

CHAPTER 387

PROFESSIONS AND OCCUPATIONS

SENATE BILL 07-085

BY SENATOR(S) Veiga, Boyd, Sandoval, Tochtrop, Tupa, and Ward;
also REPRESENTATIVE(S) Massey, Butcher, Carroll M., Carroll T., Casso, Frangas, Garcia, Hicks, Hodge, Jahn, Madden,
Marshall, McGihon, Merrifield, Todd, Borodkin, and Looper.

AN ACT

**CONCERNING ADDITIONAL CONSUMER PROTECTIONS RELATING TO REAL ESTATE TRANSACTIONS, AND
MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

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

SECTION 1. The introductory portion to 12-61-905 (1) (c) and 12-61-905 (7), Colorado Revised Statutes, are amended, and the said 12-61-905 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

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

(c) 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 such discipline denied the person authorization to practice as:

(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 A MORTGAGE LOAN;

(e) BEEN FOUND TO HAVE VIOLATED THE PROVISIONS OF SECTION 12-61-910.2.

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

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

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

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

(II) IN ANY 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 (7) SHALL BE TRANSFERRED TO THE STATE TREASURER, WHO SHALL CREDIT SUCH MONEYS TO THE CASH FUND CREATED IN SECTION 12-61-908.

SECTION 2. 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 3. Part 9 of article 61 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

12-61-910.2. Prohibited conduct - influencing a real estate appraisal. (1) A MORTGAGE BROKER 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 MORTGAGE LOAN. THIS PROHIBITION SHALL NOT BE CONSTRUED AS PROHIBITING A MORTGAGE BROKER 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.

12-61-910.3. Rule-making authority. THE DIRECTOR SHALL HAVE THE AUTHORITY TO PROMULGATE RULES AS NECESSARY TO ENABLE THE DIRECTOR TO CARRY OUT THE DIRECTOR'S DUTIES UNDER THIS PART 9.

SECTION 4. Part 7 of article 1 of title 6, Colorado Revised Statutes, is amended

BY THE ADDITION OF A NEW SECTION to read:

6-1-717. Influencing a real estate appraisal. (1) A PERSON ENGAGES IN A DECEPTIVE TRADE PRACTICE WHEN, IN THE COURSE OF SUCH PERSON'S BUSINESS, VOCATION, OR OCCUPATION, THE PERSON:

(a) KNOWINGLY SUBMITS A FALSE OR MISLEADING APPRAISAL IN CONNECTION WITH A DWELLING OFFERED AS SECURITY FOR REPAYMENT OF A MORTGAGE LOAN; OR

(b) DIRECTLY OR INDIRECTLY COMPENSATES, COERCES, OR INTIMIDATES AN APPRAISER, OR ATTEMPTS, 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 MORTGAGE LOAN.

(2) THE PROHIBITION REFERRED TO IN SUBSECTION (1) OF THIS SECTION SHALL NOT BE CONSTRUED AS PROHIBITING A PERSON 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.

SECTION 5. 6-1-105 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

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

(zz) VIOLATES ANY PROVISION OF SECTION 6-1-717.

SECTION 6. 6-1-114, Colorado Revised Statutes, is amended to read:

6-1-114. Criminal penalties. Upon a first conviction any person who promotes a pyramid promotional scheme in this state or who violates any provision of section 6-1-701 ~~is~~ OR 6-1-717 IS guilty of a class 1 misdemeanor, as defined in section 18-1.3-501, C.R.S., and upon a second or subsequent conviction OF SECTION 6-1-701 is guilty of a class 6 felony, as defined in section 18-1.3-401, C.R.S.

SECTION 7. Part 7 of article 38 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

38-38-705. Curative provisions. (1) IF THE PUBLIC TRUSTEE FAILS TO COMPLY WITH ANY OF THE NOTICE DEADLINES SET FORTH IN THIS ARTICLE, UNLESS THE FORECLOSURE HAS ALREADY BEEN WITHDRAWN BY THE HOLDER OF THE EVIDENCE OF DEBT OR THE HOLDER'S ATTORNEY, FOLLOWING WRITTEN NOTICE TO THE HOLDER OF THE EVIDENCE OF DEBT OR THE HOLDER'S ATTORNEY, THE PUBLIC TRUSTEE MAY

RERECORD THE NOTICE OF ELECTION AND DEMAND, AND THE PUBLIC TRUSTEE SHALL THEREAFTER COMPLY WITH ALL SUCH NOTICE DEADLINES FROM THE LAST RECORDING DATE AS SET FORTH ON THE RERECORDED NOTICE OF ELECTION AND DEMAND AS THOUGH SUCH FORECLOSURE HAD BEEN COMMENCED ON SUCH DATE.

(2) IN THE EVENT OF AN ERROR CONTAINED IN ANY CERTIFICATE OF PURCHASE, CERTIFICATE OF REDEMPTION, PUBLIC TRUSTEE'S DEED, OR OTHER RECORDED DOCUMENT PREPARED BY THE OFFICE OF THE PUBLIC TRUSTEE, THE PUBLIC TRUSTEE MAY CORRECT SUCH ERROR BY EXECUTING AND RECORDING A SCRIVENER'S ERROR AFFIDAVIT AS SET FORTH IN SECTION 38-35-109 (5).

SECTION 8. 38-40-105 (1.7) (a) (I), Colorado Revised Statutes, as enacted by Senate Bill 07-216, enacted at the First Regular Session of the Sixty-sixth General Assembly, is amended 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. THIS SUBPARAGRAPH (I) SHALL NOT APPLY TO A REVERSE MORTGAGE THAT COMPLIES WITH ARTICLE 38 OF TITLE 11, C.R.S.

SECTION 9. 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 fifty-six thousand six hundred ninety-six dollars (\$56,696), cash funds, and 0.3 FTE, or so much thereof as may be necessary, for the implementation of this act. Of said sum, forty thousand six hundred sixty-two dollars (\$40,662) shall be allocated to the executive director's office for the purchase of legal services from the department of law and sixteen thousand thirty-four dollars (\$16,034) and 0.3 FTE shall be allocated to the division of real estate.

(2) 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 thousand six hundred sixty-two dollars (\$40,662) and 0.3 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.

SECTION 10. Effective date - applicability. This act shall take effect upon passage and shall apply to acts occurring on or after said date; except that section 8 of this act shall take effect only if Senate Bill 07-216 is enacted at the First

Regular Session of the Sixty-sixth General Assembly and becomes law.

SECTION 11. 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