

CHAPTER 389

PROFESSIONS AND OCCUPATIONS

SENATE BILL 07-216

BY SENATOR(S) Veiga, Boyd, Groff, Romer, Shaffer, Tochtrop, Tupa, and Williams;
also REPRESENTATIVE(S) Marshall, Carroll M., Carroll T., Casso, Frangas, Hodge, Jahn, Madden, Massey, McGihon,
Merrifield, and Todd.

AN ACT

**CONCERNING ADDITIONAL CONSUMER PROTECTIONS IN RESIDENTIAL MORTGAGE LOAN
TRANSACTIONS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

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

SECTION 1. Part 1 of article 102 of title 11, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

11-102-106. Nontraditional mortgages - consumer protections - rules - incorporation of federal interagency guidance. THE BANKING BOARD SHALL ADOPT RULES GOVERNING THE MARKETING OF NONTRADITIONAL MORTGAGES BY BANKING INSTITUTIONS. IN ADOPTING SUCH RULES, THE BOARD SHALL INCORPORATE APPROPRIATE PROVISIONS OF THE FINAL "INTERAGENCY GUIDANCE ON NONTRADITIONAL MORTGAGE PRODUCT RISKS" RELEASED ON SEPTEMBER 29, 2006, BY THE OFFICE OF THE COMPTROLLER OF THE CURRENCY AND THE OFFICE OF THRIFT SUPERVISION IN THE FEDERAL DEPARTMENT OF THE TREASURY, THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, THE FEDERAL DEPOSIT INSURANCE CORPORATION, AND THE NATIONAL CREDIT UNION ADMINISTRATION, AS SUCH PUBLICATION MAY BE AMENDED.

SECTION 2. Part 9 of article 61 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

12-61-904.5. Broker's relationship to borrower - rules. (1) A MORTGAGE BROKER SHALL HAVE A DUTY OF GOOD FAITH AND FAIR DEALING IN ALL COMMUNICATIONS AND TRANSACTIONS WITH A BORROWER. SUCH DUTY INCLUDES, BUT IS NOT LIMITED TO:

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

(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 INFORMATION KNOWN TO THE MORTGAGE BROKER AND, AFTER MAKING SUCH INQUIRY, TO MAKE HIS OR HER BEST EFFORTS TO RECOMMEND, BROKER, OR ORIGINATE A RESIDENTIAL MORTGAGE LOAN THAT TAKES INTO CONSIDERATION THE INFORMATION SUBMITTED BY THE BORROWER; AND

(c) THE DUTY NOT TO COMMIT ANY UNCONSCIONABLE ACT OR PRACTICE LISTED IN SECTION 38-40-105 (1.7), C.R.S.

(2) FOR PURPOSES OF IMPLEMENTING SUBSECTION (1) OF THIS SECTION, THE DIRECTOR MAY ADOPT RULES DEFINING WHAT CONSTITUTES A REASONABLE, TANGIBLE NET BENEFIT TO THE BORROWER.

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

12-61-910.4. Nontraditional mortgages - consumer protections - rules - incorporation of federal interagency guidance. THE DIRECTOR SHALL ADOPT RULES GOVERNING THE MARKETING OF NONTRADITIONAL MORTGAGES BY MORTGAGE BROKERS. IN ADOPTING SUCH RULES, THE DIRECTOR SHALL INCORPORATE APPROPRIATE PROVISIONS OF THE FINAL "INTERAGENCY GUIDANCE ON NONTRADITIONAL MORTGAGE PRODUCT RISKS" RELEASED ON SEPTEMBER 29, 2006, BY THE OFFICE OF THE COMPTROLLER OF THE CURRENCY AND THE OFFICE OF THRIFT SUPERVISION IN THE FEDERAL DEPARTMENT OF THE TREASURY, THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, THE FEDERAL DEPOSIT INSURANCE CORPORATION, AND THE NATIONAL CREDIT UNION ADMINISTRATION, AS SUCH PUBLICATION MAY BE AMENDED.

SECTION 3. 12-61-908 (1), Colorado Revised Statutes, is amended to read:

12-61-908. Fees. (1) The director may set the fee for registration under this part 9. The fee shall be set in an amount ~~not to exceed two hundred dollars~~, that offsets the direct and indirect costs of implementing this part 9. The moneys collected pursuant to this section shall be transferred to the state treasurer, who shall credit them to the mortgage broker registration cash fund.

SECTION 4. 38-40-105 (2) (c), Colorado Revised Statutes, is amended, and the said 38-40-105 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

38-40-105. Prohibited acts by originators of certain mortgage loans - unconscionable acts and practices - definitions. (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;

(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) (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.

(7) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CONSUMER" HAS THE MEANING SET FORTH IN SECTION 5-1-301 (10), C.R.S.

(b) "DWELLING" HAS THE MEANING SET FORTH IN SECTION 5-1-301 (18), C.R.S.

(c) "MORTGAGE BROKER" HAS THE MEANING SET FORTH IN SECTION 12-61-902 (5), C.R.S.

(d) "MORTGAGE LENDER" HAS THE MEANING SET FORTH IN SECTION 12-61-902 (6),

C.R.S.

(e) "MORTGAGE ORIGINATOR" MEANS A PERSON WHO IS IN THE BUSINESS OF ORIGINATING RESIDENTIAL MORTGAGE LOANS.

(f) "ORIGINATE" HAS THE MEANING SET FORTH IN SECTION 12-61-902 (7), C.R.S.

(g) "RESIDENTIAL MORTGAGE LOAN" HAS THE MEANING SET FORTH IN SECTION 12-61-902 (8), C.R.S.

SECTION 5. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the mortgage broker registration cash fund created in section 12-61-908 (2), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for the fiscal year beginning July 1, 2007, the sum of three hundred ninety-two thousand two hundred forty-two dollars (\$392,242), cash funds, and 1.5 FTE, or so much thereof as may be necessary, for the implementation of this act. Of said sum, forty-eight thousand four hundred fifty-six dollars (\$48,456) shall be allocated to the executive director's office for the purchase of legal services from the department of law and three hundred forty-three thousand seven hundred eighty-six dollars (\$343,786) and 1.5 FTE shall be allocated to the division of real estate.

(2) (a) In addition to any other appropriation, there is hereby appropriated, to the department of law, for the fiscal year beginning July 1, 2007, the sum of forty-eight thousand four hundred fifty-six dollars (\$48,456) and 0.4 FTE, or so much thereof as may be necessary, for the provision of legal services to the department of regulatory agencies related to the implementation of this act. Said sum shall be from cash funds exempt received from the department of regulatory agencies, executive director's office out of the appropriation for legal services in subsection (1) of this section.

(b) In addition to any other appropriation, there is hereby appropriated, to the department of law, for allocation to the consumer protection section, for the fiscal year beginning July 1, 2007, the sum of two hundred sixty-five thousand eighty-five dollars (\$265,085) and 3.0 FTE, or so much thereof as may be necessary, for the implementation of this act. Said sum shall be from cash funds exempt received from the department of regulatory agencies, out of the appropriation to the division of real estate in subsection (1) of this section.

SECTION 6. Effective date - applicability. This act shall take effect July 1, 2007, and shall apply to offenses committed on or after said date.

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

Approved: June 1, 2007