

Position Statement – MLO 1.8 – Real Estate Brokerage Activity

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

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