

## CHAPTER 280

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**PROFESSIONS AND OCCUPATIONS**

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**HOUSE BILL 10-1141**

BY REPRESENTATIVE(S) Carroll T., Casso, Court, Ferrandino, Frangas, Hullinghorst, Kerr J., Loooper, Massey, Pommer, Priola, Ryden, Schafer S., Solano, Todd, Tyler, Vigil, May, Middleton, Pace, Scanlan, Summers;  
also SENATOR(S) Tochtrop.

**AN ACT**

**CONCERNING A REQUIREMENT FOR MORTGAGE COMPANIES TO BE REGISTERED BY THE DIVISION OF REAL ESTATE, AND MAKING AN APPROPRIATION THEREFOR.**

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

**SECTION 1.** 12-61-106 (1), Colorado Revised Statutes, is amended to read:

**12-61-106. Division of real estate - director, clerks, and assistants.** (1) The executive director of the department of regulatory agencies is authorized by this section to employ, subject to the provisions of the state personnel system laws of the state, a director ~~for the commission~~ OF THE DIVISION OF REAL ESTATE, who in turn shall employ such attorneys, deputies, investigators, clerks, and assistants as are necessary to discharge the duties imposed by parts 1, 3, and 4 of this article. THE DIVISION OF REAL ESTATE, WHICH SHALL BE A DIVISION IN THE DEPARTMENT OF REGULATORY AGENCIES, AND THE DIRECTOR OF THE DIVISION SHALL EXERCISE THEIR POWERS AND PERFORM THEIR DUTIES AND FUNCTIONS UNDER THE DEPARTMENT OF REGULATORY AGENCIES AS IF THEY WERE TRANSFERRED TO THE DEPARTMENT BY A **TYPE 2** TRANSFER.

**SECTION 2.** 12-61-901, Colorado Revised Statutes, is amended to read:

**12-61-901. Short title.** This part 9 shall be known and may be cited as the "Mortgage Loan Originator Licensing AND MORTGAGE COMPANY REGISTRATION Act".

**SECTION 3.** 12-61-902 (5), Colorado Revised Statutes, is amended, and the said 12-61-902 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

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

**12-61-902. Definitions.** As used in this part 9, unless the context otherwise requires:

(1.3) "BOARD" MEANS THE BOARD OF MORTGAGE LOAN ORIGINATORS CREATED IN SECTION 12-61-902.5.

~~(5) "Mortgage lender" means a lender who is in the business of making residential mortgage loans if:~~

~~(a) The lender is the payee on the promissory note evidencing the loan; and~~

~~(b) The loan proceeds are obtained by the lender from its own funds or from a line of credit made available to the lender from a bank or other entity who regularly loans money to lenders for the purpose of funding mortgage loans. "MORTGAGE COMPANY" MEANS A PERSON OTHER THAN AN INDIVIDUAL WHO, THROUGH EMPLOYEES OR OTHER INDIVIDUALS, TAKES RESIDENTIAL LOAN APPLICATIONS OR OFFERS OR NEGOTIATES TERMS OF A RESIDENTIAL MORTGAGE LOAN.~~

(5.5) "MORTGAGE LENDER" MEANS A LENDER WHO IS IN THE BUSINESS OF MAKING RESIDENTIAL MORTGAGE LOANS IF:

(a) THE LENDER IS THE PAYEE ON THE PROMISSORY NOTE EVIDENCING THE LOAN; AND

(b) THE LOAN PROCEEDS ARE OBTAINED BY THE LENDER FROM ITS OWN FUNDS OR FROM A LINE OF CREDIT MADE AVAILABLE TO THE LENDER FROM A BANK OR OTHER ENTITY THAT REGULARLY LOANS MONEY TO LENDERS FOR THE PURPOSE OF FUNDING MORTGAGE LOANS.

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

**12-61-902.5. Board of mortgage loan originators - creation - compensation - enforcement of part after board creation - immunity.** (1) THERE IS HEREBY CREATED IN THE DIVISION A BOARD OF MORTGAGE LOAN ORIGINATORS, CONSISTING OF FIVE MEMBERS APPOINTED BY THE GOVERNOR WITH THE CONSENT OF THE SENATE. OF THE MEMBERS, THREE SHALL BE LICENSED MORTGAGE LOAN ORIGINATORS AND TWO SHALL BE MEMBERS OF THE PUBLIC AT LARGE NOT ENGAGED IN MORTGAGE LOAN ORIGATION OR MORTGAGE LENDING. OF THE MEMBERS OF THE BOARD APPOINTED FOR TERMS BEGINNING ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, TWO OF THE MEMBERS APPOINTED AS MORTGAGE LOAN ORIGINATORS AND ONE OF THE MEMBERS APPOINTED AS A MEMBER OF THE PUBLIC AT LARGE SHALL BE APPOINTED FOR TERMS OF TWO YEARS, AND ONE OF THE MEMBERS APPOINTED AS A MORTGAGE LOAN ORIGINATOR AND ONE OF THE MEMBERS APPOINTED AS A MEMBER OF THE PUBLIC AT LARGE SHALL SERVE FOR TERMS OF FOUR YEARS. THEREAFTER, MEMBERS OF THE BOARD SHALL HOLD OFFICE FOR A TERM OF FOUR YEARS. IN THE EVENT OF A VACANCY BY DEATH, RESIGNATION, REMOVAL, OR OTHERWISE, THE GOVERNOR SHALL APPOINT A MEMBER TO FILL THE UNEXPIRED TERM. THE GOVERNOR SHALL HAVE THE AUTHORITY TO REMOVE ANY MEMBER FOR MISCONDUCT, NEGLIGENCE OF DUTY, OR INCOMPETENCE.

(2) (a) THE BOARD SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES AND FUNCTIONS UNDER THE DEPARTMENT OF REGULATORY AGENCIES AS IF TRANSFERRED TO THE DEPARTMENT BY A **TYPE 1** TRANSFER, AS SUCH TRANSFER IS DEFINED IN THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF TITLE 24, C.R.S.

(b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 9, ON AND AFTER THE CREATION OF THE BOARD BY THIS SECTION, THE BOARD SHALL EXERCISE ALL OF THE RULE-MAKING, ENFORCEMENT, AND ADMINISTRATIVE AUTHORITY OF THE DIRECTOR SET FORTH IN THIS PART 9. THE BOARD HAS THE AUTHORITY TO DELEGATE TO THE DIRECTOR ANY ENFORCEMENT AND ADMINISTRATIVE AUTHORITY UNDER THIS PART 9 THAT THE BOARD DEEMS NECESSARY AND APPROPRIATE. IF THE BOARD DELEGATES ANY ENFORCEMENT OR ADMINISTRATIVE AUTHORITY UNDER THIS PART 9 TO THE DIRECTOR, THE DIRECTOR SHALL ONLY BE ENTITLED TO EXERCISE SUCH AUTHORITY AS SPECIFICALLY DELEGATED IN WRITING TO THE DIRECTOR BY THE BOARD.

(3) EACH MEMBER OF THE BOARD SHALL RECEIVE THE SAME COMPENSATION AND REIMBURSEMENT OF EXPENSES AS THOSE PROVIDED FOR MEMBERS OF BOARDS AND COMMISSIONS IN THE DIVISION OF REGISTRATIONS PURSUANT TO SECTION 24-34-102 (13), C.R.S. PAYMENT FOR ALL PER DIEM COMPENSATION AND EXPENSES SHALL BE MADE OUT OF ANNUAL APPROPRIATIONS FROM THE MORTGAGE LOAN ORIGINATOR LICENSING CASH FUND CREATED IN SECTION 12-61-908.

(4) MEMBERS OF THE BOARD, CONSULTANTS, AND EXPERT WITNESSES SHALL BE IMMUNE FROM SUIT IN ANY CIVIL ACTION BASED UPON ANY DISCIPLINARY PROCEEDINGS OR OTHER OFFICIAL ACTS THEY PERFORMED IN GOOD FAITH PURSUANT TO THIS PART 9.

(5) A MAJORITY OF THE BOARD SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF ALL BUSINESS, AND ACTIONS OF THE BOARD SHALL REQUIRE A VOTE OF A MAJORITY OF THE MEMBERS PRESENT IN FAVOR OF THE ACTION TAKEN.

(6) (a) ALL RULES PROMULGATED BY THE DIRECTOR PRIOR TO THE EFFECTIVE DATE OF THIS SECTION SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL REPEALED OR MODIFIED BY THE BOARD. THE BOARD SHALL HAVE THE AUTHORITY TO ENFORCE ANY PREVIOUSLY PROMULGATED RULES OF THE DIRECTOR UNDER THIS PART 9 AND ANY RULES PROMULGATED BY THE BOARD.

(b) NOTHING IN THIS SECTION SHALL AFFECT ANY ACTION TAKEN BY THE DIRECTOR PRIOR TO THE EFFECTIVE DATE OF THIS SECTION. NO PERSON WHO, ON OR BEFORE THE EFFECTIVE DATE OF THIS SECTION, HOLDS A LICENSE ISSUED UNDER THIS PART 9 SHALL BE REQUIRED TO SECURE AN ADDITIONAL LICENSE UNDER THIS PART 9, BUT SHALL OTHERWISE BE SUBJECT TO ALL THE PROVISIONS OF THIS PART 9. A LICENSE PREVIOUSLY ISSUED SHALL, FOR ALL PURPOSES, BE CONSIDERED A LICENSE ISSUED BY THE BOARD UNDER THIS PART 9.

**SECTION 5.** 12-61-903 (1) (a) and (1) (b), the introductory portion to 12-61-903 (2), 12-61-903 (2) (c) and (3), the introductory portion to 12-61-903 (4), and 12-61-903 (4) (b), (5), (5.5) (c), (6), (7), (8), (9), (10), (11), and (12), Colorado Revised Statutes, are amended to read:

**12-61-903. License required - rules.** (1) (a) On or after August 5, 2009, unless licensed by the ~~director~~ BOARD, an individual shall not originate a mortgage, offer to originate a mortgage, act as a mortgage loan originator, or offer to act as a mortgage loan originator. On or after ~~July 31, 2010~~ DECEMBER 31, 2010, unless licensed by the ~~director~~ BOARD and registered with the nationwide mortgage licensing system and registry as a state-licensed loan originator, an individual shall not originate or offer to originate a mortgage or act or offer to act as a mortgage loan originator.

(b) On and after January 1, 2010, a licensed mortgage loan originator shall apply for license renewal in accordance with subsection (4) of this section every calendar year as determined by the ~~director~~ BOARD by rule.

(2) An applicant for initial licensing as a mortgage loan originator shall submit to the ~~director~~ BOARD the following:

(c) The application fee established by the ~~director~~ BOARD in accordance with section 12-61-908.

(3) (a) In addition to the requirements imposed by subsection (2) of this section, on or after August 5, 2009, each individual applicant for initial licensing as a mortgage loan originator shall have satisfactorily completed a mortgage lending fundamentals course approved by the ~~director~~ BOARD and consisting of at least nine hours of instruction in subjects related to mortgage lending. In addition, the applicant shall have satisfactorily completed a written examination approved by the ~~director~~ BOARD.

(b) The ~~director~~ BOARD may contract with one or more independent testing services to develop, administer, and grade the examinations required by paragraph (a) of this subsection (3) and to maintain and administer licensee records. The contract may allow the testing service to recover from applicants its costs incurred in connection with these functions. The ~~director~~ BOARD may contract separately for these functions and may allow the costs to be collected by a single contractor for distribution to other contractors.

(c) The ~~director~~ BOARD may publish reports summarizing statistical information prepared by the nationwide mortgage licensing system and registry relating to mortgage loan originator examinations.

(4) An applicant for license renewal shall submit to the ~~director~~ BOARD the following:

(b) The renewal fee established by the ~~director~~ BOARD in accordance with section 12-61-908.

(5) (a) Prior to submitting an application for a license, an applicant shall submit a set of fingerprints to the Colorado bureau of investigation. Upon receipt of the applicant's fingerprints, the Colorado bureau of investigation shall use the fingerprints to conduct a state and national criminal history record check using records of the Colorado bureau of investigation and the federal bureau of investigation. All costs arising from such criminal history record check shall be

borne by the applicant and shall be paid when the set of fingerprints is submitted. Upon completion of the criminal history record check, the bureau shall forward the results to the ~~director~~ BOARD. The ~~director~~ BOARD may acquire a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

(b) If the ~~director~~ BOARD determines that the criminal background check provided by the nationwide mortgage licensing system and registry is a sufficient method of screening license applicants to protect Colorado consumers, the ~~director~~ BOARD may, by rule, authorize the use of that criminal background check instead of the criminal history record check otherwise required by this subsection (5).

(5.5) (c) The ~~director~~ BOARD may acquire a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

(6) Before granting a license to an applicant, the ~~director~~ BOARD shall require the applicant to post a bond as required by section 12-61-907.

(7) The ~~director~~ BOARD shall issue or deny a license within sixty days after:

(a) The applicant has submitted the requisite information to the ~~director~~ BOARD and the nationwide mortgage licensing system and registry, including, but not limited to, the completed application, the application fee, and proof that the applicant has posted a surety bond and obtained errors and omissions insurance; and

(b) The ~~director~~ BOARD receives the completed criminal history record check and all other relevant information or documents necessary to reasonably ascertain facts underlying the applicant's criminal history.

(8) (a) The ~~director~~ BOARD may require, as a condition of license renewal on or after January 1, 2009, continuing education of licensees for the purpose of enhancing the professional competence and professional responsibility of all licensees.

(b) Continuing professional education requirements shall be determined by the ~~director~~ BOARD by rule; except that licensees shall be required to complete at least eight credit hours of continuing education each year. The ~~director~~ BOARD may contract with one or more independent service providers to develop, review, or approve continuing education courses. The contract may allow the independent service provider to recover from licensees its costs incurred in connection with these functions. The ~~director~~ BOARD may contract separately for these functions and may allow the costs to be collected by a single contractor for distribution to other contractors.

(9) (a) The ~~director~~ BOARD may require contractors and prospective contractors for services under subsections (3) and (8) of this section to submit, for the ~~director's~~ BOARD'S review and approval, information regarding the contents and materials of proposed courses and other documentation reasonably necessary to further the purposes of this section.

(b) The ~~director~~ BOARD may set fees for the initial and continuing review of courses for which credit hours will be granted. The initial filing fee for review of materials shall not exceed five hundred dollars, and the fee for continued review shall not exceed two hundred fifty dollars per year per course offered.

(10) The ~~director~~ BOARD may adopt reasonable rules to implement this section. The ~~director~~ BOARD may adopt rules necessary to implement provisions required in the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5101 et seq., and for participation in the nationwide mortgage licensing system and registry.

(11) In order to fulfill the purposes of this part 9, the ~~director~~ BOARD may establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this part 9.

(12) The ~~director~~ BOARD may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from or distributing information to the department of justice, a government agency, or any other source.

**SECTION 6.** Part 9 of article 61 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**12-61-903.1. Registration required - rules.** (1) ON OR AFTER JANUARY 1, 2011, EACH MORTGAGE COMPANY SHALL REGISTER WITH THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY, UNLESS EXEMPTED BY RULE BY THE BOARD, AND SHALL RENEW SUCH REGISTRATION EACH CALENDAR YEAR BASED ON THE FOLLOWING CRITERIA:

(a) (I) THE MORTGAGE COMPANY IS LEGALLY OPERATING IN THE STATE OF COLORADO IN ACCORDANCE WITH STANDARDS DETERMINED AND ADMINISTERED BY THE COLORADO SECRETARY OF STATE; AND

(II) THE MORTGAGE COMPANY IS NOT LEGALLY BARRED FROM OPERATING IN COLORADO.

(b) SOLE PROPRIETORS, GENERAL PARTNERSHIPS, AND OTHER MORTGAGE COMPANIES NOT OTHERWISE REQUIRED TO REGISTER WITH THE SECRETARY OF STATE SHALL REGISTER USING A TRADE NAME.

**SECTION 7.** The introductory portion to 12-61-903.3 (1) and 12-61-903.3 (1) (b), (1) (c), and (1) (e), Colorado Revised Statutes, are amended to read:

**12-61-903.3. License or registration inactivation.** (1) The ~~director~~ BOARD may inactivate a state license or a registration with the nationwide mortgage licensing system and registry when a licensee has failed to:

(b) Comply with the errors and omissions insurance requirement in section 12-61-903.5 or any rule of the ~~director~~ BOARD that directly or indirectly addresses errors and omissions insurance requirements;

(c) Maintain current contact information, surety bond information, or errors and omissions insurance information as required by this part 9 or by any rule of the ~~director~~ BOARD that directly or indirectly addresses such requirements;

(e) Comply with any of the education or testing requirements set forth in this part 9 or in any rule of the ~~director~~ BOARD that directly or indirectly addresses education or testing requirements; or

**SECTION 8.** 12-61-903.5 (2), Colorado Revised Statutes, is amended to read:

**12-61-903.5. Errors and omissions insurance - duties of the board - certificate of coverage - when required - group plan made available - effect.**

(2) The ~~director~~ BOARD shall determine the terms and conditions of coverage required under this section, including the minimum limits of coverage, the permissible deductible, and permissible exemptions. Each licensee subject to the requirements of this section shall maintain evidence of coverage, in a manner satisfactory to the ~~director~~ BOARD, demonstrating continuing compliance with the required terms.

**SECTION 9.** 12-61-903.7 (1) (b) and (2), Colorado Revised Statutes, are amended to read:

**12-61-903.7. License renewal.** (1) In order for a licensed mortgage loan originator to renew a license issued pursuant to this part 9, the mortgage loan originator shall:

(b) Satisfy the annual continuing education requirements set forth in section 12-61-903 (8) and in rules adopted by the ~~director~~ BOARD; and

(2) If a licensed mortgage loan originator fails to satisfy the requirements of subsection (1) of this section for license renewal, the mortgage loan originator's license shall expire. The ~~director~~ BOARD shall adopt rules to establish procedures for the reinstatement of an expired license consistent with the standards established by the nationwide mortgage licensing system and registry.

**SECTION 10.** 12-61-904 (1) (a), (1) (b), and (1) (c), Colorado Revised Statutes, are amended to read:

**12-61-904. Exemptions.** (1) Except as otherwise provided in section 12-61-911, this part 9 shall not apply to the following:

(a) ~~Employees of an agency of the federal government, of the Colorado government, or of any of Colorado's political subdivisions;~~

(b) ~~An owner of real property who offers credit secured by a mortgage or deed of trust on the property sold~~ AN INDIVIDUAL WHO ONLY OFFERS OR NEGOTIATES TERMS OF A RESIDENTIAL MORTGAGE LOAN SECURED BY A DWELLING THAT SERVED AS THE INDIVIDUAL'S RESIDENCE;

(c) ~~A bank, savings bank, savings and loan association, building and loan association, industrial bank, industrial loan company, credit union, or bank or~~

~~savings association holding company organized under the laws of any state, the District of Columbia, a territory or protectorate of the United States, or the United States, subject to regulation and supervision by a federal banking agency, or an operating subsidiary or employee or exclusive agent of any of such entities, including, without limitation, a subsidiary that is owned or controlled by a depository institution~~ A BANK AND A SAVINGS ASSOCIATION AS THESE TERMS ARE DEFINED IN THE "FEDERAL DEPOSIT INSURANCE ACT", A SUBSIDIARY THAT IS OWNED AND CONTROLLED BY A BANK OR SAVINGS ASSOCIATION, EMPLOYEES OF A BANK OR SAVINGS ASSOCIATION, EMPLOYEES OF A SUBSIDIARY THAT IS OWNED AND CONTROLLED BY A BANK OR SAVINGS ASSOCIATION, CREDIT UNIONS, AND EMPLOYEES OF CREDIT UNIONS;

**SECTION 11.** 12-61-904.5 (2), Colorado Revised Statutes, is amended to read:

**12-61-904.5. Originator's relationship to borrower - rules.** (2) For purposes of implementing subsection (1) of this section, the ~~director~~ BOARD may adopt rules defining what constitutes a reasonable, tangible net benefit to the borrower.

**SECTION 12.** The introductory portion to 12-61-905 (1), 12-61-905 (1) (a), (1) (g), (1) (k), (1) (l), (2), (3), (4), (5) (b), (6) (a), (6) (b), and (7) (a), the introductory portion to 12-61-905 (7) (b), and 12-61-905 (7) (c), (8), (9) (a), and (10), Colorado Revised Statutes, are amended to read:

**12-61-905. Powers and duties of the board.** (1) The ~~director~~ BOARD may deny an application for a license, refuse to renew, or revoke the license of an applicant or licensee who has:

(a) Filed an application with the ~~director~~ BOARD containing material misstatements of fact or omitted any disclosure required by this part 9;

(g) Had a mortgage loan originator license or similar license revoked in any ~~other~~ jurisdiction; except that a revocation that was subsequently formally nullified shall not be deemed a revocation for purposes of this section;

(k) Not completed the prelicense education requirements set forth in section 12-61-903 and any applicable rules of the ~~director~~ BOARD; or

(l) Not passed a written examination that meets the requirements set forth in section 12-61-903 and any applicable rules of the ~~director~~ BOARD.

(2) The ~~director~~ BOARD may investigate the activities of a licensee or other person that present grounds for disciplinary action under this part 9 or that violate section 12-61-910 (1).

(3) (a) If the ~~director~~ BOARD has reasonable grounds to believe that a mortgage loan originator is no longer qualified under subsection (1) of this section, the ~~director~~ BOARD may summarily suspend the mortgage loan originator's license pending a hearing to revoke the license. A summary suspension shall conform to article 4 of title 24, C.R.S.

(b) The ~~director~~ BOARD shall suspend the license of a mortgage loan originator

who fails to maintain the bond required by section 12-61-907 until the licensee complies with such section.

(4) The ~~director~~ BOARD or an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., shall conduct disciplinary hearings concerning mortgage loan originators AND MORTGAGE COMPANIES. Such hearings shall conform to article 4 of title 24, C.R.S.

(5) (b) If the ~~director~~ BOARD or an administrative law judge determines that an application contained a misstatement of fact or omitted a required disclosure due to an unintentional error, the ~~director~~ BOARD shall allow the applicant to correct the application. Upon receipt of the corrected and completed application, the ~~director~~ BOARD or administrative law judge shall not bar the applicant from being licensed on the basis of the unintentional misstatement or omission.

(6) (a) The ~~director~~ BOARD or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing or investigation conducted by the ~~director~~ BOARD or an administrative law judge. The ~~director~~ BOARD may request any information relevant to the investigation, including, but not limited to, independent credit reports obtained from a consumer reporting agency described in the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681a (p).

(b) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed witness resides or conducts business may issue an order requiring the witness to appear before the ~~director~~ BOARD or administrative law judge; produce the relevant papers, books, records, documentary evidence, testimony, or materials in question; or both. Failure to obey the order of the court may be punished as a contempt of court. The ~~director~~ BOARD or an administrative law judge may apply for such order.

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

(b) The ~~director~~ BOARD, upon ~~his or her~~ ITS own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any licensee or any individual who assumes to act in such capacity within the state. In addition to any other penalty that may be imposed pursuant to this part 9, any individual 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~~ BOARD as follows:

(c) All fines collected pursuant to this subsection (7) shall be transferred to the state treasurer, who shall credit such moneys to the mortgage COMPANY AND loan originator licensing cash fund created in section 12-61-908.

(8) The ~~director~~ BOARD shall keep records of the individuals licensed as mortgage loan originators and of disciplinary proceedings. The records kept by the ~~director~~ BOARD shall be open to public inspection in a reasonable time and manner

determined by the ~~director~~ BOARD.

(9) (a) The ~~director~~ BOARD shall maintain a system, which may include, without limitation, a hotline or web site, that gives consumers a reasonably easy method for making complaints about a mortgage loan originator.

(10) The ~~director~~ BOARD shall promulgate rules to allow licensed mortgage loan originators to hire unlicensed mortgage loan originators under temporary licenses. If an unlicensed mortgage loan originator has initiated the application process for a license, he or she shall be assigned a temporary license for a reasonable period until a license is approved or denied. The licensed mortgage loan originator who employs an unlicensed mortgage loan originator shall be held responsible under all applicable provisions of law, including without limitation this part 9 and section 38-40-105, C.R.S., for the actions of the unlicensed mortgage loan originator to whom a temporary license has been assigned under this subsection (10).

**SECTION 13.** Part 9 of article 61 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**12-61-905.1. Powers and duties of the board over mortgage companies - fines - rules.** (1) WITH RESPECT TO MORTGAGE COMPANIES, THE BOARD MAY DENY AN APPLICATION FOR REGISTRATION; REFUSE TO RENEW, SUSPEND, OR REVOKE THE REGISTRATION; ENTER CEASE-AND-DESIST ORDERS; AND IMPOSE FINES AS SET FORTH IN THIS SECTION AS FOLLOWS:

(a) IF THE BOARD HAS REASONABLE CAUSE TO BELIEVE A PERSON IS ACTING WITHOUT A LICENSE OR REGISTRATION;

(b) IF THE MORTGAGE COMPANY FAILS TO MAINTAIN POSSESSION, FOR FUTURE USE OR INSPECTION BY AN AUTHORIZED REPRESENTATIVE OF THE BOARD, FOR A PERIOD OF FOUR YEARS, OF THE DOCUMENTS OR RECORDS PRESCRIBED BY THE RULES OF THE BOARD OR TO PRODUCE SUCH DOCUMENTS OR RECORDS UPON REASONABLE REQUEST BY THE BOARD OR BY AN AUTHORIZED REPRESENTATIVE OF THE BOARD;

(c) IF THE MORTGAGE COMPANY EMPLOYS OR ACTS THROUGH INDIVIDUALS SUBJECT TO ITS CONTROL WHO ARE UNLICENSED AT THE TIME OF HIRE AND NOT IN THE PROCESS OF BECOMING LICENSED, WHO ARE REQUIRED TO BE LICENSED PURSUANT TO THIS PART 9, OR IF THE MORTGAGE COMPANY, AFTER NOTICE, CONTINUES TO EMPLOY OR ACT THROUGH INDIVIDUALS SUBJECT TO ITS CONTROL WHOSE REQUIRED LICENSES ARE NOT VALID; OR

(d) IF THE MORTGAGE COMPANY DIRECTS, MAKES, OR CAUSES TO BE MADE, IN ANY MANNER, A FALSE OR DECEPTIVE STATEMENT OR REPRESENTATION WITH REGARD TO THE RATES, POINTS, OR OTHER FINANCING TERMS OR CONDITIONS FOR A RESIDENTIAL MORTGAGE LOAN, ENGAGES IN BAIT AND SWITCH ADVERTISING AS THAT TERM IS USED IN SECTION 6-1-105 (1) (n), C.R.S., OR VIOLATES ANY RULE OF THE BOARD THAT DIRECTLY OR INDIRECTLY ADDRESSES ADVERTISING REQUIREMENTS.

(2) (a) THE BOARD UPON ITS OWN MOTION OR UPON THE COMPLAINT IN WRITING OF ANY PERSON MAY INVESTIGATE THE ACTIVITIES OF ANY REGISTERED MORTGAGE COMPANY OR ANY MORTGAGE COMPANY THAT IS ACTING IN A CAPACITY THAT

REQUIRES REGISTRATION PURSUANT TO THIS PART 9.

(b) THE BOARD MAY FINE A MORTGAGE COMPANY THAT HAS VIOLATED THIS SECTION OR ANY RULES PROMULGATED PURSUANT TO THIS SECTION AS FOLLOWS:

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

(II) IN A SECOND OR SUBSEQUENT ADMINISTRATIVE PROCEEDING, A FINE NOT IN EXCESS OF TWO THOUSAND DOLLARS PER ACT OR OCCURRENCE.

(c) ALL FINES COLLECTED PURSUANT TO THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT SUCH MONEYS TO THE MORTGAGE COMPANY AND LOAN ORIGINATOR LICENSING CASH FUND CREATED IN SECTION 12-61-908.

(3) THE BOARD MAY ADOPT REASONABLE RULES FOR IMPLEMENTING THIS SECTION.

(4) NOTHING IN THIS SECTION AUTOMATICALLY IMPUTES A VIOLATION TO THE MORTGAGE COMPANY IF A LICENSED AGENT OR EMPLOYEE, OR AN INDIVIDUAL AGENT OR EMPLOYEE WHO IS REQUIRED TO BE LICENSED, VIOLATES ANY OTHER PROVISION OF THIS PART 9.

**SECTION 14.** The introductory portion to 12-61-905.5 (1) and 12-61-905.5 (1) (d), (1) (h), (1) (i), (1) (j), (1) (k), (1) (m), (1) (p), (3), (5), (6), (7), (8) (a), and (9), Colorado Revised Statutes, are amended to read:

**12-61-905.5. Disciplinary actions - grounds - procedures - rules.** (1) The ~~director~~ BOARD, upon ~~his or her~~ ITS own motion ~~may, and,~~ OR upon the complaint in writing of any person, ~~shall~~ MAY investigate the activities of any mortgage loan originator. The ~~director~~ BOARD has the power to impose an administrative fine in accordance with section 12-61-905, deny a license, censure a licensee, place the licensee on probation and set the terms of probation, order restitution, order the payment of actual damages, or suspend or revoke a license when the ~~director~~ BOARD finds that the licensee or applicant has performed, is performing, or is attempting to perform any of the following acts:

(d) Violating any provision of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S., and, if the licensee has been assessed a civil or criminal penalty or been subject to an injunction under said act, the ~~director~~ BOARD shall revoke the licensee's license;

(h) Failing to account for or to remit, within a reasonable time, any moneys coming into his or her possession that belong to others, whether acting as a mortgage loan originator, real estate broker, salesperson, or otherwise, and failing to keep records relative to said moneys, which records shall contain such information as may be prescribed by the rules of the ~~director~~ BOARD relative thereto and shall be subject to audit by the ~~director~~ BOARD;

(i) Converting funds of others, diverting funds of others without proper

authorization, commingling funds of others with the licensee's own funds, or failing to keep such funds of others in an escrow or a trustee account with a bank or recognized depository in this state, which account may be any type of checking, demand, passbook, or statement account insured by an agency of the United States government, and to ~~so~~ keep records relative to the deposit that contain such information as may be prescribed by the rules of the ~~director~~ BOARD relative thereto, which records shall be subject to audit by the ~~director~~ BOARD;

(j) Failing to provide the parties to a residential mortgage loan transaction with such information as may be prescribed by the rules of the ~~director~~ BOARD;

(k) UNLESS AN EMPLOYEE OF A DULY REGISTERED MORTGAGE COMPANY, failing to maintain possession, for future use or inspection by an authorized representative of the ~~director~~ BOARD, for a period of four years, of the documents or records prescribed by the rules of the ~~director~~ BOARD or to produce such documents or records upon reasonable request by the ~~director~~ BOARD or by an authorized representative of the ~~director~~ BOARD;

(m) Disregarding or violating any provision of this part 9 or ~~of~~ any rule adopted by the ~~director~~ BOARD pursuant to this part 9; violating any lawful orders of the ~~director~~ BOARD; or aiding and abetting a violation of any rule, order of the ~~director~~ BOARD, or provision of this part 9;

(p) Failing to immediately notify the ~~director~~ BOARD in writing of a conviction, plea, or violation pursuant to paragraph (n) or (o) of this subsection (1);

(3) Upon request of the ~~director~~ BOARD, when any mortgage loan originator is a party to any suit or proceeding, either civil or criminal, arising out of any transaction involving a residential mortgage loan and the mortgage loan originator participated in the transaction in his or her capacity as a licensed mortgage loan originator, the mortgage loan originator shall supply to the ~~director~~ BOARD a copy of the complaint, indictment, information, or other initiating pleading and the answer filed, if any, and advise the ~~director~~ BOARD of the disposition of the case and of the nature and amount of any judgment, verdict, finding, or sentence that may be made, entered, or imposed therein.

(5) Complaints of record in the office of the ~~director~~ BOARD and the results of staff investigations ~~may, in the discretion of the director, be closed to public inspection, except as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee~~ SHALL BE CLOSED TO PUBLIC INSPECTION DURING THE INVESTIGATORY PERIOD AND UNTIL DISMISSED OR UNTIL NOTICE OF HEARING AND CHARGES ARE SERVED ON A LICENSEE, EXCEPT AS PROVIDED BY COURT ORDER. COMPLAINTS OF RECORD THAT ARE DISMISSED BY THE BOARD AND THE RESULTS OF INVESTIGATION OF SUCH COMPLAINTS SHALL BE CLOSED TO PUBLIC INSPECTION, EXCEPT AS PROVIDED BY COURT ORDER. THE BOARD'S RECORDS SHALL BE SUBJECT TO SECTIONS 24-72-203 AND 24-72-204, C.R.S., REGARDING PUBLIC RECORDS AND CONFIDENTIALITY.

(6) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the ~~director~~ BOARD, does not warrant formal action by the ~~director~~ BOARD but that should not be dismissed as being without merit, the ~~director~~

BOARD may send a letter of admonition by certified mail, return receipt requested, to the licensee against whom a complaint was made and a copy thereof OF THE LETTER OF ADMONITION to the person making the complaint, but the letter shall advise the licensee that the licensee has the right to request in writing, within twenty days after proven receipt, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(7) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the mortgage COMPANY AND loan originator licensing cash fund created in section 12-61-908.

(8) (a) The ~~director~~ BOARD shall not consider an application for licensure from an individual whose license has been revoked until two years after the date of revocation.

(9) When the ~~director~~ BOARD or the division becomes aware of facts or circumstances that fall within the jurisdiction of a criminal justice or other law enforcement authority upon investigation of the activities of a licensee, the ~~director~~ BOARD or division shall, in addition to the exercise of its authority under this part 9, refer and transmit such information, which may include originals or copies of documents and materials, to one or more criminal justice or other law enforcement authorities for investigation and prosecution as authorized by law.

**SECTION 15.** 12-61-905.6, Colorado Revised Statutes, is amended to read:

**12-61-905.6. Hearing - administrative law judge - review - rules.** (1) Except as otherwise provided in this section, all proceedings before the ~~director~~ BOARD with respect to disciplinary actions and denial of licensure under this part 9, at the discretion of the ~~director~~ BOARD, may be conducted by an authorized representative of the ~~director~~ BOARD or an administrative law judge pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(2) Proceedings shall be held in the county where the ~~director~~ BOARD has ~~his or her~~ ITS office or in such other place as the ~~director~~ BOARD may designate. If the licensee is employed by another licensed mortgage loan originator or by a real estate broker, the ~~director~~ BOARD shall also notify the licensee's employer by mailing, by first-class mail, a copy of the written notice required under section 24-4-104 (3), C.R.S., to the employer's last-known business address.

(3) The ~~director~~ BOARD, an authorized representative of the ~~director~~ BOARD, or an administrative law judge shall conduct all hearings for denying, suspending, or revoking a license or certificate on behalf of the ~~director~~ BOARD, subject to appropriations made to the department of personnel. Each administrative law judge shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S. The administrative law judge shall conduct the hearing in accordance with sections 24-4-104 and 24-4-105, C.R.S. No license shall be denied, suspended, or revoked until the ~~director~~ BOARD has made ~~his or her~~ ITS decision.

(4) The decision of the ~~director~~ BOARD in any disciplinary action or denial of

licensure under this section is subject to judicial review by the court of appeals. In order to effectuate the purposes of this part 9, the ~~director~~ BOARD has the power to promulgate rules pursuant to article 4 of title 24, C.R.S.

(5) In a judicial review proceeding, the court may stay the execution or effect of any final order of the ~~director~~ BOARD; but a hearing shall be held affording the parties an opportunity to be heard for the purpose of determining whether the public health, safety, and welfare would be endangered by staying the ~~director's~~ BOARD'S order. If the court determines that the order should be stayed, it shall also determine at the hearing the amount of the bond and adequacy of the surety, which bond shall be conditioned upon the faithful performance by such petitioner of all obligations as a mortgage loan originator and upon the prompt payment of all damages arising from or caused by the delay in the taking effect of or enforcement of the order complained of and for all costs that may be assessed or required to be paid in connection with such proceedings.

(6) In any hearing conducted by the ~~director~~ BOARD or an authorized representative of the ~~director~~ BOARD in which there is a possibility of the denial, suspension, or revocation of a license because of the conviction of a felony or of a crime involving moral turpitude, the ~~director~~ BOARD or ~~his or her~~ ITS authorized representative shall be governed by section 24-5-101, C.R.S.

**SECTION 16.** 12-61-905.7 (1), Colorado Revised Statutes, is amended to read:

**12-61-905.7. Subpoena - misdemeanor.** (1) The ~~director~~ BOARD or the administrative law judge appointed for hearings may issue subpoenas, as described in section 12-61-905 (6), which shall be served in the same manner as subpoenas issued by district courts and shall be issued without discrimination between public or private parties requiring the attendance of witnesses or the production of documents at hearings.

**SECTION 17.** 12-61-906, Colorado Revised Statutes, is amended to read:

**12-61-906. Immunity.** A person participating in good faith in the filing of a complaint or report or participating in an investigation or hearing before the ~~director~~ BOARD or an administrative law judge pursuant to this part 9 shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.

**SECTION 18.** 12-61-907 (1) and (3), Colorado Revised Statutes, are amended to read:

**12-61-907. Bond required.** (1) Before receiving a license, an applicant shall post with the ~~director~~ BOARD a surety bond in the amount of twenty-five thousand dollars or such other amount as may be prescribed by the ~~director~~ BOARD by rule. A licensed mortgage loan originator shall maintain the required bond at all times.

(3) The surety bond shall require the surety to provide notice to the ~~director~~ BOARD within thirty days if payment is made from the surety bond or if the bond is cancelled.

**SECTION 19.** 12-61-908, Colorado Revised Statutes, is amended to read:

**12-61-908. Fees - cash fund - created.** (1) The ~~director~~ BOARD may set the fees for issuance and renewal of licenses AND REGISTRATIONS under this part 9. The fees shall be set in amounts that offset the direct and indirect costs of implementing this part 9 and section 38-40-105, C.R.S. The moneys collected pursuant to this section shall be transferred to the state treasurer, who shall credit them to the mortgage COMPANY AND loan originator licensing cash fund.

(2) There is hereby created in the state treasury the mortgage COMPANY AND loan originator licensing cash fund. Moneys in the fund shall be spent only to implement this part 9 and section 38-40-105, C.R.S., and shall not revert to the general fund at the end of the fiscal year. The fund shall be subject to annual appropriation by the general assembly.

(3) For the 2009-10 fiscal year, the division is authorized to expend up to one hundred twelve thousand dollars or such other amount as may be appropriated by the general assembly from the mortgage COMPANY AND loan originator licensing cash fund for purposes of paying the development costs assessed by the conference of state bank supervisors, or its successor organization, for participating in the nationwide mortgage licensing system and registry. However, the ~~director~~ BOARD shall use ~~his or her~~ ITS discretion in determining whether expenditure of these moneys is necessary for compliance with the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" or participation in the nationwide mortgage licensing system and registry.

**SECTION 20.** 12-61-910 (3), Colorado Revised Statutes, is amended to read:

**12-61-910. Violations - injunctions.** (3) The ~~director~~ BOARD may request that an action be brought in the name of the people of the state of Colorado by the attorney general or the district attorney of the district in which the violation is alleged to have occurred to enjoin a person from engaging in or continuing the violation or from doing any act that furthers the violation. In such an action, an order or judgment may be entered awarding such preliminary or final injunction as is deemed proper by the court. The notice, hearing, or duration of an injunction or restraining order shall be made in accordance with the Colorado rules of civil procedure.

**SECTION 21.** 12-61-910.3, Colorado Revised Statutes, is amended to read:

**12-61-910.3. Rule-making authority.** The ~~director shall have~~ BOARD HAS the authority to promulgate rules as necessary to enable the ~~director~~ BOARD to carry out the ~~director's~~ BOARD'S duties under this part 9.

**SECTION 22.** 12-61-910.4, Colorado Revised Statutes, is amended to read:

**12-61-910.4. Nontraditional mortgage products - consumer protections - rules - incorporation of federal interagency guidance.** The ~~director~~ BOARD shall adopt rules governing the marketing of nontraditional mortgage products by mortgage loan originators. In adopting such rules, the ~~director~~ 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 23.** 12-61-911 (1) (j), Colorado Revised Statutes, is amended to read:

**12-61-911. Prohibited conduct - fraud - misrepresentation - conflict of interest - rules.** (1) A mortgage loan originator, including a mortgage loan originator otherwise exempted from this part 9 by section 12-61-904 (1) (b), shall not:

(j) Fail to comply with any requirement of the federal "Truth in Lending Act", 15 U.S.C. sec. 1601 and Regulation Z, 12 CFR 226; the "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601 and Regulation X, 24 CFR 3500; the "Equal Credit Opportunity Act", 15 U.S.C. sec. 1691 and Regulation B, CFR 202.9, 202.11, and 202.12; Title V, Subtitle A of the financial modernization act of 1999 (known as the "Gramm-Leach-Bliley Act"), 12 U.S.C. secs. 6801 to 6809; the federal trade commission's privacy rules, 16 CFR 313-314, mandated by the "Gramm-Leach-Bliley Act"; the "Home Mortgage Disclosure Act of 1975", 12 U.S.C. sec. 2801 et seq. and Regulation C, home mortgage disclosure; the "Federal Trade Commission Act", 12 CFR 203, 15 U.S.C. sec. 45(a); the "Telemarketing and Consumer Fraud and Abuse Prevention Act", 15 U.S.C. secs. 6101 to 6108; and the federal trade commission telephone sales rule, 16 CFR 310, as amended, in any advertising of residential mortgage loans or any other applicable mortgage loan originator activities covered by the acts. The ~~director~~ BOARD may adopt rules requiring mortgage loan originators to comply with other applicable federal statutes and regulations.

**SECTION 24.** 12-61-912 (3) (b), Colorado Revised Statutes, is amended to read:

**12-61-912. Dual status as real estate broker - requirements.** (3) (b) This subsection (3) shall not require a real estate broker or salesperson licensed under part 1 of this article who also acts as a mortgage loan originator to maintain a physical separation within the office facility for the conduct of its real estate broker or sales and mortgage loan originator activities if the ~~director~~ BOARD determines that maintaining such physical separation would constitute an undue financial hardship upon the mortgage loan originator and is unnecessary for the protection of the public.

**SECTION 25.** 12-61-914 (2) (d) and (4) (b), Colorado Revised Statutes, are amended to read:

**12-61-914. Written disclosure of fees and costs - contents - limits on fees - lock-in agreement terms - rules.** (2) The written disclosure shall contain the following information:

(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 ~~director~~ BOARD that the disclosed interest rate and terms are subject to change;

(4) (b) If the borrower's closing costs on the final settlement statement, excluding prepaid escrowed costs of ownership as defined by the ~~director~~ 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 26.** 12-61-916 (2), Colorado Revised Statutes, is amended to read:

**12-61-916. Confidentiality.** (2) The ~~director~~ BOARD may enter into agreements with other government agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing government agencies as established by rule.

**SECTION 27.** 12-61-917, Colorado Revised Statutes, is amended to read:

**12-61-917. Mortgage call reports - reports of violations.** (1) The ~~director~~ BOARD may require each licensee OR REGISTRANT to submit to the nationwide mortgage licensing system and registry mortgage call reports, which shall be in the form and contain the information required by the nationwide mortgage licensing system and registry.

(2) The ~~director~~ BOARD may report violations of this part 9, enforcement actions, and other relevant information to the nationwide mortgage licensing system and registry.

**SECTION 28.** 12-61-918, Colorado Revised Statutes, is amended to read:

**12-61-918. Unique identifier - clearly displayed.** ~~Any licensee originating a residential mortgage loan~~ EACH PERSON REQUIRED TO BE LICENSED OR REGISTERED shall show his or her OR THE ENTITY'S unique identifier clearly on all residential mortgage loan application forms ~~solicitations, or advertisements, including business cards or web sites,~~ and any other documents as specified by the ~~director~~ BOARD by rule or order.

**SECTION 29.** 24-1-122 (2) (k), Colorado Revised Statutes, is amended to read:

**24-1-122. Department of regulatory agencies - creation.** (2) The department of regulatory agencies shall consist of the following divisions:

(k) (I) Division of real estate, the head of which shall be the ~~division~~ director OF THE DIVISION. THE DIVISION OF REAL ESTATE AND THE DIRECTOR OF THE DIVISION, CREATED BY PART 1 OF ARTICLE 61 OF TITLE 12, C.R.S., SHALL EXERCISE THEIR POWERS AND PERFORM THEIR DUTIES AND FUNCTIONS UNDER THE DEPARTMENT OF REGULATORY AGENCIES AS IF THEY WERE TRANSFERRED TO THE DEPARTMENT BY A **TYPE 2** TRANSFER. The real estate commission, created by part 1 of article 61 of title 12, C.R.S., and its powers, duties, and functions are transferred by a **type 1** transfer to the department of regulatory agencies. ~~as the division of real estate.~~

(II) The division shall include the board of real estate appraisers, created by part 7 of article 61 of title 12, C.R.S., which shall exercise its powers and perform its duties and functions under the department of regulatory agencies as if the same were

transferred thereto by a **type 1** transfer. THE DIVISION SHALL ALSO INCLUDE THE BOARD OF MORTGAGE LOAN ORIGINATORS, CREATED BY SECTION 12-61-902.5. THE BOARD OF MORTGAGE LOAN ORIGINATORS SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES AND FUNCTIONS UNDER THE DEPARTMENT OF REGULATORY AGENCIES AS IF TRANSFERRED THERETO BY A **TYPE 1** TRANSFER.

**SECTION 30.** 12-61-919, Colorado Revised Statutes, is amended to read:

**12-61-919. Repeal of part.** (1) This part 9 is repealed, effective July 1, ~~2011~~ 2013.

(2) Prior to its repeal, the department of regulatory agencies shall review the licensing of mortgage loan originators AND THE REGISTRATION OF MORTGAGE COMPANIES in accordance with section 24-34-104, C.R.S. The department shall include in its review of mortgage loan originators AND MORTGAGE COMPANIES an analysis of the number and types of complaints made about mortgage loan originators AND MORTGAGE COMPANIES and whether the licensing of mortgage loan originators AND THE REGISTRATION OF MORTGAGE COMPANIES correlates with public protection from fraudulent activities in the residential mortgage loan industry.

**SECTION 31. Repeal.** 24-34-104 (42) (k), Colorado Revised Statutes, is repealed as follows:

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (42) The following agencies, functions, or both, shall terminate on July 1, 2011:

(k) ~~The licensing of mortgage loan originators pursuant to part 9 of article 61 of title 12, C.R.S.;~~

**SECTION 32.** 24-34-104 (44), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (44) The following agencies, functions, or both, shall terminate on July 1, 2013:

(p) THE LICENSING OF MORTGAGE LOAN ORIGINATORS AND THE REGISTRATION OF MORTGAGE COMPANIES PURSUANT TO PART 9 OF ARTICLE 61 OF TITLE 12, C.R.S.

**SECTION 33. Appropriation.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the mortgage company and loan originator licensing cash fund created in section 12-61-908 (2), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of registrations, for the fiscal year beginning July 1, 2010, the sum of fifteen thousand seven hundred eighty-two dollars (\$15,782) cash funds, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2010, the sum of six thousand four hundred seven dollars (\$6,407), 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 reappropriated funds received from the department of regulatory agencies out of the appropriation made in subsection (1) of this section.

**SECTION 34. Act subject to petition - effective date - applicability.** (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to acts occurring on or after the applicable effective date of this act.

Approved: May 26, 2010