

# Chapter 9: Mortgage Loan Originator Rules and Regulations and Position Statements

An \* in the left margin indicates a change in the statute, rule, or text since the last publication of the manual.

## I. Mortgage Loan Originator Rules

### DEPARTMENT OF REGULATORY AGENCIES<sup>1</sup> DIVISION OF REAL ESTATE

#### RULES REGARDING MORTGAGE LOAN ORIGINATORS 4 CCR 725-3

##### *CHAPTER 1: DEFINITIONS*

- 1.1. Active: A current, Valid license that allows a person to engage in residential mortgage loan origination activities.
- 1.2. Address: The street address, city, state and postal code.
- 1.3. Advertisement: Has the same meaning as set forth in 12 C.F.R. §1026.2(a)(2) as incorporated by reference in Rule 1.39.
- 1.4. Applicant: A natural person that submits an application to the Board to perform the activities of a Mortgage Loan Originator.
- 1.5. Application: Has the same meaning as set forth in 12 C.F.R. §1026.2(a)(3) and 12 C.F.R. §1024.2(b) as incorporated by reference in Rule 1.39.
- 1.6. Board: The Board of Mortgage Loan Originators as defined pursuant to section 12-10-702(3), C.R.S.
- 1.7. Board Insurance Policy: The qualified insurance carrier contracted by the Board to offer a group policy of errors and omissions insurance pursuant to section 12-10-707, C.R.S. The qualified insurance carrier of the Board Insurance Policy may be found on the Division's website.
- 1.8. Bona Fide Nonprofit Organization: An organization that complies with the following criteria:
  - A. Has the status of tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, incorporated by reference in compliance with Section 24-4-103(12.5), C.R.S., and does not include later amendments or editions of the Code. A certified copy of the Code is readily available for public inspection at the offices of the Board of Mortgage Loan Originators at 1560 Broadway Suite 925, Denver, Colorado. The Internal Revenue Code of 1986 may be examined at the internet website of the Internal Revenue Service at [www.irs.gov](http://www.irs.gov). The Internal Revenue Service may also be

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<sup>1</sup> The Rules of the Board of Colorado Mortgage Loan Originators are subject to change throughout the year. For the latest version of the Rules of the Board of Colorado Mortgage Loan Originators, please visit: <https://dre.colorado.gov/division-of-real-estate/about-the-division/rules-notice-of-rule-making-hearings>

contacted at 1999 Broadway, Denver, Colorado 80202 or by telephone at (303) 446-1675;

- B. Promotes affordable housing or provides homeownership education, or similar services;
  - C. Conducts its activities in a manner that serves public and charitable purposes, rather than commercial purposes;
  - D. Receives funding and revenue and charges fees in a manner that does not incentivize it or its Employees to act other than in the best interests of its clients;
  - E. Compensates its Employees to act only in the best interests of its clients; and
  - F. Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under the government housing assistance programs.
- 1.9. Business Day: Has the same meaning as set forth in 12 C.F.R. §1026.2(a)(6) and 12 C.F.R. §1024.2(b) as incorporated by reference in Rule 1.39.
- 1.10. Business Name: The company for which individuals who originate a mortgage, offer to originate a mortgage, act as a mortgage loan originator, or offer to act as a mortgage loan originator are officers, partners, members, managers, owners, exclusive agents, contractors, independent contractors or Employees.
- 1.11. Colorado Lock-in Disclosure: means the Colorado Lock-in Disclosure form created by the Board of Mortgage Loan Originators. This form is to be used for any loan application or transaction that is not under the authority of the TILA-RESPA Integrated Disclosure Rule as defined and incorporated by reference in Board Rule 1.39. This disclosure may be found on the Division of Real Estate's Website. A mortgage loan originator may use an alternate form if the alternate form includes all information required on the Colorado Lock-in Disclosure form, as determined by the Board.
- 1.12. Consumer Credit: may be either closed-end or open-end credit. It is credit that is extended primarily for personal, family, or household purposes. It excludes business and agricultural loans, and loans exceeding \$25,000 that are not secured by real property or a dwelling. It also must be extended by a "creditor".
- 1.13. Director: The Director of the Division as defined pursuant to section 12-10-101(1), C.R.S.
- 1.14. Division: The Colorado Division of Real Estate as defined pursuant to section 12-10-101(2), C.R.S.
- 1.15. Employee: An individual whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.
- 1.16. Family Member: A person who is related by blood, marriage, civil union, or adoption.
- 1.17. Fee: The prescribed non-refundable license fee as set by the Division.
- 1.18. Good Faith Estimate Disclosure: Is the same disclosure form established in the Real Estate Settlement Procedures Act, specific to Regulation X, Appendix C as incorporated by reference in Rule 1.39.
- 1.19. Housing Finance Agency: An authority that is chartered by the State of Colorado to help meet the affordable housing needs of the residents of Colorado; is supervised directly or indirectly by the state government; is subject to audit and review by the State of Colorado; and whose activities make it eligible to be a member of the National Council of State Housing Agencies.
- 1.20. HUD Approved Housing Counseling Agency: is an agency which is either a private or public nonprofit organization that is exempt from taxation under Section 501(a) pursuant to Section 501(c), of the Internal Revenue Code of 1996, 26, U.S.C. 501(a) and 501(c), and approved by

the U.S. Department of Housing and Urban Development, in accordance with Housing Counseling Program Handbook 7610.1 and Code of Federal Regulations Title 24, Part 214.

- 1.21. Inactive: A Mortgage Loan Originator who holds a Valid license shown in the Board's records as being Inactive is not permitted to engage in residential mortgage loan origination activities. To maintain licensure on Inactive status, a Mortgage Loan Originator must still continue to renew their license and meet the continuing education requirements as set forth in Chapters 3 and 4 of these Rules.
- 1.22. Independent Contractor: An individual who performs his or her duties other than at the direction of and subject to the supervision and instruction of an individual who is licensed by the Board or is not required to be licensed based on one of the following:
  - A. The individual is lawfully registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry, and who is an Employee of:
    1. A depository institution;
    2. A subsidiary that is:
      - a. Owned and controlled by a depository institution; and
      - b. Regulated by a Federal banking agency; or
    3. An institution regulated by the Farm Credit Administration; or
  - B. An individual who is an Employee of a federal, state, or local government agency or housing finance agency and who acts as a loan originator only pursuant to his or her official duties as an Employee of a federal, state, or local government agency or housing finance agency; or
  - C. An Employee of a bona fide nonprofit organization who acts as a loan originator only with respect to his or her work duties to the bona fide nonprofit organization, and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower.
- 1.23. Jurisdiction: All fifty (50) states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.
- 1.24. Loan Modification: A temporary or permanent change in one or more of the terms of a mortgagor's existing loan, allows the loan to be reinstated, and often results in a more affordable mortgage payment. The borrower retains ownership of the real property and the mortgage note and the deed of trust remains intact.
- 1.25. Loan Modifier: An individual who in the course of the person's business, vocation, or occupation offers to assist, provide, or negotiate on behalf of a borrower to facilitate the receipt of a loan modification from the borrower's current mortgage lender, generally for a fee or other thing of value.
- 1.26. Mortgage Company: Has the same meaning pursuant to section 12-10-702(12), C.R.S.
- 1.27. Mortgage Loan Originator or MLO: Has the same meaning pursuant to section 12-10-702(14), C.R.S.
- 1.28. Nationwide Mortgage Licensing System and Registry or NMLS: A mortgage licensing system developed to track the licensing and registration of mortgage loan originator as further defined in section 12-10-702(15), C.R.S. The system is also known as the Nationwide Multistate Licensing System and Registry.
- 1.29. Offering or Negotiating Terms of a Residential Mortgage Loan: To present for consideration to a borrower or prospective borrower particular residential mortgage loan terms, or to communicate directly or indirectly with a borrower, or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms. An individual's generic referral to or recommendation of a particular lender in and of itself, is not offering or negotiating the terms of a residential mortgage loan.

- 1.30. Petitioner: For the purposes of implementing the provisions of Chapter 7 of these Rules, any person who has filed with the Board a petition or has been granted leave to intervene by the Board for a declaratory order pursuant to section 24-4-105(11), C.R.S. and as set forth in Chapter 7 of these Rules.
- 1.31. Physical Address: The physical location of the property.
- 1.32. Practice Act: The Mortgage Loan Originator Licensing and Mortgage Company Registration Act found at section 12-10-701, et. seq., C.R.S.
- 1.33. Rate: The teaser rate, payment rate or interest rate used to determine a borrower's monthly payment or deferred interest specific to reverse mortgage transactions.
- 1.34. Responsible Mortgage Loan Originator or Responsible MLO: A Mortgage Loan Originator who holds an Active license and is shown in the Board records as supervising the actions and residential mortgage loan origination activities of the Mortgage Loan Originator holding a temporary license.
- 1.35. Safe and Secure Manner: Reasonable measures are taken to minimize the risk of loss, damage, or theft.
- 1.36. Short Sale: The sale of a real property for less than the mortgage loan balance. In the settlement of the short sale transaction the existing mortgage is extinguished. Any deficiency created from the settlement of the transaction may be transformed into a promissory note, charged off, forgiven, or pursued as a judgment against the previous owner.
- 1.37. Sponsor or Sponsorship: A relationship status as shown in the records of the NMLS between a Mortgage Company and a Mortgage Loan Originator. The Mortgage Loan Originator will only conduct business under the Mortgage Company as shown in the records of the NMLS.
- 1.38. Taking a Residential Mortgage Loan Application: The receipt of a residential mortgage loan application by an individual for the purpose of facilitating a decision whether to extend an offer of residential mortgage loan terms to a borrower or prospective borrower, whether the application is received directly or indirectly from the borrower or prospective borrower. An individual's generic referral to or recommendation of a particular lender, in and of itself, is not taking a residential loan application.
- 1.39. TILA-RESPA Integrated Disclosure Rule: means the Consumer Financial Protection Bureau's Integrated Mortgage Disclosures final rule, set forth in 12 C.F.R. § 1024, et seq., the Real Estate Settlement Procedures Act (Regulation X), and in 12 C.F.R. § 1026, et seq., the Truth in Lending Act (Regulation Z), effective October 3, 2015, incorporated by reference in compliance with Section 24-4-103(12.5), C.R.S., and does not include any later amendments or editions of the final rule. A certified copy of the TILA-RESPA Integrated Disclosure rule is readily available for public inspection at the offices of the Board of Mortgage Loan Originators at 1560 Broadway, Suite 925, Denver, Colorado. The TILA-RESPA Integrated Disclosure rule may be examined at the internet website of the Consumer Financial Protection Bureau at [www.consumerfinance.gov](http://www.consumerfinance.gov). The Consumer Financial Protection Bureau may also be contacted at 1700 G Street, NW, Washington, D.C. 20552 or by telephone at (202)435-7000.
- 1.40. Truth-in-Lending Disclosure: Is the same 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) as incorporated by reference in Rule 1.39.
- 1.41. Uniform Residential Loan Application: Is the Freddie Mac form 65 or the Fannie Mae form 1003 used in residential loan transactions on properties of four or fewer units.
- 1.42. Valid: A license that is approved and shown in the Board's records as either Active or Inactive as well as being eligible for renewable status.

**CHAPTER 2: REQUIREMENTS FOR LICENSURE**

2. 1. Pre-Licensing Education Requirement

An Applicant must successfully complete the twenty (20) hours of pre-licensing education reviewed and approved by the NMLS or by a company contracted by the NMLS for the review and approval of pre-licensing courses.

A. Colorado specific pre-licensing education

1. Effective March 1, 2016, Applicants must also complete two (2) hours of Colorado specific pre-licensing education reviewed and approved by the NMLS or by a company contracted by the NMLS for the review and approval of pre-licensing courses.
2. The two (2) hours of Colorado specific education replaces what was a required general elective within the twenty (20) hours of pre-licensing education.
3. Applicants may also complete the two (2) hours of Colorado specific pre-licensing education as a standalone course outside of the twenty (20) hour pre-licensing education.
4. The two (2) hours of Colorado specific education must have a final course examination that covers all major topics covered in the course. Applicants must receive a passing score of seventy-five percent (75%) on the Colorado specific education examination.

B. Completion of pre-licensing education

1. New license or expired license for three or more years

Applicants who have never held a license or held a license that has expired for three (3) or more years in Colorado or any other Jurisdiction must satisfactorily complete twenty (20) hours of pre-licensing education within the three (3) year period immediately the date of application for licensure.

2. Holds a Valid license or expired license for less than three years

Applicants who hold a Valid license or held a license that has expired for less than three (3) years in Colorado or any other Jurisdiction must complete the Colorado specific education as set forth in subsection A.1. of this Rule if not previously taken.

C. Course audits

The Board or the Board's designee may audit courses set forth in this Rule at any time and at no cost. The Board may request from each course provider all related instructional materials, student attendance records and other information that may be necessary for an audit. The purpose of the audit is to ensure adherence to the approved course of study by verifying the course material and instruction are consistent with acceptable educational principles; and that instruction is provided in a manner that the desired learning objectives are met. Failure to comply with relevant statutes and these Rules may result in the withdrawal of the approval of the course provider, instructor, and/or course.

2. 2. S.A.F.E. Mortgage Loan Originator Examination Requirement

The S.A.F.E. Mortgage Loan Originator Examination is developed by the NMLS and consists of the national examination with the Uniform State Test content.

- A. An Applicant must successfully pass the examination in accordance with the policies and procedures developed and administered by the NMLS.
- B. Applicants must comply with NMLS test administration standards and any test administration required by the testing service provider.
- C. An Applicant may retake the examination three (3) consecutive times with each consecutive time occurring at least thirty (30) days after the preceding examination.

- D. After failing three (3) consecutive examinations, an Applicant must wait at least six (6) months before taking the examination again.
- E. A Mortgage Loan Originator who fails to maintain a Valid license in any Jurisdiction for a period of five (5) years or longer must retake the examination prior to re-application for licensure, not taking into account any time during which such individual was licensed.

2.3. Criminal Background Check Requirement

Pursuant to section 12-10-704(6), C.R.S., an Applicant must submit a set of fingerprints to the Colorado Bureau of Investigation for the purpose of conducting a state and national criminal history record check prior to submitting an application to the Division. Fingerprints must be submitted to the Colorado Bureau of Investigation for processing in a manner acceptable to the Colorado Bureau of Investigation. Fingerprints must be readable and all personal identification data completed in a manner satisfactory to the Colorado Bureau of Investigation. The Board may, however, 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.

2.4. NMLS Requirement

Each Applicant must register with the NMLS in accordance with policies and procedures established by the NMLS. The Applicant, at minimum, must provide the following information to NMLS:

- A. A complete and accurate registration application, including the authorization of the NMLS to obtain a credit report and information related to any administrative, civil or criminal findings by any governmental Jurisdiction;
- B. Submission of a set of fingerprints to the NMLS in accordance with policies and procedures established by the NMLS; and
- C. Payment of any fees associated with the NMLS registration application.

2.5. Temporary Authority Eligibility and Temporary License

A. Temporary authority eligibility requirements

To be eligible for Temporary Authority to act as Mortgage Loan Originator, the Applicant must meet the following requirements:

1. The Applicant has met either one of the following classifications:
  - a. Registered in the NMLS as a loan originator for a depository (i.e. bank or savings association) as defined in section 12-10-709(1)(b), C.R.S. during the one (1) year period preceding the date of application for a temporary license; or
  - b. A license issued as a mortgage loan originator in another Jurisdiction during the thirty (30) day period preceding the date of application for a temporary license.
2. The Applicant must be eligible for temporary authority in accordance with policies and procedures as established by the NMLS.
3. The Applicant must be an Employee and Sponsored by a Colorado NMLS registered Mortgage Company.
4. An Applicant has not had any of the following administrative, civil or criminal actions:
  - a. An application for a mortgage loan originator license denied in any Jurisdiction;
  - b. A mortgage loan originator license revoked or suspended in any Jurisdiction;
  - c. Has been subject to, or served with a cease and desist order; and
  - d. Has been convicted of, or pled guilty or nolo contendere to, a misdemeanor or felony pursuant to sections 12-10-711(1)(b), (2)(b)(I), and (2)(c), C.R.S

B. Temporary license

1. Applicants seeking a temporary license and who are eligible for Temporary Authority as set forth in subsection A. of this Rule will be granted one (1) temporary license. Additional or extended temporary licenses will be prohibited.
2. Any temporary license issued by the Board will have the same force and effect of a license for the period of time it is in effect.
3. A temporary license will expire on one (1) of the following dates, whichever is sooner:
  - a. The Applicant withdraws their application for a license;
  - b. The Board denies the Applicant's application for a license;
  - c. The Board approves and issues a license;
  - d. Supervision termination date between the Responsible Mortgage Loan Originator and the Mortgage Loan Originator holding a temporary license; or
  - e. One hundred twenty (120) calendar days after the date the Applicant was issued a temporary license.
4. A Mortgage Loan Originator holding a temporary license must be an Employee and Sponsored by a Colorado NMLS registered Mortgage Company and must be supervised by a Responsible Mortgage Loan Originator.
  - a. The Responsible Mortgage Loan Originator will be held responsible under all applicable provisions of law, including without limitation the Practice Act and these Rules, for the actions of the Mortgage Loan Originator holding a temporary license, and are personally subject to all applicable penalties under the law.
  - b. Responsible Mortgage Loan Originators must notify the Division, in a manner acceptable to the Board, the beginning and ending dates of supervision for Mortgage Loan Originators holding a temporary license.
  - c. Responsible Mortgage Loan Originators will be held responsible for the activities of Mortgage Loan Originators holding a temporary license through and including the date of the temporary license expiration or termination of supervision, whichever is sooner.

2.6. Surety Bond Requirement

A. Options for surety bonds

Pursuant to section 12-10-717, C.R.S., Mortgage Loan Originators are deemed compliant with the surety bond requirement if one (1) of the three (3) options are satisfied:

1. Mortgage Loan Originators, at a minimum, may acquire and maintain an individual surety bond if:
  - a. The surety bond is in the amount of twenty-five thousand dollars (\$25,000);
  - b. The surety bond is in conformance with all relevant Colorado statutory requirements;
  - c. The surety bond is exclusive to covering acts contemplated under the Practice Act;
  - d. The surety bond is not applicable to any conduct or transactions outside the jurisdiction of the Board; and
  - e. The surety bond is identical to the individual surety bond form developed and approved by the Board.
2. Mortgage Loan Originators who are Employees or exclusive agents for companies with less than twenty (20) individuals who are required to be licensed pursuant to the Practice Act and who do not work for more than one (1) company, may, at a

minimum, operate under their company's surety bond if the surety bond meets the following criteria:

- a. The surety bond is in the amount of one hundred thousand dollars (\$100,000);
- b. The surety bond is in conformance with all relevant Colorado statutory requirements;
- c. The surety bond is exclusive to covering acts of all of the company's Employees or exclusive agents contemplated under the Practice Act; and
- d. The surety bond is identical to the individual surety bond form developed and approved by the Board.

3. Mortgage Loan Originators who are Employees or exclusive agents for companies with twenty (20) or more individuals who are required to be licensed pursuant to the Practice Act and who do not work for more than one (1) company, may, at a minimum, operate under a company's surety bond if the surety bond meets the following criteria:

- a. The surety bond is in the amount of two hundred thousand dollars (\$200,000);
- b. The surety bond is in conformance with all relevant Colorado statutory requirements;
- c. The surety bond is exclusive to covering acts of all of the company's Employees or exclusive agents contemplated under the Practice Act; and
- d. The surety bond is identical to the company surety bond form developed and approved by the Board.

B. Entity surety bonds

Regarding entity surety bonds as set forth in subsections A.2. and A.3. of this Rule, the Mortgage Company must provide the Board or an authorized representative of the Board with any and all requested surety bonds relevant to the Practice Act and as set forth in this Rule. The Mortgage Company must verify and provide adequate proof regarding the timeline of employment for each individual Mortgage Loan Originator operating under such company policy. Failure on the part of the Mortgage Company to provide such information will result in non-compliance regarding the surety bond requirement for the individual Mortgage Loan Originators operating under such entity bond.

C. Continuous surety bond coverage

Mortgage Loan Originators are required to provide proof of continuous surety bond coverage and that all required information is current. Mortgage Loan Originators may update all required information electronically on the Division's website.

D. Disciplinary action for failure to maintain surety bond

Any Mortgage Loan Originator who fails to obtain and maintain a surety bond as set forth in this Rule or fails to provide proof of continuous coverage will be subject to disciplinary action.

2.7. Errors and Omissions Insurance Requirement

Pursuant to section 12-10-707, C.R.S., every Mortgage Loan Originator holding an Active license must have in effect a policy of errors and omissions insurance to cover all acts requiring a license. Mortgage Loan Originators may obtain errors and omissions coverage through the Board Insurance Policy or may obtain errors and omissions coverage independent of the Board Insurance Policy.

A. Board insurance policy

1. The Division may enter into a contract with an insurance carrier to make available the Board Insurance Policy under the following terms and conditions:



- a. The insurance carrier must be in compliance with all applicable statutes established by the Colorado Division of Insurance.
  - b. The insurance carrier is licensed or authorized to write policies of errors and omissions insurance in this State.
  - c. The insurance carrier should maintain an A.M. Best rating of “A-” or better.
  - d. The insurance carrier will collect premiums, maintain records and report names of those insured and a record of claims to the Division on a timely basis and at no expense to the Division.
  - e. The insurance carrier has been selected through a competitive bidding process.
2. The Board Insurance Policy must provide, at a minimum, the following terms of coverage:
- a. The contract and policy are in conformance with all relevant Colorado statutory requirements;
  - b. Coverage includes all acts for which a license is required, except those illegal, fraudulent, or other acts which are normally excluded from such coverage;
  - c. Coverage must encompass all types of transactions conducted by the Mortgage Loan Originator and must be in the individual Mortgage Loan’s Originator’s name;
  - d. Coverage cannot be canceled by the insurance carrier except for nonpayment of the premium or in the event the Mortgage Loan Originator’s license becomes Inactive or is revoked or an Applicant is denied a license. Cancellation notice must be provided in a manner that complies with section 10-4-109.7(1), C.R.S.;
  - e. Coverage is for not less than one hundred thousand dollars (\$100,000) per covered claim, with an annual aggregate limit of not less than three hundred thousand dollars (\$300,000), not including costs of investigation and defense;
  - f. Coverage contains a deductible no greater than one thousand dollars (\$1,000), or a deductible no greater than twenty thousand dollars (\$20,000) for policies that primarily insure reverse mortgage transactions; and
  - g. Prior acts coverage must be offered to Mortgage Loan Originators with continuous past coverage.
- B. Independent policies
- For independent policies that are either individual and entity/group policies, the insurance carrier must be in compliance with all applicable statutes pursuant to the Colorado Division of Insurance and is licensed or authorized to write policies of errors and omissions insurance in this State. The insurance carrier should maintain an A.M. Best rating of “A- “ or better.
1. Mortgage Loan Originators, at a minimum, may acquire and maintain individual errors and omissions insurance in their own name with the following terms of coverage:
    - a. The contract and policy are in conformance with all relevant Colorado statutory requirements;
    - b. Coverage includes all acts for which a license is required, except those illegal, fraudulent, or other acts which are normally excluded from such coverage;
    - c. Coverage must encompass all types of transactions conducted by the Mortgage Loan Originator and must be in the individual Mortgage Loan Originator’s name;
    - d. Coverage is for not less than one hundred thousand dollars (\$100,000) per covered claim, with an annual aggregate limit of not less than three hundred thousand dollars (\$300,000), not including costs of investigation and defense;

- e. Coverage contains a deductible no greater than one thousand dollars (\$1,000), or a deductible no greater than twenty thousand dollars (\$20,000) for policies that primarily insure reverse mortgage transactions; and
  - f. Prior acts coverage must be offered to Mortgage Loan Originators with continuous past coverage.
2. Mortgage Loan Originators who are Employees or exclusive agents for companies with less than twenty (20) individuals who are required to be licensed pursuant to the Practice Act and who do not work for more than one (1) company, may, at a minimum, operate under the company's errors and omissions insurance policy if the policy meets the following terms of coverage:
- a. The contract and policy are in conformance with all relevant Colorado statutory requirements;
  - b. Coverage includes all acts for which a license is required, except those illegal, fraudulent, or other acts which are normally excluded from such coverage;
  - c. Coverage must include all activities contemplated under the Practice Act and states this in the policy;
  - d. Coverage must encompass all types of transactions conducted by all of the Mortgage Loan Originators employed at the company or by all Mortgage Loan Originators who are exclusive agents of the company;
  - e. Coverage is for not less than one million dollars (\$1,000,000) per covered claim, with an annual aggregate limit of not less than one million dollars (\$1,000,000), not including costs of investigation and defense;
  - f. Coverage contains a deductible no greater than fifty thousand dollars (\$50,000); and
  - g. Prior acts coverage must be offered to Mortgage Loan Originators with continuous past coverage.
3. Mortgage Loan Originators who are Employees or exclusive agents for companies with twenty (20) or more individuals and who do not work for more than one (1) company, may, at a minimum, operate under the company's errors and omissions insurance policy if the policy meets the following terms of coverage:
- a. The contract and policy are in conformance with all relevant Colorado statutory requirements;
  - b. Coverage includes all acts for which a license is required, except those illegal, fraudulent, or other acts which are normally excluded from such coverage;
  - c. Coverage must include all activities contemplated under the Practice Act and states this in the policy;
  - d. Coverage must encompass all types of transactions conducted by all of the Mortgage Loan Originators employed at the company or by all Mortgage Loan Originators who are exclusive agents of the company;
  - e. Coverage is for not less than one million dollars (\$1,000,000) per covered claim, with an annual aggregate limit of not less than two million dollars (\$2,000,000), not including costs of investigation and defense;
  - f. Coverage contains a deductible no greater than hundred thousand dollars (\$100,000); and
  - g. Prior acts coverage must be offered to Mortgage Loan Originators with continuous past coverage.

C. Entity errors and omissions insurance policies

Regarding entity errors and omissions insurance policies as set forth in subsections B.2. and B.3. of this Rule, the Mortgage Company must provide the Board, or an authorized representative of the Board, with any and all requested errors and omissions insurance policies relevant to the Practice Act and as set forth in this Rule. The Mortgage Company must verify and provide adequate proof regarding the timeline of employment for each individual Mortgage Loan Originator operating under such entity policy. Failure on the part of the Mortgage Company to provide such information will result in non-compliance regarding the errors and omissions insurance requirement for individual Mortgage Loan Originators operating under the entity's errors and omissions insurance policy.

D. Continuous insurance coverage

Mortgage Loan Originators are required to provide proof of continuous errors and omissions insurance coverage and that all required information is current. The Mortgage Loan Originator may update all required information electronically on the Division's website.

E. Disciplinary action for failure to maintain insurance

A Mortgage Loan Originator who fails to obtain and maintain an errors and omissions insurance coverage as set forth in this Rule or fails to provide proof of continuous coverage will be subject to disciplinary action.

2.8. Application Process for Licensure

A. Applying for an initial license

An Applicant for Initial Licensure as a Colorado Mortgage Loan Originator must successfully complete the requirements as set forth below:

1. Submit a set of fingerprints to the Colorado Bureau of Investigation within one (1) year immediately preceding the date of application as set forth in Rule 2.3.;
2. Register with the NMLS as set forth in Rule 2.4.;
3. Submit a set of fingerprints to the NMLS as set forth in subsection B. of Rule 2.4.;
4. Successfully complete the requisite educational requirements as set forth in Rule 2.1.;
5. Take and successfully pass the S.A.F.E. Mortgage Loan Originator Examination as set forth in Rule 2.2.;
6. Acquire a surety bond as required by section 12-10-717, C.R.S. and as set forth in Rule 2.6. prior to obtaining an Active license;
7. Acquire errors and omissions insurance required by section 12-10-707, C.R.S. and as set forth in Rule 2.7. prior to obtaining an Active license;
8. Submit a complete and accurate "Mortgage Loan Originator License Application"; and
9. Pay the Fee.

B. Applying for a temporary license

An Applicant applying for a temporary license that is eligible for temporary authority must meet the following requirements:

1. Submit a set of fingerprints to the NMLS as set forth in subsection B. of Rule 2.4.;
2. Register for temporary authority with the NMLS as set forth in subsection A.2. of Rule 2.5.;
3. Be an Employee and Sponsored by a Colorado NMLS registered mortgage company as set forth in subsections A.3. and B.4. of Rule 2.5.; and

4. Within seven (7) business days from notice of the issuance of temporary authority from the NMLS, the Applicant must complete the following state specific requirements pursuant to section 12-10-711(11), C.R.S.:
  - a. Submit a set of fingerprints to the Colorado Bureau of Investigation as set forth in Rule 2.3.;
  - b. Acquire a surety bond pursuant to section 12-10-717, C.R.S. and as set forth in Rule 2.6.;
  - c. Acquire errors and omissions insurance pursuant to section 12-10-707, C.R.S. and as set forth in Rule 2.7.;
  - d. Identify the Responsible Mortgage Loan Originator as set forth in subsections A.3. and B.4. of Rule 2.5.;
  - e. Submit a complete and accurate “Mortgage Loan Originator License Application”; and
  - f. Pay the Fee.
- C. Once an Applicant fully complies with the Practice Act and these Rules as determined by the Board, the Board will issue a license to the Applicant pursuant to section 12-10-704, C.R.S.

#### 2.9. Invalid Payment

If the Fees accompanying any application made to the Board are paid for by check and the check is not immediately paid upon presentment to the bank upon which the check was drawn, or if payment is submitted in any other manner and payment is denied, rescinded, or returned as invalid, the application will be canceled. The application or renewal must be re-submitted to the Board along with full payment of any Fees and payment of the fee required by State Fiscal Rules for the clerical services necessary for invalid payment.

#### 2.10. Review of Application Completeness

All applications will be reviewed by the Division for completeness of all required. If the application is deemed incomplete by the Division, the Applicant will be notified in writing of the deficiencies identified within the application and will have thirty (30) days to provide the documentation; otherwise, the application will be canceled and the Fee will be forfeited.

#### 2.11. Applicants with Prior or Pending Criminal Record

Pursuant to sections 12-10-704, 12-10-711, and 24-5-101, C.R.S., Applicants who have at any time in the past been convicted of, entered a plea of guilty to, entered a plea of nolo contendere, received a deferred judgment and sentence to a misdemeanor (excluding misdemeanor traffic violations) or a felony or any like municipal code violation, or has such charges pending must submit with their application the required documentation as listed below. If the required documentation is no longer available, the Applicant must provide written confirmation by the appropriate authority that such documentation is no longer available. For any charges or convictions which have been dismissed, expunged, or sealed, the Applicant must include court document(s) evidencing the dismissal, expungement, or sealing of the criminal case(s). Failure to provide the required documentation within the time frame as set forth in Rule 2.10. will result in the cancellation of the application and forfeiture of the Fee. In addition to the required documentation, Applicants may submit supplemental documentation as listed below to demonstrate their rehabilitation, truthfulness, financial responsibility, character, and general fitness for consideration by the Board.

##### A. Required documentation includes:

1. Court case disposition, registry of action, or a case action summary, which must include the following information:
  - a. Offense(s) convicted of;

- b. Statute(s) or municipal code(s) violated;
  - c. Classification(s) of offense(s) (i.e. felony or misdemeanor);
  - d. Date of conviction;
  - e. Date of sentencing;
  - f. Sentencing Terms; and
  - g. Status of case.
    - i. If the sentencing and probation terms have been completed, the status of case should show as closed or dismissed.
    - ii. If the sentencing and probation terms have not been completed, documentation must be submitted that shows current compliance with the sentencing and probation terms. Proof of current compliance should include a letter from the parole or probation officer and, if applicable, a payment history from the court showing a current account balance of payment.
  2. Police Officer's report(s), arrest report(s), or incident report(s);
  3. A signed written explanation of the circumstances surrounding each violation and, including the statement attesting that "I have no other criminal violations either past or pending, other than those I have stated on the application"; and
  4. Any other information or documentation that the Board deems necessary.
  - B. Supplemental documentation includes:
    1. Employment history for the preceding five (5) years;
    2. Letter(s) of recommendation; and
    3. A personal written statement that demonstrates and evidences the Applicant's rehabilitation, financial responsibility, character, and general fitness.
- 2.12. Applicants with Past or Pending Administrative Disciplinary Actions or Findings
- Pursuant to sections 12-10-704 and 12-10-711, C.R.S., an Applicant who has any past or pending administrative disciplinary actions or findings of a mortgage loan originator license or any other professional license from Colorado or any other Jurisdiction must submit with their application any of the following information and documentation as listed below that is relevant and available to the Applicant. If the required documentation is no longer available or accessible, the Applicant must provide written confirmation by the appropriate authority that such documentation is no longer available or the reasons why the document is not accessible. Failure to provide the required documentation within the time frame as set forth in Rule 2.10. will result in the cancellation of the application and forfeiture of the Fee.
- A. Any final agency order(s);
  - B. Any consent order(s);
  - C. Any stipulation(s);
  - D. Any investigative report(s); and
  - E. A signed written explanation of the circumstances surrounding each disciplinary actions.
- 2.13. Preliminary Advisory Opinion

Prior to an application for a license or a registration through the NMLS, a person may request the Board issue a preliminary advisory opinion. A person seeking a preliminary advisory opinion is not an Applicant for licensure. The Board may, at its sole discretion, issue an opinion which will not be binding on Board; is not appealable; and will not limit the Board's authority to investigate a future application for licensure. However, if the Board issues a positive or favorable opinion, the Board may elect to adopt such opinion as the final decision of the Board

without further investigation or hearing. The issuance of a negative or unfavorable opinion will not prohibit a person from submitting an application for licensure.

- A. A person may request a preliminary advisory opinion regarding the potential effect of the following, but not limited to:
  - 1. Any criminal conviction(s), plea(s) of guilt or nolo contendere, deferred judgment(s) and sentence for criminal offense(s) in a domestic, foreign or military court.
  - 2. Having been enjoined in the immediately preceding five (5) years under domestic or foreign laws from engaging in deceptive conduct relating to the origination of a mortgage loan;
  - 3. Having professional licenses, certifications or registrations issued by Colorado, the District of Columbia, any other states or foreign countries, revoked or suspended for fraud, theft, deceit, material misrepresentations or the breach of a fiduciary duty and such suspension or revocation denied authorization to practices as: a mortgage loan originator or similar license; real estate broker; real estate appraiser; an insurance producer; an attorney; a securities broker-dealer; a securities sales representative; an investment advisor; or an investment advisor representative; or
  - 4. Having been assessed a civil or criminal penalty for violating any provision of the Colorado Consumer Protection Act.
- B. A person requesting an opinion must do so in a form prescribed by the Board. Such form must be supported and documented by, without limitation, the following:
  - 1. Pending or Past Criminal Record  
The required and supplemental documentation as set forth in Rule 2.11. for any pending or past criminal record.
  - 2. Pending or Past Professional Disciplinary Action(s)  
The documentation as set forth in Rule 2.12. for any pending or past professional conduct.

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

- 3.1. The continuing education requirements for Mortgage Loan Originators will begin after issuance of the initial license.
  - A. Mortgage Loan Originators will complete at least eight (8) hours of continuing education courses, which must be reviewed and approved by the NMLS or by a company contracted by the NMLS to review and approve continuing education courses.
  - B. The continuing education requirements must be completed each calendar year prior to renewal or reinstatement.
- 3.2. Completion of the twenty (20) hours of pre-licensing education approved by the NMLS in the same year in which the initial license was approved, will satisfy the continuing education requirements in that calendar year.
- 3.3. Repealed (Effective March 1, 2016)
- 3.4. Repealed (Effective March 1, 2016)
- 3.5. At any time and at no cost, the Board or the Board's authorized representative may audit any continuing education courses reviewed and approved by the NMLS or by a company contracted by the NMLS to review and approve continuing education courses. The Board or the Board's authorized representative may request all related instructional materials, student attendance records, and other information that may be necessary for the audit. The purpose of the audit is to ensure adherence to the approved course of study by verifying the course material and instruction are consistent with acceptable educational principles; and that instruction is provided in a manner that the desired learning objectives are met. Failure to comply with

relevant statutes and these Rules may result in the withdrawal of the approval of the course provider, instructor, and/or the course.

**CHAPTER 4: RENEWAL, REINSTATEMENT, RE-APPLICATION, OR LICENSE STATUS**

**4.1. Renewal for Mortgage Loan Originators**

- A. There are two (2) existing databases that Mortgage Loan Originators must independently renew their Colorado license through annually. The two (2) independent databases include:
  - 1. The nationwide registration database managed by the NMLS.
  - 2. The license database managed by the Division. This database may be located by visiting the Division's website.
- B. Mortgage Loan Originators must annually renew their license, regardless whether on Active or Inactive status, through the NMLS in accordance with the timelines, policies, and procedures established by the NMLS. The NMLS may collect fees for the purpose of registration applications, renewal applications, reinstatement applications, credit reports, criminal background checks and for other processes associated with registration through the nationwide database.
- C. After renewing through the NMLS as set forth in subsection B. of this Rule, Mortgage Loan Originators must then annually renew their license, whether on Active or Inactive status, through the Division's license database as described in subsection A.2. of this Rule and pay the Fee. Mortgage Loan Originators whose license is on Inactive status are not required to maintain errors or omissions insurance as set forth in Rule 2.7. or a surety bond as set forth in Rule 2.6. Mortgage Loan Originators with an Inactive license, however, are required to stay current on all continuing education requirements as set forth in Chapter 3 of these Rules in order to renew their license.
- D. The Board will issue or deny a renewal application within thirty (30) days after the applicant has submitted all of the information necessary for renewal and after the Board has received all information necessary to make a determination regarding the Mortgage Loan Originator's compliance.
- E. For both databases as described in subsection A. of this Rule, the renewal period begins November 1st and ends December 31st of each calendar year. In order for Mortgage Loan Originators to renew their license, the Mortgage Loan Originator must be compliant with the Practice Act and these Rules.
- F. All licenses expire at midnight on December 31st of each calendar year if the has not properly renewed their license as set forth in this Rule.
- G. Mortgage Loan Originators who failed to renew their license and the license has expired may choose to reinstate their Colorado license as set forth in Rule 4.2.

**4.2. Reinstatement for Mortgage Loan Originators**

- A. Mortgage Loan Originators who failed to renew their license in both databases as described in subsection A. of Rule 4.1. and the license has expired may reinstate their Colorado license. The reinstatement period for both databases as described in subsection A of Rule 4.1. begins January 1st and ends on the last day of February of each calendar year. In order for Mortgage Loan Originators to reinstate their Colorado license, the individual must be compliant with the Practice Act and these Rules.
- B. The Fee for reinstatement is one and one half times the amount of the current renewal Fee.
- C. To reinstate a Colorado license, a Mortgage Loan Originator must complete the renewal process as set forth in subsections B. and C. of Rule 4.1.

- D. A Mortgage Loan Originator who failed to reinstate their Colorado license during the reinstatement period must re-apply as set forth in Rule 4.3.

4.3. Re-application for Mortgage Loan Originators

A. Expired Colorado license for less than three years

Mortgage Loan Originators who held a Colorado license that has expired for less than three (3) years after the date of license expiration must complete the requirements as set forth below:

1. Submit a set of fingerprints to the Colorado Bureau of Investigation within one (1) year immediately preceding the date of application as set forth in Rule 2.3.;
2. Register with the NMLS as set forth in Rule 2.4.;
3. Submit a set of fingerprints to the NMLS as set forth in subsection B. of Rule 2.4.;
4. If not previously taken, successfully complete the two (2) hours of Colorado specific education as set forth in Rule 2.1.;
5. If applicable, successfully complete at least eight (8) hours of “late” continuing education courses, which must include one (1) hour of Colorado specific education, reviewed and approved by the NMLS or by a company contracted to review and approve continuing education courses;
6. Acquire a surety bond pursuant to section 12-10-717, C.R.S. and as set forth in Rule 2.6. prior to obtaining an Active license;
7. Acquire errors and omissions insurance pursuant to section 12-10-717, C.R.S. and as set forth in Rule 2.7. prior to obtaining an Active license;
8. Submit a complete and accurate “Mortgage Loan Originator License Application”; and
9. Pay the Fee.

B. Expired Colorado license for a period of three years but Less than five years

Mortgage Loan Originators who held a Colorado license that has expired for a period of three (3) years but less than five (5) years after the date of license expiration must complete the requirements as set forth below:

1. Submit a set of fingerprints to the Colorado Bureau of Investigation within one (1) year immediately preceding the date of application as set forth in Rule 2.3.
2. Register with the NMLS as set forth in Rule 2.4.;
3. Submit a set of fingerprints to the NMLS as set forth in subsection B. of Rule 2.4.;
4. If applicable, successfully complete the relevant pre-licensing educational requirements as set forth in Rule 2.1.;
5. If applicable, successfully complete at least eight (8) hours of “late” continuing education courses reviewed and approved by the NMLS or by a company contracted to review and approve continuing education courses;
6. Acquire a surety bond pursuant to section 12-10-717, C.R.S. and Board as set forth in Rule 2.6. prior to obtaining an Active license;
7. Acquire errors and omissions insurance pursuant to section 12-10-707, C.R.S. and Board as set forth in Rule 2.7. prior to obtaining an Active license;
8. Submit a complete and accurate “Mortgage Loan Originator License Application”; and
9. Pay the Fee.



- C. Expired Colorado license for a period of five or more years  
Mortgage Loan Originators who held a Colorado license that has expired for a period of five (5) or more years after the date of license expiration must complete the requirements as set forth below:
  - 1. Comply with all requirements set forth in subsection B. of this Rule; and
  - 2. If applicable, retake and successfully pass the S.A.F.E. Mortgage Loan Originator examination, developed by the NMLS as set forth in Rule 2.2.
- 4.4. Individuals who do not have an Active license are prohibited from practicing as a Mortgage Loan Originator. Additionally, individuals who do not have an Active license are prohibited from engaging in any mortgage related activities which require licensure pursuant to the Practice Act, these Rules, or as prescribed by Board position statement.
- 4.5. Renewal, Reinstatement, and Re-application for Mortgage Companies.
  - A. Mortgage Companies must renew their registration on the nationwide database as described in subsection A.1. of Rule 4.1.
  - B. Mortgage Companies renewing, reinstating or re-applying for registration through the NMLS shall must do so in accordance with the timelines, policies, and procedures set established by the NMLS. The NMLS may collect fees for the purpose of registration applications, renewal applications, reinstatement applications, credit reports, criminal background checks and for other processes associated with registration through the nationwide database.
  - C. The Board must issue or deny a registration renewal application within thirty (30) days after the Mortgage Company has submitted all of the information necessary for license renewal or reinstatement and after the Board has received all information necessary to make a determination regarding the Mortgage Company's compliance.
  - D. The registration renewal period begins November 1st and ends December 31st of each calendar year. In order for Mortgage Companies to renew their registration must be compliant with the Practice Act and these Rules.
  - E. All registrations expire at midnight on December 31st of each calendar year if the Mortgage Company has not properly renewed their registration as set forth in this Rule.
  - F. Mortgage Companies who failed to renew their registration through the nationwide database in subsection A.1. of Rule 4.1. and the registration has expired, may choose to reinstate their registration. The reinstatement period for reinstatement begins January 1st and ends on the last day of February of each calendar year. In order for Mortgage Companies to reinstate their registration, the Mortgage Company must be compliant with the Practice Act and these Rules.
  - G. Mortgage Companies who failed to reinstate their registration must re-apply on the nationwide database as described in subsection A.1. of Rule 4.1. in order for the Board to review their registration applications and determine whether the Mortgage Company is compliant with the registration requirements.
  - H. All renewal, reinstatement, or re-application fees must be paid through the NMLS and are non-refundable.
- 4.6. Mortgage Companies that do not have an approved registration are prohibited from acting through Employees or other individuals who takes residential loan applications or offers or negotiates terms of a residential mortgage loan. Additionally, Mortgage Companies that do not have an approved registration are prohibited from engaging in any mortgage related conduct that requires a registration pursuant to the Practice Act, these Rules, or as prescribed by the Board by position statement.

4.7. Mortgage Loan Originator License Inactivation and Reactivation

If a license is inactivated by the Board or an authorized representative of the Board for one or any combination of the following reasons, the Mortgage Loan Originator must pay an administrative Fee determined by the Board in order to reactivate their Colorado license:

- A. The Mortgage Loan Originator has failed or is failing to comply with the surety bond requirements pursuant to sections 12-10-704(8) and 12-10-717, C.R.S. or as set forth in Rule 2.6.;
  - B. The Mortgage Loan Originator has failed or is failing to comply with the errors and omissions insurance pursuant to section 12-10-707, C.R.S. or as set forth in Rule 2.7.;
  - C. The Mortgage Loan Originator has failed or is failing to maintain current contact information, surety bond information, or errors and omissions insurance information as required by this Part 7 or by any Rule of the Board that directly or indirectly addresses such requirements;
  - D. The Mortgage Loan Originator has failed or is failing to respond to an investigation;
  - E. The Mortgage Loan Originator has failed or is failing to comply with any of the education or testing requirements set forth in this Part 7 or in any rule of the Board that directly or indirectly addresses education or testing requirements; or
  - F. The Mortgage Loan Originator has failed or is failing to register with and provide all required information to the NMLS.
- 4.8. Mortgage Loan Originators who have an Inactive license are prohibited from practicing as a Mortgage Loan Originator. Additionally, Mortgage Loan Originators who have an Inactive license are prohibited from engaging in any mortgage related activities which requires licensure pursuant to the Practice Act, these Rules, or as prescribed by Board position statement.
- 4.9. In order for an Inactive license to be reactivated, the Mortgage Loan Originator seeking reactivation must provide the Board with proof of full compliance with the Practice Act and these Rules.
- 4.10. No changes in license status, whether Active or Inactive, will be made except in the manner acceptable to the Board to effect such change and upon payment of the Fee for such change request.

**CHAPTER 5: PROFESSIONAL STANDARDS**

5.1. Advertising

Any Advertisement of a residential mortgage loan product or Rate offered by a Mortgage Loan Originator, or Mortgage Company must conform to the following requirements:

- A. An Advertisement must be made only for such products and terms as are actually available at the time they are offered and, if their availability is subject to any material requirements or limitations, the Advertisement must specify those requirements or limitations;
- B. The Advertisement must contain the following, each of which must be clearly and conspicuously included in the Advertisement;
  - 1. At least one (1) responsible party. The responsible party must be a Mortgage Loan Originator or a Mortgage Company. The responsible party must include their registration number that is approved on the NMLS;
  - 2. The name of the Mortgage Company; and
  - 3. The business phone number of the responsible party.
- C. The Advertisement must not appear to be offered by a government agency, a quasi-government agency or the perspective borrower's current lender and/or loan servicer;

- D. An Advertisement must not make or omit any statement the result of which would be to present a misleading or deceptive impression to consumers;
  - E. An Advertisement shall must otherwise comply with all applicable state and federal disclosure requirements;
  - F. Advertisements must incorporate applicable provisions of the final Interagency Guidance on Nontraditional Mortgage Product Risks (“Interagency Guidance”) released on September 29, 2006, incorporated by reference in compliance with section 24-4-103(12.5), C.R.S., and does not include any later amendments or editions of the final guidance. A certified copy of the Interagency Guidance is readily available for public inspection at the Office of the Board of Mortgage Loan Originators at 1560 Broadway, Suite 925, Denver, Colorado. The Interagency Guidance released by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift supervision, and the National Credit Union Administration can be examined at the internet website of the federal register (volume 71, number 192, page 58609-58618) at [www.federalregister.gov](http://www.federalregister.gov). Reference copies of the federal register publications may also be found at the Colorado Supreme Court, located at 101 w. Colfax, Denver, Colorado 80202 or by telephone at (303) 837-3720; and
  - G. The responsible party must retain copies of all Advertisements for a period of four (4) years, and provide said copies for inspection by an authorized representative of the Board upon request.
- 5.2. The Requirements Set Forth in Subsection B. of Rule 5.1. will Not Apply to:
- A. Any Advertisement which indirectly promotes a Consumer Credit transaction and which contains only the name of the Mortgage Company, the name and title of the Mortgage Loan Originator, the contact information for the Mortgage Company or the Mortgage Loan Originator, a Mortgage Company’s logo, or any license or registration numbers, such as the inscription on a coffee mug, pen, pencil, youth league jersey, sign, business card, or other promotional item; or
  - B. Any rate sheet, pricing sheet, or similar proprietary information provided to real estate brokers, builders, and other commercial entities that is not intended for distribution to consumers.
- 5.3. Loan Modifier Licensure
- A. Individuals, not otherwise exempt from Part 7, who directly or indirectly take residential Loan Modification applications or who negotiate, offer, or attempt to negotiate or offer Loan Modifications are required to be licensed as a Mortgage Loan Originator.
  - B. Mortgage Loan Originators must comply with Practice Act and these Rules.
- 5.4. Required Use of a Loan Modification Contract
- A. Mortgage Loan Originators taking Loan Modification applications or offering or negotiating Loan Modifications are required to use a loan modification contract which complies with the Practice Act and the Foreclosure Protection Act.
  - B. The Board has created the Colorado Loan Modification Services Contract to ensure compliance with the aforementioned laws. This contract may be found on the Division website. Loan Modifiers must use this form or an alternate form, if such alternate form clearly includes all information required on the suggested form, as determined by the Board.
  - C. The Colorado Loan Modification Services contract as set forth in this Rule must be completed at time of Application.

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

- A. Employees of HUD Approved Housing Counseling Agencies who are providing advice or general information on Loan Modifications in an ancillary manner relating to their general housing counseling services or duties.
- B. Employees of mortgage loan servicing companies operating on behalf of the borrowers' mortgage lenders.
- C. Licensed real estate brokers engaged in real estate brokerage services within the defined Short Sale transactions do not need to maintain a license as a Mortgage Loan Originator. If a real estate broker engages in the activities of providing Loan Modification services, separate licensure as a Mortgage Loan Originator is required.
- D. An attorney, pursuant to section 12-10-709(1)(c), C.R.S., who renders services in the course of practice, who is licensed in Colorado, and who is not primarily engaged in the business of negotiating residential mortgage loans or Loan Modifications is not required to be licensed as a Mortgage Loan Originator.

5.6. Reasonable Inquiry

- A. A Mortgage Loan Originator will only recommend appropriate products after reasonable inquiry has been made in order to understand the borrower's current and prospective financial status.
- B. Reasonable inquiry requires the Mortgage Loan Originator to review and analyze the information submitted by the borrower(s) regarding their current and prospective income, including the income's source and likely continuance and may not require the Mortgage Loan Originator to verify such income.
- C. A Mortgage Loan Originator has a duty to recommend mortgage products based on the information provided by the borrower.
- D. A Mortgage Loan Originator will be deemed in compliance with section 12-10-710(1)(b), C.R.S., and this Rule, concerning reasonable inquiry, upon reviewing and analyzing all sections contained in the Uniform Residential Loan Application and upon completion of the Tangible Net Benefit Disclosure. The Tangible Net Benefit Disclosure is posted on the Division's website.

5.7. Tangible Net Benefit

The reasonable, tangible net benefit standard in pursuant to 12-10-710(1)(a), C.R.S., is inherently dependent upon the totality of facts and circumstances relating to a specific transaction. While the refinancing of certain home loans may clearly provide a reasonable, tangible net benefit, others may require closer scrutiny, or consideration to determine whether a particular loan provides the requisite benefit to the borrower.

- A. When determining reasonable, tangible net benefit, there are many considerations a Mortgage Loan Originator must take into account in their analysis. If applicable, the required considerations for a Mortgage Loan Originator determining the requisite benefit must include, but are not limited to:
  - 1. Lower payments;
  - 2. Condensed amortization schedule;
  - 3. Debt consolidation;
  - 4. Cash out;
  - 5. Avoiding foreclosure;
  - 6. Negative amortization;
  - 7. Balloon payments;
  - 8. Variable rates;

9. Interest only options;
  10. Prepayment penalties; and
  11. Hybrid mortgage products.
- B. The purpose for a purchase or refinance transaction will be identified by the borrower. A Mortgage Loan Originator will require that all borrowers describe, in writing, the reasons they are seeking a mortgage loan, a Loan Modification or to refinance an existing mortgage loan.
1. It is the responsibility of the Mortgage Loan Originator to ensure this information is acquired and accurately documented.
  2. Pursuant to section 12-10-710(1), C.R.S., a Mortgage Loan Originator may not have demonstrated a duty of good faith and fair dealing in all communications and transactions with a borrower if it is determined that a Mortgage Loan Originator completed the required purpose for a purchase, Loan Modification or refinance transaction without analyzing the borrower's specific circumstances.
- 5.8. Tangible Net Benefit Disclosure Form
- The Board developed a disclosure form regarding reasonable, tangible net benefit. Alternate disclosures are acceptable if they include all information required on the suggested form, as determined by the Board.
- A. The Tangible Net Benefit Disclosure Form must be disclosed within three (3) Business Days after receipt of a loan Application.
  - B. The Tangible Net Benefit Disclosure will also be completed prior to or at the closing if the reasonable, tangible net benefit has changed.
  - C. The Tangible Net Benefit Disclosure must be signed by both the Mortgage Loan Originator and the borrower(s).
  - D. Mortgage Loan Originator must be able to provide proof to the Board or an authorized representative of the Board that the disclosure forms as set forth in this Rule were provided to the borrower within three (3) Business Days after receipt of a loan Application, or prior to or at closing if any subsequent changes to any loan terms requiring re-disclosure.
- 5.9. Mortgage Loan Originator and Mortgage Company Duty to Respond and Provide Requested Documents for Investigations
- A. Mortgage Loan Originators and Mortgage Companies must provide the Board or the Board's authorized representative with all information required by this Rule.
    1. Mortgage Loan Originators and Mortgage Companies will receive written notification and a copy of the complaint from the Board or an authorized representative of the Board that an investigation has been initiated. All requested information must be submitted in accordance with the timeline established in the notification letter. An extension of time may be requested.
      - a. The Mortgage Loan Originator and Mortgage Company may request an extension of time to comply if:
        - i. The request is reasonable and in writing; and
        - ii. The request is received by the Board or authorized representative of the Board prior to the expiration date as set forth in the notification letter sent by the Board or authorized representative of the Board.
      - b. Any and all extensions granted are at the discretion of the Board or an authorized representative of the Board.

2. Failure to provide all requested information will be grounds for disciplinary action regardless of whether the underlying complaint results in further investigation or subsequent action by the Board.
- B. The response from the Mortgage Loan Originator must contain the following:
1. The Mortgage Loan Originator must provide a complete and specific answer to the factual recitations, allegations or averments made in the complaint filed against the Mortgage Loan Originator, whether made by a member of the public or on the Board's own motion or by an authorized representative of the Board;
  2. The Mortgage Loan Originator must provide a complete and specific response to all questions, allegations or averments presented in the notification letter; and
  3. Any and all documents or records requested in the notification letter.
- C. Mortgage Companies must maintain any and all documents collected, gathered and provided for the purpose of negotiating and originating residential mortgage loans for a period of four (4) years. Additionally, Mortgage Companies must maintain any and all documents used for the purpose of soliciting or marketing borrowers that were directed, made or caused to be made by the Mortgage Company. These documents include, but are not limited to:
1. All Uniform Residential Loan Applications (form 1003);
  2. All required state and federal disclosures;
  3. Asset statements;
  4. Income documentation;
  5. Verification of employment;
  6. Verification of deposit;
  7. Lender submission forms;
  8. Advertisements;
  9. Flyers;
  10. Settlement statements;
  11. Uniform underwriting and transmittal summary(form 1008); and
  12. Credit report.
- D. The Mortgage Loan Originator must maintain any and all documents used for the purpose of soliciting or marketing borrowers that were directed, made or caused to be made by the Mortgage Loan Originator.
- E. All documents required in this Rule must be kept in a Safe and Secure Manner. Electronic storage is acceptable as long as the information is accessible.
- 5.10. Mortgage Loan Originators Maintaining Current Contact Information and All Information Required for Licensing
- A. Mortgage Loan Originators must maintain all current contact information and all information required for licensing, in a manner acceptable to the Board, including the two (2) databases described subsection A. of Rule 4.1. Failure to maintain the information identified in this Rule will be grounds for disciplinary action.
- B. Contact information must include, but is not limited to:
1. E-mail address;
  2. Legal first, middle and last names;
  3. Physical home address;
  4. Home phone number;

5. Business address;
  6. Business phone number; and
  7. Business name.
- C. Information required for licensing includes, but is not limited to:
1. Surety bond company;
  2. Surety bond number;
  3. Surety bond effective date;
  4. Errors and omissions insurance provider;
  5. Errors and omissions policy number;
  6. Errors and omissions effective and expiration date; and
  7. Convictions, pleas of guilt or nolo contendere for all crimes.
- D. Mortgage Loan Originators must update the Board within thirty (30) calendar days of any changes to the information as set forth in this Rule on both databases described in subsection A. of Rule 4.1.
- 5.11. Repealed (Effective March 17, 2017).
- 5.12. Mortgage Loan Originator Agreements
- A Mortgage Loan Originator must have a written correspondent or loan originator agreement with a lender before any solicitation of, or contracting with, any member of the public. A Mortgage Loan Originator is compliant with sections 12-10-713(1)(x) and (aa), C.R.S. and this rule, if they adhere to one (1) of the following requirements:
- A. They individually have a written correspondent or loan originator agreement with a lender before any solicitation of, or contracting with, any member of the public;
  - B. They are an officer, partner, member, exclusive agent, or Employee of a company that has a written correspondent or loan originator agreement with a lender before any solicitation of, or contracting with, any member of the public;
  - C. They are acting as an Independent Contractor and maintain a contractual agreement with a Mortgage Company that has a written correspondent or loan originator agreement with a lender before any solicitation of, or contracting with, any member of the public; or
  - D. They are an Employee of a lender before any solicitation of, or contracting with, any member of the public.
- 5.13. Repealed (Effective March 17, 2017).
- 5.14. Colorado Lock-in Disclosure requirements under section 12-10-725(2), C.R.S.
- A. The Colorado Lock-in Disclosure form must be used for all transactions not under the authority of the TILA-RESPA Integrated Disclosure Rule and for which the applicable GFE, HUD-1 and Truth-in-Lending Disclosures are used.
  - B. The Colorado Lock-in Disclosure form must be disclosed:
    1. Within three (3) Business Days after receipt of a loan Application and if applicable, contain the following information:
      - a. The cost, terms, duration and conditions of the lock-in agreement;
      - b. Whether a lock-in agreement has been entered;
      - c. Whether the lock-in agreement is guaranteed by the Mortgage Loan Originator; and
      - d. Disclosure must be made if a lock-in agreement has not been entered and that the interest Rate and terms are subject to change.

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 and prior to the borrower signing loan closing documents.
  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. If, after the Mortgage Loan Originator enters into a lock-in agreement, there is a change to any of the information provided on the lock-in disclosure form, including but not limited to a lock-in extension.
- C. The Colorado Lock-in Disclosure form or alternate form must be used when disclosing the secured Rate of interest for the prospective borrower or disclosing that the Rate of interest is not secured and is subject to change.
- 5.15. Repealed (Effective October 3, 2015).
- 5.16. Repealed (Effective October 3, 2015).
- 5.17. Repealed (Effective March 17, 2017).
- 5.18. Repealed (Effective October 3, 2015).
- 5.19. Repealed (Effective October 3, 2015).
- 5.20. Repealed (Effective October 3, 2015).
- 5.21. Mortgage Loan Originators are required to keep records of the disclosures, pursuant to sections 12-10-725(1) and (2), C.R.S., and these Rules, for a period of four (4) years, for the purposes of inspection by the Board or authorized representative of the Board.
- A. All documents must be kept in a Safe and Secure Manner. Electronic storage is acceptable as long as the information is accessible.
  - B. The Mortgage Company for whom the Mortgage Loan Originator is an officer, partner, contractor, Independent Contractor, member, exclusive agent or an Employee may provide the requested documents to the Board. However, the Mortgage Loan Originator is responsible for compliance with the Board's request and is subject to disciplinary action if the Mortgage Company fails or refuses to provide the requested documentation.
  - C. The Mortgage Loan Originator must be able to provide proof to the Board or an authorized representative of the Board that the disclosure forms as set forth in this Rule were in fact provided to the borrower within three (3) Business Days after receipt of a loan Application or any subsequent changes to any loan terms requiring re-disclosure.
- 5.22. Dual Status Disclosure
- The Board prohibits individuals from acting as a Mortgage Loan Originator and a real estate broker, on the same transaction, unless they comply with the requirements set forth in this Rule.
- A. Dual status is a material fact to real estate transactions and must be disclosed to the borrower(s).
  - B. The Board has created the Colorado Dual Status Disclosure form to ensure this information is clearly and concisely disclosed. This disclosure may be found on the Division's website. A Mortgage Loan Originator must use this form or an alternate form, if such alternate form clearly includes all information required on the suggested form, as determined by the Board.
  - C. The Colorado Dual Status Disclosure form must be completed, disclosed, and provided to the borrower within three (3) Business Days after receipt of a loan Application.
  - D. Mortgage Loan Originators must maintain the disclosure form defined as set forth in this Rule for a period of four (4) years.



*Chapter 9: Rules and Regulations for Mortgage Loan Originators and Position Statements*

- E. The Mortgage Loan Originator must be able to provide proof to the Board or an authorized representative of the Board that the disclosure forms as set forth in this Rule were provided to the borrower within three (3) Business Days after receipt of a loan Application or any subsequent changes to any loan terms requiring re-disclosure.
  - D. Persons who originate a mortgage, offer to originate a mortgage, act as a mortgage loan originator, or offer to act as a mortgage loan originator shall maintain the disclosure form defined by this rule for a period of five years.
  - E. The mortgage loan originator must be able to provide proof to the Board or an authorized representative of the Board that the disclosure forms defined in this rule were in fact provided to the borrower within three (3) business days after receipt of a loan application or any subsequent changes to any loan terms requiring re-disclosure.
- 5.23. Immediate notification of a conviction, plea, or violation required
- Pursuant to sections 12-10-711 and 12-10-713, C.R.S., a Mortgage Loan Originator must make written notification to the Board through the online services portal found on the Division's website within thirty (30) calendar days of any of the following:
- A. A plea of guilty, a plea of nolo contendere or a conviction of any felony or misdemeanor offense under Colorado law, federal law, or the laws of other states, excluding misdemeanor traffic offenses or petty offenses;
  - B. A violation, or aiding and abetting a violation, of the Colorado or federal fair housing laws;
  - C. Revocation or suspension of any license, registration, or certification issued by Colorado or another jurisdiction because of fraud, deceit, material misrepresentation, theft, or breach of a fiduciary duty; and
  - D. A revocation, suspension, or any other disciplinary action taken against a Mortgage Loan Originator's license in any jurisdiction.

**CHAPTER 6: BOARD REVIEW OF INITIAL DECISIONS AND EXCEPTIONS**

- 6.1. Written Form, Filing Requirements, and Service
- A. All pleadings must be in written form, mailed with a certificate of mailing to the Board.
  - B. All pleadings must be filed by the Board on or before the date the filing is due. Computation of time for the filing timelines for Chapter 6 of these Rules is pursuant to section 2-4-108, C.R.S. A pleading is considered filed upon receipt by the Board. Chapter 6 of these Rules do not provide for any additional time for service by mail.
  - C. All pleadings must be filed with the Board and not with the Office of Administrative Courts. Any pleadings filed in error with the Office of Administrative Courts will not be considered. The Board's address is:
    - Colorado Board of Mortgage Loan Originators
    - 1560 Broadway, Suite 925
    - Denver, Colorado 80202
  - D. All pleadings must be served on the opposing party on the date which the pleading is filed with the Board. Electronic service between the parties is encouraged. The date and manner must be noted on the certificate of service.
- 6.2. Initial Decision
- Upon receipt of the initial decision prepared and filed by the Administrative Law Judge from the Office of Administrative Courts, the Division will timely mail a copy of the initial decision to the parties at their respective addresses of record with the Board pursuant to section 24-4-105(16)(a), C.R.S.

6.3. Board's Authority to Review the Initial Decision

Pursuant to section 24-4-105(14)(a)(II), C.R.S., the Board may initiate a review of an initial decision on its own motion within thirty (30) days of the date on which the Division mails the initial decision to the parties. A letter from the Division initiating the review of the initial decision constitutes a motion within the meaning of section 24-4-105(14)(a)(II), C.R.S.

6.4. Appeal of the Initial Decision by the Parties

- A. Any party wishing to reverse or modify an initial decision of an Administrative Law Judge must file written exceptions with the Board in accordance with the procedures and time frames as set forth in Rule 6.5.
- B. If neither party appeals the initial decision by filing exceptions, the initial decision will become the final order of the Board after thirty (30) days from the date on which the Division mails the initial decision pursuant to section 24-4-105(14)(b)(III), C.R.S. Failure to file exceptions will result in a waiver of the right to judicial review of the final order of the Board unless the portion of the final order subject to review differs from the contents of the initial decision pursuant to section 24-4-105(14)(c), C.R.S.

6.5. Filing of Exceptions

- A. Pursuant to section 24-4-105(15)(a), C.R.S., any party seeking to file exceptions must initially file with the Board a designation of the relevant parts of the record and of parts of the transcript of the hearing within twenty (20) days of the date on which the Division mails the initial decision to the parties.

B. Transcripts:

Any party may designate the entire transcript, or may identify witness(es) whose testimony is to be transcribed, the legal ruling or argument to be transcribed, or other information necessary to identify a portion of the transcript. However, no transcript is required if the Board's review is limited to pure questions of law. The deadline for filing exceptions depends on whether either of the parties designates a portion of the transcript.

- 1. If the parties do not designate parts of the transcript, exceptions are due within thirty (30) days from the date on which the Division mails the initial decision to the parties. Both parties' exceptions are due on the same day.
- 2. Any party wishing to designate all, or any part, of the transcript must adhere to the following procedures:
  - a. Transcripts will not be deemed part of a designation unless specifically identified and ordered.
  - b. If one party designates a portion of the transcript, the other party may file a supplemental designation in which that party may designate additional portions of the transcript. The supplemental designation must be filed with the Board and served on the other party within ten (10) days after the date on which the original designation was filed.
  - c. Any party who designates a transcript must order the transcript by the date on which they file their designation with the Board whether they are filing an original or supplemental designation.
  - d. The party ordering a transcript must direct the court reporter or transcribing service to complete and file with the Board the original transcript and one (1) copy within thirty (30) days of their order.
  - e. The party that designates a transcript must pay for such transcripts.
  - f. Transcripts that are ordered and not filed with the Board in a timely manner due to non-payment, insufficient payment, or failure to direct as set forth above may not be considered by the Board.

- g. Upon receipt of transcripts identified in all designations and supplemental designations, the Board will mail a notification to the parties stating that the transcripts have been received by the Board.
  - h. Exceptions are due within thirty (30) days from the date on which such notification is mailed. Both parties' exceptions are due on the same date.
  - C. A party's exceptions must include specific objections to the initial decision.
  - D. Either party may file a response to the other party's exceptions. All responses must be filed within ten (10) days of the date on which the exceptions were filed with the Board. Subsequent replies will not be considered except for good cause shown.
  - E. The Board may in its sole discretion grant an extension of time to file exceptions or responses, or may delegate the discretion to grant such an extension of time to the Board's authorized representative.
- 6.6. Request for Oral Arguments
- A. All requests for oral argument must be in writing and included with a party's exceptions or response.
  - B. It is within the sole discretion of the Board to grant or deny a request for oral argument. The Board generally does not grant requests for oral argument. If an oral argument is granted, each party will have ten (10) minutes to present their argument. Questioning by members of the Board will not count against the allocated ten (10) minutes.
  - C. The Board or its authorized representative may extend the time for oral arguments upon good cause shown.
- 6.7. Final Orders
- A. The Board may deliberate and vote on exceptions immediately following oral arguments or the Board may take the matter under advisement.
  - B. When the Board votes on exceptions, whether after oral arguments or at a subsequent Board meeting, the ruling of the Board will not be considered final until a written order is issued.
  - C. The date of the Board's final order is the date on which the written order is signed, irrespective of any motions for reconsideration that are filed.

## **CHAPTER 7: DECLARATORY ORDERS**

- 7.1. Petition for a Declaratory Order
- Pursuant to section 24-5-105(11), C.R.S., Petitioner may petition the Board for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to any statutory provision, rule, or order of the Board as it would apply to the Petitioner.
- 7.2. Parties to the Proceeding
- The parties to any proceeding as set forth in Chapter 7 of these Rules will be the Board and the Petitioner. Any other person may seek leave of the Board to intervene in such a proceeding. Permission to intervene will be granted at the sole discretion of the Board. A petition to intervene will set forth the same matters as set forth in Rule 7.3.
- 7.3. Petition Contents
- Any petition filed as set forth in Chapter 7 of these Rules will state the following:
- A. The name and address of the Petitioner;
  - B. The statute, rule, or order to which the petition relates;
  - C. A concise statement of all the facts and law necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the Petitioner; and

D. The Petitioner may submit a concise statement of the declaratory order.

7.4. Board's Considerations Whether or Not to Rule

The Board may determine, in its sole discretion and without prior notice to the Petitioner, whether or not to rule upon a petition. In determining whether or not to rule upon a petition filed as set forth in Chapter 7 of these Rules, the Board may consider the following matters, among others:

- A. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to the Petitioner of any statutory provision, rule, or order of the Board.
- B. Whether the petition involves any subject, question, or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court involving one or more of the Petitioners.
- C. Whether the petition involves any subject, question, or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court not involving the Petitioner.
- D. Whether the petition seeks a ruling on a hypothetical question.
- E. Whether the Petitioner has some other adequate legal remedy, other than an action for declaratory order which will terminate the controversy or remove any uncertainty as to the applicability to the Petitioner of the statute, rule, or order in question.

7.5. Board Determines Not to Rule

If the Board determines it will not rule on a petition, the Board will issue its written decision disposing of the petition, stating the reasons for declining to rule upon the petition. A copy of the decision will be provided to the Petitioner. A decision not to rule on a petition for a declaratory order is not final agency action subject to judicial review

7.6. Board Determines to Rule

If the Board determines that it will rule on the petition:

- A. The Board may order the Petitioner to file an additional written brief, memorandum, statement of position, or request the Petitioner to submit additional facts or arguments in writing.
- B. The Board may take administrative notice of facts pursuant to the Administrative Procedure Act, section 24-4-105(8), C.R.S., and may utilize its experience, technical competence, and specialized knowledge when ruling on the petition.
- C. The Board may set the petition, upon due notice to the Petitioner, for a non-evidentiary hearing.
- D. The Board may, upon due notice to the Petitioner, set the petition for hearing for the purpose of obtaining additional facts or information, or to determine the truth of any facts set forth in the petition, or to hear oral arguments on the petition. Notice to the Petitioner setting such formal hearing will set forth, to the extent known, the factual or other matters into which the Board intends to inquire. The Petitioner will have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the Petitioner and any other facts the Petitioner desires the Board to consider.
- E. Any ruling by the Board may be based solely on the matters set forth in the petition or may be based on any amendments to the petition, any information gathered by the Board through a non-evidentiary hearing, formal hearing or otherwise, or any facts the Board may take administrative notice of. Upon ruling on a petition, the Board will issue its written order stating its basis for the order. A copy of the order will be provided to the Petitioner.

7.7. Declaratory Orders Subject to Judicial Review

Any declaratory order of a petition as set forth in Chapter 7 of these Rules will constitute agency action subject to judicial review pursuant to section 24-4-106, C.R.S.

**CHAPTER 8: NATIONWIDE MULTISTATE LICENSING SYSTEM AND REGISTRY (“NMLS”)**

8.1. NMLS Challenge

- A. A Mortgage Loan Originator may challenge information entered into the NMLS by the Division.
- B. The challenge must be in writing and set forth the specific information being challenged along with any supporting evidence.
- C. The grounds for a challenge will be limited to the factual accuracy of the information pertaining to the Mortgage Loan Originator’s own license record.
- D. A challenge submitted to appeal the underlying grounds for a disciplinary action will not be considered by the Director.

8.2. Review of NMLS Challenge

- A. The Director, or an authorized representative of the Director, will review all information submitted by the Mortgage Loan Originator and will determine the merits of the challenge.
- B. If the Director, or the Director’s authorized representative, determines that the information submitted to the NMLS by the Division is factually incorrect, the Division will promptly submit the correct information to the NMLS.

8.3. Appeal the NMLS Challenge

- A. A Mortgage Loan Originator may appeal the Director’s, or the Director’s authorized representative’s, decision regarding the challenge to the Board within thirty (30) calendar days of the decision being rendered.
- B. The decision of the Board regarding a NMLS challenge is subject to judicial review by the court of appeals by appropriate proceedings under section 24-4-106(11), C.R.S.

8.4. Call Reports

All Mortgage Companies must submit the NMLS Mortgage Call Report on a calendar quarterly basis, as set forth below, and must contain the required information as set forth by the NMLS.

- A. A Mortgage Company must identify the applicable NMLS Mortgage Call Report. This includes, but is not limited to, the standard section and the expanded section of the NMLS Mortgage Call Report. The Mortgage Company must identify and complete the report on behalf of all employed Mortgage Loan Originators or other Mortgage Loan Originators that operate through their Mortgage Company.
- B. The quarterly report is due within forty-five (45) calendar days of the end of the calendar quarter and the financial condition report of the standard section is due annually ninety (90) calendar days from the Mortgage Company’s fiscal year end.
- C. Mortgage Companies must comply with any rules, policies and procedures relating to the submission of a Mortgage Call Report that are prescribed by the NMLS.
- D. Failure to properly submit a NMLS Mortgage Call Report in a timely manner prescribed by the NMLS will prevent the Mortgage Company from renewing their NMLS registration.

**1-1-2 [Repealed effective 1/14/2014]**

**1-1-4 [Repealed effective 1/14/2014]**

**1-1-5 [Repealed effective 1/14/2014]**

1-2-2 [Repealed effective 1/14/2014]

1-3-1 [Repealed effective 1/14/2014]

1-4-1 [Repealed effective 1/14/2014]

1-5-1 [Repealed effective 1/14/2014]

3-1-4 [Repealed effective 1/10/2014]

## II. Mortgage Loan Originator Position Statements<sup>2</sup>

### Introduction

The Colorado Board of Mortgage Loan Originators Position Statements offer important practice related guidance to mortgage loan originator practitioners. It is important to understand that Position Statements are not law. Position Statements are, and should be, interpreted as non-binding direction on relevant laws and regulations including but not limited to the Mortgage Loan Originator Practice Act, sections 12-10-701, C.R.S. *et seq.* and the Rules Regarding Mortgage Loan Originators, 4 CCR 725-3. Since Position Statements are not law, Position Statements do not carry the full force and effect of laws and regulations.

When considering the relationship between statutory and regulatory interpretation, on the one hand, and the actual mortgage loan origination practice, on the other hand, Position Statements should be read as a series of best practices in the real estate industry. For some licensees, Position Statements may serve as a starting point to obtain competency in a new section of the mortgage loan origination practice. For others, Position Statements may serve to better understand the applicability of the statutes and regulations. Position Statements are prepared in plain language so that they are short, concise, and easy to understand.

Position Statements may be updated, deleted, or added from time to time by the Board of Mortgage Loan Originators. As Position Statements offer important insight into the real estate industry, reviewing and understanding the Position Statements is an important part of being a licensee. Electronic copies of current Position Statements can be found on the Division's website at [www.dre.colorado.gov](http://www.dre.colorado.gov). The Position Statements found in the remainder of this chapter are current as of January 1 of the year of this publication.

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<sup>2</sup> Board Position Statements are subject to change throughout the year. For the latest version of the Board Position Statements, please visit: <https://dre.colorado.gov/real-estate-manual-and-position-statements>

**Position Statement – MB 1.1 [Repealed]**

**Position Statement – MB 1.2 [Repealed]**

**Position Statement – MLO 1.3 – Board Position on Individuals Not Required to be Licensed – Supervisors and Support Staff (revised 09/18/2013) – effective 11/14/2013**

The Board of Mortgage Loan Originators (“Board”) issues this position statement to provide clarification to the mortgage industry regarding when supervisors and support staff of mortgage loan originators are not required to be licensed.

Supervision of Licensed Individuals:

Persons who directly or indirectly supervise mortgage loan originators, defined as those individuals who either take residential loan applications or offer or negotiate terms of a residential mortgage loan, are not required to hold a license if their duties are purely administrative in nature. Administrative tasks include, but are not limited to: setting goals and objectives, overseeing production, delegating duties, and evaluating performance, as long as performance of these tasks does not amount to the taking of a residential mortgage loan application or offering or negotiating the terms of a residential mortgage loan.

Support Staff:

Individuals who perform purely clerical and support tasks under the direction and supervision of a state licensed individual do not fall within the definitions of “originate a mortgage” or “mortgage loan originator.” Clerical or support tasks include, but are not limited to:

- a. Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms; and
- b. The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan.

However, at any time, if the unlicensed persons activities fall outside of administrative, clerical or support in nature and within the definitions of “originate a mortgage” as defined in section 12-10-702(17), C.R.S., or “mortgage loan originator” as defined in section 12-10-702(14)(a), C.R.S., they are required to be licensed as a Colorado mortgage loan originator.

**Position Statement – MLO 1.4 – Mortgage Loan Originator and Mortgage Company Exemptions (revised 09/18/2013)**

The Board of Mortgage Loan Originators has reissued this position statement to provide guidance for all individuals and entities identified under the exemption portion of the Mortgage Loan Originator Licensing and Mortgage Company Registration Act (the “Act”); specifically section 12-10-709, C.R.S., and federal regulations regarding seller financing.

State specific exemption for real estate brokers:

The Colorado General Assembly passed two bills in 2013 concerning the regulation of mortgage loan originators with new language affecting the exemption portion of the Act. Section 12-10-709, C.R.S., defines all individuals and entities that are exempt or otherwise excused from complying with licensure and registration standards outlined by the Act.

The first bill, SB 13-118, added exemption language for real estate brokers representing persons providing seller financing for the sale of no more than three residential properties in any twelve month period. Section 12-10-709(1)(j), C.R.S., now includes as exempt:

“A person licensed under part 2 of this article 10 who represents a person, estate, or trust providing mortgage financing under subsection (1)(a) of this section.”

The Board finds it necessary to clarify in what capacity one is acting when representing a person, estate, or trust that is offering seller financing. The Board has taken the position that “represents” denotes in the capacity of a real estate broker as set forth in section 12-10-201(6)(a), C.R.S. As such, persons licensed under part 2 are limited to the real estate brokerage activities as defined in section 12-10-702(20), C.R.S. “Acting in the capacity of a real estate broker” does not include the offering or negotiation of terms and conditions of any proposed financing arrangements with the seller. That activity would fall under the purview of mortgage origination.

Additionally, the sunset bill for the mortgage loan originators program, SB 13-156, deleted subsection (m) of former 12-61-911(1), C.R.S., thereby removing any uncertainties as to the plain and straightforward intent to exempt all individuals and entities identified in (what are now) sections 12-10-709(1)(b) through (j), C.R.S., from all sections, provisions, and requirements of the Act.

Compliance with federal requirements:

There have been some questions with regard to SB13-118, and how the new exemption created for licensed real estate brokers reconciles with federal licensure requirements. The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (“S.A.F.E. Act”) sets minimum national licensing standards for mortgage loan originators and requires that all mortgage loan originators be registered on the National Mortgage Licensing System and Registry (“NMLS”). The SAFE Act defines “loan originator” as an individual who (I) takes a residential mortgage loan application; and (II) offers or negotiates terms of a residential mortgage loan for compensation or gain. This regulation also describes activities in the residential mortgage process that are excluded from the definition of “loan originator.” Activities that are excluded include: those that pertain to administrative or clerical tasks; real estate brokerage activities by individuals licensed or registered by a state to undertake real estate brokerage activities, unless that person is compensated by a loan originator, loan processing or underwriting under the direction and supervision of a state-licensed loan originator or registered loan originator; and those individuals solely involved in extensions of credit relating to timeshare plans. Care should be taken by anyone licensed under part 2 as not to perform any acts that may require licensure under federal licensing requirements.

**Position Statement – MLO 1.5 – Loan Modifications (revised 11/20/2013)**

**Short sale** – A short sale is the sale of a real property for less than the mortgage loan balance. In the settlement of the short sale transaction the existing mortgage is extinguished. Any deficiency created from the settlement of the transaction may be transformed into a promissory note, charged off, forgiven, or pursued as a judgment against the previous owner.

**Loan modification** – A Loan Modification is a permanent change in one or more of the terms of a mortgagor’s existing loan, allows the loan to be reinstated, and often results in a more affordable mortgage payment. The borrower retains ownership of the real property and the mortgage note and deed of trust remain intact.

1. Section 12-10-702(17), C.R.S., defines “originate a mortgage” as to act directly or indirectly as a mortgage loan originator. It is the Board’s position that individuals offering or negotiating loan modifications are, at a minimum, indirectly acting as mortgage loan originators. Pursuant to section 12-10-704(1)(a), C.R.S., all persons who meet the definition of originate a mortgage are required to be licensed. As a result, persons who directly or indirectly negotiate, originate or offer or attempt to negotiate or originate loan modifications are currently required to be licensed as mortgage loan originators and are required to be licensed as state-licensed loan originators by July 31, 2010.



2. In addition to the licensing requirements, all individuals who directly or indirectly negotiate loan modifications for borrowers are required to comply with all other provisions of Colorado mortgage loan originator licensing law and Board rules. This includes, but is not limited to:
  - a. A duty of good faith and fair dealing in all communications and transactions with borrowers;
  - b. A prohibition against 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. A prohibition against soliciting or entering into a contract with a borrower that provides in substance that the mortgage loan originator may earn a fee or commission through the mortgage loan originator's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower; and
  - d. If the mortgage loan originator has obtained for the borrower a written commitment from a lender for a loan on the terms and conditions agreed to by the borrower and the mortgage loan originator, and the borrower fails to close on the loan through no fault of the mortgage loan originator, the mortgage loan originator may charge a fee, not to exceed three hundred dollars, for services rendered, preparation of documents, or transfer of documents in the borrower's file that were prepared or paid for by the borrower if the fee is not otherwise prohibited by the federal "Truth in Lending Act", 15 U.S.C. section 1601, and Regulation Z, 12 CFR 226, as amended.
3. The Board's position on this matter shall not be construed to include employees of non-profit HUD-approved housing counseling agencies as long as such individuals receive neither compensation nor anything of value for participation in loan modifications.
4. The Board's position on this matter shall not be construed to include employees of mortgage loan servicing companies operating on behalf of mortgage lenders.
5. Licensed Real Estate Brokers engaged in licensed activities when performing services within the defined short sale transactions do not need to maintain a license as a mortgage loan originator. However, loan modification services as defined in this position statement are considered outside the scope of real estate brokerage activities and as such, separate licensure as a mortgage loan originator is required.
6. As set forth in section 12-10-709(1)(c), C.R.S., an attorney who renders services in the course of practice, who is licensed in Colorado, and who is not primarily engaged in the business of negotiating residential mortgage loans or loan modifications is not required to be licensed as a mortgage loan originator.
7. Noncompliance may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:
  - a. Imposition of fines;
  - b. Restitution for any financial loss;
  - c. Refusal to renew a license;
  - d. Refusal to grant a license; and
  - e. Revocation.

### **Position Statement – MLO 1.7 – Financial Responsibility Requirement**

The Board's position on this matter is there is a presumption of compliance with the financial responsibility requirement in section 12-10-711(1)(g), C.R.S., for individuals required to be licensed as state-licensed loan originators who have complied with the errors and omissions insurance requirements defined in section 12-10-707, C.R.S., and any Director rule that directly or indirectly addresses errors and omissions insurance requirements and who have complied with the surety bond

requirements defined in sections 12-10-704(8) and 12-10-717, C.R.S., and any Board rule that directly or indirectly addresses surety bond requirements.

### **Position Statement – MLO 1.8 – Real Estate Brokerage Activity**

The Board is aware that pursuant to the real estate brokers licensing act, specifically § 12-10-401, C.R.S., *et seq.*, licensed Colorado real estate brokers are required to fulfill specific duties and obligations. Many of the duties prescribed by the act address financial matters involved in the contract for a real property transaction. Whether acting as a single agent or a transaction broker, a real estate broker must exercise reasonable skill and care, including but not limited to: 1) accounting for all money and property received in a timely manner; 2) keeping the parties fully informed of the transaction; 3) assisting the parties in complying with the terms and conditions of any contract including closing the transaction; and 4) making disclosures regarding adverse material facts pertaining to a principal's financial ability to perform the terms of the transaction and the buyer's intent to occupy the property as a principal residence. Without the informed consent of all parties, a transaction broker is prohibited from disclosing that a seller or buyer will agree to financing terms other than those offered. A single agent is prohibited from disclosing whether his or her client(s) will agree to financing terms other than those offered, unless the client consents. The Board is also cognizant that real estate brokers advise on fees relating to homeowner's associations, special assessments, appraisals, surveys, inspections, property insurance, and taxes.

Pursuant to § 12-10-702(20)(c), C.R.S., the aforementioned activities could be construed as requiring a mortgage loan originator's license since they involve "matters related to financing for the transaction" at the time of contract negotiation. However, the Board has determined these activities are exempt from the mortgage loan originator's licensing act. Specifically, § 12-10-702(14)(a), C.R.S., defines a mortgage loan originator as an individual who "takes a residential loan application" or "offers or negotiates terms of a residential mortgage loan." Real estate brokers engaging in these activities are required to be licensed as a mortgage loan originator.

### **Position Statement – MLO 1.9 – Mortgage Company Definition Applicability**

The Board of mortgage loan originators views the definition of a mortgage company, pursuant to their interpretation of Colorado law, to exclude the following entities:

1. Persons, other than an individual, who meet all of the following requirements:
  - a. Funds a residential mortgage loan when the residential mortgage loan application was taken by a licensed or exempt person;
  - b. Does not take residential mortgage loan applications or does not offer or negotiate terms of a residential mortgage loan;
  - c. Does not solicit borrowers in Colorado for the purpose of making residential mortgage loans; and
  - d. Does not participate in the offering or 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 person;
2. Private mortgage insurance companies that provide contract underwriting services to the lending community; or
3. Lead generating companies that do not, through employees or other individuals, take residential mortgage loan applications or offer or negotiate terms of a residential mortgage loan to prospective borrowers.

*Chapter 9: Rules and Regulations for Mortgage Loan Originators and Position Statements*

The types of entities described in this position statement are determined to be excluded from the definition of a mortgage company and, therefore, are not required to register as Mortgage Companies with the Colorado Board of Mortgage Loan Originators.