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A BILL FOR AN ACT

101 **CONCERNING MEASURES TO PREVENT MORTGAGE FRAUD, AND, IN**
102 **CONNECTION THEREWITH, EXTENDING THE PROHIBITION AGAINST**
103 **CERTAIN ACTS TO INCLUDE MORTGAGE LENDERS, MORTGAGE**
104 **LOAN APPLICANTS, REAL ESTATE BROKERS, REAL ESTATE AGENTS,**
105 **REAL ESTATE APPRAISERS, AND CLOSING AGENTS; PROHIBITING**
106 **CERTAIN PRACTICES; CHANGING THE MENTAL STATE REQUIRED**
107 **TO BE PROVEN AS AN ELEMENT OF A VIOLATION; AND MAKING AN**
108 **APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Adds definitions of the terms "borrower" and "residential mortgage loan" to the statutes governing mortgage brokers. Includes a chattel loan on a manufactured home or modular home within the definition of "residential mortgage loan". Clarifies the application of the "Mortgage Broker Registration Act" to residential mortgage loans.

In provisions relating to false and deceptive inducements to the creation of a mortgage loan by a mortgage broker or mortgage originator, adds mortgage lenders, mortgage loan applicants, real estate brokers, real estate agents, real estate appraisers, and closing agents to the persons to whom the prohibitions apply.

Reduces the mental state required to be proven in an action for violation of anti-fraud provisions from "knowingly" to "knew or reasonably should have known". Increases the mental state required to be proven in an action for violation of unconscionability provisions from none to "knowingly".

Requires mortgage brokers to make an inquiry about and to take into consideration the borrower's current and prospective income and other factors prior to recommending, brokering, or originating a residential mortgage loan.

Gives the director of the division of real estate rule-making authority to carry out the purposes of the regulatory statutes governing mortgage brokers.

Requires mortgage brokers to make certain disclosures and comply with the requirements of federal laws regarding lending, including the requirements of the federal "Real Estate Settlement Procedures Act". Removes an exemption from state law for mortgage brokers employed by FHA-approved or FHA-appointed lenders.

Authorizes the attorney general to seek injunctions against persons violating anti-fraud provisions, prohibiting them from conducting further business for up to 5 years.

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

2 **SECTION 1.** [12-61-902](#) (5), the introductory portion to
3 [12-61-902](#) (6), and [12-61-902](#) (7), Colorado Revised Statutes, are
4 amended, and the said [12-61-902](#) is further amended BY THE ADDITION
5 OF THE FOLLOWING NEW SUBSECTIONS, to read:

6 [12-61-902](#). **Definitions.** As used in this part 9, unless the context
7 otherwise requires:

1 (1.5) "BORROWER" MEANS ANY PERSON WHO CONSULTS WITH OR
2 RETAINS A MORTGAGE BROKER IN AN EFFORT TO OBTAIN OR SEEK ADVICE
3 OR INFORMATION ON OBTAINING OR APPLYING TO OBTAIN A RESIDENTIAL

4 MORTGAGE LOAN FOR HIMSELF, HERSELF, OR PERSONS INCLUDING HIMSELF
5 OR HERSELF, REGARDLESS OF WHETHER THE PERSON ACTUALLY OBTAINS
6 SUCH A LOAN.

7 (5) "Mortgage broker" means an individual who negotiates,
8 originates, or offers or attempts to negotiate or originate for a borrower,
9 and for a commission or other thing of value, a RESIDENTIAL MORTGAGE
10 loan to be consummated and funded by a mortgage lender.

11 (6) "Mortgage lender" means a lender who is in the business of
12 making RESIDENTIAL mortgage loans if:

13 (7) "Originate" means to submit an application or documentation to
14 a MORTGAGE lender or underwriter in an attempt to obtain a RESIDENTIAL
15 MORTGAGE loan.

16 (8) "RESIDENTIAL MORTGAGE LOAN" MEANS A LOAN THAT IS
17 PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD USE AND THAT IS
18 SECURED BY A MORTGAGE OR DEED OF TRUST ON RESIDENTIAL REAL
19 ESTATE UPON WHICH IS CONSTRUCTED OR INTENDED TO BE CONSTRUCTED
20 A SINGLE-FAMILY DWELLING OR MULTIPLE-FAMILY DWELLING OF FOUR OR
21 FEWER UNITS.

22

23 **SECTION 2.** The introductory portion to [12-61-904](#) (1) and
24 [12-61-904](#) (1) (e), Colorado Revised Statutes, are amended to read:

25 [12-61-904](#). **Exemptions.** (1) EXCEPT AS OTHERWISE PROVIDED
26 IN SECTION [12-61-911](#), this part 9 shall not apply to the following:

27 (e) ~~A federal housing administration approved mortgagee or an~~

Page 4 of 18

1 ~~appointed federal housing administration correspondent, acting through~~
2 ~~officers, partners, members, exclusive agents, contractors, or employees~~
3 ~~of such entities when making or brokering any mortgage loan; or~~

4 **SECTION 3.** Part 9 of article 61 of title 12, Colorado Revised
5 Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

6 [12-61-904.5](#). **Broker's relationship to borrower.** (1) A
7 MORTGAGE BROKER SHALL ACT FOR THE BENEFIT OF THE BORROWER BY
8 TAKING ACTIONS THAT INCLUDE, BUT ARE NOT LIMITED TO, MAKING A
9 REASONABLE INQUIRY CONCERNING THE BORROWER'S CURRENT AND
10 PROSPECTIVE INCOME, EXISTING DEBTS AND OTHER FINANCIAL
11 OBLIGATIONS, AND ANY OTHER INFORMATION KNOWN TO THE MORTGAGE
12 BROKER AND, AFTER MAKING SUCH INQUIRY, USING HIS OR HER BEST
13 EFFORTS TO RECOMMEND, BROKER, OR ORIGINATE A RESIDENTIAL
14 MORTGAGE LOAN THAT TAKES INTO CONSIDERATION THE INFORMATION
15 SUBMITTED BY THE BORROWER.

16 (2) A VIOLATION OF THIS SECTION CONSTITUTES A DECEPTIVE
17 TRADE PRACTICE UNDER THE "COLORADO CONSUMER PROTECTION ACT",
18 ARTICLE 1 OF TITLE 6, C.R.S.

19 **SECTION 4.** The introductory portion to [12-61-905](#) (1) (c) and
20 [12-61-905](#) (7), Colorado Revised Statutes, are amended, and the said
21 [12-61-905](#) (1) is further amended BY THE ADDITION OF THE
22 FOLLOWING NEW PARAGRAPHS, to read:

23 **[12-61-905. Powers and duties of the director.](#)** (1) The director
24 shall deny, refuse to renew, or revoke the registration of an applicant who
25 has:

26 (c) WITHIN THE LAST FIVE YEARS, had a license, registration, or
27 certification issued by Colorado or another state revoked or suspended for

Page 5 of 18

1 fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary
2 duty, and such discipline denied the person authorization to practice as:

3 (d) BEEN ENJOINED WITHIN THE IMMEDIATELY PRECEDING FIVE
4 YEARS UNDER THE LAWS OF THIS OR ANY OTHER STATE OR OF THE UNITED
5 STATES FROM ENGAGING IN DECEPTIVE CONDUCT RELATING TO THE
6 BROKERING OF A MORTGAGE LOAN;

7 (e) BEEN FOUND TO HAVE VIOLATED THE PROVISIONS OF SECTION
8 [12-61-911](#).

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

13 (b) THE DIRECTOR, UPON HIS OR HER OWN MOTION MAY, AND, UPON
14 THE COMPLAINT IN WRITING OF ANY PERSON, SHALL, INVESTIGATE THE
15 ACTIVITIES OF ANY REGISTRANT OR LICENSEE OR ANY PERSON WHO
16 ASSUMES TO ACT IN SUCH CAPACITY WITHIN THE STATE. IN ADDITION TO
17 ANY OTHER PENALTY THAT MAY BE IMPOSED PURSUANT TO THIS PART 9,
18 A PERSON VIOLATING ANY PROVISION OF THIS PART 9 OR ANY RULES
19 PROMULGATED PURSUANT TO THIS ARTICLE MAY BE FINED UPON A FINDING
20 OF MISCONDUCT BY THE DIRECTOR AS FOLLOWS:

21 (I) IN THE FIRST ADMINISTRATIVE PROCEEDING, A FINE NOT IN
22 EXCESS OF ONE THOUSAND DOLLARS PER ACT OR OCCURRENCE;

23 (II) IN ANY SUBSEQUENT ADMINISTRATIVE PROCEEDING, A FINE
24 NOT LESS THAN ONE THOUSAND DOLLARS NOR IN EXCESS OF TWO
25 THOUSAND DOLLARS PER ACT OR OCCURRENCE.

26 (c) ALL FINES COLLECTED PURSUANT TO THIS SUBSECTION (7)
27 SHALL BE TRANSFERRED TO THE STATE TREASURER, WHO SHALL CREDIT

Page 6 of 18

1 SUCH MONEYS TO THE MORTGAGE BROKER LICENSING CASH FUND CREATED
2 IN SECTION [12-61-908](#).

3 **SECTION 5.** Part 9 of article 61 of title 12, Colorado Revised
4 Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

5 **[12-61-910.3](#). Rule-making authority.** THE DIRECTOR SHALL
6 HAVE AUTHORITY TO PROMULGATE RULES AS NECESSARY TO ENABLE THE
7 DIRECTOR TO CARRY OUT THE DIRECTOR'S DUTIES UNDER THIS PART 9.

8 **SECTION 6.** [12-61-911](#), Colorado Revised Statutes, is
9 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

10 **[12-61-911](#). Prohibited conduct - fraud - misrepresentation -**
11 **conflict of interest - rules.** (1) A MORTGAGE BROKER, INCLUDING A
12 MORTGAGE BROKER OTHERWISE EXEMPTED FROM THIS PART 9 BY SECTION
13 [12-61-904](#) (1) (b) OR (1) (c), SHALL NOT:

14 (a) DIRECTLY OR INDIRECTLY EMPLOY ANY SCHEME, DEVICE, OR
15 ARTIFICE TO DEFRAUD OR MISLEAD BORROWERS OR LENDERS OR TO
16 DEFRAUD ANY PERSON;

17 (b) ENGAGE IN ANY UNFAIR OR DECEPTIVE PRACTICE TOWARD ANY
18 PERSON;

19 (c) OBTAIN PROPERTY BY FRAUD OR MISREPRESENTATION;

20 (d) SOLICIT OR ENTER INTO A CONTRACT WITH A BORROWER THAT
21 PROVIDES IN SUBSTANCE THAT THE MORTGAGE BROKER MAY EARN A FEE
22 OR COMMISSION THROUGH THE MORTGAGE BROKER'S "BEST EFFORTS" TO
23 OBTAIN A LOAN EVEN THOUGH NO LOAN IS ACTUALLY OBTAINED FOR THE
24 BORROWER;

25 (e) SOLICIT, ADVERTISE, OR ENTER INTO A CONTRACT FOR
26 SPECIFIC INTEREST RATES, POINTS, OR OTHER FINANCING TERMS UNLESS
27 THE TERMS ARE ACTUALLY AVAILABLE AT THE TIME OF SOLICITING,

Page 7 of 18

1 ADVERTISING, OR CONTRACTING FROM A LENDER WITH WHOM THE
2 MORTGAGE BROKER MAINTAINS A WRITTEN CORRESPONDENT OR LOAN
3 BROKER AGREEMENT UNDER SECTION [12-61-913](#);

4 (f) FAIL TO MAKE A DISCLOSURE TO A LOAN APPLICANT OR A
5 NONINSTITUTIONAL INVESTOR AS REQUIRED BY SECTION [12-61-914](#) AND
6 ANY OTHER APPLICABLE STATE OR FEDERAL LAW;

7 (g) MAKE, IN ANY MANNER, ANY FALSE OR DECEPTIVE STATEMENT
8 OR REPRESENTATION WITH REGARD TO THE RATES, POINTS, OR OTHER
9 FINANCING TERMS OR CONDITIONS FOR A RESIDENTIAL MORTGAGE LOAN
10 OR ENGAGE IN "BAIT AND SWITCH" ADVERTISING;

11 (h) NEGLIGENTLY MAKE ANY FALSE STATEMENT OR KNOWINGLY
12 AND WILLFULLY MAKE ANY OMISSION OF MATERIAL FACT IN CONNECTION

13 WITH ANY REPORTS FILED BY A MORTGAGE BROKER OR IN CONNECTION
14 WITH ANY INVESTIGATION CONDUCTED BY THE DIVISION;

15

16 (i) ADVERTISE ANY RATE OF INTEREST WITHOUT CONSPICUOUSLY
17 DISCLOSING THE ANNUAL PERCENTAGE RATE IMPLIED BY SUCH RATE OF
18 INTEREST;

19 (j) FAIL TO COMPLY WITH ANY REQUIREMENT OF THE FEDERAL
20 "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1601 AND REGULATION Z, 12
21 CFR 226; THE "REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974",
22 12 U.S.C. SEC. 2601 AND REGULATION X, 24 CFR 3500; THE "EQUAL
23 CREDIT OPPORTUNITY ACT", 15 U.S.C. SEC. 1691 AND REGULATION B,
24 CFR 202.9, 202.11, AND 202.12; TITLE V, SUBTITLE A OF THE FINANCIAL
25 MODERNIZATION ACT OF 1999 (KNOWN AS THE "GRAMM-LEACH-BLILEY
26 ACT"), 12 U.S.C. SECS. 6801-6809; THE FEDERAL TRADE COMMISSION'S
27 PRIVACY RULES, 16 CFR 313-314, MANDATED BY THE

Page 8 of 18

1 "GRAMM-LEACH-BLILEY ACT"; THE "HOME MORTGAGE DISCLOSURE ACT
2 OF 1975", 12 U.S.C. SEC. 2801 ET SEQ. AND REGULATION C, HOME
3 MORTGAGE DISCLOSURE; THE "FEDERAL TRADE COMMISSION ACT", 12 CFR
4 203, 15 U.S.C. SEC. 45(a); THE "TELEMARKETING AND CONSUMER FRAUD
5 AND ABUSE PREVENTION ACT", 15 U.S.C. SECS. 6101 TO 6108; AND THE
6 FEDERAL TRADE COMMISSION TELEPHONE SALES RULE, 16 CFR 310, AS
7 AMENDED, IN ANY ADVERTISING OF RESIDENTIAL MORTGAGE LOANS OR
8 ANY OTHER APPLICABLE MORTGAGE BROKER ACTIVITIES COVERED BY THE
9 ACTS. THE DIRECTOR MAY ADOPT RULES REQUIRING MORTGAGE BROKERS
10 TO COMPLY WITH OTHER APPLICABLE FEDERAL STATUTES AND
11 REGULATIONS IN ANY ADVERTISING OF RESIDENTIAL MORTGAGE LOANS,
12 OR ANY OTHER MORTGAGE BROKER ACTIVITY.

13 (k) FAIL TO PAY A THIRD-PARTY PROVIDER, NO LATER THAN THIRTY
14 DAYS AFTER THE RECORDING OF THE LOAN CLOSING DOCUMENTS OR
15 NINETY DAYS AFTER COMPLETION OF THE THIRD-PARTY SERVICE,
16 WHICHEVER COMES FIRST, UNLESS OTHERWISE AGREED OR UNLESS THE
17 THIRD-PARTY SERVICE PROVIDER HAS BEEN NOTIFIED IN WRITING THAT A
18 BONA FIDE DISPUTE EXISTS REGARDING THE PERFORMANCE OR QUALITY OF
19 THE THIRD-PARTY SERVICE;

20 (l) COLLECT, CHARGE, ATTEMPT TO COLLECT OR CHARGE, OR USE
21 OR PROPOSE ANY AGREEMENT PURPORTING TO COLLECT OR CHARGE ANY
22 FEE PROHIBITED BY SECTION [12-61-914](#) OR [12-61-915](#); OR

23 (m) FAIL TO COMPLY WITH ANY PROVISION OF THIS PART 9 OR ANY
24 RULE ADOPTED PURSUANT TO THIS PART 9.

25 **SECTION 7.** Part 9 of article 61 of title 12, Colorado Revised
26 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW
27 SECTIONS to read:

Page 9 of 18

1 **12-61-912. Dual status as real estate broker or salesperson -**
2 **requirements.** (1) UNLESS A MORTGAGE BROKER COMPLIES WITH BOTH
3 SUBSECTIONS (2) AND (3) OF THIS SECTION, HE OR SHE SHALL NOT ACT AS
4 A LOAN ORIGINATOR IN ANY TRANSACTION IN WHICH:

5 (a) THE MORTGAGE BROKER ACTS OR HAS ACTED AS A REAL ESTATE
6 BROKER OR SALESPERSON; OR

7 (b) ANOTHER PERSON DOING BUSINESS UNDER THE SAME LICENSED
8 REAL ESTATE BROKER ACTS OR HAS ACTED AS A REAL ESTATE BROKER OR
9 SALESPERSON.

10 (2) BEFORE PROVIDING MORTGAGE SERVICES TO THE BORROWER,
11 A MORTGAGE BROKER SHALL MAKE A FULL AND FAIR DISCLOSURE TO THE
12 BORROWER, IN ADDITION TO ANY OTHER DISCLOSURES REQUIRED BY THIS
13 PART 9 OR OTHER LAWS, OF ALL MATERIAL FEATURES OF THE LOAN
14 PRODUCT AND ALL FACTS MATERIAL TO THE TRANSACTION.

15 (3) (a) A REAL ESTATE BROKER OR SALESPERSON LICENSED UNDER
16 PART 1 OF THIS ARTICLE WHO ALSO ACTS AS A MORTGAGE BROKER SHALL
17 CARRY ON SUCH MORTGAGE BROKER BUSINESS ACTIVITIES AND SHALL
18 MAINTAIN SUCH PERSON'S MORTGAGE BROKER BUSINESS RECORDS
19 SEPARATE AND APART FROM THE REAL ESTATE BROKER ACTIVITIES
20 CONDUCTED PURSUANT TO PART 1 OF THIS ARTICLE. SUCH ACTIVITIES
21 SHALL BE DEEMED SEPARATE AND APART EVEN IF THEY ARE CONDUCTED AT
22 AN OFFICE LOCATION WITH A COMMON ENTRANCE AND MAILING ADDRESS
23 IF:

24 (I) EACH BUSINESS IS CLEARLY IDENTIFIED BY A SIGN VISIBLE TO
25 THE PUBLIC;

26 (II) EACH BUSINESS IS PHYSICALLY SEPARATED WITHIN THE OFFICE
27 FACILITY; AND

Page 10 of 18

1 (III) NO DECEPTION OF THE PUBLIC AS TO THE SEPARATE
2 IDENTITIES OF THE BROKER BUSINESS FIRMS RESULTS.

3 (b) THIS SUBSECTION (3) SHALL NOT REQUIRE A REAL ESTATE
4 BROKER OR SALESPERSON LICENSED UNDER PART 1 OF THIS ARTICLE WHO
5 ALSO ACTS AS A MORTGAGE BROKER TO MAINTAIN A PHYSICAL
6 SEPARATION WITHIN THE OFFICE FACILITY FOR THE CONDUCT OF ITS REAL
7 ESTATE AND MORTGAGE BROKER ACTIVITIES IF THE DIRECTOR
8 DETERMINES THAT MAINTAINING SUCH PHYSICAL SEPARATION WOULD
9 CONSTITUTE AN UNDUE FINANCIAL HARDSHIP UPON THE MORTGAGE
10 BROKER AND IS UNNECESSARY FOR THE PROTECTION OF THE PUBLIC.

11 **12-61-913. Written contract required - effect.** (1) EVERY
12 CONTRACT BETWEEN A MORTGAGE BROKER AND A BORROWER SHALL BE IN
13 WRITING AND SHALL CONTAIN THE ENTIRE AGREEMENT OF THE PARTIES.

14 (2) A MORTGAGE BROKER SHALL HAVE A WRITTEN
15 CORRESPONDENT OR LOAN BROKER AGREEMENT WITH A LENDER BEFORE

16 ANY SOLICITATION OF, OR CONTRACTING WITH, ANY MEMBER OF THE
17 PUBLIC.

18 **12-61-914. Written disclosure of fees and costs - contents -**
19 **limits on fees - lock-in agreement terms - rules.** (1) WITHIN THREE
20 BUSINESS DAYS AFTER RECEIPT OF A LOAN APPLICATION OR ANY MONEYS
21 FROM A BORROWER, A MORTGAGE BROKER SHALL PROVIDE TO EACH
22 BORROWER A FULL WRITTEN DISCLOSURE CONTAINING AN ITEMIZATION
23 AND EXPLANATION OF ALL FEES AND COSTS THAT THE BORROWER IS
24 REQUIRED TO PAY IN CONNECTION WITH OBTAINING A RESIDENTIAL
25 MORTGAGE LOAN, AND SPECIFYING THE FEE OR FEES THAT INURE TO THE
26 BENEFIT OF THE MORTGAGE BROKER. A GOOD-FAITH ESTIMATE OF A FEE
27 OR COST SHALL BE PROVIDED IF THE EXACT AMOUNT OF THE FEE OR COST

Page 11 of 18

1 IS NOT DETERMINABLE. EXCEPT AS REQUIRED BY PARAGRAPH (c) OF
2 SUBSECTION (2) OF THIS SECTION, THIS SUBSECTION (1) SHALL NOT BE
3 CONSTRUED TO REQUIRE DISCLOSURE OF THE DISTRIBUTION OR
4 BREAKDOWN OF LOAN FEES, DISCOUNTS, OR POINTS BETWEEN THE
5 MORTGAGE BROKER AND ANY LENDER OR INVESTOR.

6 (2) THE WRITTEN DISCLOSURE SHALL CONTAIN THE FOLLOWING
7 INFORMATION:

8 (a) THE ANNUAL PERCENTAGE RATE, FINANCE CHARGE, AMOUNT
9 FINANCED, TOTAL AMOUNT OF ALL PAYMENTS, NUMBER OF PAYMENTS,
10 AMOUNT OF EACH PAYMENT, AMOUNT OF POINTS OR PREPAID INTEREST,
11 AND THE CONDITIONS AND TERMS UNDER WHICH ANY LOAN TERMS MAY
12 CHANGE BETWEEN THE TIME OF DISCLOSURE AND CLOSING OF THE LOAN.
13 IF THE INTEREST RATE IS VARIABLE, THE WRITTEN DISCLOSURE SHALL
14 CLEARLY DESCRIBE THE CIRCUMSTANCES UNDER WHICH THE RATE MAY
15 INCREASE, ANY LIMITATION ON THE INCREASE, THE EFFECT OF AN
16 INCREASE, AND AN EXAMPLE OF THE PAYMENT TERMS RESULTING FROM AN
17 INCREASE.

18 (b) THE ITEMIZED COSTS OF ANY CREDIT REPORT, APPRAISAL, TITLE
19 REPORT, TITLE INSURANCE POLICY, MORTGAGE INSURANCE, ESCROW FEE,
20 PROPERTY TAX, INSURANCE, STRUCTURAL OR PEST INSPECTION, AND ANY
21 OTHER THIRD-PARTY PROVIDER'S COSTS ASSOCIATED WITH THE
22 RESIDENTIAL MORTGAGE LOAN;

23 (c) IF APPLICABLE, THE AMOUNT OF ANY COMMISSION OR OTHER
24 COMPENSATION TO BE PAID TO THE MORTGAGE BROKER, INCLUDING THE
25 MANNER IN WHICH SUCH COMMISSION OR OTHER COMPENSATION IS
26 CALCULATED AND THE RELATIONSHIP OF SUCH COMMISSION OR OTHER
27 COMPENSATION TO THE COST OF THE LOAN RECEIVED BY THE BORROWER;

Page 12 of 18

1 (d) IF APPLICABLE, THE COST, TERMS, DURATION, AND CONDITIONS
2 OF A LOCK-IN AGREEMENT AND WHETHER A LOCK-IN AGREEMENT HAS BEEN
3 ENTERED, WHETHER THE LOCK-IN AGREEMENT IS GUARANTEED BY THE
4 MORTGAGE BROKER OR LENDER, AND, IF A LOCK-IN AGREEMENT HAS NOT
5 BEEN ENTERED, DISCLOSURE IN A FORM ACCEPTABLE TO THE DIRECTOR

6 THAT THE DISCLOSED INTEREST RATE AND TERMS ARE SUBJECT TO
7 CHANGE;

8 (e) A STATEMENT THAT IF THE BORROWER IS UNABLE TO OBTAIN
9 A LOAN FOR ANY REASON, THE MORTGAGE BROKER MUST, WITHIN FIVE
10 DAYS AFTER A WRITTEN REQUEST BY THE BORROWER, GIVE COPIES OF EACH
11 APPRAISAL, TITLE REPORT, AND CREDIT REPORT PAID FOR BY THE
12 BORROWER TO THE BORROWER, AND TRANSMIT THE APPRAISAL, TITLE
13 REPORT, OR CREDIT REPORT TO ANY OTHER MORTGAGE BROKER OR
14 LENDER TO WHOM THE BORROWER DIRECTS THE DOCUMENTS TO BE SENT;

15 (f) WHETHER AND UNDER WHAT CONDITIONS ANY LOCK-IN FEES
16 ARE REFUNDABLE TO THE BORROWER; AND

17 (g) A STATEMENT PROVIDING THAT MONEYS PAID BY THE
18 BORROWER TO THE MORTGAGE BROKER FOR THIRD-PARTY PROVIDER
19 SERVICES ARE HELD IN A TRUST ACCOUNT AND ANY MONEYS REMAINING
20 AFTER PAYMENT TO THIRD-PARTY PROVIDERS WILL BE REFUNDED.

21 (3) IF, AFTER THE WRITTEN DISCLOSURE IS PROVIDED UNDER THIS
22 SECTION, A MORTGAGE BROKER ENTERS INTO A LOCK-IN AGREEMENT WITH
23 A BORROWER OR REPRESENTS TO THE BORROWER THAT THE BORROWER
24 HAS ENTERED INTO A LOCK-IN AGREEMENT, THEN NO LESS THAN THREE
25 BUSINESS DAYS THEREAFTER, INCLUDING SATURDAYS, THE MORTGAGE
26 BROKER SHALL DELIVER OR SEND BY FIRST-CLASS MAIL TO THE BORROWER
27 A WRITTEN CONFIRMATION OF THE TERMS OF THE LOCK-IN AGREEMENT,

Page 13 of 18

1 WHICH SHALL INCLUDE A COPY OF THE DISCLOSURE MADE UNDER
2 PARAGRAPH (d) OF SUBSECTION (2) OF THIS SECTION.

3 (4) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF
4 THIS SUBSECTION (4), A MORTGAGE BROKER SHALL NOT CHARGE ANY FEE
5 THAT INURES TO THE BENEFIT OF THE MORTGAGE BROKER AND THAT
6 EXCEEDS THE FEE DISCLOSED ON THE WRITTEN DISCLOSURE PURSUANT TO
7 THIS SECTION UNLESS:

8 (I) THE NEED TO CHARGE THE FEE WAS NOT REASONABLY
9 FORESEEABLE AT THE TIME THE WRITTEN DISCLOSURE WAS PROVIDED; AND

10 (II) THE MORTGAGE BROKER HAS PROVIDED TO THE BORROWER, NO
11 LESS THAN THREE BUSINESS DAYS PRIOR TO THE SIGNING OF THE LOAN
12 CLOSING DOCUMENTS, A CLEAR WRITTEN EXPLANATION OF THE FEE AND
13 THE REASON FOR CHARGING A FEE EXCEEDING THAT WHICH WAS
14 PREVIOUSLY DISCLOSED.

15 (b) IF THE BORROWER'S CLOSING COSTS ON THE FINAL
16 SETTLEMENT STATEMENT, EXCLUDING PREPAID ESCROWED COSTS OF
17 OWNERSHIP AS DEFINED BY THE DIRECTOR BY RULE, DO NOT EXCEED THE
18 TOTAL CLOSING COSTS IN THE MOST RECENT GOOD-FAITH ESTIMATE,
19 EXCLUDING PREPAID ESCROWED COSTS OF OWNERSHIP, NO OTHER
20 DISCLOSURES SHALL BE REQUIRED BY THIS SUBSECTION (4).

21 [12-61-915](#). **Fee, commission, or compensation - when**
22 **permitted - amount.** (1) EXCEPT AS OTHERWISE PERMITTED BY
23 SUBSECTION (2) OR (3) OF THIS SECTION, A MORTGAGE BROKER SHALL NOT
24 RECEIVE A FEE, COMMISSION, OR COMPENSATION OF ANY KIND IN
25 CONNECTION WITH THE PREPARATION, NEGOTIATION, OR BROKERING OF
26 A RESIDENTIAL MORTGAGE LOAN UNLESS A BORROWER ACTUALLY OBTAINS
27 A LOAN FROM A LENDER ON THE TERMS AND CONDITIONS AGREED TO BY

Page 14 of 18

1 THE BORROWER AND MORTGAGE BROKER.

2 (2) IF THE MORTGAGE BROKER HAS OBTAINED FOR THE BORROWER
3 A WRITTEN COMMITMENT FROM A LENDER FOR A LOAN ON THE TERMS AND
4 CONDITIONS AGREED TO BY THE BORROWER AND THE MORTGAGE BROKER,
5 AND THE BORROWER FAILS TO CLOSE ON THE LOAN THROUGH NO FAULT OF
6 THE MORTGAGE BROKER, THE MORTGAGE BROKER MAY CHARGE A FEE, NOT
7 TO EXCEED THREE HUNDRED DOLLARS, FOR SERVICES RENDERED,
8 PREPARATION OF DOCUMENTS, OR TRANSFER OF DOCUMENTS IN THE
9 BORROWER'S FILE THAT WERE PREPARED OR PAID FOR BY THE BORROWER
10 IF THE FEE IS NOT OTHERWISE PROHIBITED BY THE FEDERAL "TRUTH IN
11 LENDING ACT", 15 U.S.C. SEC. 1601, AND REGULATION Z, 12 CFR 226, AS
12 AMENDED.

13 (3) A MORTGAGE BROKER MAY SOLICIT OR RECEIVE FEES FOR
14 THIRD-PARTY PROVIDER GOODS OR SERVICES IN ADVANCE. FEES FOR ANY
15 GOODS OR SERVICES NOT PROVIDED SHALL BE REFUNDED TO THE
16 BORROWER, AND THE MORTGAGE BROKER MAY NOT CHARGE MORE FOR THE
17 GOODS AND SERVICES THAN THE ACTUAL COSTS OF THE GOODS OR
18 SERVICES CHARGED BY THE THIRD-PARTY PROVIDER.

19 **SECTION 8.** The introductory portion to [38-40-105](#) (1) and
20 [38-40-105](#) (1) (b), Colorado Revised Statutes, are amended, and the said
21 [38-40-105](#) (1) is further amended BY THE ADDITION OF A NEW
22 PARAGRAPH, to read:

23 [38-40-105](#). **Prohibited acts by participants in certain**
24 **mortgage loan transactions.** (1) The following acts by any mortgage
25 broker, ~~or~~ mortgage originator, MORTGAGE LENDER, MORTGAGE LOAN
26 APPLICANT, REAL ESTATE BROKER, REAL ESTATE AGENT, REAL ESTATE
27 APPRAISER, OR CLOSING AGENT, OTHER THAN A PERSON WHO PROVIDES

Page 15 of 18

1 CLOSING OR SETTLEMENT SERVICES SUBJECT TO REGULATION BY THE
2 DIVISION OF INSURANCE, with respect to any loan that is secured by a first
3 or subordinate mortgage or deed or trust lien against a dwelling are
4 prohibited:

5 (b) To ~~knowingly~~ make a false promise or misrepresentation or
6 conceal an essential or material fact to entice either a borrower or a
7 creditor to enter into a mortgage agreement WHEN, UNDER THE TERMS AND
8 CIRCUMSTANCES OF THE TRANSACTION, HE OR SHE KNEW OR REASONABLY
9 SHOULD HAVE KNOWN OF SUCH FALSITY, MISREPRESENTATION, OR
10 CONCEALMENT;

11

12 (e) TO KNOWINGLY FACILITATE THE CONSUMMATION OF A
13 MORTGAGE LOAN TRANSACTION THAT VIOLATES, OR THAT IS CONNECTED
14 WITH A VIOLATION OF, SECTION [12-61-911](#), C.R.S.

15 **SECTION 9. [6-1-105](#)** (1), Colorado Revised Statutes, is amended
16 BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

17 **[6-1-105. Deceptive trade practices.](#)** (1) A person engages in a
18 deceptive trade practice when, in the course of such person's business,
19 vocation, or occupation, such person:

20 (yy) VIOLATES ANY PROVISION OF SECTION [12-61-904.5](#), C.R.S.;

21 (zz) VIOLATES ANY PROVISION OF SECTION [12-61-911](#), C.R.S.

22 **SECTION 10. [6-1-110](#)** (3), Colorado Revised Statutes, is amended
23 to read:

24 **[6-1-110. Restraining orders - injunctions - assurances of](#)**
25 **discontinuance.** (3) When the attorney general or a district attorney
26 shows by a preponderance of evidence that a mortgage broker, or mortgage
27 originator, MORTGAGE LENDER, MORTGAGE LOAN APPLICANT, REAL ESTATE

Page 16 of 18

1 BROKER, REAL ESTATE AGENT, REAL ESTATE APPRAISER, OR CLOSING
2 AGENT, OTHER THAN A PERSON WHO PROVIDES CLOSING OR SETTLEMENT
3 SERVICES SUBJECT TO REGULATION BY THE DIVISION OF INSURANCE, has
4 continued to ~~conduct the business of originating~~ PARTICIPATE IN THE
5 ORIGINATION OF mortgage loans in violation of section [38-40-105](#), C.R.S.,
6 after having been previously enjoined from practices in violation of such
7 section, the attorney general or district attorney may, in addition to any
8 other remedies, apply for and obtain, in the court that has previously issued
9 an injunction, a further injunction against continuing to participate in the
10 business of originating mortgage loans for up to ~~two~~ FIVE years.

11 **SECTION 11. Appropriation.** (1) In addition to any other
12 appropriation, there is hereby appropriated, out of any moneys in the
13 mortgage broker registration cash fund created in Section [12-61-908](#) (2),
14 Colorado Revised Statutes, not otherwise appropriated, to the department
15 of regulatory agencies, for the fiscal year beginning July 1, 2007, the sum
16 of four hundred ninety-five thousand eighty-four dollars (\$495,084), cash
17 funds, and 2.5 FTE, or so much thereof as may be necessary. Of said sum,
18 one hundred eighteen thousand five hundred ninety-eight dollars
19 (\$118,598) shall be allocated to the executive director's office for the
20 purchase of legal services from the department of law and three hundred
21 seventy-six thousand four hundred eighty-six dollars (\$376,486) and 2.5
22 FTE shall be allocated to the division of real estate for the implementation
23 of this act.

24 (2) (a) In addition to any other appropriation, there is hereby
25 appropriated, to the department of law, for the fiscal year beginning July 1,

26 2007, the sum of one hundred eighteen thousand five hundred ninety-eight
27 dollars (\$118,598) and 1.0 FTE, or so much thereof as may be necessary,

Page 17 of 18

1 for the provision of legal services to the department of regulatory agencies
2 related to the implementation of this act. Said sum shall be from cash funds
3 exempt received from the department of regulatory agencies, executive
4 director's office out of the appropriation for legal services in subsection
5 (1) of this section.

6 (b) In addition to any other appropriation, there is hereby
7 appropriated, to the department of law, for consumer protection, for the
8 fiscal year beginning July 1, 2007, the sum of two hundred sixty-four
9 thousand six hundred eight dollars (\$264,608), cash funds exempt, and 3.0
10 FTE, or so much thereof as may be necessary, for the implementation of
11 this act. Said sum shall be from cash funds exempt received from the
12 department of regulatory agencies out of the appropriation to the division
13 of real estate in subsection (1) of this section.

14 (3) (a) In addition to any other appropriation, there is hereby
15 appropriated, to the department of public safety, for allocation to the
16 Colorado bureau of investigation, for the processing of fingerprint-based
17 criminal history checks for mortgage brokers, for the fiscal year beginning
18 July 1, 2007, the sum of eighty-six thousand eighty-eight dollars
19 (\$86,088), cash funds, and 1.7 FTE, or so much thereof as may be
20 necessary, for the implementation of this act. Said sum shall be from
21 fingerprint processing fees collected by the Colorado bureau of
22 investigation.

23 (b) In addition to any other appropriation, there is hereby
24 appropriated to the department of public safety, for the fiscal year
25 beginning July 1, 2007, the sum of two hundred eleven thousand two
26 hundred dollars (\$211,200), cash funds exempt, or so much thereof as may
27 be necessary, for pass through to the federal bureau of investigation for

Page 18 of 18

1 fingerprint-based national criminal history checks for mortgage brokers
2 related to the implementation of this act. Said sum shall be from
3 fingerprint processing fees collected by the Colorado bureau of
4 investigation.

5 **SECTION 12. Applicability.** This act shall apply to acts or
6 omissions committed on or after the effective date of this act.

7 **SECTION 13. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, and safety.