

Chapter 8:

Mortgage Loan Originator License Law

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

I. Introduction

In 2003, the Department of Regulatory Agencies received a request to initiate a review of the mortgage loan origination industry to determine whether regulation was appropriate. A sunrise review was conducted and completed October 14, 2005 pursuant to § 24-34-104.1(2), C.R.S. In summary, the review addressed Colorado's current regulatory environment with respect to mortgage transactions and the possibility for public harm.

Colorado was one of two states (the other being Alaska) that had no regulatory oversight of mortgage loan originators. Along with Colorado, Alaska has also implemented a regulatory program. In Colorado, the sunrise review also concluded that there was significant risk to consumers, as mortgage financing often represented their largest financial transaction. The review highlighted an inherent conflict of interest between the consumer, who seeks the lowest possible interest rate, and the mortgage loan originator, who receives compensation from higher interest rates. Ultimately, the sunrise review identified a need for regulatory oversight to ensure consumer protection. As a result, the Mortgage Broker Registration Act, House Bill 06-1161, was passed by the Colorado General Assembly in 2006.

- * The Mortgage Broker Registration Act provided a minimal registration program for mortgage loan originators. Registration required a completed criminal background check, a \$25,000 surety bond, a completed application, and payment of the application fee. Due to the wave of foreclosures and the mortgage fraud epidemic, the Colorado General Assembly passed four new mortgage broker bills in the 2007 session. These included House Bill 07-1322, Senate Bill 07-085, Senate Bill 07-216, and Senate Bill 07-203. Governor Bill Ritter, Jr. signed all four bills into law on June 1, 2007. This legislation created a significant change in Colorado's regulatory environment. House Bill 07-1322 contained measures to prevent mortgage fraud and established comprehensive definitions of prohibited conduct for mortgage loan originators. Senate Bill 07-085 prohibited mortgage loan originators from coercing or intimidating appraisers for the purpose of influencing an appraiser's independent judgment. Senate Bill 07-216 established that mortgage loan originators have a duty of good faith and fair dealing in all communications and transactions with a borrower. Finally, Senate Bill 07-203 required the development of a licensure program and the establishment of grounds for disciplinary actions.

In July of 2008, the United States Congress passed the Housing and Economic Recovery Act of 2008. A small portion of this Act is Title V—The S.A.F.E. Mortgage Licensing Act, which may also be cited as the Secure and Fair Enforcement for Mortgage Licensing Act of 2008. In summary, this bill sets minimum national licensing standards for mortgage loan originators and requires that all mortgage loan originators be registered on the Nationwide Mortgage Licensing System and Registry. Additionally, this law requires licensure for a few new groups of individuals and loan originators, including: loan originators working for non-profit organizations; loan originators working in chattel financing related to mobile and

manufactured housing; loan originators working for affiliates of depositories; and independent contractor loan processors and underwriters. The S.A.F.E. Act was essentially a mandate for states to ensure that their laws are consistent with this federal mandate. Furthermore, the S.A.F.E. Act mandates the development of the Nationwide Mortgage Licensing System and Registry. This registry benefits Colorado because it is possible to track individuals across state lines. In order to adopt provisions defined in the S.A.F.E. Act, the Colorado General Assembly passed House Bill 09-1085 in May of 2009; it became effective August 5, 2009.

In 2009, the Federal Housing and Finance Agency established a policy decision requiring Fannie Mae and Freddie Mac to only purchase mortgage loans if they contained a unique identifier for the individual mortgage loan originator and the mortgage company. Because Colorado, at that time, was one of two states (the other being Hawaii) that did not have any oversight regarding mortgage companies, the Colorado General Assembly acted and passed House Bill 10-1141. This law became effective on August 11, 2010 and requires mortgage companies to be registered on the Nationwide Mortgage Licensing System and Registry. Furthermore, this law established some standards of conduct for mortgage companies, including: document retention; advertising standards; and a prohibition on mortgage companies hiring unlicensed mortgage loan originators. Additionally, this law transforms the Mortgage Loan Originator Program from a director-model program to a board-model program. The defined board consists of five members, three of which must be licensed mortgage loan originators and two that must be members of the public at large not engaged in mortgage loan origination or mortgage lending. The transition to the new Board of Mortgage Loan Originators is an important change for Colorado's Mortgage Loan Originator regulatory program.

Since the inception of the mortgage regulatory program, there have been several laws that have been passed. Additionally, there have been numerous rules that have been promulgated, many of which were adopted on an emergency basis. This regulatory program has seen a consistent change in licensing requirements, standards of conduct, and prohibitions. The mission of the Department of Regulatory Agencies is consumer protection. The Colorado Division of Real Estate now has the tools to protect Colorado consumers and ensure fair competition through aggressive enforcement and responsible implementation.

II. Mortgage Loan Originator Licensing and Mortgage Company Registration Act¹

Colorado Revised Statutes Title 12, Article 10, Part 7

§ 12-10-701, C.R.S. Short title.

Editor's note: This section is similar to former §12-61-901 as it existed prior to 2019.

The short title of this part 7 is the “Mortgage Loan Originator Licensing and Mortgage Company Registration Act”.

¹ Colorado Revised Statutes are subject to change through the legislative process. Check the Division website for updates.

§ 12-10-702, C.R.S. Definitions.

Editor's note: This section is similar to former §12-61-902 as it existed prior to 2019.

As used in this part 7, unless the context otherwise requires:

- (1) “Affiliate” means a person who, directly or indirectly, through intermediaries, controls, is controlled by, or is under the common control of another person addressed by this part 7.
- (2) “Affordable housing dwelling unit” means an affordable housing dwelling unit as defined in section 29-26-102.
- (3) “Board” means the board of mortgage loan originators created in section 12-10-703.
- (4) “Borrower” means any person who consults with or retains a mortgage loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.
- (5) “Community development organization” means any community housing development organization or community land trust as defined by the federal “Cranston-Gonzalez National Affordable Housing Act” of 1990 or a community-based development organization as defined by the federal “Housing and Community Development Act of 1974”, that is also either a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal “Internal Revenue Code of 1986” pursuant to section 501 (c) of the federal “Internal Revenue Code of 1986”, 26 U.S.C. sec. 501 (a) and 501 (c), as amended, and that receives funding from the United States department of housing and urban development, Colorado division of housing, Colorado housing and finance authority, or United States department of agriculture rural development, or through a grantee of the United States department of housing and urban development, purely for the purpose of community housing development activities.
- (6) “Depository institution” has the same meaning as set forth in the “Federal Deposit Insurance Act”, 12 U.S.C. sec. 1813 (c), and includes a credit union.
- (7) “Dwelling” shall have the same meaning as set forth in the federal “Truth in Lending Act”, 15 U.S.C. sec. 1602 (w).
- (8) “Federal banking agency” means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, or the federal deposit insurance corporation.
- (9) “HUD-approved housing counseling agency” means an agency that is either a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal “Internal Revenue Code of 1986” pursuant to section 501 (c) of the federal “Internal Revenue Code of 1986”, 26 U.S.C. sec. 501 (a) and 501 (c), as amended, and approved by the United States department of housing and urban development, in accordance with the housing counseling program handbook section 7610.1 and 24 CFR 214.
- (10) “Individual” means a natural person.
- (11) (a) “Loan processor or underwriter” means an individual who performs clerical or support duties at the direction of, and subject to supervision by, a state-licensed loan originator or a registered loan originator.
(b) As used in this subsection (11), “clerical or support duties” includes duties performed after receipt of an application for a residential mortgage loan, including:
 - (I) The receipt, collection, distribution, and analysis of information commonly used for the processing or underwriting of a residential mortgage loan; and
 - (II) Communicating with a borrower to obtain the information necessary to process or underwrite a loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

- (12) “Mortgage company” means a person other than an individual who, through employees or other individuals, takes residential loan applications or offers or negotiates terms of a residential mortgage loan.
- (13) “Mortgage lender” means a lender who is in the business of making residential mortgage loans if:
 - (a) The lender is the payee on the promissory note evidencing the loan; and
 - (b) The loan proceeds are obtained by the lender from its own funds or from a line of credit made available to the lender from a bank or other entity that regularly loans money to lenders for the purpose of funding mortgage loans.
- (14) (a) “Mortgage loan originator” means an individual who:
 - (I) Takes a residential mortgage loan application; or
 - (II) Offers or negotiates terms of a residential mortgage loan.
- (b) “Mortgage loan originator” does not include:
 - (I) An individual engaged solely as a loan processor or underwriter;
 - (II) A person that only performs real estate brokerage or sales activities and is licensed or registered pursuant to part 2 of this article 10, unless the person is compensated by a mortgage lender or a mortgage loan originator;
 - (III) A person solely involved in extensions of credit relating to time share plans, as defined in 11 U.S.C. sec. 101 (53D);
 - (IV) An individual who is servicing a mortgage loan; or
 - (V) A person that only performs the services and activities of a dealer, as defined in section 24-32-3302.
- (15) “Nationwide mortgage licensing system and registry” means a mortgage licensing system developed pursuant to the federal “Secure and Fair Enforcement for Mortgage Licensing Act of 2008”, 12 U.S.C. sec. 5101 et seq., as amended, to track the licensing and registration of mortgage loan originators and that is established and maintained by:
 - (a) The Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or their successor entities; or
 - (b) The secretary of the United States department of housing and urban development.
- (16) “Nontraditional mortgage product” means a mortgage product other than a thirty-year, fixed-rate mortgage.
- (17) “Originate a mortgage” means to act, directly or indirectly, as a mortgage loan originator.
- (18) “Person” means a natural person, corporation, company, limited liability company, partnership, firm, association, or other legal entity.
- (19) “Quasi-government agency” means an agency that is either a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal “Internal Revenue Code of 1986” pursuant to section 501 (c) of the federal “Internal Revenue Code of 1986”, 26 U.S.C. sec. 501 (a) and 501 (c), as amended, and was created to operate in accordance with article 4 of title 29 as a public housing authority.
- (20) “Real estate brokerage activity” means an activity that involves offering or providing real estate brokerage services to the public, including, without limitation:
 - (a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
 - (b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

- (c) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than matters related to financing for the transaction;
- (d) Engaging in an activity for which a person engaged in the activity is required under applicable law to be registered or licensed as a real estate agent or real estate broker; or
- (e) Offering to engage in any activity, or act in any capacity related to the activity, described in this subsection (20).

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

(22) “Residential real estate” means any real property upon which a dwelling is or will be constructed.

(23) “Self-help housing organization” means a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal “Internal Revenue Code of 1986” pursuant to section 501 (c) of the federal “Internal Revenue Code of 1986”, 26 U.S.C. sec. 501 (a) and 501 (c), as amended, and that purely originates residential mortgage loans with interest rates no greater than zero percent for borrowers who have provided part of the labor to construct the dwelling securing the loan or that receives funding from the United States department of agriculture rural development section 502 mutual self-help housing program for borrowers that have provided part of the labor to construct the dwelling securing the loan.

(24) “Servicing a mortgage loan” means collecting, receiving, or obtaining the right to collect or receive payments on behalf of a mortgage lender, including payments of principal, interest, escrow amounts, and other amounts due on obligations due and owing to the mortgage lender.

(25) “State-licensed loan originator” means an individual who is:

- (a) A mortgage loan originator or engages in the activities of a mortgage loan originator;
- (b) Not an employee of a depository institution or a subsidiary that is:
 - (I) Owned and controlled by a depository institution; and
 - (II) Regulated by a federal banking agency;
- (c) Licensed or required to be licensed pursuant to this part 7; and
- (d) Registered as a state-licensed loan originator with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

(26) “Unique identifier” means a number or other identifier assigned to a mortgage loan originator pursuant to protocols established by the nationwide mortgage licensing system and registry.

§ 12-10-703, C.R.S. Board of mortgage loan originators – creation – compensation – enforcement of part after board creation – immunity.

Editor’s note: (1) This section is similar to former §12-61-902.5 as it existed prior to 2019.

(1) (a) There is hereby created in the division of real estate a board of mortgage loan originators, consisting of five members appointed by the governor with the consent of the senate.

(b) Of the members of the board:

- (I) Three must be licensed mortgage loan originators. The general assembly encourages the governor to appoint to at least one of these three positions a licensed mortgage loan originator who is an employee or exclusive agent of, or works as an independent contractor for, a Colorado-based mortgage company.
- (II) Two must be members of the public at large not engaged in mortgage loan origination or mortgage lending.

- (c) The term of office for a member is four years; except that the terms shall be staggered so that no more than three members' terms expire in the same year.
- (d) In the event of a vacancy by death, resignation, removal, or otherwise, the governor shall appoint a member to fill the unexpired term. The governor has the authority to remove any member for misconduct, neglect of duty, or incompetence.

(2) (a) The board is a **type 1** entity, as defined in section 24-1-105, and exercises its powers and performs its duties and functions under the department.

(b) Notwithstanding any other provision of this part 7, on and after the creation of the board by this section, the board shall exercise all of the rule-making, enforcement, and administrative authority of the director set forth in this part 7. The board has the authority to delegate to the director any enforcement and administrative authority under this part 7 that the board deems necessary and appropriate. If the board delegates any enforcement or administrative authority under this part 7 to the director, the director shall only be entitled to exercise such authority as specifically delegated in writing to the director by the board.

(3) Each member of the board shall receive the same compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations pursuant to section 12-20-103 (6). Payment for all per diem compensation and expenses shall be made out of annual appropriations from the division of real estate cash fund created in section 12-10-215.

(4) Members of the board, consultants, and expert witnesses shall be immune from suit in any civil action based upon any disciplinary proceedings or other official acts they performed in good faith pursuant to this part 7.

(5) A majority of the board shall constitute a quorum for the transaction of all business, and actions of the board shall require a vote of a majority of the members present in favor of the action taken.

(6) (a) All rules promulgated by the director prior to August 11, 2010, shall remain in full force and effect until repealed or modified by the board. The board shall have the authority to enforce any previously promulgated rules of the director under this part 7 and any rules promulgated by the board.

(b) Nothing in this section shall affect any action taken by the director prior to August 11, 2010. No person who, on or before August 11, 2010, holds a license issued under this part 7 shall be required to secure an additional license under this part 7, but shall otherwise be subject to all the provisions of this part 7. A license previously issued shall, for all purposes, be considered a license issued by the board under this part 7.

§ 12-10-704, C.R.S. License required – rules.

Editor's note: (1) This section is similar to former §12-61-903 as it existed prior to 2019.

(2) Before its relocation in 2019, this section was amended in HB 19-1166. Those amendments were superseded by the repeal and reenactment of this title 12, effective October 1, 2019. For those amendments to the former section in effect from April 18, 2019, to October 1, 2019, see HB 19-1166, chapter 125, Session Laws of Colorado 2019.

(1) (a) Unless licensed by the board and registered with the nationwide mortgage licensing system and registry as a state-licensed loan originator, an individual shall not originate or offer to originate a mortgage or act or offer to act as a mortgage loan originator.

(b) On and after January 1, 2010, a licensed mortgage loan originator shall apply for license renewal in accordance with subsection (5) of this section every calendar year as determined by the board by rule.

- (2) An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless the independent contractor is a state-licensed loan originator.
- (3) An applicant for initial licensing as a mortgage loan originator shall submit to the board the following:
 - (a) A criminal history record check in compliance with subsection (6) of this section;
 - (b) A disclosure of all administrative discipline taken against the applicant concerning the categories listed in section 12-10-711 (1)(c); and
 - (c) The application fee established by the board in accordance with section 12-10-718.
- (4) (a) In addition to the requirements imposed by subsection (3) of this section, on or after August 5, 2009, each individual applicant for initial licensing as a mortgage loan originator must have satisfactorily completed:
 - (I) At least twenty hours of education as administered and approved by the Nationwide Multistate Licensing System and Registry or its successor; and
 - (II) A written examination approved by the board. For the portion of the examination that represents the state-specific test required in the federal “Secure and Fair Enforcement for Mortgage Licensing Act of 2008”, 12 U.S.C. sec. 5101 et seq., as amended, the board may adopt the uniform state test administered through the Nationwide Multistate Licensing System and Registry or its successor.
- (b) The board may contract with one or more independent testing services to develop, administer, and grade the examinations required by subsection (4)(a) of this section and to maintain and administer licensee records. The contract may allow the testing service to recover from applicants its costs incurred in connection with these functions. The board may contract separately for these functions and may allow the costs to be collected by a single contractor for distribution to other contractors.
- (c) The board may publish reports summarizing statistical information prepared by the nationwide mortgage licensing system and registry relating to mortgage loan originator examinations.
- (5) An applicant for license renewal shall submit to the board the following:
 - (a) A disclosure of all administrative discipline taken against the applicant concerning the categories listed in section 12-10-711 (1)(c); and
 - (b) The renewal fee established by the board in accordance with section 12-10-718.
- (6) (a) Prior to submitting an application for a license, an applicant shall submit a set of fingerprints to the Colorado bureau of investigation. Upon receipt of the applicant's fingerprints, the Colorado bureau of investigation shall use the fingerprints to conduct a state and national criminal history record check using records of the Colorado bureau of investigation and the federal bureau of investigation. All costs arising from the fingerprint-based criminal history record check must be borne by the applicant and must be paid when the set of fingerprints is submitted. Upon completion of the fingerprint-based criminal history record check, the bureau shall forward the results to the board. The board shall acquire a name-based judicial record check, as defined in section 22-2-119.3 (6)(d), for an applicant who has a record of arrest without a disposition. The applicant shall pay the costs associated with a name-based judicial record check.
- (b) If the board determines that the criminal background check provided by the nationwide mortgage licensing system and registry is a sufficient method of screening license applicants to protect Colorado consumers, the board may, by rule, authorize the use of that criminal background check instead of the criminal history record check otherwise required by this subsection (6).

- (7) (a) On and after January 1, 2010, in connection with an application for a license as a mortgage loan originator, the applicant shall furnish information concerning the applicant's identity to the nationwide mortgage licensing system and registry. The applicant shall furnish, at a minimum, the following:
 - (I) Fingerprints for submission to the federal bureau of investigation and any government agency or entity authorized to receive fingerprints for a state, national, or international criminal history record check; and
 - (II) Personal history and experience, in a form prescribed by the nationwide mortgage licensing system and registry, including submission of authorization for the nationwide mortgage licensing system and registry to obtain:
 - (A) An independent credit report from the consumer reporting agency described in the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681a (p); and
 - (B) Information related to any administrative, civil, or criminal findings by a government jurisdiction.
- (b) An applicant is responsible for paying all costs arising from a criminal history record check and shall pay the costs upon submission of fingerprints.
- (c) The board shall acquire a name-based judicial record check, as defined in section 22-2-119.3 (6)(d), for an applicant who has a record of arrest without a disposition. The applicant shall pay the costs associated with a name-based judicial record check.
- (8) Before granting a license to an applicant, the board shall require the applicant to post a bond as required by section 12-10-717.
- (9) The board shall issue or deny a license within sixty days after:
 - (a) The applicant has submitted the requisite information to the board and the Nationwide Multistate Licensing System and Registry, including the completed application and any necessary supplementary information, the application fee, and proof that the applicant has posted a surety bond and obtained errors and omissions insurance; and
 - (b) The board receives the completed criminal history record check and all other relevant information or documents necessary to reasonably ascertain facts underlying the applicant's criminal history.
- (10) (a) The board may require, as a condition of license renewal on or after January 1, 2009, continuing education of licensees for the purpose of enhancing the professional competence and professional responsibility of all licensees.
- (b) Continuing professional education requirements shall be determined by the board by rule; except that licensees shall be required to complete at least eight credit hours of continuing education each year. The board may contract with one or more independent service providers to develop, review, or approve continuing education courses. The contract may allow the independent service provider to recover from licensees its costs incurred in connection with these functions. The board may contract separately for these functions and may allow the costs to be collected by a single contractor for distribution to other contractors.
- (11) (a) The board may require contractors and prospective contractors for services under subsections (4) and (10) of this section to submit, for the board's review and approval, information regarding the contents and materials of proposed courses and other documentation reasonably necessary to further the purposes of this section.
- (b) The board may set fees for the initial and continuing review of courses for which credit hours will be granted. The initial filing fee for review of materials shall not exceed five hundred dollars, and the fee for continued review shall not exceed two hundred fifty dollars per year per course offered.

- (12) The board may adopt reasonable rules to implement this section. The board may adopt rules necessary to implement provisions required in the federal “Secure and Fair Enforcement for Mortgage Licensing Act of 2008”, 12 U.S.C. sec. 5101 et seq., as amended, and for participation in the nationwide mortgage licensing system and registry.
- (13) In order to fulfill the purposes of this part 7, the board may establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this part 7.
- (14) The board may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from or distributing information to the department of justice, a government agency, or any other source.

§ 12-10-705, C.R.S. Registration required – rules.

Editor's note: This section is similar to former §12-61-903.1 as it existed prior to 2019.

- (1) On or after January 1, 2011, each mortgage company shall register with the nationwide mortgage licensing system and registry, unless exempted by rule by the board, and shall renew its registration each calendar year based on the following criteria:
 - (a) (I) The mortgage company is legally operating in the state of Colorado in accordance with standards determined and administered by the Colorado secretary of state; and (II) The mortgage company is not legally barred from operating in Colorado.
 - (b) Sole proprietors, general partnerships, and other mortgage companies not otherwise required to register with the secretary of state shall register using a trade name.

§ 12-10-706, C.R.S. License or registration inactivation.

Editor's note: This section is similar to former §12-61-903.3 as it existed prior to 2019.

- (1) The board may deactivate a state license or a registration with the nationwide mortgage licensing system and registry when a licensee has failed to:
 - (a) Comply with the surety bond requirements of sections 12-10-704 (8) and 12-10-717;
 - (b) Comply with the errors and omissions insurance requirement in section 12-10-707 or any rule of the board that directly or indirectly addresses errors and omissions insurance requirements;
 - (c) Maintain current contact information, surety bond information, or errors and omissions insurance information as required by this part 7 or by any rule of the board that directly or indirectly addresses those requirements;
 - (d) Respond to an investigation or examination;
 - (e) 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) Register with and provide all required information to the nationwide mortgage licensing system and registry.

§ 12-10-707, C.R.S. Errors and omissions insurance – duties of the board – certificate of coverage – when required – group plan made available – effect – rules.

Editor's note: This section is similar to former §12-61-903.5 as it existed prior to 2019.

- (1) Every licensee under this part 7, except an inactive mortgage loan originator or an attorney licensee who maintains a policy of professional malpractice insurance that provides coverage for errors and omissions insurance for their activities as a licensee under this part 7, shall

maintain errors and omissions insurance to cover all activities contemplated under this part 7. The division shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after a competitive bid process in accordance with article 103 of title 24. A group policy obtained by the division must be available to all licensees with no right on the part of the insurer to cancel a licensee. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the division.

- (2) (a) If the division is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable annual premium, as determined by the division, a licensee shall independently obtain the errors and omissions insurance required by this section.
(b) The division shall solicit and consider information and comments from interested persons when determining the reasonableness of annual premiums.
- (3) The division shall determine the terms and conditions of coverage required under this section based on rules promulgated by the board. Each licensee shall be notified of the required terms and conditions at least thirty days before the annual premium renewal date as determined by the division. Each licensee shall file a certificate of coverage showing compliance with the required terms and conditions with the division by the annual premium renewal date, as determined by the division.
- (4) In addition to all other powers and duties conferred upon the board by this part 7, the board shall adopt such rules as it deems necessary or proper to carry out this section.

§ 12-10-708, C.R.S. License renewal.

Editor's note: This section is similar to former §12-61-903.7 as it existed prior to 2019.

- (1) In order for a licensed mortgage loan originator to renew a license issued pursuant to this part 7, the mortgage loan originator shall:
 - (a) Continue to meet the minimum standards for issuance of a license pursuant to this part 7;
 - (b) Satisfy the annual continuing education requirements set forth in section 12-10-704 (10) and in rules adopted by the board; and
 - (c) Pay applicable license renewal fees.
- (2) If a licensed mortgage loan originator fails to satisfy the requirements of subsection (1) of this section for license renewal, the mortgage loan originator's license shall expire. The board shall adopt rules to establish procedures for the reinstatement of an expired license consistent with the standards established by the nationwide mortgage licensing system and registry.

§ 12-10-709, C.R.S. Exemptions – definition – rules.

Editor's note: This section is similar to former §12-61-904 as it existed prior to 2019.

- (1) Except as otherwise provided in section 12-10-713, this part 7 does not apply to the following, unless otherwise determined by the federal bureau of consumer financial protection or the United States department of housing and urban development:
 - (a) With respect to a residential mortgage loan:
 - (I) A person, estate, or trust that provides mortgage financing for the sale of no more than three properties in any twelve-month period to purchasers of the properties, each of which is owned by the person, estate, or trust and serves as security for the loan; or
 - (II) An individual who acts as a mortgage loan originator, without compensation or gain to the mortgage loan originator, in providing loan financing for not more than three residential mortgage loans in any twelve-month period to a family member of

the individual. The board shall define “family member” by rule. For purposes of this exemption only, “compensation or gain” excludes any interest paid under the loan financing provided.

- (b) A bank and a savings association as these terms are defined in the “Federal Deposit Insurance Act”, 12 U.S.C. sec. 1811 et seq., as amended, a subsidiary that is owned and controlled by a bank or savings association, employees of a bank or savings association, employees of a subsidiary that is owned and controlled by a bank or savings association, credit unions, and employees of credit unions;
- (c) 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;
- (d) A person who:
 - (I) Funds a residential mortgage loan that has been originated and processed by a licensed person or by an exempt person;
 - (II) Does not solicit borrowers in Colorado for the purpose of making residential mortgage loans; and
 - (III) Does not participate in the negotiation of residential mortgage loans with the borrower, except for setting the terms under which a person may buy or fund a residential mortgage loan originated by a licensed or exempt person;
- (e) A loan processor or underwriter who is not an independent contractor and who does not represent to the public that the individual can or will perform any activities of a mortgage loan originator. As used in this subsection (1)(e), “represent to the public” means communicating, through advertising or other means of communicating, or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual is able to provide a particular service or activity for a consumer.
- (f) To the extent that it is providing programs benefitting affordable housing dwelling units, an agency of the federal government, the Colorado government, or any of Colorado’s political subdivisions or employees of an agency of the federal government, of the Colorado government, or of any of Colorado’s political subdivisions;
- (g) Quasi-government agencies, HUD-approved housing counseling agencies, or employees of quasi-government agencies or HUD-approved housing counseling agencies;
- (h) Community development organizations or employees of community development organizations;
- (i) Self-help housing organizations or employees of self-help housing organizations or volunteers acting as an agent of self-help housing organizations;
- (j) 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.

- (2) The exemptions in subsection (1) of this section shall not apply to persons acting beyond the scope of the exemptions.
- (3) The board may adopt reasonable rules modifying the exemptions in this section in accordance with rules adopted by the federal bureau of consumer financial protection or the United States department of housing and urban development.

§ 12-10-710, C.R.S. Originator’s relationship to borrower – rules.

Editor’s note: This section is similar to former §12-61-904.5 as it existed prior to 2019.

- (1) A mortgage loan originator shall have a duty of good faith and fair dealing in all communications and transactions with a borrower. The duty includes, but is not limited to:

- (a) The duty to not recommend or induce the borrower to enter into a transaction that does not have a reasonable, tangible net benefit to the borrower, considering all of the circumstances, including the terms of a loan, the cost of a loan, and the borrower's circumstances;
- (b) The duty to make a reasonable inquiry concerning the borrower's current and prospective income, existing debts and other obligations, and any other relevant information and, after making the inquiry, to make his or her best efforts to recommend, broker, or originate a residential mortgage loan that takes into consideration the information submitted by the borrower, but the mortgage loan originator shall not be deemed to violate this section if the borrower conceals or misrepresents relevant information; and
- (c) The duty not to commit any acts, practices, or omissions in violation of section 38-40-105.

- (2) For purposes of implementing subsection (1) of this section, the board may adopt rules defining what constitutes a reasonable, tangible net benefit to the borrower.
- (3) A violation of this section constitutes a deceptive trade practice under the "Colorado Consumer Protection Act", article 1 of title 6.

§ 12-10-711, C.R.S. Powers and duties of the board – rules.

Editor's note: This section is similar to former §12-61-905 as it existed prior to 2019.

- (1) The board may deny an application for a license, refuse to renew, or revoke the license of an applicant or licensee who has:
 - (a) Filed an application with the board containing material misstatements of fact or omitted any disclosure required by this part 7;
 - (b) Within the last five years, been convicted of or pled guilty or nolo contendere to a crime involving fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty, except as otherwise set forth in this part 7;
 - (c) Except as otherwise set forth in this part 7, within the last five years, had a license, registration, or certification issued by Colorado or another state revoked or suspended for fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty, and the discipline denied the person authorization to practice as:
 - (I) A mortgage broker or a mortgage loan originator;
 - (II) A real estate broker, as defined by section 12-10-201 (6);
 - (III) A real estate salesperson;
 - (IV) A real estate appraiser, as defined by section 12-10-602 (9);
 - (V) An insurance producer, as defined by section 10-2-103 (6);
 - (VI) An attorney;
 - (VII) A securities broker-dealer, as defined by section 11-51-201 (2);
 - (VIII) A securities sales representative, as defined by section 11-51-201 (14);
 - (IX) An investment advisor, as defined by section 11-51-201 (9.5); or
 - (X) An investment advisor representative, as defined by section 11-51-201 (9.6);
 - (d) Been enjoined within the immediately preceding five years under the laws of this or any other state or of the United States from engaging in deceptive conduct relating to the brokering of or originating a mortgage loan;
 - (e) Been found to have violated the provisions of section 12-10-721;
 - (f) Been found to have violated the provisions of section 12-10-713;

- (g) Not demonstrated financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the individual will operate honestly, fairly, and efficiently, consistent with the purposes of this part 7;
- (h) Not completed the prelicense education requirements set forth in section 12-10-704 and any applicable rules of the board; or
- (i) Not passed a written examination that meets the requirements set forth in section 12-10-704 and any applicable rules of the board.

(2) The board shall deny an application for a license, refuse to renew, or revoke the license of an applicant or licensee who has:

- (a) (I) Had a mortgage loan originator license or similar license revoked in any jurisdiction.
- (II) If a revocation is subsequently formally nullified, the license is not revoked for purposes of this subsection (2)(a).
- (b) (I) At any time been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.
- (II) If the individual obtains a pardon of the conviction, the board shall not deem the individual convicted for purposes of this subsection (2)(b).
- (c) Been convicted of, or pled guilty or nolo contendere to, a felony within the immediately preceding seven years.

(3) The board may investigate the activities of a licensee or other person that present grounds for disciplinary action under this part 7 or that violate section 12-10-720 (1).

(4) (a) If the board has reasonable grounds to believe that a mortgage loan originator is no longer qualified under subsection (1) of this section, the board may summarily suspend the mortgage loan originator's license pending a hearing to revoke the license. A summary suspension shall conform to article 4 of title 24.

(b) The board shall suspend the license of a mortgage loan originator who fails to maintain the bond required by section 12-10-717 until the licensee complies with that section.

(5) The board or an administrative law judge appointed pursuant to part 10 of article 30 of title 24 shall conduct disciplinary hearings concerning mortgage loan originators and mortgage companies. The hearings shall conform to article 4 of title 24.

(6) (a) Except as provided in subsection (6)(b) of this section, an individual whose license has been revoked shall not be eligible for licensure for two years after the effective date of the revocation.

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

(7) (a) The board or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing or investigation conducted by the board or an administrative law judge. The board may request any information relevant to the investigation, including, but not limited to, independent credit reports obtained from a consumer reporting agency described in the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681a (p).

(b) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed witness resides or conducts business may issue an order

requiring the witness to appear before the board or administrative law judge; produce the relevant papers, books, records, documentary evidence, testimony, or materials in question; or both. Failure to obey the order of the court may be punished as a contempt of court. The board or an administrative law judge may apply for an order.

(c) The licensee or individual who, after an investigation under this part 7, is found to be in violation of a provision of this part 7 shall be responsible for paying all reasonable and necessary costs of the division arising from subpoenas or requests issued pursuant to this subsection (7), including court costs for an action brought pursuant to subsection (7)(b) of this section.

(8) (a) If the board has reasonable cause to believe that an individual is violating this part 7, including but not limited to section 12-10-720 (1), the board may enter an order requiring the individual to cease and desist the violations.

(b) The board, upon its own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any licensee or any individual who assumes to act in such capacity within the state. In addition to any other penalty that may be imposed pursuant to this part 7, any individual violating any provision of this part 7 or any rules promulgated pursuant to this article 10 may be fined upon a finding of misconduct by the board as follows:

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

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

(c) All fines collected pursuant to this subsection (8) shall be transferred to the state treasurer, who shall credit them to the division of real estate cash fund created in section 12-10-215.

(9) The board shall keep records of the individuals licensed as mortgage loan originators and of disciplinary proceedings. The records kept by the board shall be open to public inspection in a reasonable time and manner determined by the board.

(10) The board shall maintain a system, which may include, without limitation, a hotline or website, that gives consumers a reasonably easy method for making complaints about a mortgage loan originator.

(11) The board shall promulgate rules to allow licensed mortgage loan originators to hire unlicensed mortgage loan originators under temporary licenses. If an unlicensed mortgage loan originator has initiated the application process for a license, he or she shall be assigned a temporary license for a reasonable period until a license is approved or denied. The licensed mortgage loan originator who employs an unlicensed mortgage loan originator shall be held responsible under all applicable provisions of law, including without limitation this part 7 and section 38-40-105, for the actions of the unlicensed mortgage loan originator to whom a temporary license has been assigned under this subsection (11).

§ 12-10-712, C.R.S. Powers and duties of the board over mortgage companies – fines – rules.

Editor's note: This section is similar to former §12-61-905.1 as it existed prior to 2019.

(1) With respect to mortgage companies, the board may deny an application for registration; refuse to renew, suspend, or revoke the registration; enter cease-and-desist orders; and impose fines as set forth in this section as follows:

(a) If the board has reasonable cause to believe a person is acting without a license or registration;

- (b) If the mortgage company fails to maintain possession, for future use or inspection by an authorized representative of the board, for a period of four years, of the documents or records prescribed by the rules of the board or to produce the documents or records upon reasonable request by the board or by an authorized representative of the board;
- (c) If the mortgage company employs or contracts with individuals who are required to be licensed pursuant to this part 7 and who are not either:
 - (I) Licensed; or
 - (II) In the process of becoming licensed; or
- (d) If the mortgage company directs, makes, or causes to be made, in any manner, a false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan; engages in bait and switch advertising as that term is used in section 6-1-105 (1)(n); or violates any rule of the board that directly or indirectly addresses advertising requirements.

(2) (a) The board, upon its own motion or upon the complaint in writing of any person, may investigate the activities of any registered mortgage company or any mortgage company that is acting in a capacity that requires registration pursuant to this part 7.

(b) The board may fine a mortgage company that has violated this section or any rules promulgated pursuant to this section as follows:

- (I) In the first administrative proceeding, a fine not in excess of one thousand dollars per act or occurrence;
- (II) In a second or subsequent administrative proceeding, a fine not in excess of two thousand dollars per act or occurrence.

(c) All fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit them to the division of real estate cash fund created in section 12-10-215.

(3) The board may adopt reasonable rules for implementing this section.

(4) Nothing in this section automatically imputes a violation to the mortgage company if a licensed agent or employee, or an individual agent or employee who is required to be licensed, violates any other provision of this part 7.

§ 12-10-713, C.R.S. Disciplinary actions – grounds – procedures – rules.

Editor's note: This section is similar to former §12-61-905.5 as it existed prior to 2019.

(1) The board, upon its own motion, may, or upon the complaint in writing of any person, shall, investigate the activities of any mortgage loan originator. The board has the power to impose an administrative fine in accordance with section 12-10-711, deny a license, censure a licensee, place the licensee on probation and set the terms of probation, order restitution, order the payment of actual damages, or suspend or revoke a license when the board finds that the licensee or applicant has performed, is performing, or is attempting to perform any of the following acts:

- (a) Knowingly making any misrepresentation or knowingly making use of any false or misleading advertising;
- (b) Making any promise that influences, persuades, or induces another person to detrimentally rely on the promise when the licensee could not or did not intend to keep the promise;
- (c) Knowingly misrepresenting or making false promises through agents, salespersons, advertising, or otherwise;
- (d) Violating any provision of the “Colorado Consumer Protection Act”, article 1 of title 6, and, if the licensee has been assessed a civil or criminal penalty or been subject to an injunction under the act, the board shall revoke the licensee’s license;

- (e) Acting for more than one party in a transaction without disclosing any actual or potential conflict of interest or without disclosing to all parties any fiduciary obligation or other legal obligation of the mortgage loan originator to any party;
- (f) Representing or attempting to represent a mortgage loan originator other than the licensee's principal or employer without the express knowledge and consent of that principal or employer;
- (g) In the case of a licensee in the employ of another mortgage loan originator, failing to place, as soon after receipt as is practicably possible, in the custody of that licensed mortgage loan originator-employer any deposit money or other money or fund entrusted to the employee by any person dealing with the employee as the representative of that licensed mortgage loan originator-employer;
- (h) Failing to account for or to remit, within a reasonable time, any money coming into his or her possession that belongs to others, whether acting as a mortgage loan originator, real estate broker, salesperson, or otherwise, and failing to keep records relative to the money, which records shall contain such information as may be prescribed by the rules of the board relative thereto and shall be subject to audit by the board;
- (i) Converting funds of others, diverting funds of others without proper authorization, commingling funds of others with the licensee's own funds, or failing to keep the funds of others in an escrow or a trustee account with a bank or recognized depository in this state, which account may be any type of checking, demand, passbook, or statement account insured by an agency of the United States government, and to keep records relative to the deposit that contain such information as may be prescribed by the rules of the board relative thereto, which records shall be subject to audit by the board;
- (j) Failing to provide the parties to a residential mortgage loan transaction with such information as may be prescribed by the rules of the board;
- (k) Unless an employee of a duly registered mortgage company, failing to maintain possession, for future use or inspection by an authorized representative of the board, for a period of four years, of the documents or records prescribed by the rules of the board or to produce the documents or records upon reasonable request by the board or by an authorized representative of the board;
- (l) Paying a commission or valuable consideration for performing any of the functions of a mortgage loan originator, as described in this part 7, to any person who is not licensed under this part 7 or is not registered in compliance with the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5101 et seq., as amended;
- (m) Disregarding or violating any provision of this part 7 or any rule adopted by the board pursuant to this part 7; violating any lawful orders of the board; or aiding and abetting a violation of any rule, order of the board, or provision of this part 7;
- (n) Conviction of, entering a plea of guilty to, or entering a plea of nolo contendere to any crime in article 3 of title 18, parts 1 to 4 of article 4 of title 18, article 5 of title 18, part 3 of article 8 of title 18, article 15 of title 18, article 17 of title 18, or any other like crime under Colorado law, federal law, or the laws of other states. A certified copy of the judgment of a court of competent jurisdiction of a conviction or other official record indicating that a plea was entered shall be conclusive evidence of the conviction or plea in any hearing under this part 7.
- (o) Violating or aiding and abetting in the violation of the Colorado or federal fair housing laws;
- (p) Failing to immediately notify the board in writing of a conviction, plea, or violation pursuant to subsection (1)(n) or (1)(o) of this section;

- (q) Having demonstrated unworthiness or incompetency to act as a mortgage loan originator by conducting business in such a manner as to endanger the interest of the public;
- (r) Procuring, or attempting to procure, a mortgage loan originator's license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, a mortgage loan originator's license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for the license;
- (s) Claiming, arranging for, or taking any secret or undisclosed amount of compensation, commission, or profit or failing to reveal to the licensee's principal or employer the full amount of the licensee's compensation, commission, or profit in connection with any acts for which a license is required under this part 7;
- (t) Exercising an option to purchase in any agreement authorizing or employing a licensee to sell, buy, or exchange real estate for compensation or commission except when the licensee, prior to or coincident with election to exercise the option to purchase, reveals in writing to the licensee's principal or employer the full amount of the licensee's profit and obtains the written consent of the principal or employer approving the amount of the profit;
- (u) Fraud, misrepresentation, deceit, or conversion of trust funds that results in the payment of any claim pursuant to this part 7 or that results in the entry of a civil judgment for damages;
- (v) Any other conduct, whether of the same or a different character than specified in this subsection (1), that evinces a lack of good faith and fair dealing;
- (w) Having had a mortgage loan originator's license suspended or revoked in any jurisdiction or having had any disciplinary action taken against the mortgage loan originator in any other jurisdiction. A certified copy of the order of disciplinary action shall be *prima facie* evidence of the disciplinary action.
- (x) Engaging in any unfair or deceptive practice toward any person;
- (y) Obtaining property by fraud or misrepresentation;
- (z) 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;
 - (aa) Soliciting, advertising, or entering into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of the solicitation, advertisement, or contract;
 - (bb) Failing to make a disclosure to a loan applicant or a noninstitutional investor as required by section 12-10-725 and any other applicable state or federal law;
 - (cc) Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engaging in bait and switch advertising;
 - (dd) Negligently making any false statement or knowingly and willfully omitting a material fact in connection with any reports filed by a mortgage loan originator or in connection with any investigation conducted by the division;
 - (ee) In any advertising of residential mortgage loans or any other applicable mortgage loan originator activities covered by the following federal acts, failing to comply with any requirement of the "Truth in Lending Act", 15 U.S.C. sec. 1601 and Regulation Z, 12 CFR 226 and 12 CFR 1026; the "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601 and Regulation X, 12 CFR 1024 et seq.; the "Equal Credit Opportunity Act", 15 U.S.C. sec. 1691 and Regulation B, 12 CFR 202.9, 202.11, and 202.12 and 12 CFR 1002; Title V, Subtitle A of the "Financial Services Modernization Act of 1999",

also known as the “Gramm-Leach-Bliley Act”, 15 U.S.C. secs. 6801 to 6809, and the federal trade commission’s privacy rules, 16 CFR 313 and 314, mandated by the “Gramm-Leach-Bliley Act”; the “Home Mortgage Disclosure Act of 1975”, 12 U.S.C. sec. 2801 et seq. and Regulation C, home mortgage disclosure, 12 CFR 203 and 12 CFR 1003; the “Federal Trade Commission Act” of 1914, 15 U.S.C. sec. 45 (a) and 16 CFR 233; and the “Telemarketing and Consumer Fraud and Abuse Prevention Act”, 15 U.S.C. secs. 6101 to 6108, and the federal trade commission’s telemarketing sales rule, 16 CFR 310, as amended. The board may adopt rules requiring mortgage loan originators to comply with other applicable state and federal statutes and regulations.

- (ff) Failing to pay a third-party provider, no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service; or
- (gg) Collecting, charging, attempting to collect or charge, or using or proposing any agreement purporting to collect or charge any fee prohibited by section 12-10-725 or 12-10-726.

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

(3) This part 7 shall not be construed to relieve any person from civil liability or criminal prosecution under the laws of this state.

(4) Complaints of record in the office of the board and board investigations, including board investigative files, are closed to public inspection. Stipulations and final agency orders are public record and subject to sections 24-72-203 and 24-72-204.

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

(6) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit them to the division of real estate cash fund created in section 12-10-215.

(7)

- (a) The board shall not consider an application for licensure from an individual whose license has been revoked until two years after the date of revocation.
- (b) If an individual’s license was suspended or revoked due to conduct that resulted in financial loss to another person, no new license shall be granted, nor shall a suspended license be reinstated, until full restitution has been made to the person suffering the financial loss. The amount of restitution shall include interest, reasonable attorney fees, and costs of any suit or other proceeding undertaken in an effort to recover the loss.

(8) When the board or the division becomes aware of facts or circumstances that fall within the jurisdiction of a criminal justice or other law enforcement authority upon investigation of the activities of a licensee, the board or division shall, in addition to the exercise of its authority under this part 7, refer and transmit the information, which may include originals or copies of documents and materials, to one or more criminal justice or other law enforcement authorities for investigation and prosecution as authorized by law.

§ 12-10-714, C.R.S. Hearing – administrative law judge – review – rules.

Editor's note: This section is similar to former §12-61-905.6 as it existed prior to 2019.

- (1) Except as otherwise provided in this section, all proceedings before the board with respect to disciplinary actions and denial of licensure under this part 7, at the discretion of the board, may be conducted by an authorized representative of the board or an administrative law judge pursuant to sections 24-4-104 and 24-4-105.
- (2) Proceedings shall be held in the county where the board has its office or in such other place as the board may designate. If the licensee is employed by another licensed mortgage loan originator or by a real estate broker, the board shall also notify the licensee's employer by mailing, by first-class mail, a copy of the written notice required under section 24-4-104 (3) to the employer's last-known business address.
- (3) The board, an authorized representative of the board, or an administrative law judge shall conduct all hearings for denying, suspending, or revoking a license or certificate on behalf of the board, subject to appropriations made to the department of personnel. Each administrative law judge shall be appointed pursuant to part 10 of article 30 of title 24. The administrative law judge shall conduct the hearing in accordance with sections 24-4-104 and 24-4-105. No license shall be denied, suspended, or revoked until the board has made its decision.
- (4) The decision of the board in any disciplinary action or denial of licensure under this section is subject to judicial review by the court of appeals. In order to effectuate the purposes of this part 7, the board has the power to promulgate rules pursuant to article 4 of title 24.
- (5) In a judicial review proceeding, the court may stay the execution or effect of any final order of the board; but a hearing shall be held affording the parties an opportunity to be heard for the purpose of determining whether the public health, safety, and welfare would be endangered by staying the board's order. If the court determines that the order should be stayed, it shall also determine at the hearing the amount of the bond and adequacy of the surety, which bond shall be conditioned upon the faithful performance by the petitioner of all obligations as a mortgage loan originator and upon the prompt payment of all damages arising from or caused by the delay in the taking effect of or enforcement of the order complained of and for all costs that may be assessed or required to be paid in connection with the proceedings.
- (6) In any hearing conducted by the board or an authorized representative of the board in which there is a possibility of the denial, suspension, or revocation of a license because of the conviction of a felony or of a crime involving moral turpitude, the board or its authorized representative shall be governed by section 24-5-101.

§ 12-10-715, C.R.S. Subpoena – misdemeanor.

Editor's note: This section is similar to former §12-61-905.7 as it existed prior to 2019.

- (1) The board or the administrative law judge appointed for hearings may issue subpoenas, as described in section 12-10-711 (7), which shall be served in the same manner as subpoenas issued by district courts and shall be issued without discrimination between public or private parties requiring the attendance of witnesses or the production of documents at hearings.
- (2) Any person who willfully fails or neglects to appear and testify or to produce books, papers, or records required by subpoena, duly served upon him or her in any matter conducted under this

part 7 commits a petty offense. Each day a person so refuses or neglects constitutes a separate offense.

§ 12-10-716, C.R.S. Immunity.

Editor's note: This section is similar to former §12-61-906 as it existed prior to 2019.

A person participating in good faith in the filing of a complaint or report or participating in an investigation or hearing before the board or an administrative law judge pursuant to this part 7 shall be immune from any liability, civil or criminal, that otherwise might result by reason of the action.

§ 12-10-717, C.R.S. Bond required – rules.

Editor's note: This section is similar to former §12-61-907 as it existed prior to 2019.

- (1) Before receiving a license, an applicant shall post with the board a surety bond in an amount prescribed by the board by rule. A licensed mortgage loan originator shall maintain the required bond at all times. The surety bond may be held by the individual mortgage loan originator or may be in the name of the company by which the mortgage loan originator is employed. The board may adopt rules to further define surety bond requirements.
- (2) The surety shall not be required to pay a person making a claim upon the bond until a final determination of fraud, forgery, criminal impersonation, or fraudulent representation has been made by a court with jurisdiction.
- (3) The surety bond shall require the surety to provide notice to the board within thirty days if payment is made from the surety bond or if the bond is cancelled.

§ 12-10-718, C.R.S. Fees.

Editor's note: This section is similar to former §12-61-908 as it existed prior to 2019.

The board may set the fees for issuance and renewal of licenses and registrations under this part 7. The fees shall be set in amounts that offset the direct and indirect costs of implementing this part 7 and section 38-40-105. The money collected pursuant to this section shall be transferred to the state treasurer, who shall credit it to the division of real estate cash fund created in section 12-10-215.

§ 12-10-719, C.R.S. Attorney general – district attorney – jurisdiction.

Editor's note: This section is similar to former §12-61-909 as it existed prior to 2019.

The attorney general shall have concurrent jurisdiction with the district attorneys of this state to investigate and prosecute allegations of criminal violations of this part 7.

§ 12-10-720, C.R.S. Violations – injunctions.

Editor's note: This section is similar to former §12-61-910 as it existed prior to 2019.

- (1) (a) Any individual violating this part 7 by acting as a mortgage loan originator in this state without having obtained a license or by acting as a mortgage loan originator after that individual's license has been revoked or during any period for which the license may have been suspended commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501; except that, if the violator is not a natural person, the violator shall be punished by a fine of not more than five thousand dollars.
(b) Each residential mortgage loan negotiated or offered to be negotiated by an unlicensed person shall be a separate violation of this subsection (1).
- (2) The board may request that an action be brought in the name of the people of the state of Colorado by the attorney general or the district attorney of the district in which the violation is alleged to have occurred to enjoin a person from engaging in or continuing the violation or

from doing any act that furthers the violation. In such an action, an order or judgment may be entered awarding the preliminary or final injunction as is deemed proper by the court. The notice, hearing, or duration of an injunction or restraining order shall be made in accordance with the Colorado rules of civil procedure.

(3) A violation of this part 7 shall not affect the validity or enforceability of any mortgage.

§ 12-10-721, C.R.S. Prohibited conduct – influencing a real estate appraisal.

Editor's note: This section is similar to former §12-61-910.2 as it existed prior to 2019.

(1) A mortgage loan originator shall not, directly or indirectly, compensate, coerce, or intimidate an appraiser, or attempt, directly or indirectly, to compensate, coerce, or intimidate an appraiser, for the purpose of influencing the independent judgment of the appraiser with respect to the value of a dwelling offered as security for repayment of a residential mortgage loan. This prohibition shall not be construed as prohibiting a mortgage loan originator from requesting an appraiser to:

- (a) Consider additional, appropriate property information;
- (b) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or
- (c) Correct errors in the appraisal report.

§ 12-10-722, C.R.S. Rule-making authority.

Editor's note: This section is similar to former §12-61-910.3 as it existed prior to 2019.

The board has the authority to promulgate rules as necessary to enable the board to carry out the board's duties under this part 7.

§ 12-10-723, C.R.S. Acts of employee – mortgage loan originator's liability.

Editor's note: This section is similar to former §12-61-911.5 as it existed prior to 2019.

An unlawful act or violation of this part 7 upon the part of an agent or employee of a licensed mortgage loan originator shall not be cause for disciplinary action against a mortgage loan originator unless it appears that the mortgage loan originator knew or should have known of the unlawful act or violation or had been negligent in the supervision of the agent or employee.

§ 12-10-724, C.R.S. Dual status as real estate broker – requirements.

Editor's note: This section is similar to former §12-61-912 as it existed prior to 2019.

(1) Unless a mortgage loan originator complies with both subsections (2) and (3) of this section, he or she shall not act as a mortgage loan originator in any transaction in which:

- (a) The mortgage loan originator acts or has acted as a real estate broker or salesperson; or
- (b) Another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson.

(2) Before providing mortgage-related services to the borrower, a mortgage loan originator shall make a full and fair disclosure to the borrower, in addition to any other disclosures required by this part 7 or other laws, of all material features of the loan product and all facts material to the transaction.

(3) (a) A real estate broker or salesperson licensed under part 2 of this article 10 who also acts as a mortgage loan originator shall carry on the mortgage loan originator business activities and shall maintain the person's mortgage loan originator business records separate and apart from the real estate broker or sales activities conducted pursuant to part 2 of this

article 10. The activities shall be deemed separate and apart even if they are conducted at an office location with a common entrance and mailing address if:

- (I) Each business is clearly identified by a sign visible to the public;
- (II) Each business is physically separated within the office facility; and
- (III) No deception of the public as to the separate identities of the broker business firms results.

(b) This subsection (3) shall not require a real estate broker or salesperson licensed under part 2 of this article 10 who also acts as a mortgage loan originator to maintain a physical separation within the office facility for the conduct of its real estate broker or sales and mortgage loan originator activities if the board determines that maintaining the physical separation would constitute an undue financial hardship upon the mortgage loan originator and is unnecessary for the protection of the public.

§ 12-10-725, C.R.S. Written disclosure of fees and costs – contents – limits on fees – rules.

Editor's note: This section is similar to former §12-61-914 as it existed prior to 2019.

- (1) A mortgage loan originator's disclosures must comply with all applicable requirements of:
 - (a) The federal "Truth in Lending Act", 15 U.S.C. sec. 1601 et seq., and Regulation Z, 12 CFR 226 and 12 CFR 1026;
 - (b) The federal "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601 et seq., and Regulation X, 12 CFR 1024 et seq.;
 - (c) The federal "Equal Credit Opportunity Act", 15 U.S.C. sec. 1691 and Regulation B, 12 CFR 202.9, 202.11, and 202.12 and 12 CFR 1002;
 - (d) Title V, Subtitle A of the federal "Financial Services Modernization Act of 1999", also known as the "Gramm-Leach-Bliley Act", 15 U.S.C. secs. 6801 to 6809, and the federal trade commission's privacy rules, 16 CFR 313 and 314, adopted in accordance with the federal "Gramm-Leach-Bliley Act";
 - (e) The federal "Home Mortgage Disclosure Act of 1975", 12 U.S.C. sec. 2801 et seq., and Regulation C, 12 CFR 203 and 12 CFR 1003, pertaining to home mortgage disclosure;
 - (f) The "Federal Trade Commission Act" of 1914, 15 U.S.C. sec. 45 (a), and 16 CFR 233;
 - (g) The federal "Telemarketing and Consumer Fraud and Abuse Prevention Act", 15 U.S.C. secs. 6101 to 6108, and the federal trade commission's telemarketing sales rule, 16 CFR 310.
- (2) The board may, by rule, require mortgage loan originators to comply with other mortgage loan disclosure requirements contained in applicable statutes and regulations in connection with making any residential mortgage loan or engaging in other activity subject to this part 7.

§ 12-10-726, C.R.S. Fee, commission, or compensation – when permitted – amount.

Editor's note: This section is similar to former §12-61-915 as it existed prior to 2019.

- (1) Except as otherwise permitted by subsection (2) or (3) of this section, a mortgage loan originator shall not receive a fee, commission, or compensation of any kind in connection with the preparation or negotiation of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed to by the borrower and mortgage loan originator.
- (2) 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. sec. 1601, and Regulation Z, 12 CFR 226, as amended.

- (3) A mortgage loan originator may solicit or receive fees for third-party provider goods or services in advance. Fees for any goods or services not provided shall be refunded to the borrower, and the mortgage loan originator may not charge more for the goods and services than the actual costs of the goods or services charged by the third-party provider.

§ 12-10-727, C.R.S. Confidentiality.

Editor's note: This section is similar to former §12-61-916 as it existed prior to 2019.

- (1) Except as otherwise provided in the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5111, the requirements under any federal law or law of this state regarding privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court with respect to the information or material, shall apply to the information or material after it has been disclosed to the nationwide mortgage licensing system and registry. The information or material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or confidentiality protections provided by federal or state law.
- (2) The board may enter into agreements with other government agencies, the Conference of State Bank Supervisors or its successor organization, the American Association of Residential Mortgage Regulators or its successor organization, or other associations representing government agencies as established by rule.
- (3) Information or material that is subject to privilege or confidentiality pursuant to subsection (1) of this section shall not be subject to the following:
 - (a) Disclosure under a federal or state law governing the disclosure to the public of information held by an officer or agency of the federal government or the respective state; or
 - (b) Subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to a privilege held by the nationwide mortgage licensing system and registry regarding the information or material, the person to whom the information or material pertains waives the privilege, in whole or in part.

§ 12-10-728, C.R.S. Mortgage call reports – reports of violations.

Editor's note: This section is similar to former §12-61-917 as it existed prior to 2019.

- (1) The board may require each licensee or registrant to submit to the nationwide mortgage licensing system and registry mortgage call reports, which shall be in the form and contain the information required by the nationwide mortgage licensing system and registry.
- (2) The board may report violations of this part 7, enforcement actions, and other relevant information to the nationwide mortgage licensing system and registry.

§ 12-10-729, C.R.S. Unique identifier – clearly displayed.

Editor's note: This section is similar to former §12-61-918 as it existed prior to 2019.

Each person required to be licensed or registered shall show his or her or the entity's unique identifier clearly on all residential mortgage loan application forms and any other documents as specified by the board by rule or order.

§ 12-10-730, C.R.S. Repeal of part – subject to review.

Editor's note: This section is similar to former §12-61-919 as it existed prior to 2019.

- (1) This part 7 is repealed, effective September 1, 2029.
- (2) Before the repeal, the licensing of mortgage loan originators and the registration of mortgage companies is scheduled for review in accordance with section 24-34-104. The department shall include in its review of mortgage loan originators and mortgage companies an analysis of the number and types of complaints made about mortgage loan originators and mortgage companies and whether the licensing of mortgage loan originators and the registration of mortgage companies correlates with public protection from fraudulent activities in the residential mortgage loan industry.

III. Standards for Mortgage Lending and Servicing

§ 38-40-101, C.R.S. Mortgage broker fees – escrow accounts – unlawful act – penalty.

- (1) Any funds, other than advanced for actual costs and expenses to be incurred by the mortgage broker on behalf of the applicant for a loan, paid to a mortgage broker as a fee conditioned upon the consummation of a loan secured or to be secured by a mortgage or other transfer of or encumbrance on real estate shall be held in an escrow or a trustee account with a bank or recognized depository in this state. Such account may be any type of checking, demand, passbook, or statement account insured by an agency of the United States government.
- (2) It is unlawful for a mortgage broker to misappropriate funds held in escrow or a trustee account pursuant to subsection (1) of this section.
- (3) The withdrawal, transfer, or other use or conversion of any funds held in escrow or a trustee account pursuant to subsection (1) of this section prior to the time a loan secured or to be secured by mortgage or other transfer of or encumbrance on real estate is consummated shall be prima facie evidence of intent to violate subsection (2) of this section.
- (4) Any mortgage broker violating any of the provisions of subsection (2) of this section commits theft as defined in section 18-4-401, C.R.S.
- (5) Any mortgage broker violating any of the provisions of subsection (1) or (2) of this section shall be liable to the person from whom any funds were received for the sum of one thousand dollars plus actual damages caused thereby, together with costs and reasonable attorney fees. No lender shall be liable for any act or omission of a mortgage broker under this section.
- (6) As used in this section, unless the context otherwise requires, "mortgage broker" means a person, firm, partnership, association, or corporation, other than a bank, trust company, savings and loan association, credit union, supervised lender as defined in section 5-1-301 (46), C.R.S., insurance company, federal housing administration approved mortgagee, land mortgagee, or farm loan association or duly appointed loan correspondents, acting through officers, partners, or regular salaried employees for any such entity, that engages in negotiating or offering or attempting to negotiate for a borrower, and for commission, money, or other thing of value, a loan to be consummated and funded by someone other than the one acting for the borrower.

***§ 38-40-102, C.R.S. Disclosure of costs – statement of terms of indebtedness.
(Repealed)***

§ 38-40-103, C.R.S. Servicing of mortgages and deeds of trust – liability for interest or late fees for property taxes.

- (1) (a) (I) Any person who regularly engages in the collection of payments on mortgages and deeds of trust for owners of evidences of debt secured by mortgages or deeds of

trust shall promptly credit all payments which are received and which are required to be accepted by such person or his agent and shall promptly perform all duties imposed by law and all duties imposed upon the servicer by such evidences of debt, mortgages, or deeds of trust creating or securing the indebtedness.

- (II) No more than twenty days after the date of transfer of the servicing or collection rights and duties to another person, the transferor of such rights and duties shall mail a notice addressed to the debtor from whom it has been collecting payments at the address shown on its records, notifying such debtor of the transfer of the servicing of his or her debt and the name, address, and telephone number of the transferee of the servicing.
- (b) The debtor may continue to make payments to the transferor of the servicing of his or her loan until a notice of the transfer is received from the transferee containing the name, address, and telephone number of the new servicer of the loan to whom future payments should be made. Such notice may be combined with the notice required in subparagraph (II) of paragraph (a) of this subsection (1). It shall be the responsibility of the transferor to forward to the transferee any payments received and due after the date of transfer of the loan.
- (2) The servicer of a loan shall respond in writing within twenty days from the receipt of a written request from the debtor or from an agent of the debtor acting pursuant to written authority from the debtor for information concerning the debtor's loan, which is readily available to the servicer from its books and records and which would not constitute the rendering of legal advice. Any such response must include the telephone number of the servicer. The servicer shall not be liable for any damage or harm that might arise from the release of any information pursuant to this section.
- (3) The servicer of a loan shall annually provide to the debtor a summary of activity related to the loan. Such a summary shall contain, but need not be limited to, the total amount of principal and interest paid on the loan in that calendar year.
- (4) The servicer of a loan shall be liable for any interest or late fees charged by any taxing entity if funds for the full payment of taxes on the real estate have been held in an escrow account by such servicer and not remitted to the taxing entity when due.

§ 38-40-103.5, C.R.S. Notice upon transfer of servicing rights – prior servicer's offer to borrower survives transfer – definitions.

- (1) As used in this section:
 - (a) "Borrower" means a person liable under an evidence of debt constituting a residential mortgage loan.
 - (b) "Evidence of debt" has the meaning set forth in section 38-38-100.3 (8).
 - (c) "Holder" means the holder of an evidence of debt constituting a residential mortgage loan.
 - (d) "Residential mortgage loan" has the meaning set forth in section 12-10-702 (21).
 - (e) (I) "Servicer" means a person who collects, receives, or has the right to collect or receive payments on behalf of a holder, including payments of principal, interest, escrow amounts, and other amounts due on obligations due and owing to the holder.
(II) "Servicer" includes:
 - (A) The person or entity to whom payments are to be sent, as listed on the most recent billing statement or payment coupon provided to the borrower; or

(B) A subsidiary, affiliate, or assignee of a servicer, however designated, including a person designated as a subservicer.

(2) A servicer to whom servicing rights for a residential mortgage loan have been sold or transferred by the holder or by a predecessor servicer is subject to, and shall honor, the borrower's acceptance, prior to the sale or transfer of servicing rights, of any offer previously made by the holder or predecessor servicer in connection with a modification of a residential mortgage loan.

(3) At the time of the transfer or sale of servicing rights for a residential mortgage loan, the transferor or seller shall inform the buyer or transferee of the servicing rights whether a loan modification is pending.

(4) A contract for the transfer or sale of servicing rights for a residential mortgage loan must obligate the successor servicer to:

(a) Accept and continue processing any pending loan modification requests; and

(b) Honor any trial and permanent loan modification agreements entered into by the prior servicer.

§ 38-40-104, C.R.S. Cause of action – attorney fees.

* (1) If any applicant or debtor is aggrieved by a violation of section 38-40-103, 38-40-103.5, or 38-40-106 and the violation is not remedied in a reasonable, timely, and good faith manner by the party obligated to do so, and after a good faith effort to resolve the dispute is made by the debtor or borrower, the debtor or borrower may bring an action in a court of competent jurisdiction for any such violation. If the court finds that actual damages have occurred, the court shall award to the debtor or borrower, in addition to actual damages, the amount of one thousand dollars, together with costs and reasonable attorney fees.

* (2) A transferee of servicing or collection rights is not liable for any act or omission of the transferor of those rights under section 38-40-103 or 38-40-103.5.

§ 38-40-105, C.R.S. Prohibited acts by participants in certain mortgage loan transactions – unconscionable acts and practices – definitions.

(1) The following acts by any mortgage broker, mortgage originator, mortgage lender, mortgage loan applicant, real estate appraiser, or closing agent, other than a person who provides closing or settlement services subject to regulation by the division of insurance, with respect to any loan that is secured by a first or subordinate mortgage or deed or trust lien against a dwelling are prohibited:

(a) To knowingly advertise, display, distribute, broadcast, televise, or cause or permit to be advertised, displayed, distributed, broadcast, or televised, in any manner, any false, misleading, or deceptive statement with regard to rates, terms, or conditions for a mortgage loan;

(b) To make a false promise or misrepresentation or conceal an essential or material fact to entice either a borrower or a creditor to enter into a mortgage agreement when, under the terms and circumstances of the transaction, he or she knew or reasonably should have known of such falsity, misrepresentation, or concealment;

(c) To knowingly and with intent to defraud present, cause to be presented, or prepare with knowledge or belief that it will be presented to or by a lender or an agent thereof any written statement or information in support of an application for a mortgage loan that he or she knows to contain false information concerning any fact material thereto or if he or she knowingly and with intent to defraud or mislead conceals information concerning any fact material thereto;

- (d) To facilitate the consummation of a mortgage loan agreement that is unconscionable given the terms and circumstances of the transaction;
- (e) To knowingly facilitate the consummation of a mortgage loan transaction that violates, or that is connected with a violation of, section 12-10-713.
- (f) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1638, §4, effective August 5, 2009.)

(1.5) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1638, §4, effective August 5, 2009.)

(1.7) (a) A mortgage broker or mortgage originator shall not commit, or assist or facilitate the commission of, the following acts or practices, which are hereby deemed unconscionable:

- (I) Engaging in a pattern or practice of providing residential mortgage loans to consumers based predominantly on acquisition of the foreclosure or liquidation value of the consumer's collateral without regard to the consumer's ability to repay a loan in accordance with its terms; except that any reasonable method may be used to determine a borrower's ability to repay. This subparagraph (I) shall not apply to a reverse mortgage that complies with article 38 of title 11, C.R.S.
- (II) Knowingly or intentionally flipping a residential mortgage loan. As used in this subparagraph (II), "flipping" means making a residential mortgage loan that refinances an existing residential mortgage loan when the new loan does not have reasonable, tangible net benefit to the consumer considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the consumer's circumstances. This subparagraph (II) applies regardless of whether the interest rate, points, fees, and charges paid or payable by the consumer in connection with the refinancing exceed any thresholds specified by law.
- (III) Entering into a residential mortgage loan transaction knowing there was no reasonable probability of payment of the obligation by the consumer.

(b) Except as this subsection (1.7) may be enforced by the attorney general or a district attorney, only the original parties to a transaction shall have a right of action under this subsection (1.7), and no action or claim under this subsection (1.7) may be brought against a purchaser from, or assignee of, a party to the transaction.

(2) (a) Except as provided in subsection (5) of this section, if a court, as a matter of law, finds a mortgage contract or any clause of the contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court in making the determination.

(c)

- (I) In order to support a finding of unconscionability, there must be evidence of some bad faith overreaching on the part of the mortgage broker or mortgage originator such as that which results from an unreasonable inequality of bargaining power or under other circumstances in which there is an absence of meaningful choice on the part of one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the mortgage broker, mortgage originator, or lender.
- (II) This paragraph (c) shall not apply to an unconscionable act or practice under subsection (1.7) of this section.

- (3) A violation of this section shall be deemed a deceptive trade practice as provided in section 6-1-105 (1)(uu), C.R.S.
- (4) The provisions of this section are in addition to and are not intended to supersede the deceptive trade practices actionable at common law or under other statutes of this state.
- (5) No right or claim arising under this section may be raised or asserted in any proceeding against a bona fide purchaser of such mortgage contract or in any proceeding to obtain an order authorizing sale of property by a public trustee as required by section 38-38-105.
- (6) The following acts by any real estate agent or real estate broker, as defined in section 12-10-201 (6), in connection with any residential mortgage loan transaction, are prohibited:
 - (a) If directly engaged in negotiating, originating, or offering or attempting to negotiate or originate for a borrower a residential mortgage loan transaction, the real estate agent or real estate broker shall not make a false promise or misrepresentation or conceal an essential or material fact to entice either a borrower or lender to enter into a mortgage loan agreement when the real estate agent or real estate broker actually knew or, under the terms and circumstances of the transaction, reasonably should have known of such falsity, misrepresentation, or concealment.
 - (b) If not directly engaged in negotiating, originating, or offering or attempting to negotiate or originate for a borrower a residential mortgage loan transaction, the real estate agent or real estate broker shall not make a false promise or misrepresentation or conceal an essential or material fact to entice either a borrower or lender to enter into a mortgage loan agreement when the real estate agent or real estate broker had actual knowledge of such falsity, misrepresentation, or concealment.
- (7) As used in this section, unless the context otherwise requires:
 - (a) "Consumer" has the meaning set forth in section 5-1-301, C.R.S.
 - (b) "Dwelling" has the meaning set forth in section 5-1-301, C.R.S.
 - (c) "Mortgage broker" has the same meaning as "mortgage loan originator" as set forth in section 12-10-702 (14).
 - (d) "Mortgage lender" has the meaning set forth in section 12-10-702 (13).
 - (e) "Mortgage originator" has the same meaning as "mortgage loan originator" as set forth in section 12-10-702 (14).
 - (f) "Originate" has the same meaning as "originate a mortgage" as set forth in section 12-10-702 (17).
 - (g) "Residential mortgage loan" has the meaning set forth in section 12-10-702 (21).

§ 38-40-106, C.R.S. Mortgage servicers—requirements concerning disbursement of insurance proceeds—disclosure of mortgage interest rate—retention of communications—definitions.

- (1) As used in this section, unless the context otherwise requires:
 - (a) "Borrower" has the meaning set forth in section 38-38-100.3 (2.5).
 - (b) "Mortgage servicer" means:
 - (I) A mortgage servicer, as defined in section 5-21-103 (4);
 - (II) A mortgage servicer, as defined in section 38-38-100.3 (23.3); or
 - (III) An agent of a mortgage servicer.
 - (c) "Rebuild plan" means a written plan to rebuild a residential property that has been destroyed.
 - (d) "Repair plan" means a written plan to repair a residential property that has been damaged.

- (e) “Residential property” means a residential property that is the subject of a mortgage.
- (2) (a) Upon the request of a borrower, a mortgage servicer shall promptly disclose to the borrower the specific conditions under which the mortgage servicer will disburse insurance proceeds to the borrower in the event that a residential property that is the subject of a mortgage is damaged or destroyed and an insurance company pays insurance proceeds to satisfy a claim associated with such damage or destruction. A mortgage servicer may provide the information electronically.
- (b) In the event that a residential property is damaged or destroyed, a borrower, after consulting with the borrower’s contractor, shall create a repair plan or rebuild plan for the residential property. The borrower shall submit the repair plan or rebuild plan to the mortgage servicer for approval. The mortgage servicer shall indicate approval or denial of the plan within thirty days of receipt. The repair plan or rebuild plan must include specific milestones that require the mortgage servicer to disburse insurance proceeds in certain amounts upon reaching the specified milestones, as described in subsections (2)(c)(I)(B) and (2)(d)(II) of this section. If a mortgage servicer employs inspectors for the purpose of determining when such milestones are attained, the mortgage servicer shall notify the borrower of the specific criteria that the inspectors use to make such determinations.
- (c) (I) If a borrower is not delinquent in making payments on the mortgage or the borrower is less than thirty-one days delinquent in making payments on the mortgage, a mortgage servicer shall disburse the insurance proceeds to the borrower as follows:
 - (A) If the amount of the insurance proceeds is less than or equal to forty thousand dollars, the mortgage servicer shall disburse the entire amount to the borrower in one payment; and
 - (B) If the amount of the insurance proceeds is more than forty thousand dollars, the mortgage servicer shall initially disburse to the borrower an amount that is forty thousand dollars or thirty-three percent of the total proceeds, whichever amount is greater. Thereafter, the mortgage servicer shall disburse the remaining proceeds based on periodic inspections and progress on the work in accordance with the milestones in the repair plan or rebuild plan described in subsection (2)(b) of this section and, where required by federal law or regulation, after approval by the federal home loan banks or applicable federal agency.
- (II) For the purposes of this subsection (2)(c), if a borrower has made advance payments to a contractor or to purchase materials, as evidenced by paid receipts, the mortgage servicer may reimburse the borrower for such payments.
- (d) If a borrower is more than thirty-one days delinquent in making payments on the mortgage, a mortgage servicer shall disburse the insurance proceeds to the borrower as follows:
 - (I) If the amount of the insurance proceeds is less than or equal to five thousand dollars, the mortgage servicer shall disburse the entire amount to the borrower in one payment; and
 - (II) If the amount of the insurance proceeds is more than five thousand dollars, the mortgage servicer shall initially disburse to the borrower an amount that is twenty-five percent of the total proceeds; except that the amount of this initial disbursement may not exceed ten thousand dollars or the amount by which the total proceeds exceed the sum of the unpaid balance on the mortgage, any interest accrued on the mortgage, and any advances made on the mortgage. Thereafter, the mortgage servicer shall disburse the remaining proceeds in amounts not to exceed twenty-five percent of the remaining proceeds, in accordance with the milestones

established in the repair plan or the rebuild plan pursuant to subsection (2)(b) of this section; except that the mortgage servicer shall not disburse any remaining proceeds until the mortgage servicer or the mortgage servicer's agent has inspected the repairs, if any, that have been made pursuant to a repair plan established pursuant to subsection (2)(b) of this section.

(e) For the purposes of disbursement of insurance proceeds as described in subsections (2)(c) and (2)(d) of this section:

(I) A mortgage servicer shall make the first disbursement of insurance proceeds to the borrower:

(A) Within fourteen days after the mortgage servicer receives the insurance proceeds if the mortgage is insured by the federal government or securitized by the federal national mortgage association or the federal home loan mortgage corporation; and

(B) As soon as reasonably possible and no later than thirty days after the mortgage servicer receives the insurance proceeds if the mortgage is not insured by the federal government or securitized by the federal national mortgage association or the federal home loan mortgage corporation; and

(II) A mortgage servicer may disburse funds directly to a designee of a borrower so long as:

(A) The designee is agreed to by both the borrower and the mortgage servicer; and

(B) The designation is permitted by federal and state law and any associated rules.

(f) Notwithstanding any other provision of this section, a mortgage servicer shall promptly disburse to a borrower any amount of insurance proceeds in excess of the remaining amount that the borrower owes on the mortgage unless:

(I) The property is an affordable residential rental property that is subject to rent or income restrictions as required by federal, state, local, or political subdivision program requirements; and

(II) The insurance proceeds in excess of the remaining amount that the borrower owes on the mortgage are necessary to return the property to the same condition in which the property existed prior to the damage or destruction.

(g) A mortgage servicer shall hold in an interest-bearing account any insurance proceeds that the mortgage servicer does not immediately disburse to a borrower as required by this section. Such an account must generate interest at a rate that is not less than the national rate for money market accounts, as determined according to 12 CFR 337.7. A mortgage servicer shall ensure that any interest that is credited to the account is credited and disbursed to the borrower.

(3) Immediately upon commencing the servicing of a mortgage, and at any time thereafter at the request of the borrower, a mortgage servicer shall:

(a) Disclose to the borrower the interest rate associated with the mortgage; and

(b) Provide the borrower, in writing, with a primary point of contact for the purpose of communicating with the mortgage servicer.

(4) A mortgage servicer shall retain for at least four years all written and electronic communications between the mortgage servicer and a borrower.

(5) Nothing in this section:

(a) Prohibits a mortgage servicer from releasing insurance proceeds in amounts greater than required by this section;

- (b) Prohibits or limits a mortgage servicer from distributing additional money that is made available during a declared state of emergency or natural disaster; or
- (c) Prohibits a mortgage servicer from complying with federal rules, regulations, and requirements.

IV. Loan Fraud²

Legislative declaration

- (1) The general assembly hereby determines that mortgage lending has a significant effect upon Colorado's economy; an estimated two trillion five hundred billion dollars in mortgage loans were made in the United States in 2005; an estimated eighty percent of reported mortgage fraud involves collusion by industry insiders; and Colorado's per capita incidents of mortgage fraud is one of the ten highest in the nation.
- (2) The general assembly hereby declares that the high rates of mortgage fraud in Colorado are unacceptable and that residential mortgage fraud shall not be tolerated. The general assembly further declares that the goals of Colorado law are to deter residential mortgage fraud and to make the victim whole.

§ 18-4-401, C.R.S. Theft.

- (9) (a) If a person is convicted of or pleads guilty or nolo contendere to theft by deception and the underlying factual basis of the case involves the mortgage lending process, a minimum fine of the amount of pecuniary harm resulting from the theft shall be mandatory, in addition to any other penalty the court may impose.
- (b) A court shall not accept a plea of guilty or nolo contendere to another offense from a person charged with a violation of this section that involves the mortgage lending process unless the plea agreement contains an order of restitution in accordance with part 6 of article 1.3 of this title that compensates the victim for any costs to the victim caused by the offense.
- (c) The district attorneys and the attorney general have concurrent jurisdiction to investigate and prosecute a violation of this section that involves making false statements or filing or facilitating the use of a document known to contain a false statement or material omission relied upon by another person in the mortgage lending process.
- (d) Documents involved in the mortgage lending process include, but are not limited to, uniform residential loan applications or other loan applications; appraisal reports; HUD-1 settlement statements; supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, bank statements, tax returns, and payroll stubs; and any required disclosures.
- (e) For the purposes of this subsection (9):
 - (I) "Mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan, including, without limitation, solicitation, application, or origination; negotiation of terms; third-party provider services; underwriting; signing and closing; funding of the loan; and perfecting and releasing the mortgage.
 - (II) "Residential mortgage loan" means a loan or agreement to extend credit, made to a person and secured by a mortgage or lien on residential real property, including,

² Colorado Revised Statutes are subject to change through the legislative process. Check the Division website for updates.

but not limited to, the refinancing or renewal of a loan secured by residential real property.

(III) “Residential real property” means real property used as a residence and containing no more than four families housed separately.

§ 13-21-125, C.R.S. Civil actions for theft in the mortgage lending process.

A person who suffers damages as a result of a violation of section 18-4-401, C.R.S., in the mortgage lending process, as defined by section 18-4-401 (9) (e) (I), C.R.S., shall have a private civil right of action against the perpetrator, regardless of whether the perpetrator was convicted of the crime. A claim arising under this section shall not be asserted against a bona fide purchaser of a mortgage contract.

§ 18-5-208, C.R.S. Dual contracts to induce loan.

It is a class 2 misdemeanor for any person to knowingly make, issue, deliver, or receive dual contracts for the purchase or sale of real property. The term “dual contracts”, either written or oral, means two separate contracts concerning the same parcel of real property, one of which states the true and actual purchase price and one of which states a purchase price in excess of the true and actual purchase price, and is used, or intended to be used, to induce persons to make a loan or a loan commitment on such real property in reliance upon the stated inflated value.

....

Loan fraud has become one of the largest areas of white-collar crime and is a recurring subject of Commission disciplinary actions. Loan fraud includes falsified loan applications; fictitious income, employment, or deposit verifications; false occupancy claims; undisclosed buyer rebates or credits; and a host of other items, which can be considered dual contracting.

Loan fraud may also result in disbarment by HUD from all federal programs, large fines, and federal prosecution. Since virtually all loan programs are affiliated with the federal government in either the primary or secondary mortgage market, disbarment can mean the end of a career in real estate, appraisal, and lending or related fields.