TRACK THE LICENSING AND REGISTRATION OF MORTGAGE LOAN ORIGINATORS AND THAT IS ESTABLISHED AND MAINTAINED BY:

(a) THE CONFERENCE OF STATE BANK SUPERVISORS AND THE AMERICAN ASSOCIATION OF RESIDENTIAL MORTGAGE REGULATORS, OR THEIR SUCCESSOR ENTITIES; OR

(b) THE SECRETARY OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

(6.5) "NONTRADITIONAL MORTGAGE PRODUCT" MEANS A MORTGAGE PRODUCT OTHER THAN A THIRTY-YEAR, FIXED-RATE MORTGAGE.

(7) "Originate A MORTGAGE" means to ~~submit an application or documentation to a mortgage lender or underwriter in an attempt to obtain a residential mortgage loan~~ ACT, DIRECTLY OR INDIRECTLY, AS A MORTGAGE LOAN ORIGINATOR.

(7.5) "PERSON" MEANS A NATURAL PERSON, CORPORATION, COMPANY, LIMITED LIABILITY COMPANY, PARTNERSHIP, FIRM, ASSOCIATION, OR OTHER LEGAL ENTITY.

(7.7) "REAL ESTATE BROKERAGE ACTIVITY" MEANS AN ACTIVITY THAT INVOLVES OFFERING OR PROVIDING REAL ESTATE BROKERAGE SERVICES TO THE PUBLIC, INCLUDING, WITHOUT LIMITATION:

(a) ACTING AS A REAL ESTATE AGENT OR REAL ESTATE BROKER FOR A BUYER, SELLER, LESSOR, OR LESSEE OF REAL PROPERTY;

(b) BRINGING TOGETHER PARTIES INTERESTED IN THE SALE, PURCHASE, LEASE, RENTAL, OR EXCHANGE OF REAL PROPERTY;

(c) NEGOTIATING, ON BEHALF OF ANY PARTY, ANY PORTION OF A CONTRACT RELATING TO THE SALE, PURCHASE, LEASE, RENTAL, OR EXCHANGE OF REAL PROPERTY, OTHER THAN MATTERS RELATED TO FINANCING FOR THE TRANSACTION;

(d) ENGAGING IN AN ACTIVITY FOR WHICH A PERSON ENGAGED IN THE ACTIVITY IS REQUIRED UNDER APPLICABLE LAW TO BE REGISTERED OR LICENSED AS A REAL ESTATE AGENT OR REAL ESTATE BROKER; OR

(e) OFFERING TO ENGAGE IN ANY ACTIVITY, OR ACT IN ANY CAPACITY RELATED TO SUCH ACTIVITY, DESCRIBED IN THIS SUBSECTION (7.7).

(8) "Residential mortgage loan" means a loan that is primarily for personal, family, or household use and that is secured by a mortgage, or deed of trust, or other equivalent, consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a single-family dwelling or multiple-family dwelling of four or fewer units.

(9) "RESIDENTIAL REAL ESTATE" MEANS ANY REAL PROPERTY UPON WHICH A DWELLING IS OR WILL BE CONSTRUCTED.

(10) "SERVICING A MORTGAGE LOAN" MEANS COLLECTING, RECEIVING, OR OBTAINING THE RIGHT TO COLLECT OR RECEIVE PAYMENTS ON BEHALF OF A MORTGAGE LENDER, INCLUDING PAYMENTS OF PRINCIPAL, INTEREST, ESCROW AMOUNTS, AND OTHER AMOUNTS DUE ON OBLIGATIONS

DUE AND OWING TO THE MORTGAGE LENDER.

(11) "STATE-LICENSED LOAN ORIGINATOR" MEANS AN INDIVIDUAL WHO IS:

(a) A MORTGAGE LOAN ORIGINATOR OR ENGAGES IN THE ACTIVITIES OF A MORTGAGE LOAN ORIGINATOR;

(b) NOT AN EMPLOYEE OF A DEPOSITORY INSTITUTION OR A SUBSIDIARY THAT IS:

(I) OWNED AND CONTROLLED BY A DEPOSITORY INSTITUTION; AND

(II) REGULATED BY A FEDERAL BANKING AGENCY;

(c) LICENSED OR REQUIRED TO BE LICENSED PURSUANT TO THIS PART 9; AND

(d) REGISTERED AS A STATE-LICENSED LOAN ORIGINATOR WITH, AND MAINTAINS A UNIQUE IDENTIFIER THROUGH, THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.

(12) "UNIQUE IDENTIFIER" MEANS A NUMBER OR OTHER IDENTIFIER ASSIGNED TO A MORTGAGE LOAN ORIGINATOR PURSUANT TO PROTOCOLS ESTABLISHED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.

12-61-903. License required - rules. (1) (a) On or after ~~January 1, 2008~~ THE EFFECTIVE DATE OF THIS SUBSECTION (1), AS AMENDED, unless licensed by the director, ~~a person~~ AN INDIVIDUAL shall not ~~broker~~ ORIGINATE a mortgage, offer to ~~broker~~ ORIGINATE a mortgage, act as a mortgage ~~broker~~ LOAN ORIGINATOR, or offer to act as a mortgage ~~broker~~ LOAN ORIGINATOR. ON OR AFTER JULY 31, 2010, UNLESS LICENSED BY THE DIRECTOR AND REGISTERED WITH THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY AS A STATE-LICENSED LOAN ORIGINATOR, AN INDIVIDUAL SHALL NOT ORIGINATE OR OFFER TO ORIGINATE A MORTGAGE OR ACT OR OFFER TO ACT AS A MORTGAGE LOAN ORIGINATOR.

(b) ON AND AFTER JANUARY 1, 2010, a licensed mortgage ~~broker~~ LOAN ORIGINATOR shall apply for license renewal in accordance with

subsection (4) of this section every ~~three years~~ CALENDAR YEAR AS DETERMINED BY THE DIRECTOR BY RULE.

~~(c) A mortgage broker who was registered under the predecessor to this section on or before January 1, 2008, shall have his or her registration converted to a license upon satisfaction of all initial licensing requirements that he or she had not already satisfied when applying for registration. The initial term of licensure of such a mortgage broker shall expire on the third anniversary of his or her initial registration.~~

(1.5) AN INDEPENDENT CONTRACTOR MAY NOT ENGAGE IN RESIDENTIAL MORTGAGE LOAN ORIGATION ACTIVITIES AS A LOAN PROCESSOR OR UNDERWRITER UNLESS THE INDEPENDENT CONTRACTOR IS A STATE-LICENSED LOAN ORIGINATOR.

(2) An applicant for initial licensing AS A MORTGAGE LOAN ORIGINATOR shall submit to the director the following:

(a) A criminal history record check in compliance with subsection (5) of this section;

(b) A disclosure of all administrative discipline taken against the applicant concerning the categories listed in section 12-61-905 (1) (c); and

(c) The application fee established by the director in accordance with section 12-61-908.

(3) (a) In addition to the requirements imposed by subsection (2) of this section, on or after ~~January 1, 2009~~ THE EFFECTIVE DATE OF THIS SUBSECTION (3), AS AMENDED, each individual applicant for initial licensing as a mortgage ~~broker~~ LOAN ORIGINATOR shall have satisfactorily completed ~~within the three years immediately preceding the date of the application,~~ a mortgage lending fundamentals course approved by the director and consisting of at least nine hours of ~~classroom~~ instruction in subjects related to mortgage lending. In addition, the applicant shall have satisfactorily completed a written examination approved by the director.

(b) The director may contract with one or more independent testing services to develop, administer, and grade the examinations required by paragraph (a) of this subsection (3) and to maintain and administer licensee

records. The contract may allow the testing service to recover from applicants its costs incurred in connection with these functions. The director may contract separately for these functions and may allow the costs to be collected by a single contractor for distribution to other contractors.

(c) THE DIRECTOR MAY PUBLISH REPORTS SUMMARIZING STATISTICAL INFORMATION PREPARED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY RELATING TO MORTGAGE LOAN ORIGINATOR EXAMINATIONS.

(4) An applicant for license renewal shall submit to the director the following:

(a) A disclosure of all administrative discipline taken against the applicant concerning the categories listed in section 12-61-905 (1) (c); and

(b) The renewal fee established by the director in accordance with section 12-61-908.

(5) (a) Prior to submitting an application for a license, an applicant shall submit a set of fingerprints to the Colorado bureau of investigation. Upon receipt of the applicant's fingerprints, the Colorado bureau of investigation shall use the fingerprints to conduct a state and national criminal history record check using records of the Colorado bureau of investigation and the federal bureau of investigation. All costs arising from such criminal history record check shall be borne by the applicant and shall be paid when the set of fingerprints is submitted. Upon completion of the criminal history record check, the bureau shall forward the results to the director. THE DIRECTOR MAY ACQUIRE A NAME-BASED CRIMINAL HISTORY RECORD CHECK FOR AN APPLICANT WHO HAS TWICE SUBMITTED TO A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK AND WHOSE FINGERPRINTS ARE UNCLASSIFIABLE.

(b) IF THE DIRECTOR DETERMINES THAT THE CRIMINAL BACKGROUND CHECK PROVIDED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY IS A SUFFICIENT METHOD OF SCREENING LICENSE APPLICANTS TO PROTECT COLORADO CONSUMERS, THE DIRECTOR MAY, BY RULE, AUTHORIZE THE USE OF THAT CRIMINAL BACKGROUND CHECK INSTEAD OF THE CRIMINAL HISTORY RECORD CHECK OTHERWISE REQUIRED BY THIS SUBSECTION (5).

(5.5) (a) ON AND AFTER JANUARY 1, 2010, IN CONNECTION WITH AN APPLICATION FOR A LICENSE AS A MORTGAGE LOAN ORIGINATOR, THE APPLICANT SHALL FURNISH INFORMATION CONCERNING THE APPLICANT'S IDENTITY TO THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY. THE APPLICANT SHALL FURNISH, AT A MINIMUM, THE FOLLOWING:

(I) FINGERPRINTS FOR SUBMISSION TO THE FEDERAL BUREAU OF INVESTIGATION AND ANY GOVERNMENT AGENCY OR ENTITY AUTHORIZED TO RECEIVE FINGERPRINTS FOR A STATE, NATIONAL, OR INTERNATIONAL CRIMINAL HISTORY RECORD CHECK; AND

(II) PERSONAL HISTORY AND EXPERIENCE, IN A FORM PRESCRIBED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY, INCLUDING SUBMISSION OF AUTHORIZATION FOR THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY TO OBTAIN:

(A) AN INDEPENDENT CREDIT REPORT FROM THE CONSUMER REPORTING AGENCY DESCRIBED IN THE FEDERAL "FAIR CREDIT REPORTING ACT", 15 U.S.C. SEC. 1681a (p); AND

(B) INFORMATION RELATED TO ANY ADMINISTRATIVE, CIVIL, OR CRIMINAL FINDINGS BY A GOVERNMENT JURISDICTION.

(b) AN APPLICANT IS RESPONSIBLE FOR PAYING ALL COSTS ARISING FROM A CRIMINAL HISTORY RECORD CHECK AND SHALL PAY SUCH COSTS UPON SUBMISSION OF FINGERPRINTS.

(c) THE DIRECTOR MAY ACQUIRE A NAME-BASED CRIMINAL HISTORY RECORD CHECK FOR AN APPLICANT WHO HAS TWICE SUBMITTED TO A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK AND WHOSE FINGERPRINTS ARE UNCLASSIFIABLE.

(5.7) ANY INDIVIDUAL WHO OBTAINS A LICENSE PURSUANT TO THIS PART 9 PRIOR TO JANUARY 1, 2010, SHALL FURNISH AT LEAST THE FOLLOWING INFORMATION CONCERNING THE INDIVIDUAL'S IDENTITY TO THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY:

(a) FINGERPRINTS FOR SUBMISSION TO THE FEDERAL BUREAU OF INVESTIGATION AND ANY GOVERNMENT AGENCY OR ENTITY AUTHORIZED TO RECEIVE FINGERPRINTS FOR A STATE, NATIONAL, OR INTERNATIONAL

CRIMINAL HISTORY RECORD CHECK; AND

(b) PERSONAL HISTORY AND EXPERIENCE IN A FORM PRESCRIBED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY, INCLUDING SUBMISSION OF AUTHORIZATION FOR THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY TO OBTAIN:

(I) AN INDEPENDENT CREDIT REPORT FROM THE CONSUMER REPORTING AGENCY DESCRIBED IN THE FEDERAL "FAIR CREDIT REPORTING ACT", 15 U.S.C. SEC. 1681a (p); AND

(II) INFORMATION RELATED TO ANY ADMINISTRATIVE, CIVIL, OR CRIMINAL FINDINGS BY A GOVERNMENT JURISDICTION.

(6) Before granting a license to an applicant, the director shall require the applicant to post a bond as required by section 12-61-907.

(7) The director shall issue or deny a license within ~~twenty-one~~ SIXTY days after: ~~receiving~~

(a) THE APPLICANT HAS SUBMITTED THE REQUISITE INFORMATION TO THE DIRECTOR AND THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY, INCLUDING, BUT NOT LIMITED TO, THE COMPLETED APPLICATION, THE APPLICATION FEE, AND PROOF THAT THE APPLICANT HAS POSTED A SURETY BOND AND OBTAINED ERRORS AND OMISSIONS INSURANCE; AND

(b) THE DIRECTOR RECEIVES the completed criminal history record check ~~completed application, application fee, and proof of the posting of the surety bond~~ AND ALL OTHER RELEVANT INFORMATION OR DOCUMENTS NECESSARY TO REASONABLY ASCERTAIN FACTS UNDERLYING THE APPLICANT'S CRIMINAL HISTORY.

(8) (a) The director may require, as a condition of license renewal on or after January 1, 2009, continuing education of licensees for the purpose of enhancing the professional competence and professional responsibility of all licensees.

(b) Continuing professional education requirements shall be determined by the director BY RULE; except that licensees shall ~~not~~ be required to complete ~~more than nine~~ AT LEAST EIGHT credit hours of

continuing education ~~within a three-year period~~ EACH YEAR. The director may contract with one or more independent service providers to develop, review, or approve continuing education courses. The contract may allow the independent service provider to recover from licensees its costs incurred in connection with these functions. The director may contract separately for these functions and may allow the costs to be collected by a single contractor for distribution to other contractors.

(9) (a) The director may require contractors and prospective contractors for services under subsections (3) and (8) of this section to submit, for the director's review and approval, information regarding the contents and materials of proposed courses and other documentation reasonably necessary to further the purposes of this section.

(b) The director may set fees for the initial and continuing review of courses for which credit hours will be granted. The initial filing fee for review of materials shall not exceed five hundred dollars, and the fee for continued review shall not exceed two hundred fifty dollars per year per course offered.

(10) The director may adopt reasonable rules to implement this section. THE DIRECTOR MAY ADOPT RULES NECESSARY TO IMPLEMENT PROVISIONS REQUIRED IN THE FEDERAL "SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008", 12 U.S.C. SEC. 5101 ET SEQ., AND FOR PARTICIPATION IN THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.

(11) IN ORDER TO FULFILL THE PURPOSES OF THIS PART 9, THE DIRECTOR MAY ESTABLISH RELATIONSHIPS OR CONTRACTS WITH THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY OR OTHER ENTITIES DESIGNATED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY TO COLLECT AND MAINTAIN RECORDS AND PROCESS TRANSACTION FEES OR OTHER FEES RELATED TO LICENSEES OR OTHER PERSONS SUBJECT TO THIS PART 9.

(12) THE DIRECTOR MAY USE THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY AS A CHANNELING AGENT FOR REQUESTING INFORMATION FROM OR DISTRIBUTING INFORMATION TO THE DEPARTMENT OF JUSTICE, A GOVERNMENT AGENCY, OR ANY OTHER SOURCE.

12-61-903.3. License or registration inactivation. (1) THE DIRECTOR MAY INACTIVATE A STATE LICENSE OR A REGISTRATION WITH THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY WHEN A LICENSEE HAS FAILED TO:

(a) COMPLY WITH THE SURETY BOND REQUIREMENTS OF SECTIONS 12-61-903 (6) AND 12-61-907;

(b) COMPLY WITH THE ERRORS AND OMISSIONS INSURANCE REQUIREMENT IN SECTION 12-61-903.5 OR ANY RULE OF THE DIRECTOR THAT DIRECTLY OR INDIRECTLY ADDRESSES ERRORS AND OMISSIONS INSURANCE REQUIREMENTS;

(c) 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 DIRECTOR THAT DIRECTLY OR INDIRECTLY ADDRESSES SUCH REQUIREMENTS;

(d) RESPOND TO AN INVESTIGATION OR EXAMINATION;

(e) COMPLY WITH ANY OF THE EDUCATION OR TESTING REQUIREMENTS SET FORTH IN THIS PART 9 OR IN ANY RULE OF THE DIRECTOR THAT DIRECTLY OR INDIRECTLY ADDRESSES EDUCATION OR TESTING REQUIREMENTS; OR

(f) REGISTER WITH AND PROVIDE ALL REQUIRED INFORMATION TO THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.

12-61-903.5. Errors and omissions insurance - duties of the director - certificate of coverage - when required - group plan made available - effect - rules. (1) ~~(a) Every licensee under this part 9 except an inactive mortgage broker or an attorney licensee who maintains a policy of professional malpractice insurance that provides coverage for errors and omissions for activities as a licensee under this part 9; shall maintain errors and omissions insurance to cover all activities contemplated under this part 9.~~

(b) THE REQUIREMENTS OF THIS SUBSECTION (1) SHALL NOT APPLY TO:

(I) A MORTGAGE LOAN ORIGINATOR WITH AN INACTIVE LICENSE OR REGISTRATION; OR

(II) AN ATTORNEY LICENSED AS A LOAN ORIGINATOR WHO MAINTAINS A POLICY OF PROFESSIONAL MALPRACTICE INSURANCE THAT PROVIDES COVERAGE FOR ERRORS AND OMISSIONS FOR ACTIVITIES OF THE ATTORNEY LICENSEE REGULATED BY THIS PART 9.

(2) The director shall determine the terms and conditions of coverage required under this section, including the minimum limits of coverage, the permissible deductible, and permissible exemptions. Each licensee SUBJECT TO THE REQUIREMENTS OF THIS SECTION shall maintain evidence of coverage, in a manner satisfactory to the director, demonstrating continuing compliance with the required terms.

12-61-903.7. License renewal. (1) IN ORDER FOR A LICENSED MORTGAGE LOAN ORIGINATOR TO RENEW A LICENSE ISSUED PURSUANT TO THIS PART 9, THE MORTGAGE LOAN ORIGINATOR SHALL:

(a) CONTINUE TO MEET THE MINIMUM STANDARDS FOR ISSUANCE OF A LICENSE PURSUANT TO THIS PART 9;

(b) SATISFY THE ANNUAL CONTINUING EDUCATION REQUIREMENTS SET FORTH IN SECTION 12-61-903 (8) AND IN RULES ADOPTED BY THE DIRECTOR; AND

(c) PAY APPLICABLE LICENSE RENEWAL FEES.

(2) IF A LICENSED MORTGAGE LOAN ORIGINATOR FAILS TO SATISFY THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION FOR LICENSE RENEWAL, THE MORTGAGE LOAN ORIGINATOR'S LICENSE SHALL EXPIRE. THE DIRECTOR SHALL ADOPT RULES TO ESTABLISH PROCEDURES FOR THE REINSTATEMENT OF AN EXPIRED LICENSE CONSISTENT WITH THE STANDARDS ESTABLISHED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.

12-61-904. Exemptions. (1) Except as otherwise provided in section 12-61-911, this part 9 shall not apply to the following:

(a) Employees of an agency of the federal government, of the

Colorado government, or of any of Colorado's political subdivisions;

(b) An owner of real property who offers credit secured by a mortgage or deed of trust on the property sold;

(c) A bank, savings bank, savings and loan association, building and loan association, industrial bank, industrial loan company, credit union, or bank or savings association holding company organized under the laws of any state, the District of Columbia, a territory or protectorate of the United States, or the United States, subject to regulation and supervision by a federal banking agency, or an operating subsidiary ~~or affiliate of such entities~~; or an employee or exclusive agent of any of such entities, including, without limitation, a subsidiary ~~or affiliate of such entities~~ THAT IS OWNED OR CONTROLLED BY A DEPOSITORY INSTITUTION;

(d) An attorney who renders services in the course of practice, who is licensed in Colorado, and who is not primarily engaged in the business of negotiating residential mortgage loans;

(e) (Deleted by amendment, L. 2007, p. 1716, § 2, effective June 1, 2007, and p. 1734, § 6, effective January 1, 2008.)

(f) A person who:

(I) Funds a residential mortgage loan that has been originated and processed by a licensed person or by an exempt person;

(II) Does not solicit borrowers in Colorado for the purpose of making residential mortgage loans; and

(III) Does not participate in the negotiation of residential mortgage loans with the borrower, except for setting the terms under which a person may buy or fund a residential mortgage loan originated by a licensed or exempt person;

(g) A LOAN PROCESSOR OR UNDERWRITER WHO IS NOT AN INDEPENDENT CONTRACTOR AND WHO DOES NOT REPRESENT TO THE PUBLIC THAT THE INDIVIDUAL CAN OR WILL PERFORM ANY ACTIVITIES OF A MORTGAGE LOAN ORIGINATOR. AS USED IN THIS PARAGRAPH (g), "REPRESENT TO THE PUBLIC" MEANS COMMUNICATING, THROUGH

ADVERTISING OR OTHER MEANS OF COMMUNICATING OR PROVIDING INFORMATION, INCLUDING THE USE OF BUSINESS CARDS, STATIONERY, BROCHURES, SIGNS, RATE LISTS, OR OTHER PROMOTIONAL ITEMS, THAT THE INDIVIDUAL IS ABLE TO PROVIDE A PARTICULAR SERVICE OR ACTIVITY FOR A CONSUMER.

(2) The exemptions in subsection (1) of this section shall not apply to persons acting beyond the scope of such exemptions.

12-61-904.5. Originator's relationship to borrower - rules. (1) A mortgage ~~broker~~ LOAN ORIGINATOR shall have a duty of good faith and fair dealing in all communications and transactions with a borrower. Such duty includes, but is not limited to:

(a) The duty to not recommend or induce the borrower to enter into a transaction that does not have a reasonable, tangible net benefit to the borrower, considering all of the circumstances, including the terms of a loan, the cost of a loan, and the borrower's circumstances;

(b) The duty to make a reasonable inquiry concerning the borrower's current and prospective income, existing debts and other obligations, and any other RELEVANT information ~~known to the mortgage broker~~ and, after making such inquiry, to make his or her best efforts to recommend, broker, or originate a residential mortgage loan that takes into consideration the information submitted by the borrower, BUT THE MORTGAGE LOAN ORIGINATOR SHALL NOT BE DEEMED TO VIOLATE THIS SECTION IF THE BORROWER CONCEALS OR MISREPRESENTS RELEVANT INFORMATION; and

(c) The duty not to commit any ~~unconscionable act or practice listed~~ ACTS, PRACTICES, OR OMISSIONS in VIOLATION OF section 38-40-105, ~~(1.7)~~; C.R.S.

(2) For purposes of implementing subsection (1) of this section, the director may adopt rules defining what constitutes a reasonable, tangible net benefit to the borrower.

(3) A violation of this section constitutes a deceptive trade practice under the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.

12-61-905. Powers and duties of the director. (1) The director

shall MAY deny AN APPLICATION FOR A LICENSE, refuse to renew, or revoke the license of an applicant OR LICENSEE who has:

(a) Filed an application with the director containing material misstatements of fact or omitted any disclosure required by this part 9;

(b) Within the last five years, been convicted of or pled guilty or nolo contendere to a crime involving fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty, EXCEPT AS OTHERWISE SET FORTH IN THIS PART 9;

(c) EXCEPT AS OTHERWISE SET FORTH IN THIS PART 9, within the last five years, had a license, registration, or certification issued by Colorado or another state revoked or suspended for fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty, and such discipline denied the person authorization to practice as:

(I) A mortgage broker OR A MORTGAGE LOAN ORIGINATOR;

(II) A real estate broker, as defined by section 12-61-101 (2);

(III) A real estate salesperson;

(IV) A real estate appraiser, as defined by section 12-61-702 (5);

(V) An insurance producer, as defined by section 10-2-103 (6), C.R.S.;

(VI) An attorney;

(VII) A securities broker-dealer, as defined by section 11-51-201 (2), C.R.S.;

(VIII) A securities sales representative, as defined by section 11-51-201 (14), C.R.S.;

(IX) An investment advisor, as defined by section 11-51-201 (9.5), C.R.S.; or

(X) An investment advisor representative, as defined by section

11-51-201 (9.6), C.R.S.;

(d) Been enjoined within the immediately preceding five years under the laws of this or any other state or of the United States from engaging in deceptive conduct relating to the brokering of OR ORIGINATING a mortgage loan;

(e) Been found to have violated the provisions of section 12-61-910.2; or

(f) Been found to have violated the provisions of section 12-61-911;

(g) HAD A MORTGAGE LOAN ORIGINATOR LICENSE OR SIMILAR LICENSE REVOKED IN ANY OTHER JURISDICTION; EXCEPT THAT A REVOCATION THAT WAS SUBSEQUENTLY FORMALLY NULLIFIED SHALL NOT BE DEEMED A REVOCATION FOR PURPOSES OF THIS SECTION;

(h) AT ANY TIME PRECEDING THE DATE OF APPLICATION FOR A LICENSE OR REGISTRATION, BEEN CONVICTED OF, OR PLED GUILTY OR NOLO CONTENDERE TO, A FELONY IN A DOMESTIC, FOREIGN, OR MILITARY COURT IF THE FELONY INVOLVED AN ACT OF FRAUD, DISHONESTY, BREACH OF TRUST, OR MONEY LAUNDERING; EXCEPT THAT, IF THE INDIVIDUAL OBTAINS A PARDON OF THE CONVICTION, THE INDIVIDUAL SHALL NOT BE DEEMED CONVICTED FOR PURPOSES OF THIS PARAGRAPH (h);

(i) BEEN CONVICTED OF, OR PLED GUILTY OR NOLO CONTENDERE TO, A FELONY WITHIN THE SEVEN YEARS IMMEDIATELY PRECEDING THE DATE OF APPLICATION FOR A LICENSE OR REGISTRATION;

(j) NOT DEMONSTRATED FINANCIAL RESPONSIBILITY, CHARACTER, AND GENERAL FITNESS TO COMMAND THE CONFIDENCE OF THE COMMUNITY AND TO WARRANT A DETERMINATION THAT THE INDIVIDUAL WILL OPERATE HONESTLY, FAIRLY, AND EFFICIENTLY, CONSISTENT WITH THE PURPOSES OF THIS PART 9;

(k) NOT COMPLETED THE PRELICENSE EDUCATION REQUIREMENTS SET FORTH IN SECTION 12-61-903 AND ANY APPLICABLE RULES OF THE DIRECTOR; OR

(l) NOT PASSED A WRITTEN EXAMINATION THAT MEETS THE

REQUIREMENTS SET FORTH IN SECTION 12-61-903 AND ANY APPLICABLE RULES OF THE DIRECTOR.

(2) The director may investigate the activities of a licensee or other person that present grounds for disciplinary action under this part 9 or that violate section 12-61-910 (1).

(3) (a) If the director has reasonable grounds to believe that a mortgage ~~broker~~ LOAN ORIGINATOR is no longer qualified under subsection (1) of this section, the director may summarily suspend the mortgage ~~broker's~~ LOAN ORIGINATOR'S license pending a hearing to revoke the license. A summary suspension shall conform to article 4 of title 24, C.R.S.

(b) The director shall suspend the license of a mortgage ~~broker~~ LOAN ORIGINATOR who fails to maintain the bond required by section 12-61-907 until the licensee complies with such section.

(4) The director or an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., shall conduct disciplinary hearings concerning mortgage ~~brokers~~ LOAN ORIGINATORS. Such hearings shall conform to article 4 of title 24, C.R.S.

(5) (a) Except as provided in paragraph (b) of this subsection (5), a ~~person~~ AN INDIVIDUAL whose license has been revoked shall not be eligible for licensure for two years after the effective date of the revocation.

(b) If the director or an administrative law judge determines that an application contained a misstatement of fact or omitted a required disclosure due to an unintentional error, the director shall allow the applicant to correct the application. Upon receipt of the corrected and completed application, the director or administrative law judge shall not bar the applicant from being licensed on the basis of the unintentional misstatement or omission.

(6) (a) The director or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing or investigation conducted by the director or an administrative law judge. THE DIRECTOR MAY REQUEST ANY INFORMATION RELEVANT TO THE

INVESTIGATION, INCLUDING, BUT NOT LIMITED TO, INDEPENDENT CREDIT REPORTS OBTAINED FROM A CONSUMER REPORTING AGENCY DESCRIBED IN THE FEDERAL "FAIR CREDIT REPORTING ACT", 15 U.S.C. SEC. 1681a (p).

(b) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed witness resides or conducts business may issue an order requiring the witness to appear before the director or administrative law judge; and produce the relevant papers, books, records, documentary evidence, testimony, or materials in question; OR BOTH. Failure to obey the order of the court may be punished as a contempt of court. The director or an administrative law judge may apply for such order.

(c) THE LICENSEE OR INDIVIDUAL WHO, AFTER AN INVESTIGATION UNDER THIS PART 9, IS FOUND TO BE IN VIOLATION OF A PROVISION OF THIS PART 9 SHALL BE RESPONSIBLE FOR PAYING ALL REASONABLE AND NECESSARY COSTS OF THE DIVISION ARISING FROM SUBPOENAS OR REQUESTS ISSUED PURSUANT TO THIS SUBSECTION (6), INCLUDING COURT COSTS FOR AN ACTION BROUGHT PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (6).

(7) (a) If the director has reasonable cause to believe that a ~~person~~ AN INDIVIDUAL is violating this part 9, including but not limited to section 12-61-910 (1), the director may enter an order requiring ~~such person~~ THE INDIVIDUAL to cease and desist such violations.

(b) The director, upon his or her own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any licensee or any ~~person~~ INDIVIDUAL who assumes to act in such capacity within the state. In addition to any other penalty that may be imposed pursuant to this part 9, any ~~person~~ INDIVIDUAL violating any provision of this part 9 or any rules promulgated pursuant to this article may be fined upon a finding of misconduct by the director as follows:

(I) In the first administrative proceeding, a fine not in excess of one thousand dollars per act or occurrence;

(II) In a second or subsequent administrative proceeding, a fine not less than one thousand dollars nor in excess of two thousand dollars per act or occurrence.

(c) All fines collected pursuant to this subsection (7) shall be transferred to the state treasurer, who shall credit such moneys to the mortgage ~~broker~~ LOAN ORIGINATOR licensing cash fund created in section 12-61-908.

(8) The director shall keep records of the ~~persons~~ INDIVIDUALS licensed as mortgage ~~brokers~~ LOAN ORIGINATORS and of disciplinary proceedings. The records kept by the director shall be open to public inspection in a reasonable time and manner determined by the director.

(9) (a) The director shall maintain a system, which may include, without limitation, a hotline or web site, that gives consumers a reasonably easy method for making complaints about a mortgage ~~broker~~ LOAN ORIGINATOR.

~~(b) The director shall review the complaints annually and prepare a report to be issued to the committee of the general assembly that has oversight of mortgage brokers. Such report shall contain the trends in complaints and investigations under this part 9.~~

(10) The director shall promulgate rules to allow licensed mortgage ~~brokers~~ LOAN ORIGINATORS to hire unlicensed mortgage ~~brokers~~ LOAN ORIGINATORS under temporary licenses. If ~~such~~ an unlicensed mortgage ~~broker~~ LOAN ORIGINATOR has initiated the application process for a license, he or she shall be assigned a temporary license for a reasonable period until a license is approved or denied. The licensed mortgage ~~broker~~ LOAN ORIGINATOR who employs ~~such~~ an unlicensed mortgage ~~broker~~ LOAN ORIGINATOR shall be held responsible under all applicable provisions of law, including without limitation this part 9 and section 38-40-105, C.R.S., for the actions of the unlicensed mortgage ~~broker~~ LOAN ORIGINATOR to whom a temporary license has been assigned under this subsection (10).

12-61-905.5. Disciplinary actions - grounds - procedures - rules.

(1) The director, upon his or her own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any mortgage ~~broker~~, and LOAN ORIGINATOR. The director has the power to impose an administrative fine in accordance with section 12-61-905, ~~and to~~ DENY A LICENSE, censure a licensee, ~~to~~ place the licensee on probation and ~~to~~ set the terms of probation, ORDER RESTITUTION, ORDER THE PAYMENT OF ACTUAL DAMAGES, or ~~to~~ suspend or revoke a license when the director finds that the

licensee OR APPLICANT has performed, is performing, or is attempting to perform any of the following acts:

(a) Knowingly making any misrepresentation or knowingly making use of any false or misleading advertising;

(b) Making any promise that influences, persuades, or induces another person to detrimentally rely on such promise when the licensee could not or did not intend to keep such promise;

(c) Knowingly misrepresenting or making false promises through agents, salespersons, advertising, or otherwise;

(d) Violating any provision of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S., and, if the licensee has been assessed a civil or criminal penalty or been subject to an injunction under said act, the director shall revoke the licensee's license;

(e) Acting for more than one party in a transaction without disclosing any actual or potential conflict of interest or without disclosing to all parties any fiduciary obligation or other legal obligation of the mortgage ~~broker~~ LOAN ORIGINATOR to any party;

(f) Representing or attempting to represent a mortgage ~~broker~~ LOAN ORIGINATOR other than the licensee's PRINCIPAL OR employer without the express knowledge and consent of that PRINCIPAL OR employer;

(g) In the case of a licensee in the employ of another mortgage ~~broker~~ LOAN ORIGINATOR, failing to place, as soon after receipt as is practicably possible, in the custody of that licensed mortgage ~~broker-employer~~ LOAN ORIGINATOR-EMPLOYER any deposit money or other money or fund entrusted to the employee by any person dealing with the employee as the representative of that licensed mortgage ~~broker-employer~~ LOAN ORIGINATOR-EMPLOYER;

(h) Failing to account for or to remit, within a reasonable time, any moneys coming into his or her possession that belong to others, whether acting as a mortgage ~~broker~~ LOAN ORIGINATOR, real estate broker, salesperson, or otherwise, and failing to keep records relative to said moneys, which records shall contain such information as may be prescribed

by the rules of the director relative thereto and shall be subject to audit by the director;

(i) Converting funds of others, diverting funds of others without proper authorization, commingling funds of others with the licensee's own funds, or failing to keep such funds of others in an escrow or a trustee account with a bank or recognized depository in this state, which account may be any type of checking, demand, passbook, or statement account insured by an agency of the United States government, and to so keep records relative to the deposit that contain such information as may be prescribed by the rules of the director relative thereto, which records shall be subject to audit by the director;

(j) Failing to provide the parties to a residential mortgage loan transaction with such information as may be prescribed by the rules of the director;

(k) Failing to maintain possession, for future use or inspection by an authorized representative of the director, for a period of four years, of the documents or records prescribed by the rules of the director or to produce such documents or records upon reasonable request by the director or by an authorized representative of the director;

(l) Paying a commission or valuable consideration for performing any of the functions of a mortgage broker LOAN ORIGINATOR, as described in this part 9, to any person WHO IS not licensed under this part 9 ~~except that a licensed mortgage broker may pay a finder's fee or a share of any commission on a cooperative sale when such payment is made to a mortgage broker licensed in another state or country. If such state or country does not license mortgage brokers, then the payee shall be a citizen or resident of said state or country and represent that the payee is in the mortgage brokerage business in said state or country~~ OR IS NOT REGISTERED IN COMPLIANCE WITH THE FEDERAL "SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008", 12 U.S.C. SEC. 5101 ET SEQ.;

(m) Disregarding or violating any provision of this part 9 or of any rule adopted by the director pursuant to this part 9; violating any lawful orders of the director; or aiding and abetting a violation of any rule, order of the director, or provision of this part 9;

(n) Conviction of, entering a plea of guilty to, or entering a plea of nolo contendere to any crime in article 3 of title 18, C.R.S., in parts 1 to 4 of article 4 of title 18, C.R.S., in article 5 of title 18, C.R.S., in part 3 of article 8 of title 18, C.R.S., in article 15 of title 18, C.R.S., in article 17 of title 18, C.R.S., or any other like crime under Colorado law, federal law, or the laws of other states. A certified copy of the judgment of a court of competent jurisdiction of such conviction or other official record indicating that such plea was entered shall be conclusive evidence of such conviction or plea in any hearing under this part 9.

(o) Violating or aiding and abetting in the violation of the Colorado or federal fair housing laws;

(p) Failing to immediately notify the director in writing of a conviction, plea, or violation pursuant to paragraph (n) or (o) of this subsection (1);

(q) Having demonstrated unworthiness or incompetency to act as a mortgage ~~broker~~ LOAN ORIGINATOR by conducting business in such a manner as to endanger the interest of the public;

~~(r) Failing to exercise reasonable supervision over the activities of licensed employees;~~

(s) Procuring, or attempting to procure, a mortgage ~~broker's~~ LOAN ORIGINATOR'S license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, a mortgage ~~broker's~~ LOAN ORIGINATOR'S license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for such license;

(t) Claiming, arranging for, or taking any secret or undisclosed amount of compensation, commission, or profit or failing to reveal to the licensee's principal or employer the full amount of such licensee's compensation, commission, or profit in connection with any acts for which a license is required under this part 9;

(u) Exercising an option to purchase in any agreement authorizing or employing such licensee to sell, buy, or exchange real estate for compensation or commission except when such licensee, prior to or coincident with election to exercise such option to purchase, reveals in

writing to the licensee's principal or employer the full amount of the licensee's profit and obtains the written consent of such principal or employer approving the amount of such profit;

(v) Fraud, misrepresentation, deceit, or conversion of trust funds that results in the payment of any claim pursuant to this part 9 or that results in the entry of a civil judgment for damages;

(w) Any other conduct, whether of the same or a different character than specified in this subsection (1), that evinces a lack of good faith and fair dealing;

(x) Having had a mortgage ~~broker's~~ LOAN ORIGINATOR'S license suspended or revoked in any jurisdiction or having had any disciplinary action taken against the mortgage ~~broker~~ LOAN ORIGINATOR in any other jurisdiction. A certified copy of the order of disciplinary action shall be prima facie evidence of such disciplinary action.

~~(2) If a firm, partnership, limited liability company, association, or corporation operating under the license of a mortgage broker designated and licensed as a representative of said firm, partnership, limited liability company, association, or corporation is guilty of any of the acts set out in subsection (1) of this section, the director may suspend or revoke the right of the firm, partnership, limited liability company, association, or corporation to conduct its business under the license of said mortgage broker, whether or not the designated mortgage broker had personal knowledge thereof and whether or not the director suspends or revokes the individual license of said mortgage broker.~~

(3) Upon request of the director, when any mortgage ~~broker~~ LOAN ORIGINATOR is a party to any suit or proceeding, either civil or criminal, arising out of any transaction involving a residential mortgage loan and ~~when such~~ THE mortgage ~~broker~~ LOAN ORIGINATOR participated in ~~such~~ THE transaction in his or her capacity as a licensed mortgage ~~broker~~, ~~it shall be the duty of such~~ LOAN ORIGINATOR, THE mortgage ~~broker~~ to LOAN ORIGINATOR SHALL supply to the director a copy of the complaint, indictment, information, or other initiating pleading and the answer filed, if any, and ~~to~~ advise the director of the disposition of the case and of the nature and amount of any judgment, verdict, finding, or sentence that may be made, entered, or imposed therein.

(4) This part 9 shall not be construed to relieve any person from civil liability or criminal prosecution under the laws of this state.

(5) Complaints of record in the office of the director and the results of staff investigations may, in the discretion of the director, be closed to public inspection, except as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee.

(6) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, the director may send a letter of admonition by certified mail, return receipt requested, to the licensee against whom a complaint was made and a copy thereof to the person making the complaint, but the letter shall advise the licensee that the licensee has the right to request in writing, within twenty days after proven receipt, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(7) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the mortgage ~~broker~~ LOAN ORIGINATOR licensing cash fund created in section 12-61-908.

(8) (a) The director shall not consider an application for licensure from a ~~person~~ AN INDIVIDUAL whose license has been revoked until two years after the date of revocation.

(b) If a ~~person's~~ AN INDIVIDUAL'S license was suspended or revoked due to conduct that resulted in financial loss to another person, no new license shall be granted, nor shall a suspended license be reinstated, until full restitution has been made to the person suffering such financial loss. The amount of restitution shall include interest, reasonable attorney fees, and costs of any suit or other proceeding undertaken in an effort to recover the loss.

(9) When the director or the division becomes aware of facts or

circumstances that fall within the jurisdiction of a criminal justice or other law enforcement authority upon investigation of the activities of a licensee, the director or division shall, in addition to the exercise of its authority under this part 9, refer and transmit such information, which may include originals or copies of documents and materials, to one or more criminal justice or other law enforcement authorities for investigation and prosecution as authorized by law.

12-61-905.6. Hearing - administrative law judge - review - rules.

(1) Except as otherwise provided in this section, all proceedings before the director with respect to disciplinary actions and denial of licensure under this part 9, at the discretion of the director, may be conducted by an AUTHORIZED REPRESENTATIVE OF THE DIRECTOR OR AN administrative law judge pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(2) Proceedings shall be held in the county where the director has his or her office or in such other place as the director may designate. If the licensee is employed by another licensed mortgage ~~broker~~ LOAN ORIGINATOR or by a real estate broker, the director shall also notify the licensee's employer by mailing, by first-class mail, a copy of the written notice required under section 24-4-104 (3), C.R.S., to the employer's last-known business address.

(3) THE DIRECTOR, AN AUTHORIZED REPRESENTATIVE OF THE DIRECTOR, OR an administrative law judge shall conduct all hearings for denying, suspending, or revoking a license or certificate on behalf of the director, subject to appropriations made to the department of personnel. Each administrative law judge shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S. The administrative law judge shall conduct the hearing in accordance with sections 24-4-104 and 24-4-105, C.R.S. No license shall be denied, suspended, or revoked until the director has made his or her decision.

(4) The decision of the director in any disciplinary action or denial of licensure under this section is subject to judicial review ~~under section 24-4-106, C.R.S.~~ BY THE COURT OF APPEALS. In order to effectuate the purposes of this part 9, the director has the power to promulgate rules pursuant to article 4 of title 24, C.R.S.

(5) In a judicial review proceeding, the court may stay the execution

or effect of any final order of the director; but a hearing shall be held affording the parties an opportunity to be heard for the purpose of determining whether the public health, safety, and welfare would be endangered by staying the director's order. If the court determines that the order should be stayed, it shall also determine at the hearing the amount of the bond and adequacy of the surety, which bond shall be conditioned upon the faithful performance by such petitioner of all obligations as a mortgage ~~broker~~ LOAN ORIGINATOR and upon the prompt payment of all damages arising from or caused by the delay in the taking effect of or enforcement of the order complained of and for all costs that may be assessed or required to be paid in connection with such proceedings.

(6) In any hearing conducted by the director OR AN AUTHORIZED REPRESENTATIVE OF THE DIRECTOR in which there is a possibility of the denial, suspension, or revocation of a license because of the conviction of a felony or of a crime involving moral turpitude, the director OR HIS OR HER AUTHORIZED REPRESENTATIVE shall be governed by section 24-5-101, C.R.S.

12-61-905.7. Subpoena - misdemeanor. (1) The director or the administrative law judge appointed for hearings may issue a subpoena compelling the attendance and testimony of witnesses and the production of books, papers, or records pursuant to an investigation or hearing of the director. ~~Such subpoenas, AS DESCRIBED IN SECTION 12-61-905 (6), WHICH shall be served in the same manner as subpoenas issued by district courts and shall be issued without discrimination between public or private parties requiring the attendance of witnesses and OR the production of documents at hearings. If a person fails or refuses to obey a subpoena issued by the director or the appointed administrative law judge, the director may petition the district court having jurisdiction for issuance of a subpoena in the premises, and the court shall, in a proper case, issue its subpoena.~~

(2) Any person who willfully fails or neglects to appear and testify or to produce books, papers, or records required by subpoena, duly served upon him or her in any matter conducted under this part 9, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of one hundred dollars or imprisonment in the county jail for not more than thirty days for each such offense, or by both such fine and imprisonment. Each day such person so refuses or neglects constitutes a separate offense.

12-61-906. Immunity. A person participating in good faith in the filing of a complaint or report or participating in an investigation or hearing before the director or an administrative law judge pursuant to this part 9 shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.

12-61-907. Bond required. (1) Before receiving a license, an applicant shall post with the director a surety bond ~~or an alternative authorized by article 35 of title 11, C.R.S.~~, IN THE AMOUNT of twenty-five thousand dollars OR SUCH OTHER AMOUNT AS MAY BE PRESCRIBED BY THE DIRECTOR BY RULE. A licensed mortgage ~~broker~~ LOAN ORIGINATOR shall maintain ~~such~~ THE REQUIRED bond at all times.

(2) The surety shall not be required to pay a person making a claim upon the bond until a final determination of fraud, forgery, criminal impersonation, or fraudulent representation has been made by a court with jurisdiction.

(3) The surety bond shall require the surety to provide notice to the director within thirty days if payment is made from the surety bond or if the bond is cancelled.

12-61-908. Fees - cash fund - created. (1) The director may set the fees for issuance and renewal of licenses under this part 9. The fees shall be set in amounts that offset the direct and indirect costs of implementing this part 9 and section 38-40-105, C.R.S. The moneys collected pursuant to this section shall be transferred to the state treasurer, who shall credit them to the mortgage ~~broker~~ LOAN ORIGINATOR licensing cash fund.

(2) There is hereby created in the state treasury the mortgage ~~broker~~ LOAN ORIGINATOR licensing cash fund. Moneys in the fund shall be spent only to implement this part 9 and section 38-40-105, C.R.S., and shall not revert to the general fund at the end of the fiscal year. The fund shall be subject to annual appropriation by the general assembly.

(3) FOR THE 2009-10 FISCAL YEAR, THE DIVISION IS AUTHORIZED TO EXPEND UP TO ONE HUNDRED TWELVE THOUSAND DOLLARS OR SUCH OTHER AMOUNT AS MAY BE APPROPRIATED BY THE GENERAL ASSEMBLY FROM THE MORTGAGE LOAN ORIGINATOR LICENSING CASH FUND FOR PURPOSES OF