

CHAPTER 17

PROFESSIONS AND OCCUPATIONS

SENATE BILL 16-014

BY SENATOR(S) Holbert, Baumgardner, Crowder, Heath, Johnston, Jones, Kefalas, Scott, Tate, Todd, Woods, Cadman;
also REPRESENTATIVE(S) Williams, Priola.

AN ACT

CONCERNING THE ALIGNMENT OF STATE MORTGAGE ORIGINATOR DISCLOSURE LAWS WITH RECENT
CHANGES IN FEDERAL LAW.

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

SECTION 1. In Colorado Revised Statutes, **amend** 12-61-914 as follows:

12-61-914. Written disclosure of fees and costs - contents - limits on fees - lock-in agreement terms - rules. (1) (a) ~~Within three business days after receipt of a loan application, or any moneys from a borrower, a mortgage loan originator shall provide to each borrower a full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, specifying the fee or fees that inure to the benefit of the mortgage loan originator. A good-faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not determinable. Except as required by paragraph (c) of subsection (2) of this section, this subsection (1) shall not be construed to require disclosure of the distribution or breakdown of loan fees, discounts, or points between the mortgage loan originator and any mortgage lender or investor.~~ A MORTGAGE LOAN ORIGINATOR'S DISCLOSURES MUST COMPLY WITH ALL APPLICABLE REQUIREMENTS OF:

(I) THE FEDERAL "TRUTH IN LENDING ACT", 15 U.S.C. SECS. 1601 ET SEQ., AND REGULATION Z, 12 CFR 226 AND 12 CFR 1026;

(II) THE FEDERAL "REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974", 12 U.S.C. SECS. 2601 ET SEQ., AND REGULATION X, 12 CFR 1024 ET SEQ.;

(III) 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;

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

(IV) 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";

(V) THE FEDERAL "HOME MORTGAGE DISCLOSURE ACT OF 1975", 12 U.S.C. SECS. 2801 ET SEQ., AND REGULATION C, 12 CFR 203 AND 12 CFR 1003, PERTAINING TO HOME MORTGAGE DISCLOSURE;

(VI) THE "FEDERAL TRADE COMMISSION ACT OF 1914", 15 U.S.C. SEC. 45 (a), AND 16 CFR 233;

(VII) 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.

(b) 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 9.

(2) ~~The written disclosure shall contain the following information:~~

~~(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest, and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan. If the interest rate is variable, the written disclosure shall clearly describe the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase.~~

~~(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan;~~

~~(c) If applicable, the amount of any commission or other compensation to be paid to the mortgage loan originator, including the manner in which the commission or other compensation is calculated and the relationship of the commission or other compensation to the cost of the loan received by the borrower;~~

~~(d) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, whether the lock-in agreement is guaranteed by the mortgage loan originator or lender, and, if a lock-in agreement has not been entered, disclosure in a form acceptable to the board that the disclosed interest rate and terms are subject to change;~~

~~(e) A statement that, if the borrower is unable to obtain a loan for any reason, the~~

~~mortgage loan originator must, within five days after a written request by the borrower, give copies of each appraisal, title report, and credit report paid for by the borrower to the borrower and transmit the appraisal, title report, or credit report to any other mortgage loan originator or lender to whom the borrower directs the documents to be sent;~~

~~(f) Whether and under what conditions any lock-in fees are refundable to the borrower; and~~

~~(g) A statement providing that moneys paid by the borrower to the mortgage loan originator for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.~~

~~(3) If, after the written disclosure is provided under this section, a mortgage loan originator enters into a lock-in agreement with a borrower or represents to the borrower that the borrower has entered into a lock-in agreement, the mortgage loan originator shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement within three days, including Saturdays, after the agreement is entered or the representation is made. The written confirmation shall include a copy of the disclosure made under paragraph (d) of subsection (2) of this section.~~

~~(4) (a) Except as otherwise provided in paragraph (b) of this subsection (4), a mortgage loan originator shall not charge any fee that inures to the benefit of the mortgage loan originator and that exceeds the fee disclosed on the written disclosure pursuant to this section unless:~~

~~(f) The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and~~

~~(h) The mortgage loan originator has provided to the borrower, at least three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.~~

~~(b) If the borrower's closing costs on the final settlement statement, excluding prepaid escrowed costs of ownership as defined by the board by rule, do not exceed the total closing costs in the most recent good faith estimate, excluding prepaid escrowed costs of ownership, no other disclosures shall be required by this subsection (4).~~

SECTION 2. In Colorado Revised Statutes, **repeal** 38-40-102 as follows:

38-40-102. Disclosure of costs - statement of terms of indebtedness. ~~(1) Any person regularly engaged in the making of loans secured by a mortgage or deed of trust on a one-to-four-family dwelling shall provide to any applicant for a loan to be secured by such a mortgage or deed of trust a good faith estimate, as a dollar amount or range, of each charge for a settlement service to be charged by the lender and paid by the applicant or a third party at the time of the making of the loan for which the application is made. Such disclosure shall be delivered to the applicant, and to any third party who will be liable on the loan and to the seller if the name and~~

~~address of the third party and seller is known to the lender at the time of the application, in the same manner and at the same time as the good faith estimate required by the federal "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601 et seq. If the lender conditionally guarantees any of the terms of the loan for which the application is made, there shall be delivered to the applicant a written statement of the conditions of such guaranty, including the period of time within which the consummation of the loan must occur in order for the guaranty to be honored.~~

~~(2) A person shall not state terms of an indebtedness to an applicant which are in conflict with the good faith estimate and which he knows to be false or unavailable at the time of the statement or at the time of closing of the agreement creating the indebtedness.~~

~~(3) As used in this section, unless the context otherwise requires, the terms "good faith estimate", "person", and "settlement service" shall have the same meanings as given to such terms in the federal "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601 et seq., and in regulation X, 24 CFR part 3500, issued by the United States secretary of housing and urban development pursuant to such act.~~

~~(4) The provisions of this section shall not apply to a loan to be made by a bank, trust company, savings and loan association, credit union, federal housing administration approved mortgagee, or supervised lender as defined in section 5-1-301 (46), C.R.S., that will be secured by a mortgage or deed of trust other than a first mortgage or deed of trust having priority as a lien on the real property over any other mortgage or deed of trust.~~

SECTION 3. 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: March 16, 2016