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TITLE 12

DIVISION OF REAL ESTATE

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Draft Real Estate and Conservation Easement Provisions

ARTICLE 10
Real Estate

PART 1

COMMON DEFINITIONS

12-10-101. Definitions. AS USED IN THIS ARTICLE 10, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) **[Similar to 12-61-702 (1)]** (a) "APPRAISAL", "APPRAISAL REPORT", OR "REAL ESTATE APPRAISAL" MEANS A WRITTEN OR ORAL ANALYSIS, OPINION, OR CONCLUSION RELATING TO THE NATURE, QUALITY, VALUE, OR UTILITY OF SPECIFIED INTERESTS IN, OR ASPECTS OF, IDENTIFIED REAL ESTATE THAT IS TRANSMITTED TO THE CLIENT UPON THE COMPLETION OF AN ASSIGNMENT. THESE TERMS INCLUDE A VALUATION, WHICH IS AN OPINION OF THE VALUE OF REAL ESTATE, AND AN ANALYSIS, WHICH IS A GENERAL STUDY OF REAL ESTATE NOT SPECIFICALLY PERFORMED ONLY TO DETERMINE VALUE; EXCEPT THAT THE TERMS INCLUDE A VALUATION COMPLETED BY AN APPRAISER EMPLOYEE OF A COUNTY ASSESSOR AS DEFINED IN SECTION 39-1-102 (2).

(b) THE TERMS DO NOT INCLUDE AN ANALYSIS, VALUATION, OPINION, CONCLUSION, NOTATION, OR COMPILATION OF DATA BY AN OFFICER, DIRECTOR, OR REGULAR SALARIED EMPLOYEE OF A FINANCIAL INSTITUTION OR ITS AFFILIATE, MADE FOR INTERNAL USE ONLY BY THE FINANCIAL INSTITUTION OR AFFILIATE, CONCERNING AN INTEREST IN REAL ESTATE THAT IS OWNED OR HELD AS COLLATERAL BY THE FINANCIAL INSTITUTION OR AFFILIATE AND THAT IS NOT REPRESENTED OR DEEMED TO BE AN APPRAISAL EXCEPT TO THE FINANCIAL INSTITUTION, THE AGENCIES REGULATING THE FINANCIAL INSTITUTION, AND ANY SECONDARY MARKETS THAT PURCHASE REAL ESTATE SECURED LOANS. AN APPRAISAL PREPARED BY AN OFFICER, DIRECTOR, OR REGULAR SALARIED EMPLOYEE OF A FINANCIAL INSTITUTION WHO IS NOT LICENSED OR CERTIFIED UNDER THIS ARTICLE 10 SHALL CONTAIN A WRITTEN NOTICE THAT THE PREPARER IS NOT LICENSED OR CERTIFIED AS AN APPRAISER UNDER THIS ARTICLE 10.

<{***Before last session, DOR had indicated an interest in adding "CCIOA" and "common interest community" to the common definitions for the real estate article. With the repeal of part 10 concerning community association managers, I haven't added those definitions here. "Common interest community" is used elsewhere in the real estate article - in sections 12-61-101, 12-61-401, and 12-61-403, but in the first two instances, the definition of the term in title 38 is cross-referenced. Do you want to add the definition of "common interest community" here?***}>

(2) **[Similar to 12-61-401 (2)]** "DEVELOPER" MEANS ANY PERSON, AS DEFINED IN SECTION 2-4-401 (8), THAT PARTICIPATES AS OWNER, PROMOTER, OR SALES AGENT IN THE PROMOTION, SALE, OR LEASE OF A SUBDIVISION OR ANY PART THEREOF.

(3) **[Similar to 12-61-702 (7) and 12-61-902 (3)]** "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION OF REAL ESTATE.

(4) **[Similar to 12-61-702 (8) and 12-61-902 (4)]** "DIVISION" MEANS THE DIVISION OF REAL ESTATE.

(5) **[Similar to 12-61-101 (1.2) and 12-61-401 (2.5)]** "HOA" OR "HOMEOWNERS' ASSOCIATION" MEANS AN ASSOCIATION OR UNIT OWNERS' ASSOCIATION FORMED BEFORE, ON, OR AFTER JULY 1, 1992, AS PART OF A COMMON INTEREST COMMUNITY, AS DEFINED IN SECTION 38-33.3-103.

(6) "INDIVIDUAL" MEANS A NATURAL PERSON.

(7) **[Similar to 12-61-902 (6)]** (a) "MORTGAGE LOAN ORIGINATOR" MEANS AN INDIVIDUAL WHO:

(I) TAKES A RESIDENTIAL MORTGAGE LOAN APPLICATION; OR

(II) OFFERS OR NEGOTIATES TERMS OF A RESIDENTIAL MORTGAGE LOAN.

(b) "MORTGAGE LOAN ORIGINATOR" DOES NOT INCLUDE:

(I) AN INDIVIDUAL ENGAGED SOLELY AS A LOAN PROCESSOR OR UNDERWRITER;

(II) A PERSON THAT ONLY PERFORMS REAL ESTATE BROKERAGE OR SALES ACTIVITIES AND IS LICENSED OR REGISTERED PURSUANT TO PART 2 OF THIS ARTICLE 10, UNLESS THE PERSON IS COMPENSATED BY A MORTGAGE LENDER OR A MORTGAGE LOAN ORIGINATOR;

(III) A PERSON SOLELY INVOLVED IN EXTENSIONS OF CREDIT RELATING TO TIME SHARE PLANS, AS DEFINED IN 11 U.S.C. SEC. 101 (53D);

(IV) AN INDIVIDUAL WHO IS SERVICING A MORTGAGE LOAN; OR

(V) A PERSON THAT ONLY PERFORMS THE SERVICES AND ACTIVITIES OF A DEALER, AS DEFINED IN SECTION 24-32-3302.

(8) **[Similar to 12-61-602 (3) and 12-61-902 (7.5)]** "PERSON" MEANS A NATURAL PERSON, CORPORATION, COMPANY, LIMITED LIABILITY COMPANY, PARTNERSHIP, FIRM, ASSOCIATION, OR OTHER LEGAL ENTITY.

(9) **[Similar to 12-61-702 (11)]** (a) "REAL ESTATE APPRAISER" OR "APPRAISER" MEANS A PERSON WHO PROVIDES AN ESTIMATE OF THE NATURE, QUALITY, VALUE, OR UTILITY OF AN INTEREST IN, OR ASPECT OF, IDENTIFIED REAL ESTATE AND INCLUDES ONE WHO ESTIMATES VALUE AND WHO POSSESSES THE NECESSARY QUALIFICATIONS, ABILITY, AND EXPERIENCE TO EXECUTE OR DIRECT THE APPRAISAL OF REAL PROPERTY.

(b) "REAL ESTATE APPRAISER" DOES NOT INCLUDE:

(I) A PERSON WHO CONDUCTS APPRAISALS STRICTLY OF PERSONAL PROPERTY;

(II) A PERSON LICENSED AS A BROKER PURSUANT TO PART 2 OF THIS ARTICLE 10 WHO PROVIDES AN OPINION OF VALUE THAT IS NOT REPRESENTED AS AN APPRAISAL AND IS NOT USED FOR PURPOSES OF OBTAINING FINANCING;

(III) A PERSON LICENSED AS A CERTIFIED PUBLIC ACCOUNTANT PURSUANT TO ARTICLE 100 OF THIS TITLE 12, AND OTHERWISE REGULATED, AS LONG AS THE PERSON DOES NOT REPRESENT HIS OR HER OPINIONS OF VALUE FOR REAL ESTATE AS AN APPRAISAL;

(IV) A CORPORATION, ACTING THROUGH ITS OFFICERS OR REGULAR SALARIED EMPLOYEES, WHEN CONDUCTING A VALUATION OF REAL ESTATE PROPERTY RIGHTS OWNED, TO BE PURCHASED, OR SOLD BY THE CORPORATION;

(V) A PERSON WHO CONDUCTS APPRAISALS STRICTLY OF WATER RIGHTS OR OF MINERAL RIGHTS;

(VI) A RIGHT-OF-WAY ACQUISITION AGENT EMPLOYED BY A PUBLIC ENTITY WHO PROVIDES AN OPINION OF VALUE THAT IS NOT REPRESENTED AS AN APPRAISAL WHEN THE PROPERTY BEING VALUED IS TWENTY-FIVE THOUSAND DOLLARS OR LESS, AS PERMITTED BY FEDERAL LAW;

(VII) AN OFFICER, DIRECTOR, OR REGULAR SALARIED EMPLOYEE OF A FINANCIAL INSTITUTION OR ITS AFFILIATE WHO MAKES, FOR INTERNAL USE ONLY BY THE FINANCIAL INSTITUTION OR AFFILIATE, AN ANALYSIS, EVALUATION, OPINION, CONCLUSION, NOTATION, OR COMPILATION OF DATA WITH RESPECT TO AN APPRAISAL SO LONG AS THE PERSON DOES NOT MAKE A WRITTEN ADJUSTMENT OF THE APPRAISAL'S CONCLUSION AS TO THE VALUE OF THE SUBJECT REAL PROPERTY;

(VIII) AN OFFICER, DIRECTOR, OR REGULAR SALARIED EMPLOYEE OF A FINANCIAL INSTITUTION OR ITS AFFILIATE WHO MAKES AN INTERNAL ANALYSIS, VALUATION, OPINION, CONCLUSION, NOTATION, OR COMPILATION OF DATA CONCERNING AN INTEREST IN REAL ESTATE THAT IS OWNED OR HELD AS COLLATERAL BY THE FINANCIAL INSTITUTION OR ITS AFFILIATE; OR

(IX) A PERSON WHO REPRESENTS PROPERTY OWNERS AS AN ADVOCATE IN TAX OR VALUATION PROTESTS AND APPEALS PURSUANT TO TITLE 39.

(10) **[Similar to 12-61-101 (2)]** (a) "REAL ESTATE BROKER" OR "BROKER" MEANS ANY PERSON, FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, OR CORPORATION THAT, IN CONSIDERATION OF COMPENSATION BY FEE, COMMISSION, SALARY, OR ANYTHING OF VALUE OR WITH THE INTENTION OF RECEIVING OR COLLECTING SUCH COMPENSATION, ENGAGES IN OR OFFERS OR ATTEMPTS TO ENGAGE IN, EITHER DIRECTLY OR INDIRECTLY, BY A CONTINUING COURSE OF CONDUCT OR BY ANY SINGLE ACT OR TRANSACTION, ANY OF THE FOLLOWING ACTS:

(I) SELLING, EXCHANGING, BUYING, RENTING, OR LEASING REAL ESTATE, OR INTEREST THEREIN, OR IMPROVEMENTS AFFIXED THEREON;

(II) OFFERING TO SELL, EXCHANGE, BUY, RENT, OR LEASE REAL ESTATE, OR INTEREST THEREIN, OR IMPROVEMENTS AFFIXED THEREON;

(III) SELLING OR OFFERING TO SELL OR EXCHANGE AN EXISTING LEASE OF REAL ESTATE, OR INTEREST THEREIN, OR IMPROVEMENTS AFFIXED THEREON;

(IV) NEGOTIATING THE PURCHASE, SALE, OR EXCHANGE OF REAL ESTATE, OR INTEREST THEREIN, OR IMPROVEMENTS AFFIXED THEREON;

(V) LISTING, OFFERING, ATTEMPTING, OR AGREEING TO LIST REAL ESTATE, OR INTEREST THEREIN, OR IMPROVEMENTS AFFIXED THEREON FOR SALE, EXCHANGE, RENT, OR LEASE;

(VI) AUCTIONING OR OFFERING, ATTEMPTING, OR AGREEING TO AUCTION REAL ESTATE, OR INTEREST THEREIN, OR IMPROVEMENTS AFFIXED THEREON;

(VII) BUYING, SELLING, OFFERING TO BUY OR SELL, OR OTHERWISE DEALING IN OPTIONS ON REAL ESTATE, OR INTEREST THEREIN, OR IMPROVEMENTS AFFIXED THEREON, OR ACTING AS AN "OPTION DEALER";

(VIII) PERFORMING ANY OF THE FOREGOING ACTS AS AN EMPLOYEE OF, OR ON BEHALF OF, THE OWNER OF REAL ESTATE, OR INTEREST THEREIN, OR IMPROVEMENTS AFFIXED THEREON AT A SALARY OR FOR A FEE, COMMISSION, OR OTHER CONSIDERATION;

(IX) NEGOTIATING OR ATTEMPTING OR OFFERING TO NEGOTIATE

THE LISTING, SALE, PURCHASE, EXCHANGE, OR LEASE OF A BUSINESS OR BUSINESS OPPORTUNITY OR THE GOODWILL THEREOF OR ANY INTEREST THEREIN WHEN THE ACT OR TRANSACTION INVOLVES, DIRECTLY OR INDIRECTLY, ANY CHANGE IN THE OWNERSHIP OR INTEREST IN REAL ESTATE, OR IN A LEASEHOLD INTEREST OR ESTATE, OR IN A BUSINESS OR BUSINESS OPPORTUNITY THAT OWNS AN INTEREST IN REAL ESTATE OR IN A LEASEHOLD UNLESS THE ACT IS PERFORMED BY ANY BROKER-DEALER LICENSED UNDER THE PROVISIONS OF ARTICLE 51 OF TITLE 11, WHO IS ACTUALLY ENGAGED GENERALLY IN THE BUSINESS OF OFFERING, SELLING, PURCHASING, OR TRADING IN SECURITIES OR ANY OFFICER, PARTNER, SALESPERSON, EMPLOYEE, OR OTHER AUTHORIZED REPRESENTATIVE OR AGENT THEREOF; OR

(X) SOLICITING A FEE OR VALUABLE CONSIDERATION FROM A PROSPECTIVE TENANT FOR FURNISHING INFORMATION CONCERNING THE AVAILABILITY OF REAL PROPERTY, INCLUDING APARTMENT HOUSING THAT MAY BE LEASED OR RENTED AS A PRIVATE DWELLING, ABODE, OR PLACE OF RESIDENCE. ANY PERSON, FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, OR CORPORATION OR ANY EMPLOYEE OR AUTHORIZED AGENT THEREOF ENGAGED IN THE ACT OF SOLICITING A FEE OR VALUABLE CONSIDERATION FROM ANY PERSON OTHER THAN A PROSPECTIVE TENANT FOR FURNISHING INFORMATION CONCERNING THE AVAILABILITY OF REAL PROPERTY, INCLUDING APARTMENT HOUSING THAT MAY BE LEASED OR RENTED AS A PRIVATE DWELLING, ABODE, OR PLACE OF RESIDENCE, IS EXEMPT FROM THIS DEFINITION OF "REAL ESTATE BROKER" OR "BROKER". THIS EXEMPTION APPLIES ONLY IN RESPECT TO THE FURNISHING OF INFORMATION CONCERNING THE AVAILABILITY OF REAL PROPERTY.

(b) "REAL ESTATE BROKER" OR "BROKER" DOES NOT APPLY TO ANY OF THE FOLLOWING:

(I) ANY ATTORNEY-IN-FACT ACTING WITHOUT COMPENSATION UNDER A POWER OF ATTORNEY, DULY EXECUTED BY AN OWNER OF REAL ESTATE, AUTHORIZING THE CONSUMMATION OF A REAL ESTATE TRANSACTION;

(II) ANY PUBLIC OFFICIAL IN THE CONDUCT OF HIS OR HER OFFICIAL DUTIES;

(III) ANY RECEIVER, TRUSTEE, ADMINISTRATOR, CONSERVATOR, EXECUTOR, OR GUARDIAN ACTING UNDER PROPER AUTHORIZATION;

(IV) ANY INDIVIDUAL, FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR ASSOCIATION ACTING PERSONALLY, <{***Other than the individual, who is "acting personally"?***}> OR A CORPORATION ACTING THROUGH ITS OFFICERS OR REGULAR SALARIED EMPLOYEES, ON BEHALF OF THAT PERSON OR ON ITS OWN BEHALF AS PRINCIPAL IN ACQUIRING OR IN NEGOTIATING TO ACQUIRE ANY INTEREST IN REAL ESTATE; <{***Here, and in subsections (12)(b)(VI) and (12)(b)(XVI), I recommend changing "person" to "individual" to properly distinguish the term from the subsequent terms because "person" will be defined for all of article 10 to include corporations, partnerships, etc. I have made similar changes in other parts as well, or have added "natural" before "person" if "person" is listed in a series such as "person, firm, partnership, limited liability company ...".***}>

(V) AN ATTORNEY-AT-LAW IN CONNECTION WITH HIS OR HER REPRESENTATION OF CLIENTS IN THE PRACTICE OF LAW;

(VI) ANY INDIVIDUAL, FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, OR CORPORATION, OR ANY EMPLOYEE OR AUTHORIZED AGENT THEREOF, ENGAGED IN THE ACT OF NEGOTIATING, ACQUIRING, PURCHASING, ASSIGNING, EXCHANGING, SELLING, LEASING, OR DEALING IN OIL AND GAS OR OTHER MINERAL LEASES OR INTERESTS THEREIN OR OTHER SEVERED MINERAL OR ROYALTY INTERESTS IN REAL PROPERTY, INCLUDING EASEMENTS, RIGHTS-OF-WAY, PERMITS, LICENSES, AND ANY OTHER INTERESTS IN REAL PROPERTY FOR OR ON BEHALF OF A THIRD PARTY, FOR THE PURPOSE OF, OR FACILITIES RELATED TO, INTRASTATE AND INTERSTATE PIPELINES FOR OIL, GAS, AND OTHER PETROLEUM PRODUCTS, FLOW LINES, GAS GATHERING SYSTEMS, AND NATURAL GAS STORAGE AND DISTRIBUTION;

(VII) AN INDIVIDUAL ACTING PERSONALLY WITH RESPECT TO PROPERTY OWNED OR LEASED BY THAT PERSON OR AN INDIVIDUAL WHO IS A GENERAL PARTNER OF A PARTNERSHIP, A MANAGER OF A LIMITED LIABILITY COMPANY, OR AN OWNER OF TWENTY PERCENT OR MORE OF SUCH PARTNERSHIP OR LIMITED LIABILITY COMPANY, AND AUTHORIZED TO SELL OR LEASE PROPERTY OWNED BY THE PARTNERSHIP OR LIMITED LIABILITY COMPANY, EXCEPT AS PROVIDED IN SECTION 12-10-201 (3); <{***"Option dealer" definition.***}>

(VIII) A CORPORATION WITH RESPECT TO PROPERTY OWNED OR LEASED BY IT, ACTING THROUGH ITS OFFICERS OR REGULAR SALARIED EMPLOYEES, WHEN SUCH ACTS ARE INCIDENTAL AND NECESSARY IN THE ORDINARY COURSE OF THE CORPORATION'S BUSINESS ACTIVITIES OF A NON-REAL ESTATE NATURE, BUT ONLY IF THE CORPORATION IS NOT ENGAGED IN THE BUSINESS OF LAND TRANSACTIONS, EXCEPT AS PROVIDED IN SECTION 12-10-201 (3). <{***"Option dealer" definition.***}> FOR THE PURPOSES OF THIS SUBSECTION (10)(b)(VIII), THE TERM "OFFICERS OR REGULAR SALARIED EMPLOYEES" MEANS PERSONS REGULARLY EMPLOYED WHO DERIVE NOT LESS THAN SEVENTY-FIVE PERCENT OF THEIR COMPENSATION FROM THE CORPORATION IN THE FORM OF SALARIES. <{***In the first sentence I removed the parentheses around "but only if the corporation is not engaged in the business of land transactions" and replaced them with commas because our drafting convention is not to use parentheses.***}>

(IX) A PRINCIPAL OFFICER OF ANY CORPORATION WITH RESPECT TO PROPERTY OWNED BY IT WHEN THE PROPERTY IS LOCATED WITHIN THE STATE OF COLORADO AND WHEN THE PRINCIPAL OFFICER IS THE OWNER OF TWENTY PERCENT OR MORE OF THE OUTSTANDING STOCK OF THE CORPORATION, EXCEPT AS PROVIDED IN SECTION 12-10-201 (3), <{***"Option dealer" definition***}> BUT THIS EXEMPTION DOES NOT INCLUDE ANY CORPORATION SELLING PREVIOUSLY OCCUPIED ONE-FAMILY AND TWO-FAMILY DWELLINGS;

(X) A SOLE PROPRIETOR, CORPORATION, PARTNERSHIP, OR LIMITED LIABILITY COMPANY, ACTING THROUGH ITS OFFICERS, PARTNERS, OR REGULARLY SALARIED EMPLOYEES, WITH RESPECT TO PROPERTY OWNED OR LEASED BY THE SOLE PROPRIETOR, CORPORATION, PARTNERSHIP, OR LIMITED LIABILITY COMPANY ON WHICH HAS BEEN OR WILL BE ERECTED A COMMERCIAL, INDUSTRIAL, OR RESIDENTIAL BUILDING THAT HAS NOT BEEN PREVIOUSLY OCCUPIED AND WHERE THE CONSIDERATION PAID FOR THE PROPERTY INCLUDES THE COST OF THE BUILDING, PAYABLE, LESS DEPOSIT OR DOWN PAYMENT, AT THE TIME OF CONVEYANCE OF THE

PROPERTY AND BUILDING;

(XI) (A) A CORPORATION, PARTNERSHIP, OR LIMITED LIABILITY COMPANY ACTING THROUGH ITS OFFICERS, PARTNERS, MANAGERS, OR REGULARLY SALARIED EMPLOYEES RECEIVING NO ADDITIONAL COMPENSATION THEREFOR, OR ITS WHOLLY OWNED SUBSIDIARY OR OFFICERS, PARTNERS, MANAGERS, OR REGULAR SALARIED EMPLOYEES THEREOF RECEIVING NO ADDITIONAL COMPENSATION, WITH RESPECT TO PROPERTY LOCATED IN COLORADO THAT IS OWNED OR LEASED BY THE CORPORATION, PARTNERSHIP, OR LIMITED LIABILITY COMPANY AND ON WHICH HAS BEEN OR WILL BE ERECTED A SHOPPING CENTER, OFFICE BUILDING, OR INDUSTRIAL PARK WHEN SUCH SHOPPING CENTER, OFFICE BUILDING, OR INDUSTRIAL PARK IS SOLD, LEASED, OR OTHERWISE OFFERED FOR SALE OR LEASE IN THE ORDINARY COURSE OF THE BUSINESS OF THE CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR WHOLLY OWNED SUBSIDIARY.

(B) FOR THE PURPOSES OF THIS SUBSECTION (10)(b)(XI), "SHOPPING CENTER" MEANS LAND ON WHICH BUILDINGS ARE OR WILL BE CONSTRUCTED THAT ARE USED FOR COMMERCIAL AND OFFICE PURPOSES AROUND OR ADJACENT TO WHICH OFF-STREET PARKING IS PROVIDED; "OFFICE BUILDING" MEANS A BUILDING USED PRIMARILY FOR OFFICE PURPOSES; AND "INDUSTRIAL PARK" MEANS LAND ON WHICH BUILDINGS ARE OR WILL BE CONSTRUCTED FOR WAREHOUSE, RESEARCH, MANUFACTURING, PROCESSING, OR FABRICATION PURPOSES.

(XII) A REGULARLY SALARIED EMPLOYEE OF AN OWNER OF AN APARTMENT BUILDING OR COMPLEX WHO ACTS AS AN ON-SITE MANAGER OF SUCH AN APARTMENT BUILDING OR COMPLEX. THIS EXEMPTION APPLIES ONLY IN RESPECT TO THE CUSTOMARY DUTIES OF AN ON-SITE MANAGER PERFORMED FOR HIS OR HER EMPLOYER.

(XIII) A REGULARLY SALARIED EMPLOYEE OF AN OWNER OF CONDOMINIUM UNITS WHO ACTS AS AN ON-SITE MANAGER OF SUCH UNITS. FOR PURPOSES OF THIS SUBSECTION (10)(b)(XIII) ONLY, THE TERM "OWNER" INCLUDES A HOMEOWNERS' ASSOCIATION FORMED AND ACTING PURSUANT TO ITS RECORDED CONDOMINIUM DECLARATION AND BYLAWS. THIS EXEMPTION APPLIES ONLY IN RESPECT TO THE CUSTOMARY DUTIES OF AN ON-SITE MANAGER PERFORMED FOR HIS OR HER EMPLOYER.

(XIV) A REAL ESTATE BROKER LICENSED IN ANOTHER STATE WHO RECEIVES A SHARE OF A COMMISSION OR FINDER'S FEE ON A COOPERATIVE TRANSACTION FROM A LICENSED COLORADO REAL ESTATE BROKER;

(XV) A SOLE PROPRIETOR, CORPORATION, PARTNERSHIP, OR LIMITED LIABILITY COMPANY, ACTING THROUGH ITS OFFICERS, PARTNERS, OR REGULARLY SALARIED EMPLOYEES, WITH RESPECT TO PROPERTY LOCATED IN COLORADO, WHERE THE PURCHASER OF THE PROPERTY IS IN THE BUSINESS OF DEVELOPING LAND FOR RESIDENTIAL, COMMERCIAL, OR INDUSTRIAL PURPOSES;

(XVI) ANY INDIVIDUAL, FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, OR CORPORATION, OR ANY EMPLOYEE OR AUTHORIZED AGENT THEREOF, ENGAGED IN THE ACT OF NEGOTIATING, PURCHASING, ASSIGNING, EXCHANGING, SELLING, LEASING, OR ACQUIRING RIGHTS-OF-WAY, PERMITS, LICENSES, AND ANY OTHER INTERESTS IN REAL PROPERTY FOR. OR ON BEHALF OF, A THIRD PARTY FOR THE PURPOSE OF, OR FACILITIES RELATED TO:

(A) TELECOMMUNICATION LINES;

(B) WIRELESS COMMUNICATION FACILITIES;

(C) CATV;

(D) ELECTRIC GENERATION, TRANSMISSION, AND DISTRIBUTION LINES;

(E) WATER DIVERSION, COLLECTION, DISTRIBUTION, TREATMENT, AND STORAGE OR USE; AND

(F) TRANSPORTATION, SO LONG AS THE INDIVIDUAL, FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, OR CORPORATION, INCLUDING ANY EMPLOYEE OR AUTHORIZED AGENT THEREOF, DOES NOT REPRESENT ANY DISPLACED PERSON OR ENTITY AS AN AGENT THEREOF IN THE PURCHASE, SALE, OR EXCHANGE OF REAL ESTATE, OR AN INTEREST THEREIN, RESULTING FROM RESIDENTIAL OR COMMERCIAL RELOCATIONS REQUIRED UNDER ANY TRANSPORTATION PROJECT, REGARDLESS OF THE SOURCE OF PUBLIC FUNDING.

(11) **[Similar to 12-61-401 (3)]** (a) "SUBDIVISION" MEANS ANY REAL PROPERTY DIVIDED INTO TWENTY OR MORE INTERESTS INTENDED SOLELY FOR RESIDENTIAL USE AND OFFERED FOR SALE, LEASE, OR TRANSFER.

(b) (I) THE TERM "SUBDIVISION" ALSO INCLUDES:

(A) THE CONVERSION OF AN EXISTING STRUCTURE INTO A COMMON INTEREST COMMUNITY, AS DEFINED IN ARTICLE 33.3 OF TITLE 38, OF TWENTY OR MORE RESIDENTIAL UNITS; <{***I moved the phrase "as defined in article 33.3 of title 38" after "common interest community" because that is the term defined in article 33.3 of title 38.***}>

(B) A GROUP OF TWENTY OR MORE TIME SHARES INTENDED FOR RESIDENTIAL USE; AND

(C) A GROUP OF TWENTY OR MORE PROPRIETARY LEASES IN A COOPERATIVE HOUSING CORPORATION, AS DEFINED IN ARTICLE 33.5 OF TITLE 38.

(II) THE TERM "SUBDIVISION" DOES NOT INCLUDE:

(A) THE SELLING OF MEMBERSHIPS IN CAMPGROUNDS;

(B) BULK SALES AND TRANSFERS BETWEEN DEVELOPERS;

(C) PROPERTY UPON WHICH THERE HAS BEEN OR UPON WHICH THERE WILL BE ERECTED RESIDENTIAL BUILDINGS THAT HAVE NOT BEEN PREVIOUSLY OCCUPIED AND WHERE THE CONSIDERATION PAID FOR THE PROPERTY INCLUDES THE COST OF SUCH BUILDINGS;

(D) LOTS THAT, AT THE TIME OF CLOSING OF A SALE OR OCCUPANCY UNDER A LEASE, ARE SITUATED ON A STREET OR ROAD AND STREET OR ROAD SYSTEM IMPROVED TO STANDARDS AT LEAST EQUAL TO STREETS AND ROADS MAINTAINED BY THE COUNTY, CITY, OR TOWN IN WHICH THE LOTS ARE LOCATED; HAVE A FEASIBLE PLAN TO PROVIDE POTABLE WATER AND SEWAGE DISPOSAL; AND HAVE TELEPHONE AND ELECTRICITY FACILITIES AND SYSTEMS ADEQUATE TO SERVE THE LOTS, WHICH FACILITIES AND SYSTEMS ARE INSTALLED AND IN PLACE ON THE LOTS OR IN A STREET, ROAD, OR EASEMENT ADJACENT TO THE LOTS AND WHICH FACILITIES AND SYSTEMS COMPLY WITH APPLICABLE STATE, COUNTY, MUNICIPAL, OR OTHER LOCAL LAWS, RULES, AND REGULATIONS; OR <{***Can this be made into a new subsection (11)(b)(II)(E)? It doesn't seem to follow the language in (11)(b)(II)(D) concerning lots??***}> ANY SUBDIVISION THAT HAS BEEN OR IS REQUIRED TO BE APPROVED AFTER SEPTEMBER 1, 1972, BY A REGIONAL, COUNTY, OR MUNICIPAL PLANNING AUTHORITY PURSUANT TO ARTICLE 28 OF TITLE 30 OR ARTICLE 23 OF TITLE

31;

(E) SALES BY PUBLIC OFFICIALS IN THE OFFICIAL CONDUCT OF THEIR DUTIES.

(12) **[Similar to 12-61-401 (4)]** "TIME SHARE" MEANS A TIME SHARE ESTATE, AS DEFINED IN SECTION 38-33-110 (5), OR A TIME SHARE USE, BUT THE TERM DOES NOT INCLUDE GROUP RESERVATIONS MADE FOR CONVENTION PURPOSES AS A SINGLE TRANSACTION WITH A HOTEL, MOTEL, OR CONDOMINIUM OWNER OR ASSOCIATION. FOR THE PURPOSES OF THIS SUBSECTION (12), "TIME SHARE USE" MEANS A CONTRACTUAL OR MEMBERSHIP RIGHT OF OCCUPANCY, THAT CANNOT BE TERMINATED AT THE WILL OF THE OWNER, FOR LIFE OR FOR A TERM OF YEARS, TO THE RECURRENT, EXCLUSIVE USE OR OCCUPANCY OF A LOT, PARCEL, UNIT, OR SPECIFIC OR NONSPECIFIC SEGMENT OF REAL PROPERTY, ANNUALLY OR ON SOME OTHER PERIODIC BASIS, FOR A PERIOD OF TIME THAT HAS BEEN OR WILL BE ALLOTTED FROM THE USE OR OCCUPANCY PERIODS INTO WHICH THE PROPERTY HAS BEEN DIVIDED. <{***I removed the parentheses around "that cannot be terminated at the will of the owner" and replaced them with commas because our drafting convention is not to use parentheses.***}>

PART 2
BROKERS AND SALESPERSONS

12-10-201. [Formerly 12-61-101] Definitions. As used in this part ~~1~~ ***2***, unless the context otherwise requires:

(1) "Employing real estate broker" or "employing broker" means a broker who is shown in real estate commission records as employing or engaging another broker.

~~(1.2) "HOA" or "homeowners' association" means an association or unit owners' association formed before, on, or after July 1, 1992, as part of a common interest community as defined in section 38-33.3-103, C.R.S.~~ <{***Definition moved to common definitions in part 1.***}>

~~(1.3)~~ (2) "Limited liability company" shall have the same meaning as it is given in section 7-80-102 (7). ~~C.R.S.~~

~~(1.5)~~ (3) "Option dealer" means any ~~person~~ INDIVIDUAL, firm, partnership, limited liability company, association, or corporation who, directly or indirectly, takes, obtains, or uses an option to purchase, exchange, rent, or lease real property or any interest therein with the intent or for the purpose of buying, selling, exchanging, renting, or leasing ~~said~~ THE real property or interest therein to another or others, whether or not ~~said~~ THE option is in that person's or its name and whether or not title to said property passes through the name of ~~said person~~ THE INDIVIDUAL, firm, partnership, limited liability company, association, or corporation in connection with the purchase, sale, exchange, rental, or lease of ~~said~~ THE real property or interest therein.

~~(1.7)~~ (4) "Partnership" includes, but is not limited to, a registered limited liability partnership.

~~(2) (a) "Real estate broker" or "broker" means any person, firm, partnership, limited liability company, association, or corporation who, in consideration of compensation by fee, commission, salary, or anything of value or with the intention of receiving or collecting such compensation, engages in or offers or attempts to engage in, either~~

directly or indirectly, by a continuing course of conduct or by any single act or transaction, any of the following acts:

(I) Selling, exchanging, buying, renting, or leasing real estate, or interest therein, or improvements affixed thereon;

(II) Offering to sell, exchange, buy, rent, or lease real estate, or interest therein, or improvements affixed thereon;

(III) Selling or offering to sell or exchange an existing lease of real estate, or interest therein, or improvements affixed thereon;

(IV) Negotiating the purchase, sale, or exchange of real estate, or interest therein, or improvements affixed thereon;

(V) Listing, offering, attempting, or agreeing to list real estate, or interest therein, or improvements affixed thereon for sale, exchange, rent, or lease;

(VI) Auctioning or offering, attempting, or agreeing to auction real estate, or interest therein, or improvements affixed thereon;

(VII) Buying, selling, offering to buy or sell, or otherwise dealing in options on real estate, or interest therein, or improvements affixed thereon or acting as an "option dealer";

(VIII) Performing any of the foregoing acts as an employee of, or in behalf of, the owner of real estate, or interest therein, or improvements affixed thereon at a salary or for a fee, commission, or other consideration;

(IX) Negotiating or attempting or offering to negotiate the listing, sale, purchase, exchange, or lease of a business or business opportunity or the goodwill thereof or any interest therein when such act or transaction involves, directly or indirectly, any change in the ownership or interest in real estate, or in a leasehold interest or estate, or in a business or business opportunity which owns an interest in real estate or in a leasehold unless such act is performed by any broker-dealer licensed under the provisions of article 51 of title 11, C.R.S., who is actually engaged generally in the business of offering, selling, purchasing, or trading in securities or any officer, partner, salesperson, employee, or other authorized representative or agent thereof;

(X) Soliciting a fee or valuable consideration from a prospective tenant for furnishing information concerning the availability of real property, including apartment housing which may be leased or rented as a private dwelling, abode, or place of residence. Any person, firm, partnership, limited liability company, association, or corporation or any employee or authorized agent thereof engaged in the act of soliciting a fee or valuable consideration from any person other than a prospective tenant for furnishing information concerning the availability of real property, including apartment housing which may be leased or rented as a private dwelling, abode, or place of residence, is exempt from this definition of "real estate broker" or "broker". This exemption applies only in respect to the furnishing of information concerning the availability of real property.

(b) "Real estate broker" does not apply to any of the following:

(I) Any attorney-in-fact acting without compensation under a power of attorney, duly executed by an owner of real estate, authorizing the consummation of a real estate transaction;

(II) Any public official in the conduct of his or her official duties;

(III) Any receiver, trustee, administrator, conservator, executor,

~~or guardian acting under proper authorization;~~

~~(IV) Any person, firm, partnership, limited liability company, or association acting personally or a corporation acting through its officers or regular salaried employees, on behalf of that person or on its own behalf as principal in acquiring or in negotiating to acquire any interest in real estate;~~

~~(V) An attorney-at-law in connection with his or her representation of clients in the practice of law;~~

~~(VI) Any person, firm, partnership, limited liability company, association, or corporation, or any employee or authorized agent thereof, engaged in the act of negotiating, acquiring, purchasing, assigning, exchanging, selling, leasing, or dealing in oil and gas or other mineral leases or interests therein or other severed mineral or royalty interests in real property, including easements, rights-of-way, permits, licenses, and any other interests in real property for or on behalf of a third party, for the purpose of, or facilities related to, intrastate and interstate pipelines for oil, gas, and other petroleum products, flow lines, gas gathering systems, and natural gas storage and distribution;~~

~~(VII) A natural person acting personally with respect to property owned or leased by that person or a natural person who is a general partner of a partnership, a manager of a limited liability company, or an owner of twenty percent or more of such partnership or limited liability company, and authorized to sell or lease property owned by such partnership or limited liability company, except as provided in subsection (1.5) of this section;~~

~~(VIII) A corporation with respect to property owned or leased by it, acting through its officers or regular salaried employees, when such acts are incidental and necessary in the ordinary course of the corporation's business activities of a non-real estate nature (but only if the corporation is not engaged in the business of land transactions), except as provided in subsection (1.5) of this section. For the purposes of this subparagraph (VIII), the term "officers or regular salaried employees" means persons regularly employed who derive not less than seventy-five percent of their compensation from the corporation in the form of salaries.~~

~~(IX) A principal officer of any corporation with respect to property owned by it when such property is located within the state of Colorado and when such principal officer is the owner of twenty percent or more of the outstanding stock of such corporation, except as provided in subsection (1.5) of this section, but this exemption does not include any corporation selling previously occupied one-family and two-family dwellings;~~

~~(X) A sole proprietor, corporation, partnership, or limited liability company, acting through its officers or partners, or through regular salaried employees, with respect to property owned or leased by such sole proprietor, corporation, partnership, or limited liability company on which has been or will be erected a commercial, industrial, or residential building which has not been previously occupied and where the consideration paid for such property includes the cost of such building, payable, less deposit or down payment, at the time of conveyance of such property and building;~~

~~(XI) (A) A corporation, partnership, or limited liability company~~

~~acting through its officers, partners, managers, or regularly salaried employees receiving no additional compensation therefor, or its wholly owned subsidiary or officers, partners, managers, or regular salaried employees thereof receiving no additional compensation, with respect to property located in Colorado which is owned or leased by such corporation, partnership, or limited liability company and on which has been or will be erected a shopping center, office building, or industrial park when such shopping center, office building, or industrial park is sold, leased, or otherwise offered for sale or lease in the ordinary course of the business of such corporation, partnership, limited liability company, or wholly owned subsidiary.~~

~~(B) For the purposes of this subparagraph (XI), "shopping center" means land on which buildings are or will be constructed which are used for commercial and office purposes around or adjacent to which off-street parking is provided; "office building" means a building used primarily for office purposes; and "industrial park" means land on which buildings are or will be constructed for warehouse, research, manufacturing, processing, or fabrication purposes.~~

~~(XII) A regularly salaried employee of an owner of an apartment building or complex who acts as an on-site manager of such an apartment building or complex. This exemption applies only in respect to the customary duties of an on-site manager performed for his or her employer.~~

~~(XIII) A regularly salaried employee of an owner of condominium units who acts as an on-site manager of such units. For purposes of this subparagraph (XIII) only, the term "owner" includes a homeowners' association formed and acting pursuant to its recorded condominium declaration and bylaws. This exemption applies only in respect to the customary duties of an on-site manager performed for his or her employer.~~

~~(XIV) A real estate broker licensed in another state who receives a share of a commission or finder's fee on a cooperative transaction from a licensed Colorado real estate broker;~~

~~(XV) A sole proprietor, corporation, partnership, or limited liability company, acting through its officers, partners, or regularly salaried employees, with respect to property located in Colorado, where the purchaser of such property is in the business of developing land for residential, commercial, or industrial purposes;~~

~~(XVI) Any person, firm, partnership, limited liability company, association, or corporation, or any employee or authorized agent thereof, engaged in the act of negotiating, purchasing, assigning, exchanging, selling, leasing, or acquiring rights-of-way, permits, licenses, and any other interests in real property for or on behalf of a third party for the purpose of, or facilities related to:~~

~~(A) Telecommunication lines;~~

~~(B) Wireless communication facilities;~~

~~(C) CATV;~~

~~(D) Electric generation, transmission, and distribution lines;~~

~~(E) Water diversion, collection, distribution, treatment, and storage or use; and~~

~~(F) Transportation, so long as such person, firm, partnership, limited liability company, association, or corporation, including any~~

~~employee or authorized agent thereof, does not represent any displaced person or entity as an agent thereof in the purchase, sale, or exchange of real estate, or an interest therein, resulting from residential or commercial relocations required under any transportation project, regardless of the source of public funding.~~ <{***This definition has been added to the common definitions in new part 1.***}>

12-10-202. [Formerly 12-61-102] License required. It is unlawful for any ~~person~~ INDIVIDUAL, firm, partnership, limited liability company, association, or corporation to engage in the business or capacity of real estate broker in this state without first having obtained a license from the real estate commission. No person shall be granted a license until ~~such~~ THE person establishes compliance with the provisions of this part ~~1~~ ***2*** concerning education, experience, and testing; truthfulness and honesty and otherwise good moral character; and, in addition to any other requirements of this section, competency to transact the business of a real estate broker in such manner as to safeguard the interest of the public and only after satisfactory proof of ~~such~~ THE qualifications, together with the application for ~~such~~ THE license, is filed in the office of the commission. In determining ~~such~~ THE person's character, the real estate commission shall be governed by section 24-5-101. ~~C.R.S.~~

12-10-203. [Formerly 12-61-103] Application for license - rules. (1) (a) All persons desiring to become real estate brokers shall apply to the real estate commission for a license under the provisions of this part ~~1~~ ***2***. Application for a license as a real estate broker shall be made to the commission upon forms or in a manner prescribed by it.

(b) (I) Prior to submitting an application for a license pursuant to ~~paragraph (a) of this subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION, each applicant shall submit a set of fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. The applicant shall pay the fee established by the Colorado bureau of investigation for conducting the fingerprint-based criminal history record check to the bureau. Upon completion of the criminal history record check, the bureau shall forward the results to the real estate commission. The real estate commission 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.

(II) For purposes of this ~~paragraph (b)~~ SUBSECTION (1)(b), "applicant" means an individual, or any person designated to act as broker for any partnership, limited liability company, or corporation pursuant to subsection ~~(7)~~ ***(6)*** of this section.

(2) Every real estate broker licensed under this part ~~1~~ ***2*** shall maintain a place of business within this state, except as provided in section ~~12-61-107~~ ***12-10-208***. In case a real estate broker maintains more than one place of business within the state, the broker shall be responsible for supervising all licensed activities originating in ~~such~~ THE offices.

(3) The commission is authorized by this section to require and procure any such proof as is necessary in reference to the truthfulness, honesty, and good moral character of any applicant for a real estate broker's license or, if the applicant is a partnership, limited liability

company, or corporation, of any partner, manager, director, officer, member, or stockholder if ~~such person~~ THE INDIVIDUAL has, either directly or indirectly, a substantial interest in ~~such~~ THE applicant prior to the issuance of ~~such~~ THE license.

(4) (a) An applicant for a broker's license shall be at least eighteen years of age. The applicant must furnish proof satisfactory to the commission that the applicant has either received a degree from an accredited degree-granting college or university with a major course of study in real estate or has successfully completed courses of study, approved by the commission, at any accredited college or university or any private occupational school that has a certificate of approval from the private occupational school division in accordance with the provisions of article ~~59~~ ***64*** of ~~this~~ title ***23*** or that has been approved by the commission or licensed by an official state agency of any other state as follows:

(I) Forty-eight hours of classroom instruction or equivalent correspondent hours in real estate law and real estate practice; and

(II) Forty-eight hours of classroom instruction or equivalent correspondent hours in understanding and preparation of Colorado real estate contracts; and

(III) A total of seventy-two hours of instruction or equivalent correspondence hours from the following areas of study:

(A) Trust accounts and record keeping;

(B) Real estate closings;

(C) Current legal issues; and

(D) Practical applications.

(b) An applicant for a broker's license who has been licensed as a real estate broker in another jurisdiction shall be required to complete only the course of study comprising the subject matter areas described in ~~subparagraphs (II) and (III)(B) of paragraph (a) of this subsection (4)~~ SUBSECTIONS (4)(a)(II) AND (4)(a)(III)(B) OF THIS SECTION..

(c) An applicant for a broker's license who has been licensed as a real estate salesperson in another jurisdiction shall be required to complete only the course of study required in ~~subparagraphs (II) and (III) of paragraph (a) of this subsection (4)~~ SUBSECTIONS (4)(a)(II) AND (4)(a)(III) OF THIS SECTION.

~~(d) (Deleted by amendment, L. 96, p. 414, § 2, effective January 1, 1997.)~~

~~(5) (Deleted by amendment, L. 96, p. 414, § 2, effective January 1, 1997.)~~

~~(6)~~ ***(5)*** (a) The applicant for a broker's license shall submit to and pass an examination designated to determine the competency of the applicant and prepared by or under the supervision of the real estate commission or its designated contractor. The commission may contract with an independent testing service to develop, administer, or grade examinations or to administer licensee records. The contract may allow the testing service to recover the costs of the examination and the costs of administering exam and license records from the applicant. The commission may contract separately for these functions and allow recovered costs to be collected and retained by a single contractor for distribution to other contractors. The commission shall have the authority to set the minimum passing score that an applicant must receive on the examination, and ~~said~~ THE score shall reflect the minimum level of

competency required to be a broker. ~~Said~~ THE examination shall be given at such times and places as the commission prescribes. The examination shall include, but not be limited to, ethics, reading, spelling, basic mathematics, principles of land economics, appraisal, financing, a knowledge of the statutes and law of this state relating to deeds, trust deeds, mortgages, listing contracts, contracts of sale, bills of sale, leases, agency, brokerage, trust accounts, closings, securities, the provisions of this part ~~1~~ ***2***, and the rules of the commission. The examination for a broker's license shall also include the preparation of a real estate closing statement.

(b) An applicant for a broker's license who has held a real estate license in another jurisdiction that administers a real estate broker's examination and who has been licensed for two or more years prior to applying for a Colorado license may be issued a broker's license if the applicant establishes that he or she possesses credentials and qualifications that are substantively equivalent to the requirements in Colorado for licensure by examination.

(c) In addition to all other applicable requirements, the following provisions apply to brokers that did not hold a current and valid broker's license on December 31, 1996:

(I) No such broker shall engage in an independent brokerage practice without first having served actively as a real estate broker for at least two years. The commission shall adopt rules requiring an employing broker to ensure that a high level of supervision is exercised over such a broker during ~~such~~ THE two-year period.

(II) No such broker shall employ another broker without first having completed twenty-four clock hours of instruction, or the equivalent in correspondence hours, as approved by the commission, in brokerage administration.

(III) Effective January 1, 2019, a broker shall not act as an employing broker without first demonstrating, in accordance with rules of the commission, experience and knowledge sufficient to enable the broker to employ and adequately supervise other brokers, as appropriate to the broker's area of supervision. The commission's rules must set forth the method or methods by which the broker may demonstrate ~~such~~ THE experience and knowledge, either by documenting a specified number of transactions that the broker has completed or by other methods.

~~(7)~~ ***(6)*** (a) Real estate brokers' licenses may be granted to individuals, partnerships, limited liability companies, or corporations. A partnership, limited liability company, or corporation, in its application for a license, shall designate a qualified, active broker to be responsible for management and supervision of the licensed actions of the partnership, limited liability company, or corporation and all licensees shown in the commission's records as being in the employ of ~~such~~ THE entity. The application of the partnership, limited liability company, or corporation and the application of the broker designated by it shall be filed with the real estate commission.

(b) No license shall be issued to any partnership, limited liability company, or corporation unless and until the broker so designated by the partnership, limited liability company, or corporation submits to and passes the examination required by this part ~~1~~ ***2*** on behalf of the partnership, limited liability company, or corporation. Upon ~~such~~ THE

broker's successfully passing the examination and upon compliance with all other requirements of law by the partnership, limited liability company, or corporation, as well as by the designated broker, the commission shall issue a broker's license to the partnership, limited liability company, or corporation, which shall bear the name of ~~such~~ THE designated broker, and thereupon the broker so designated shall conduct business as a real estate broker only through the said partnership, limited liability company, or corporation and not for the broker's own account.

(c) If the ~~person~~ INDIVIDUAL so designated is refused a license by the real estate commission or ceases to be the designated broker of ~~such~~ THE partnership, limited liability company, or corporation, ~~such~~ THE entity may designate another person to make application for a license. If ~~such~~ THE person ceases to be the designated broker of ~~such~~ THE partnership, limited liability company, or corporation, the director may issue a temporary license to prevent hardship for a period not to exceed ninety days to the licensed person so designated. The director may extend a temporary license for one additional period not to exceed ninety days upon proper application and a showing of good cause; if the director refuses, no further extension of a temporary license shall be granted except by the commission. If any broker or employee of any such partnership, limited liability company, or corporation, other than the one designated as provided in this section, desires to act as a real estate broker, ~~such~~ THE broker or employee shall first obtain a license as a real estate broker as provided in this section and shall pay the regular fee therefor.

~~(8)~~ ***(7)*** The broker designated to act as broker for any partnership, limited liability company, or corporation is personally responsible for the handling of any and all earnest money deposits or escrow or trust funds received or disbursed by ~~said~~ THE partnership, limited liability company, or corporation. In the event of any breach of duty by the said partnership, limited liability company, or corporation as a fiduciary, any person aggrieved or damaged by the said breach of fiduciary duty shall have a claim for relief against ~~such~~ THE partnership, limited liability company, or corporation, as well as against the designated broker, and may pursue ~~said~~ THE claim against the partnership, limited liability company, or corporation and the designated broker personally. The said broker may be held responsible and liable for damages based upon ~~such~~ THE breach of fiduciary duty as may be recoverable against the said partnership, limited liability company, or corporation, and any judgment so obtained may be enforced jointly or severally against ~~said~~ THE broker personally and the said partnership, limited liability company, or corporation. <{***Are you comfortable getting rid of "said" throughout this subsection (7)***}>

~~(9)~~ ***(8)*** No license for a broker registered as being in the employ of another broker shall be issued to a partnership, a limited liability company, or a corporation or under a fictitious name or trade name; except that a married woman may elect to use her birth name.

~~(10)~~ ***(9)*** No person shall be licensed as a real estate broker under more than one name, and no person shall conduct or promote a real estate brokerage business except under the name under which ~~such~~ THE person is licensed.

~~(11) Repealed.~~

~~(12)~~ ***(10)*** A licensed attorney shall take and pass the examination

referred to in this section after having completed twelve hours of classroom instruction or equivalent correspondent hours in trust accounts, record keeping, and real estate closings.

~~**12-61-103.5. Transitional provisions - holders of existing salesperson's licenses. (Repealed)**~~

12-10-204. [Formerly 12-61-103.6] Errors and omissions insurance required - rules. (1) Every licensee under this part ~~1~~ ***2***, except an inactive broker or an attorney licensee who maintains a policy of professional malpractice insurance that provides coverage for errors and omissions for their activities as a licensee under this part ~~1~~ ***2***, shall maintain errors and omissions insurance to cover all activities contemplated under parts 1 to ~~8~~ ***7*** of this article ***10***. <{***Can we just remove reference to specific parts and refer to "this article 10" generally?***}> The division ~~of real estate~~ shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after a competitive bid process in accordance with article 103 of title 24. ~~C.R.S.~~ A group policy obtained by the division ~~of real estate~~ must be available to all licensees with no right on the part of the insurer to cancel a licensee. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the division. ~~of real estate.~~

(2) (a) If the division ~~of real estate~~ is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable annual premium, as determined by the division, ~~of real estate,~~ a licensee shall independently obtain the errors and omissions insurance required by this section.

(b) The division of real estate shall solicit and consider information and comments from interested persons when determining the reasonableness of annual premiums.

(3) The division ~~of real estate~~ shall determine the terms and conditions of coverage required under this section based on rules promulgated by the commission. The commission shall notify each licensee of the required terms and conditions at least thirty days before the annual premium renewal date as determined by the commission. Each licensee shall file a certificate of coverage showing compliance with the required terms and conditions with the commission by the annual premium renewal date, as determined by the division. ~~of real estate.~~

(4) In addition to all other powers and duties conferred upon the commission by this article ***10***, the commission shall adopt such rules as it deems necessary or proper to carry out the provisions of this section.

~~(5) (Deleted by amendment, L. 2008, p. 497, § 4, effective April 17, 2008.)~~

12-10-205. [Formerly 12-61-104] Licenses - issuance - contents - display. (1) The commission shall make available for each licensee a license in such form and size as ~~said~~ THE commission shall prescribe and adopt. The real estate license shall show the name of the licensee and shall have imprinted thereon the seal, or a facsimile, of the department ~~of regulatory agencies~~ and, in addition to the foregoing, shall contain such other matter as ~~said~~ THE commission shall prescribe.

~~(2) and (3) (Deleted by amendment, L. 2001, p. 24, § 2, effective March 9, 2001.)~~

12-10-206. [Formerly 12-61-105] Commission - compensation

- immunity - subject to termination. (1) There is hereby created a commission of five members, appointed by the governor, which shall administer parts ~~1~~ ***2*** and ~~4~~ ***5*** of this article ~~61~~ ***10***. This commission is known as the real estate commission, also referred to in this part ~~1~~ ***2*** as the "commission", and consists of three real estate brokers who have had not less than five years' experience in the real estate business in Colorado, one of whom has substantial experience in property management, and two representatives of the public at large. Members of the commission hold office for a period of three years. Upon the death, resignation, removal, or otherwise of any member of the commission, the governor shall appoint a member to fill out the unexpired term. The governor may remove any member for misconduct, neglect of duty, or incompetence.

(2) Each member of the commission shall receive the same compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations pursuant to section 24-34-102 (13). ~~C.R.S.~~ Payment for all such per diem compensation and expenses shall be made out of annual appropriations from the division of real estate cash fund provided for in section ~~12-61-111.5~~ ***12-10-215***.

~~(2.5)~~ ***(3)*** Members of the commission, consultants, expert witnesses, and complainants shall be immune from suit in any civil action based upon any disciplinary proceedings or other official acts they performed in good faith.

~~(3)~~ ***(4)*** No real estate broker's license shall be denied, suspended, or revoked except as determined by a majority vote of the members of the commission.

~~(4)~~ ***(5)*** The provisions of section 24-34-104, ~~C.R.S.,~~ concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the real estate commission created by this section.

12-10-207. [Formerly 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 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~~ ***2*** and ~~4~~ ***5*** of this article ~~61~~ ***10***. The division, ~~of real estate,~~ which is 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.

(2) It is the duty of the director, personally, or ~~his~~ THE DIRECTOR'S designee to aid in the administration and enforcement of parts ~~1~~ ***2*** and ~~4~~ ***5*** of this article ~~61~~ ***10*** and in the prosecution of all persons charged with violating any of their provisions, to conduct audits of business accounts of licensees, to perform such duties of the commission as the commission prescribes, and to act in behalf of the commission on such occasions and in such circumstances as the commission directs.

12-10-208. [Formerly 12-61-107]. Resident licensee - nonresident licensee - consent to service. (1) A nonresident of the state may become a real estate broker in this state by conforming to all the

conditions of this part ~~1~~ ***2***; except that the nonresident broker shall not be required to maintain a place of business within this state if that broker maintains a definite place of business in another state.

(2) If a broker has no registered agent registered in this state, ~~such~~ THE registered agent is not located under its registered agent name at its registered agent address, or the registered agent cannot with reasonable diligence be served, the broker may be served by registered mail or by certified mail, return receipt requested, addressed to the entity at its principal address. Service is perfected under this subsection (2) at the earliest of: <{***Do we want to maintain the certified mail requirement here?***}>

(a) The date the broker receives the process, notice, or demand;

(b) The date shown on the return receipt, if signed by or on behalf of the broker; or

(c) Five days after mailing.

(3) All such applications shall contain a certification that the broker is authorized to act for the corporation.

12-10-209. [Formerly 12-61-108]. Record of licensees - publications. The commission shall maintain a record of the names and addresses of all licensees licensed under the provisions of parts ~~1~~ ***2*** and ~~4~~ ***5*** of this article **10**, together with such other information relative to the enforcement of ~~said~~ THE provisions as deemed by the commission to be necessary. Publication of the record and of any other information circulated in quantity outside the executive branch shall be in accordance with the provisions of section 24-1-136. ~~C.R.S.~~

12-10-210. [Formerly 12-61-108.5]. Compilation and publication of passing rates per educational institution for real estate licensure examinations - definition - rules. (1) The commission shall have the authority to obtain information from each educational institution authorized to offer courses in real estate for the purpose of compiling the number of applicants who pass the real estate licensure examination from each educational institution. The information shall include the name of each student who attended the institution and a statement of whether the student completed the necessary real estate courses required for licensure. The commission shall have access to such other information as necessary to accomplish the purpose of this section. For the purposes of this section, an "applicant" is a student who completed the required education requirements and who applied for and sat for the licensure examination.

(2) The commission shall compile the information obtained in subsection (1) of this section with applicant information retained by the commission. Specifically, the commission shall compile whether the student applied for the licensure examination and whether the applicant passed the licensure examination. The commission shall create statistical data setting forth:

(a) The name of the educational institution;

(b) The number of students who completed the necessary real estate course required for licensure;

(c) Whether the student registered and sat for the licensure examination; and

(d) The number of those applicants who passed the licensure examination.

(3) The commission shall publish this statistical data and make it

available to the public quarterly.

(4) The commission shall retain the statistical data for three years.

(5) Specific examination scores for an applicant will be kept confidential by the commission unless the applicant authorizes release of ~~such~~ THE information.

(6) The commission may promulgate rules for the administration of this section.

12-10-211. [Formerly 12-61-109]. Change of license status - inactive - cancellation. (1) Immediate notice shall be given in a manner acceptable to the commission by each licensee of any change of business location or employment. A change of business address or employment without notification to the commission shall automatically inactivate the licensee's license.

(2) A broker who transfers to the address of another broker or a broker applicant who desires to be employed by another broker shall inform the commission if ~~said~~ THE broker is to be in the employ of the other broker. The employing broker shall have the control and custody of the employed broker's license. The employed broker may not act on behalf of ~~said~~ THE broker or as broker for a partnership, limited liability company, or corporation during the term of ~~such~~ THE employment; but this shall not affect the employed broker's right to transfer to another employing broker or to a location where the employed broker may conduct business as an independent broker or as a broker acting for a partnership, limited liability company, or corporation.

(3) In the event that any licensee is discharged by or terminates employment with a broker, it shall be the joint duty of both such parties to immediately notify the commission. Either party may furnish ~~such~~ THE notice in a manner acceptable to the commission. The party giving notice shall notify the other party in person or in writing of the termination of employment.

(4) It is unlawful for any such licensee to perform any of the acts authorized under the license in pursuance of this part ~~1~~ ***2***, either directly or indirectly, on or after the date that employment has been terminated. When any real estate broker whose employment has been terminated is employed by another real estate broker, the commission shall, upon proper notification, enter ~~such~~ THE change of employment in the records of the commission. Not more than one employer or place of employment shall be shown for any real estate broker for the same period of time.

12-10-212. [Formerly 12-61-110]. License fees - partnership, limited liability company, and corporation licenses - rules. (1) Fees established pursuant to section ~~12-61-111.5~~ ***12-10-215*** shall be charged by and paid to the commission or the agent for the commission for the following:

~~(a) and (b) (Deleted by amendment, L. 96, p. 419, § 5, effective January 1, 1997.)~~

~~(c)~~ ***(a)*** Each broker's examination;

~~(d)~~ ***(b)*** Each broker's original application and license;

~~(e) (Deleted by amendment, L. 96, p. 419, § 5, effective January 1, 1997.)~~

~~(f)~~ ***(c)*** Each renewal of a broker's license;

~~(g) (Deleted by amendment, L. 96, p. 419, § 5, effective January 1, 1997.)~~

~~(h)~~ ***(d)*** Any change of name, address, or employing broker requiring a change in commission records;

~~(i)~~ ***(e)*** A new application ~~which~~ THAT shall be submitted when a licensed real estate broker wishes to become the broker acting for a partnership, a limited liability company, or a corporation.

(2) The proper fee shall accompany each application for licensure. The fee shall not be refundable. Failure by the person taking an examination to file the appropriate broker's application within one year of the date ~~such~~ THE person passed the examination will automatically cancel the examination, and all rights to a passing score will be terminated.

(3) Each real estate broker's license granted to an individual shall entitle ~~such~~ THE individual to perform all the acts contemplated by this part ~~1~~ ***2***, without any further application on his OR HER part and without the payment of any fee other than the fees specified in this section.

(4) (a) (I) The commission shall require that any person licensed under this part ~~1~~ ***2***, whether on an active or inactive basis, renew the license on or before December 31 of every third year after issuance; except that an initial license issued under this part ~~1~~ ***2*** on or after April 23, 2018, expires at 12 midnight on December 31 of the year in which it was issued.

(II) Renewal is conditioned upon fulfillment of the continuing education requirements set forth in section ~~12-61-110.5~~ ***12-10-213***. For persons renewing or reinstating an active license, written certification verifying completion for the previous licensing period of the continuing education requirements set forth in section ~~12-61-110.5~~ ***12-10-213*** must accompany and be submitted to the commission with the application for renewal or reinstatement. For persons who did not submit certification verifying compliance with section ~~12-61-110.5~~ ***12-10-213*** at the time a license was renewed or reinstated on an inactive status, written certification verifying completion for the previous licensing period of the continuing education requirements set forth in that section must accompany and be submitted with any future application to reactivate the license. The commission may, by rule, establish procedures to facilitate such a renewal. In the absence of any reason or condition that might warrant the refusal of the granting of a license or the revocation thereof, the commission shall issue a new license upon receipt by the commission of the written request of the applicant and the appropriate fees required by this section. Applications for renewal will be accepted thirty days prior to January 1.

(III) A person who fails to renew a license before January 1 of the year succeeding the year of the expiration of the license may reinstate the license as follows:

(A) If proper application is made within thirty-one days after the date of expiration, by payment of the regular renewal fee;

(B) If proper application is made more than thirty-one days but within one year after the date of expiration, by payment of the regular renewal fee and payment of a reinstatement fee equal to one-half the regular renewal fee;

(C) If proper application is made more than one year but within three years after the date of expiration, by payment of the regular renewal fee and payment of a reinstatement fee equal to the regular renewal fee.

(IV) The commission may, by rule, establish procedures to facilitate the transition of the reinstatement license periods described in subsections (4)(a)(III)(A) to (4)(a)(III)(C) of this section from an anniversary expiration date to a December 31 expiration date.

~~(a.5) Repealed.~~

(b) Any reinstated license shall be effective only as of the date of reinstatement. Any person who fails to apply for reinstatement within three years after the expiration of a license shall, without exception, be treated as a new applicant for licensure.

(c) All reinstatement fees shall be transmitted to the state treasurer, who shall credit same to the division of real estate cash fund, as established by section ~~12-61-111.5~~ ***12-10-215***.

(5) The suspension, expiration, or revocation of a real estate broker's license shall automatically inactivate every real estate broker's license where the holder of ~~such~~ THE license is shown in the commission records to be in the employ of the broker whose license has expired or has been suspended or revoked pending notification to the commission by the employed licensee of a change of employment.

~~(6) (Deleted by amendment, L. 91, p. 1628, § 8, effective July 1, 1991.)~~

12-10-213. [Formerly 12-61-110.5]. Renewal of license - continuing education requirement - rules. (1) A broker applying for renewal of a license pursuant to section ~~12-61-110 (4)~~ ***12-10-212 (4)*** shall include with ~~such~~ THE application a certified statement verifying successful completion of real estate courses in accordance with the following schedule:

~~(a) and (b) Repealed.~~

~~(c)~~ ***(a)*** For licensees applying for renewal of a three-year license, passage within the previous three years of the Colorado portion of the real estate exam or completion of a minimum of twenty-four hours of credit, twelve of which must be the credits developed by the commission pursuant to subsection (2) of this section.

~~(d)~~ ***(b)*** For licensees applying for renewal of a license that expires less than three years after it was issued, passage within the license period of the Colorado portion of the real estate exam or completion of a minimum of twenty-four hours of credit, at least eight of which must be the credits developed by the commission pursuant to subsection (2) of this section.

(2) The real estate commission shall develop twelve hours of credit designed to assure reasonable currency of real estate knowledge by licensees, which credits shall include an update of the current statutes and the rules promulgated by the commission that affect the practice of real estate. If a licensee takes a course pursuant to rule 260 of the Colorado rules of civil procedure and the course concerns real property law, the licensee shall receive credit for the course toward the fulfillment of the licensee's continuing education requirements pursuant to this section. The credits shall be taken from an accredited Colorado college or university; a Colorado community college; a Colorado private occupational school holding a certificate of approval from the state board for community colleges and occupational education; or an educational institution or an educational service described in section 23-64-104. Successful completion of ~~such~~ THE credits shall require satisfactory passage of a

written examination or written examinations of the materials covered. The examinations shall be audited by the commission to verify their accuracy and the validity of the grades given. The commission shall set the standards required for satisfactory passage of the examinations.

(3) All credits, other than the credits specified in subsection (2) of this section, shall be acquired from educational courses approved by the commission that contribute directly to the professional competence of a licensee. ~~Such~~ THE credits may be acquired through successful completion of instruction in one or more of the following subjects:

(a) Real estate law;
(b) Property exchanges;
(c) Real estate contracts;
(d) Real estate finance;
(e) Real estate appraisal;
(f) Real estate closing;
(g) Real estate ethics;
(h) Condominiums and cooperatives;
(i) Real estate time-sharing;
(j) Real estate marketing principles;
(k) Real estate construction;
(l) Land development;
(m) Real estate energy concerns;
(n) Real estate geology;
(o) Water and waste management;
(p) Commercial real estate;
(q) Real estate securities and syndications;
(r) Property management;
(s) Real estate computer principles;
(t) Brokerage administration and management;
(u) Agency; and
(v) Any other subject matter as approved by the real estate commission.

(4) A licensee applying for renewal of a license ~~which~~ THAT expires on December 31 of the year in which it was issued is not subject to the education requirements set forth in subsection (1) of this section.

(5) The real estate commission shall promulgate rules and regulations to implement this section.

~~**12-61-110.6. Study - repeal. (Repealed)**~~

~~**12-61-110.8. Renewal of license - fingerprint-based criminal history record check - repeal. (Repealed)**~~

12-10-214. [Formerly 12-61-111]. Disposition of fees. All fees collected by the real estate commission under parts ~~1~~ ***2*** and ~~4~~ ***5*** of this article ***10***, not including administrative fees that are in the nature of an administrative fine and fees retained by contractors pursuant to contracts entered into in accordance with section ~~12-61-103~~ ***12-10-203*** or 24-34-101, ~~C.R.S.~~, shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund. Pursuant to section ~~12-61-111.5~~ ***12-10-215***, the general assembly shall make annual appropriations from ~~said~~ THE fund for expenditures of the commission incurred in the performance of its duties under parts ~~1~~ ***2*** and ~~4~~ ***5*** of this article ***10***. The commission may request an appropriation specifically designated for educational and enforcement purposes. The expenditures

incurred by the commission under parts ~~1~~ ***2*** and ~~4~~ ***5*** of this article ***10*** shall be made out of ~~such~~ THE appropriations upon vouchers and warrants drawn pursuant to law.

12-10-215. [Formerly 12-61-111.5]. Fee adjustments - cash fund created. (1) This section applies to all activities of the division under parts ~~1, 4, 7, 9, and 10~~ ***2***, ***5***, ***6***, AND ***7*** of this article ~~61~~ ***10***.

(2) (a) (I) The division shall propose, as part of its annual budget request, an adjustment in the amount of each fee that it is authorized by law to collect under parts ~~1, 4,~~ **2, 5,** ~~7, 9 and 10~~ ***6***, AND ***7*** of this article ~~61~~ ***10***. The budget request and the adjusted fees for the division must reflect direct and indirect costs.

(II) The costs of the HOA information and resource center, created in section ~~12-61-406.5~~ ***12-10-507***, shall be paid from the division of real estate cash fund created in this section. The division ~~of real estate~~ shall estimate the direct and indirect costs of operating the HOA information and resource center and shall establish the amount of the annual registration fee to be collected under section 38-33.3-401. The amount of the registration fee shall be sufficient to recover these costs, subject to a maximum limit of fifty dollars.

(b) ~~(I)~~ Based upon the appropriation made and subject to the approval of the executive director, ~~of the department of regulatory agencies,~~ <{***The new common definitions article in title 12 will define "executive director".***}> the division ~~of real estate~~ shall adjust its fees so that the revenue generated from the fees approximates its direct and indirect costs incurred in administering the programs and activities from which the fees are derived. The fees shall remain in effect for the fiscal year for which the budget request applies. All fees collected by the division, not including fees retained by contractors pursuant to contracts entered into in accordance with section ~~12-61-103~~ ***12-10-203*** or 24-34-101, shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund, which fund is hereby created. All money credited to the division of real estate cash fund shall be used as provided in this section or in section ~~12-61-111~~ ***12-10-214*** and shall not be deposited in or transferred to the general fund of this state or any other fund.

~~(II) Repealed.~~

(c) Beginning July 1, 1979, and each July 1 thereafter, whenever ~~moneys~~ MONEY appropriated to the division for its activities for the prior fiscal year ~~are~~ IS unexpended, ~~said moneys~~ THE MONEY shall be made a part of the appropriation to the division for the next fiscal year, and ~~such~~ THE amount shall not be raised from fees collected by the division. If a supplemental appropriation is made to the division for its activities, its fees, when adjusted for the fiscal year next following that in which the supplemental appropriation was made, shall be adjusted by an additional amount ~~which~~ THAT is sufficient to compensate for ~~such~~ THE supplemental appropriation. Funds appropriated to the division in the annual long appropriations bill shall be designated as a cash fund and shall not exceed the amount anticipated to be raised from fees collected by the division.

12-10-216. [Formerly 12-61-112]. Records - evidence - inspection. (1) The executive director ~~of the department of regulatory agencies~~ shall adopt a seal by which all proceedings authorized under

parts ~~1~~ ***2*** and ~~4~~ ***5*** of this article ~~61~~ ***10*** shall be authenticated. Copies of records and papers in the office of the commission or department ~~of regulatory agencies~~ <{***The new common definitions article in title 12 will define "department".***}> relating to the administration of parts ~~1~~ ***2*** and ~~4~~ ***5*** of this article ~~61~~ ***10***, when duly certified and authenticated by the seal, shall be received as evidence in all courts equally and with like effect as the originals. All records kept in the office of the commission or department, ~~of regulatory agencies,~~ under authority of parts ~~1~~ ***2*** and ~~4~~ ***5*** of this article ~~61~~ ***10***, must be open to public inspection at such time and in such manner as may be prescribed by rules formulated by the commission.

~~(2) Repealed.~~

~~(3)~~ ***(2)*** The commission shall not be required to maintain or preserve licensing history records of any person licensed under the provisions of this part ~~1~~ ***2*** for any period of time longer than seven years.

12-10-217. [Formerly 12-61-113]. Investigation - revocation - actions against licensee or applicant - definition - repeal. (1) The commission, upon its own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any licensee or any person who assumes to act in the capacity of a licensee within the state, and the commission, after holding a hearing pursuant to section ~~12-61-114~~ ***12-10-219***, has the power to impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense and to censure a licensee, to place the licensee on probation and to set the terms of probation, or to temporarily suspend a license, or permanently revoke a license, when the licensee has performed, is performing, or is attempting to perform any of the following acts and is guilty of:

(a) Knowingly making any misrepresentation or knowingly making use of any false or misleading advertising;

(b) Making any promise of a character ~~which~~ THAT influences, persuades, or induces another person when he OR SHE could not or did not intend to keep ~~such~~ THE promise;

(c) Knowingly misrepresenting or making false promises through agents, advertising, or otherwise;

~~(c.5)~~ ***(d)*** Violating any provision of the "Colorado Consumer Protection Act", article 1 of title 6; ~~C.R.S.;~~

~~(d)~~ ***(e)*** Acting for more than one party in a transaction without the knowledge of all parties thereto;

~~(e)~~ ***(f)*** Representing or attempting to represent a real estate broker other than the licensee's employer without the express knowledge and consent of that employer;

~~(f)~~ ***(g)*** In the case of a broker registered as in the employ of another broker, failing to place, as soon after receipt as is practicably possible, in the custody of that licensed broker-employer any deposit money or other money or fund entrusted to the employee by any person dealing with the employee as the representative of that licensed broker-employer;

~~(g)~~ ***(h)*** Failing to account for or to remit, within a reasonable time, any ~~moneys~~ MONEY coming into the licensee's possession that ~~belong~~ BELONGS to others, whether acting as real estate brokers or otherwise, and failing to keep records relative to ~~said moneys~~ THE MONEY, which records shall contain such information as may be prescribed by the rules of the

commission relative thereto and shall be subject to audit by the commission;

~~(g.5)~~ ***(i)*** Converting funds of others, diverting funds of others without proper authorization, commingling funds of others with the broker's own funds, or failing to keep ~~such~~ THE funds of others in an escrow or a trustee account with some 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 ~~which~~ THAT contain such information as may be prescribed by the rules ~~and regulations~~ of the commission relative thereto, which records shall be subject to audit by the commission;

~~(h)~~ ***(j)*** Failing to provide the purchaser and seller of real estate with a closing statement of the transaction, containing such information as may be prescribed by the rules ~~and regulations~~ of the commission or failing to provide a signed duplicate copy of the listing contract and the contract of sale or the preliminary agreement to sell to the parties thereto;

~~(i)~~ ***(k)*** Failing to maintain possession, for future use or inspection by an authorized representative of the commission, for a period of four years, of the documents or records prescribed by the rules ~~and regulations~~ of the commission or to produce ~~such~~ THE documents or records upon reasonable request by the commission or by an authorized representative of the commission;

~~(j)~~ ***(l)*** Paying a commission or valuable consideration for performing any of the functions of a real estate broker, as described in this part ~~1~~ ***2***, to any person not licensed under this part ~~1~~ ***2***; except that a licensed broker may pay a finder's fee or a share of any commission on a cooperative sale when ~~such~~ THE payment is made to a real estate broker licensed in another state or country. If a country does not license real estate brokers, then the payee must be a citizen or resident of ~~said~~ THE country and represent that the payee is in the business of selling real estate in ~~said~~ THE country.

~~(k)~~ ***(m)*** Disregarding or violating any provision of this part ~~1~~ ***2*** or part ~~8~~ ***4*** of this article ***10***, violating any reasonable rule ~~or regulation~~ promulgated by the commission in the interests of the public and in conformance with the provisions of this part ~~1~~ ***2*** or part ~~8~~ ***4*** of this article ***10***; violating any lawful commission orders; or aiding and abetting a violation of any rule, ~~regulation,~~ commission order, or provision of this part ~~1~~ ***2*** or part ~~8~~ ***4*** of this article ***10***;

~~(l) Repealed.~~

~~(m)~~ ***(n)*** (I) Conviction of, entering a plea of guilty to, or entering a plea of nolo contendere to any crime in article 3 of title 18; parts 1, 2, 3, and 4 of article 4 of title 18; part 1, 2, 3, 4, 5, 7, 8, or 9 of article 5 of title 18; article 5.5 of title 18; parts 3, 4, 6, 7, and 8 of article 6 of title 18; parts 1, 3, 4, 5, 6, 7, and 8 of article 7 of title 18; part 3 of article 8 of title 18; article 15 of title 18; article 17 of title 18; section 18-18-404, 18-18-405, 18-18-406, 18-18-411, 18-18-412.5, 18-18-412.7, 18-18-412.8, 18-18-415, 18-18-416, 18-18-422, or 18-18-423; or any other like crime under Colorado law, federal law, or the laws of other states. A certified copy of the judgment of a court of competent jurisdiction of ~~such~~ THE conviction or other official record indicating that ~~such~~ THE plea was entered shall be conclusive evidence of ~~such~~ THE

conviction or plea in any hearing under this part ~~1~~ ***2***.

(II) As used in this subsection ~~(1)(m)~~ ***(1)(n)***, "conviction" includes the imposition of a deferred judgment or deferred sentence.

~~(m.5)~~ ***(o)*** Violating or aiding and abetting in the violation of the Colorado or federal fair housing laws;

~~(m.6)~~ ***(p)*** Failing to immediately notify the commission in writing of a conviction, plea, or violation pursuant to ~~paragraph (m) or (m.5) of this subsection (1)~~ SUBSECTION (1)(n) OR (1)(o) OF THIS SECTION;

~~(n)~~ ***(q)*** Having demonstrated unworthiness or incompetency to act as a real estate broker by conducting business in such a manner as to endanger the interest of the public;

~~(o)~~ ***(r)*** In the case of a broker licensee, failing to exercise reasonable supervision over the activities of licensed employees;

~~(p)~~ ***(s)*** Procuring, or attempting to procure, a real estate broker's license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, a real estate broker's license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for ~~such~~ THE license;

~~(q)~~ ***(t)*** Claiming, arranging for, or taking any secret or undisclosed amount of compensation, commission, or profit or failing to reveal to the licensee's principal or employer the full amount of ~~such~~ THE licensee's compensation, commission, or profit in connection with any acts for which a license is required under this part ~~1~~ ***2***;

~~(r)~~ ***(u)*** Using any provision allowing the licensee an option to purchase in any agreement authorizing or employing ~~such~~ THE licensee to sell, buy, or exchange real estate for compensation or commission, except when ~~such~~ THE licensee, prior to or coincident with election to exercise ~~such~~ THE option to purchase, reveals in writing to the licensee's principal or employer the full amount of the licensee's profit and obtains the written consent of ~~such~~ THE principal or employer approving the amount of ~~such~~ THE profit;

~~(s) (I) Repealed.~~

~~(II)~~ ***(v)*** Effective on and after August 26, 2013, fraud, misrepresentation, deceit, or conversion of trust funds that results in the entry of a civil judgment for damages;

~~(t)~~ ***(w)*** Any other conduct, whether of the same or a different character than specified in this subsection (1), ~~which~~ THAT constitutes dishonest dealing;

~~(u) Repealed.~~

~~(v)~~ ***(x)*** Having had a real estate broker's or a subdivision developer's license suspended or revoked in any jurisdiction, or having had any disciplinary action taken against the broker or subdivision developer in any other jurisdiction if the broker's or subdivision developer's action would constitute a violation of this subsection (1). A certified copy of the order of disciplinary action shall be prima facie evidence of ~~such~~ THE disciplinary action.

~~(w)~~ ***(y)*** Failing to keep records documenting proof of completion of the continuing education requirements in accordance with section ~~12-61-110.5~~ ***12-10-213*** for a period of four years from the date of compliance with ~~said~~ THE section;

~~(x)~~ ***(z)*** (I) Violating any provision of section ~~12-61-113.2~~ ***12-10-218***.

(II) In addition to any other remedies available to the commission pursuant to this ~~title~~ ARTICLE 10, after notice and a hearing pursuant to section 24-4-105, ~~C.R.S.~~, the commission may assess a penalty for a violation of section ~~12-61-113.2~~ ***12-10-218*** or of any rule promulgated pursuant to section ~~12-61-113.2~~ ***12-10-218***. The penalty shall be the amount of remuneration improperly paid and shall be transmitted to the state treasurer and credited to the general fund.

~~(y)~~ ***(aa)*** Within the last five years, having 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:

(I) A mortgage broker or mortgage loan originator;

(II) A real estate broker or salesperson;

(III) A real estate appraiser, as defined by section ~~12-61-702 (11)~~ ***12-10-101 (9)***;

(IV) An insurance producer, as defined by section 10-2-103 (6); ~~C.R.S.~~;

(V) An attorney;

(VI) A securities broker-dealer, as defined by section 11-51-201 (2); ~~C.R.S.~~;

(VII) A securities sales representative, as defined by section 11-51-201 (14); ~~C.R.S.~~;

(VIII) An investment advisor, as defined by section 11-51-201 (9.5); ~~C.R.S.~~; or

(IX) An investment advisor representative, as defined by section 11-51-201 (9.6). ~~C.R.S.~~

~~(1.5)~~ ***(2)*** Every person licensed pursuant to section ~~12-61-101 (2)(a)(X)~~ ***12-10-101 (10)(a)(X)*** shall give a prospective tenant a contract or receipt; and ~~such~~ THE contract or receipt shall include the address and telephone number of the real estate commission in prominent letters and shall state that the regulation of rental location agents is under the purview of the real estate commission.

~~(2)~~ ***(3)*** In the event a firm, partnership, limited liability company, association, or corporation operating under the license of a broker designated and licensed as representative of ~~said~~ THE firm, partnership, limited liability company, association, or corporation is guilty of any of the foregoing acts, the commission may suspend or revoke the right of the said firm, partnership, limited liability company, association, or corporation to conduct its business under the license of ~~said~~ THE broker, whether or not the designated broker had personal knowledge thereof and whether or not the commission suspends or revokes the individual license of ~~said~~ THE broker.

~~(3)~~ ***(4)*** Upon request of the commission, when any real estate broker is a party to any suit or proceeding, either civil or criminal, arising out of any transaction involving the sale or exchange of any interest in real property or out of any transaction involving a leasehold interest in the real property and when ~~such~~ THE broker is involved in ~~such~~ THE transaction in such capacity as a licensed broker, it shall be the duty of ~~said~~ THE broker to supply to the commission a copy of the complaint, indictment, information, or other initiating pleading and the answer filed, if any, and to advise the commission 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.

~~(4)~~ ***(5)*** This part ~~1~~ ***2*** shall not be construed to relieve any person from civil liability or criminal prosecution under the laws of this state.

~~(5)~~ ***(6)*** Complaints of record in the office of the commission and commission investigations, including commission investigative files, are closed to public inspection. Stipulations and final agency orders are public records subject to sections 24-72-203 and 24-72-204. ~~C.R.S.~~

~~(6)~~ ***(7)*** When a complaint or an investigation discloses an instance of misconduct ~~which~~ THAT, in the opinion of the commission, does not warrant formal action by the commission but which should not be dismissed as being without merit, the commission 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 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~~ THE request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings. <{***Do we want to maintain the certified mail requirement here?***}>

~~(7)~~ ***(8)*** All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund.

~~(8)~~ ***(9)*** Any application for licensure from a person whose license has been revoked shall not be considered until the passage of one year from the date of revocation.

~~(9)~~ ***(10)*** When the division ~~of real estate~~ 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 division shall, in addition to the exercise of its authority under this part ~~1~~ ***2***, refer and transmit ~~such~~ THE 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.

12-10-218. [Formerly 12-61-113.2]. Affiliated business arrangements - definitions - disclosures - enforcement and penalties - reporting - rules - investigation information shared with the division of insurance. (1) As used in this section, unless the context otherwise requires:

(a) "Affiliated business arrangement" means an arrangement in which:

(I) A provider of settlement services or an associate of a provider of settlement services has either an affiliate relationship with or a direct beneficial ownership interest of more than one percent in another provider of settlement services; and

(II) A provider of settlement services or the associate of a provider directly or indirectly refers settlement service business to another provider of settlement services or affirmatively influences the selection of another provider of settlement services.

(b) "Associate" means a person who has one or more of the

following relationships with a person in a position to refer settlement service business:

(I) A spouse, parent, or child of ~~such~~ THE person;

(II) A corporation or business entity that controls, is controlled by, or is under common control with ~~such~~ THE person;

(III) An employer, officer, director, partner, franchiser, or franchisee of ~~such~~ THE person, including a broker acting as an independent contractor; or

(IV) Anyone who has an agreement, arrangement, or understanding with ~~such~~ THE person, the purpose or substantial effect of which is to enable the person in a position to refer settlement service business to benefit financially from referrals of ~~such~~ THE business.

(c) "Settlement service" means any service provided in connection with a real estate settlement including, but not limited to, the following:

(I) Title searches;

(II) Title examinations;

(III) The provision of title certificates;

(IV) Title insurance;

(V) Services rendered by an attorney;

(VI) The preparation of title documents;

(VII) Property surveys;

(VIII) The rendering of credit reports or appraisals;

(IX) Real estate appraisal services;

(X) Home inspection services;

(XI) Services rendered by a real estate broker;

(XII) Pest and fungus inspections;

(XIII) The origination of a loan;

(XIV) The taking of a loan application;

(XV) The processing of a loan;

(XVI) Underwriting and funding of a loan;

(XVII) Escrow handling services;

(XVIII) The handling of the processing; and

(XIX) Closing of settlement.

(2) (a) An affiliated business arrangement is permitted where the person referring business to the affiliated business arrangement receives payment only in the form of a return on an investment and where it does not violate the provisions of section ~~12-61-113~~ ***12-10-217***.

(b) If a licensee or the employing broker of a licensee is part of an affiliated business arrangement when an offer to purchase real property is fully executed, the licensee shall disclose to all parties to the real estate transaction the existence of the arrangement. The disclosure shall be written, shall be signed by all parties to the real estate transaction, and shall comply with the federal "Real Estate Settlement Procedures Act of 1974", as amended, 12 U.S.C. sec. 2601 et seq.

(c) A licensee shall not require the use of an affiliated business arrangement or a particular provider of settlement services as a condition of obtaining services from that licensee for any settlement service. For the purposes of this ~~paragraph (c)~~ SUBSECTION (2)(c), "require the use" shall have the same meaning as "required use" in 24 CFR 3500.2 (b).

(d) No licensee shall give or accept any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service

involving an affiliated business arrangement shall be referred to any provider of settlement services.

(e) Nothing in this section shall be construed to prohibit payment of a fee to:

(I) An attorney for services actually rendered;

(II) A title insurance company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance;

(III) A lender to its duly appointed agent for services actually performed in the making of a loan.

(f) Nothing in this section shall be construed to prohibit payment to any person of:

(I) A bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed;

(II) A fee pursuant to cooperative brokerage and referral arrangements or agreements between real estate brokers.

(g) It shall not be a violation of this section for an affiliated business arrangement:

(I) To require a buyer, borrower, or seller to pay for the services of any attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction; or

(II) If an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or her law practice.

(h) No person shall be liable for a violation of this section if ~~such~~ THE person proves by a preponderance of the evidence that ~~such~~ THE violation was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures that are reasonably adopted to avoid ~~such~~ THE error.

(3) On and after July 1, 2006, a licensee shall disclose at the time the licensee enters into or changes an affiliated business arrangement, in a form and manner acceptable to the commission, the names of all affiliated business arrangements to which the licensee is a party. The disclosure shall include the physical locations of the affiliated businesses.

(4) On and after July 1, 2006, an employing broker, in a form and manner acceptable to the commission, shall at least annually disclose the names of all affiliated business arrangements to which the employing broker is a party. The disclosure shall include the physical locations of the affiliated businesses.

(5) The commission may promulgate rules concerning the creation and conduct of an affiliated business arrangement, including, but not limited to, rules defining what constitutes a sham affiliated business arrangement. The commission shall adopt the rules, policies, or guidelines issued by the United States department of housing and urban development concerning the federal "Real Estate Settlement Procedures Act of 1974", as amended, 12 U.S.C. sec. 2601 et seq. Rules adopted by the commission shall be at least as stringent as the federal rules and shall ensure that consumers are adequately informed about affiliated business arrangements. The commission shall consult with the insurance commissioner pursuant to section 10-11-124 (2), ~~C.R.S.,~~ concerning rules, policies, or guidelines the insurance commissioner adopts

concerning affiliated business arrangements. Neither the rules promulgated by the commissioner nor the real estate commission may create a conflicting regulatory burden on an affiliated business arrangement.

(6) The division may share information gathered during an investigation of an affiliated business arrangement with the division of insurance.

~~**12-61-113.5. Mobile home transactions - requirements. (Repealed)**~~

12-10-219. [Formerly 12-61-114]. Hearing - administrative law judge - review - rules. (1) Except as otherwise provided in this section, all proceedings before the commission with respect to disciplinary actions and denial of licensure under this part ~~1~~ ***2*** and part ~~8~~ ***4*** of this article ***10*** and certifications issued under part ~~4~~ ***5*** of this article ***10*** shall be conducted by an administrative law judge pursuant to the provisions of sections 24-4-104 and 24-4-105. ~~C.R.S.~~

(2) ~~Such~~ THE proceedings shall be held in the county where the commission has its office or in such other place as the commission may designate. If the licensee is an employed broker, the commission shall also notify the broker employing the licensee by mailing, by first-class mail, a copy of the written notice required under section 24-4-104 (3) ~~C.R.S.,~~ to the employing broker's last-known business address.

(3) An administrative law judge shall conduct all hearings for denying, suspending, or revoking a license or certificate on behalf of the commission, 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 pursuant to the provisions of sections 24-4-104 and 24-4-105. ~~C.R.S.~~ No license shall be denied, suspended, or revoked until the commission has made its decision by a majority vote.

(4) The decision of the commission in any disciplinary action or denial of licensure under this section is subject to review by the court of appeals by appropriate proceedings under section 24-4-106 (11). In order to effectuate the purposes of parts ~~1~~ ***2***, 4, and ~~8~~ ***4*** of this article ~~61~~ ***10***, the commission has the power to promulgate rules pursuant to article 4 of title 24. The commission may appear in court by its own attorney.

(5) Pursuant to ~~said~~ THE proceeding, the court has the right, in its discretion, to stay the execution or effect of any final order of the commission; 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 commission's order. If the court determines that the order should be stayed, it shall also determine at ~~said~~ THE hearing the amount of the bond and adequacy of the surety, which bond shall be conditioned upon the faithful performance by ~~such~~ THE petitioner of all obligations as a real estate broker 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~~ THE proceedings.

(6) In any hearing conducted by the commission 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

commission shall be governed by the provisions of section 24-5-101. ~~C.R.S.~~

12-10-220. [Formerly 12-61-114.5] Rules. All rules adopted or amended by the commission are subject to sections 24-4-103 (8)(c) and (8)(d) and 24-34-104 (6)(b). ~~C.R.S.~~

~~**12-61-115. Subpoena compelling attendance of witnesses, records, and documents. (Repealed)**~~

~~**12-61-116. Failure to obey subpoena - penalty. (Repealed)**~~

12-10-221. [Formerly 12-61-117] Broker remuneration. It is unlawful for a real estate broker registered in the commission office as in the employ of another broker to accept a commission or valuable consideration for the performance of any of the acts specified in this part ~~1~~ ***2*** from any person except the broker's employer, who shall be a licensed real estate broker.

12-10-222. [Formerly 12-61-118] Acts of third parties - broker's liability. Any unlawful act or violation of any of the provisions of this part ~~1~~ ***2*** upon the part of an employee, officer, or member of a licensed real estate broker shall not be cause for disciplinary action against a real estate broker, unless it appears to the satisfaction of the commission that the real estate broker had actual knowledge of the unlawful act or violation or had been negligent in the supervision of employees.

12-10-223. [Formerly 12-61-119] Violations. Any natural person, firm, partnership, limited liability company, association, or corporation violating the provisions of this part ~~1~~ ***2*** by acting as real estate broker in this state without having obtained a license or by acting as real estate broker after the broker's license has been revoked or during any period for which ~~said~~ THE license may have been suspended is guilty of a misdemeanor and, upon conviction thereof, if a natural person, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment and, if an entity, shall be punished by a fine of not more than five thousand dollars. A second violation, if by a natural person, shall be punishable by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

12-10-224. [Formerly 12-61-120] Subpoena compelling attendance of witnesses and production of records and documents. The commission, the director, ~~for the commission,~~ <{***This reference to the "director for the commission" means the director of the division of real estate, correct? Is it intended to mean the director, acting on behalf of the commission? If so, is that necessary here?***}> or the administrative law judge appointed for hearings may issue a subpoena compelling the attendance and testimony of witnesses and the production of books, papers, or records pursuant to an investigation or hearing of ~~such~~ THE commission. ~~Such~~ THE subpoenas 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 and the production of documents at hearings. If a person fails or refuses to obey a subpoena issued by the commission, the director, or the appointed administrative law judge, the commission may petition the district court having jurisdiction for issuance of a subpoena in the

premises, and the court shall, in a proper case, issue its subpoena. Any person who refuses to obey ~~such~~ A subpoena shall be punished as provided in section ~~12-61-121~~ ***12-10-225*.**

12-10-225. [Formerly 12-61-121] Failure to obey subpoena - penalty. Any person who willfully fails or neglects to appear and testify or to produce books, papers, or records required by subpoena, duly served upon him or her in any matter conducted under parts ~~1~~ ***2*** and ~~4~~ ***5*** of this article ~~61~~ ***10***, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of twenty-five dollars, or imprisonment in the county jail for not more than thirty days for each such offense, or by both such fine and imprisonment. Each day ~~such~~ A person so refuses or neglects constitutes a separate offense.

12-10-226. [Formerly 12-61-122] Powers of commission - injunctions. The commission may apply to a court of competent jurisdiction for an order enjoining any act or practice that constitutes a violation of parts ~~1~~ ***2*** and ~~4~~ ***5*** of this article ~~61~~ ***10***, <{***Should the "and" be an "or" here so that it isn't referencing a violation of both parts 2 and 5 but rather a violation of part 2 or a violation of part 5? If so, perhaps this could be addressed in an SRC bill if not in this bill.***}> and, upon a showing that a person is engaging or intends to engage in any such act or practice, an injunction, restraining order, or other appropriate order shall be granted by ~~such~~ THE court regardless of the existence of another remedy therefor. Any notice, hearing, or duration of any injunction or restraining order shall be made in accordance with the provisions of the Colorado rules of civil procedure.

12-10-227. [Formerly 12-61-123] Repeal of part. This part ~~1~~ ***2*** is repealed, effective September 1, 2026. Before its repeal, the ~~real estate~~ division, including the real estate commission, ~~shall be reviewed~~ IS SCHEDULED FOR REVIEW in accordance with section 24-34-104.

PART 3
BROKERS' COMMISSIONS

12-10-301. [Formerly 12-61-201]. When entitled to commission. No real estate agent or broker is entitled to a commission for finding a purchaser who is ready, willing, and able to complete the purchase of real estate as proposed by the owner until the same is consummated or is defeated by the refusal or neglect of the owner to consummate the same as agreed upon.

12-10-302. [Formerly 12-61-202]. Objections on account of title. No real estate agent or broker is entitled to a commission when a proposed purchaser fails or refuses to complete his OR HER contract of purchase because of defects in the title of the owner, unless ~~such~~ THE owner, within a reasonable time, has ~~said~~ THE defects corrected by legal proceedings or otherwise.

12-10-303. [Formerly 12-61-203]. When owner must perfect title. The owner shall not be required to begin legal or other proceedings for the correction of ~~such~~ A title until ~~such~~ THE agent or broker secures from the proposed purchaser an enforceable contract in writing, binding him OR HER to complete the purchase whenever the defects in the title are corrected.

12-10-304. [Formerly 12-61-203.5]. Referral fees - conformity

with federal law required - remedies for violation - definitions. (1) A person licensed under parts ~~1~~ ***2*** to ~~4~~ ***5*** of this article ***10*** shall not pay or receive a referral fee except in accordance with the federal "Real Estate Settlement Procedures Act of 1974", as amended, 12 U.S.C. sec. 2601 et seq., and unless reasonable cause for payment of the referral fee exists. A reasonable cause for payment means:

(a) An actual introduction of business has been made;

(b) A contractual referral fee relationship exists; or

(c) A contractual cooperative brokerage relationship exists.

(2) (a) No person shall interfere with the brokerage relationship of a licensee.

(b) As used in this subsection (2):

(I) "Brokerage relationship" means a relationship entered into between a broker and a buyer, seller, landlord, or tenant under which the broker engages in any of the acts set forth in section ~~12-61-101 (2)~~ ***12-10-101 (10)***. A brokerage relationship is not established until a written brokerage agreement is entered into between the parties or is otherwise established by law.

(II) "Interference with the brokerage relationship" means demanding a referral fee from a licensee without reasonable cause.

(III) "Referral fee" means any fee paid by a licensee to any person or entity, other than a cooperative commission offered by a listing broker to a selling broker or vice versa.

(3) Any person aggrieved by a violation of any provision of this section may bring a civil action in a court of competent jurisdiction. The prevailing party in any such action shall be entitled to actual damages and, in addition, the court may award an amount up to three times the amount of actual damages sustained as a result of any such violation plus reasonable attorney fees.

12-10-305. [Formerly 12-61-204]. Repeal of part. This part ~~2~~ ***3*** is repealed, effective September 1, 2026. Before its repeal, this part ~~2~~ ***3*** is scheduled for review in accordance with section 24-34-104.

~~**12-61-301 to 12-61-309. (Repealed)**~~

PART 4
BROKERAGE RELATIONSHIPS

12-10-401. [Formerly 12-61-801]. Legislative declaration. (1) The general assembly finds, determines, and declares that the public will best be served through a better understanding of the public's legal and working relationships with real estate brokers and by being able to engage any such real estate broker on terms and under conditions that the public and the real estate broker find acceptable. This includes engaging a broker as a single agent or transaction-broker. Individual members of the public should not be exposed to liability for acts or omissions of real estate brokers that have not been approved, directed, or ratified by ~~such~~ THE individuals. Further, the public should be advised of the general duties, obligations, and responsibilities of the real estate broker they engage.

(2) This part ~~8~~ ***4*** is enacted to govern the relationships between real estate brokers and sellers, landlords, buyers, and tenants in real estate

transactions.

12-10-402. [Formerly 12-61-802]. Definitions. As used in this part ~~8~~ ***4***, unless the context otherwise requires:

(1) "Broker" shall have the same meaning as set forth in section ~~12-61-101 (2)~~ ***12-10-101 (10)***, except as otherwise specified in this part ~~8~~ ***4***.

~~(1.3)~~ ***(2)*** "Customer" means a party to a real estate transaction with whom the broker has no brokerage relationship because ~~such~~ THE party has not engaged or employed a broker.

~~(1.5)~~ ***(3) (a)*** "Designated broker" means an employing broker or employed broker who is designated in writing by an employing broker to serve as a single agent or transaction-broker for a seller, landlord, buyer, or tenant in a real estate transaction.

(b) "Designated broker" does not include a real estate brokerage firm that consists of only one licensed natural person. <{***I would suggest putting the "does not include" language in a separate subsection as I've done here.***}>

~~(2)~~ ***(4)*** "Dual agent" means a broker who, with the written informed consent of all parties to a contemplated real estate transaction, is engaged as a limited agent for both the seller and buyer or both the landlord and tenant.

~~(3)~~ ***(5)*** "Limited agent" means an agent whose duties and obligations to a principal are only those set forth in section ~~12-61-804~~ ***12-10-404*** or ~~12-61-805~~ ***12-10-405***, with any additional duties and obligations agreed to pursuant to section ~~12-61-803 (5)~~ ***12-10-403 (5).***

~~(4)~~ ***(6)*** "Single agent" means a broker who is engaged by and represents only one party in a real estate transaction. A single agent includes the following:

(a) "Buyer's agent", which means a broker who is engaged by and represents the buyer in a real estate transaction;

(b) "Landlord's agent", which means a broker who is engaged by and represents the landlord in a leasing transaction;

(c) "Seller's agent", which means a broker who is engaged by and represents the seller in a real estate transaction; and

(d) "Tenant's agent", which means a broker who is engaged by and represents the tenant in a leasing transaction.

~~(5)~~ ***(7)*** "Subagent" means a broker engaged to act for another broker in performing brokerage tasks for a principal. The subagent owes the same obligations and responsibilities to the principal as does the principal's broker.

~~(6)~~ ***(8)*** "Transaction-broker" means a broker who assists one or more parties throughout a contemplated real estate transaction with communication, interposition, advisement, negotiation, contract terms, and the closing of ~~such~~ THE real estate transaction without being an agent or advocate for the interests of any party to ~~such~~ THE transaction. Upon agreement in writing pursuant to section ~~12-61-803 (2)~~ ***12-10-403 (2)*** or a written disclosure pursuant to section ~~12-61-808 (2)(d)~~ ***12-10-408 (2)(c)***, a transaction-broker may become a single agent.

12-10-403. [Formerly 12-61-803]. Relationships between brokers and the public - definition - rules. (1) When engaged in any of the activities enumerated in section ~~12-61-101 (2)~~ ***12-10-101 (10)***, a broker may act in any transaction as a single agent or transaction-broker.

The broker's general duties and obligations arising from that relationship shall be disclosed to the seller and the buyer or to the landlord and the tenant pursuant to section ~~12-61-808~~ ***12-10-408***.

(2) A broker shall be considered a transaction-broker unless a single agency relationship is established through a written agreement between the broker and the party or parties to be represented by ~~such~~ THE broker.

(3) A broker may work with a single party in separate transactions pursuant to different relationships including, but not limited to, selling one property as a seller's agent and working with that seller in buying another property as a transaction-broker or buyer's agent, but only if the broker complies with this part ~~8~~ ***4*** in establishing the relationships for each transaction.

(4) (a) A broker licensed pursuant to part ~~1~~ ***2*** of this article ***10***, whether acting as a single agent or transaction-broker, may complete standard forms for use in a real estate transaction, including standard forms intended to convey personal property as part of the real estate transaction, when a broker is performing the activities enumerated or referred to in section ~~12-61-101 (2)~~ ***12-10-101 (10)*** in the transaction.

(b) As used in this subsection (4), "standard form" means:

(I) A form promulgated by the real estate commission for current use by brokers, also referred to in this section as a "commission-approved form";

(II) A form drafted by a licensed Colorado attorney representing the broker, employing broker, or brokerage firm, so long as the name of the attorney or law firm and the name of the broker, employing broker, or brokerage firm for whom the form is prepared are included on the form itself;

(III) A form provided by a party to the transaction if the broker is acting in the transaction as either a transaction-broker or as a single agent for the party providing the form to the broker, so long as the broker retains written confirmation that the form was provided by a party to the transaction;

(IV) A form prescribed by a governmental agency, a quasi-governmental agency, or a lender regulated by state or federal law, if use of the form is mandated by ~~such~~ THE agency or lender;

(V) A form issued with the written approval of the Colorado Bar Association or its successor organization and specifically designated for use by brokers in Colorado, so long as the form is used within any guidelines or conditions specified by the Colorado Bar Association or successor organization in connection with the use of the form;

(VI) A form used for disclosure purposes only, if the disclosure does not purport to waive or create any legal rights or obligations affecting any party to the transaction and if the form provides only information concerning either:

(A) The real estate involved in the transaction specifically; or

(B) The geographic area in which the real estate is located generally;

(VII) A form prescribed by a title company that is providing closing services in a transaction for which the broker is acting either as a transaction-broker or as a single agent for a party to the transaction; or

(VIII) A letter of intent created or prepared by a broker,

employing broker, or brokerage firm so long as the letter of intent states on its face that it is nonbinding and creates no legal rights or obligations.

(c) A broker shall use a commission-approved form when such a form exists and is appropriate for the transaction. A broker's use of any standard form described in subsection (4)(b)(III) or (4)(b)(IV) of this section must be limited to inserting transaction-specific information within the form. In using standard forms described in subsection (4)(b)(II), (4)(b)(V), (4)(b)(VI), (4)(b)(VII), or (4)(b)(VIII) of this section, the broker may also advise the parties as to effects thereof, and the broker's use of those standard forms must be appropriate for the transaction and the circumstances in which they are used. In any transaction described in this subsection (4), the broker shall advise the parties that the forms have important legal consequences and that the parties should consult legal counsel before signing ~~such~~ THE forms.

(5) Nothing contained in this section shall prohibit the public from entering into written contracts with any broker ~~which~~ THAT contain duties, obligations, or responsibilities ~~which~~ THAT are in addition to those specified in this part ~~8~~ ***4***.

(6) (a) If a real estate brokerage firm has more than one licensed natural person, the employing broker or an individual broker employed or engaged by that employing broker shall be designated to work with the seller, landlord, buyer, or tenant as a designated broker. The employing broker may designate more than one of its individual brokers to work with a seller, landlord, buyer, or tenant.

(b) The brokerage relationship established between the seller, landlord, buyer, or tenant and a designated broker, including the duties, obligations, and responsibilities of that relationship, shall not extend to the employing broker nor to any other broker employed or engaged by that employing broker who has not been so designated and shall not extend to the firm, partnership, limited liability company, association, corporation, or other entity that employs ~~such~~ THE broker.

(c) A real estate broker may have designated brokers working as single agents for a seller or landlord and a buyer or tenant in the same real estate transaction without creating dual agency for the employing real estate broker, or any broker employed or engaged by that employing real estate broker.

(d) An individual broker may be designated to work for both a seller or landlord and a buyer or tenant in the same transaction as a transaction-broker for both, as a single agent for the seller or landlord treating the buyer or tenant as a customer, or as a single agent for a buyer or tenant treating the seller or landlord as a customer, but not as a single agent for both. The applicable designated broker relationship shall be disclosed in writing to the seller or landlord and buyer or tenant in a timely manner pursuant to rules promulgated by the real estate commission.

(e) A designated broker may work with a seller or landlord in one transaction and work with a buyer or tenant in another transaction.

(f) When a designated broker serves as a single agent pursuant to section ~~12-61-804~~ ***12-10-404*** or ~~12-61-805~~ ***12-10-405***, there shall be no imputation of knowledge to the employing or employed broker who has not been so designated.

(g) The extent and limitations of the brokerage relationship with

the designated broker shall be disclosed to the seller, landlord, buyer, or tenant working with that designated broker pursuant to section ~~12-61-808~~ ***12-10-408***.

(7) No seller, buyer, landlord, or tenant shall be vicariously liable for a broker's acts or omissions that have not been approved, directed, or ratified by ~~such~~ THE seller, buyer, landlord, or tenant.

(8) Nothing in this section shall be construed to limit the employing broker's or firm's responsibility to supervise licensees employed by ~~such~~ THE broker or firm nor to shield ~~such~~ THE broker or firm from vicarious liability.

12-10-404. [Formerly 12-61-804]. Single agent engaged by seller or landlord. (1) A broker engaged by a seller or landlord to act as a seller's agent or a landlord's agent is a limited agent with the following duties and obligations:

(a) To perform the terms of the written agreement made with the seller or landlord;

(b) To exercise reasonable skill and care for the seller or landlord;

(c) To promote the interests of the seller or landlord with the utmost good faith, loyalty, and fidelity, including, but not limited to:

(I) Seeking a price and terms ~~which~~ THAT are acceptable to the seller or landlord; except that the broker shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;

(II) Presenting all offers to and from the seller or landlord in a timely manner regardless of whether the property is subject to a contract for sale or a lease or letter of intent to lease;

(III) Disclosing to the seller or landlord adverse material facts actually known by the broker;

(IV) Counseling the seller or landlord as to any material benefits or risks of a transaction ~~which~~ THAT are actually known by the broker;

(V) Advising the seller or landlord to obtain expert advice as to material matters about which the broker knows but the specifics of which are beyond the expertise of ~~such~~ THE broker;

(VI) Accounting in a timely manner for all money and property received; and

(VII) Informing the seller or landlord that ~~such~~ THE seller or landlord shall not be vicariously liable for the acts of ~~such~~ THE seller's or landlord's agent that are not approved, directed, or ratified by ~~such~~ THE seller or landlord.

(d) To comply with all requirements of this article ***10*** and any rules promulgated pursuant to this article ***10***; and

(e) To comply with any applicable federal, state, or local laws, rules, ~~regulations,~~ or ordinances including fair housing and civil rights statutes or regulations. <{***Rules and regulations are the same thing so I've removed the redundant reference to "rules, regulations" to simply read "rules".***}>

(2) The following information shall not be disclosed by a broker acting as a seller's or landlord's agent without the informed consent of the seller or landlord:

(a) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(b) What the motivating factors are for the party selling or leasing the property;

(c) That the seller or landlord will agree to financing terms other than those offered;

(d) Any material information about the seller or landlord unless disclosure is required by law or failure to disclose ~~such~~ THE information would constitute fraud or dishonest dealing; or

(e) Any facts or suspicions regarding circumstances ~~which~~ THAT may psychologically impact or stigmatize any real property pursuant to section 38-35.5-101. ~~C.R.S.~~

(3) (a) A broker acting as a seller's or landlord's agent owes no duty or obligation to the buyer or tenant; except that a broker shall, subject to the limitations of section 38-35.5-101, ~~C.R.S.,~~ concerning psychologically impacted property, disclose to any prospective buyer or tenant all adverse material facts actually known by ~~such~~ THE broker. ~~Such~~ THE adverse material facts may include but shall not be limited to adverse material facts pertaining to the title and the physical condition of the property, any material defects in the property, and any environmental hazards affecting the property ~~which~~ THAT are required by law to be disclosed.

(b) A seller's or landlord's agent owes no duty to conduct an independent inspection of the property for the benefit of the buyer or tenant and owes no duty to independently verify the accuracy or completeness of any statement made by ~~such~~ THE seller or landlord or any independent inspector.

(4) A seller's or landlord's agent may show alternative properties not owned by ~~such~~ THE seller or landlord to prospective buyers or tenants and may list competing properties for sale or lease and not be deemed to have breached any duty or obligation to ~~such~~ THE seller or landlord.

(5) A designated broker acting as a seller's or landlord's agent may cooperate with other brokers but may not engage or create any subagents.

12-10-405. [Formerly 12-61-805]. Single agent engaged by buyer or tenant. (1) A broker engaged by a buyer or tenant to act as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:

(a) To perform the terms of the written agreement made with the buyer or tenant;

(b) To exercise reasonable skill and care for the buyer or tenant;

(c) To promote the interests of the buyer or tenant with the utmost good faith, loyalty, and fidelity, including, but not limited to:

(I) Seeking a price and terms ~~which~~ THAT are acceptable to the buyer or tenant; except that the broker shall not be obligated to seek other properties while the buyer is a party to a contract to purchase property or while the tenant is a party to a lease or letter of intent to lease;

(II) Presenting all offers to and from the buyer or tenant in a timely manner regardless of whether the buyer is already a party to a contract to purchase property or the tenant is already a party to a contract or a letter of intent to lease;

(III) Disclosing to the buyer or tenant adverse material facts actually known by the broker;

(IV) Counseling the buyer or tenant as to any material benefits or risks of a transaction ~~which~~ THAT are actually known by the broker;

(V) Advising the buyer or tenant to obtain expert advice as to material matters about which the broker knows but the specifics of which are beyond the expertise of ~~such~~ THE broker;

(VI) Accounting in a timely manner for all money and property received; and

(VII) Informing the buyer or tenant that ~~such~~ THE buyer or tenant shall not be vicariously liable for the acts of ~~such~~ THE buyer's or tenant's agent that are not approved, directed, or ratified by ~~such~~ THE buyer or tenant;

(d) To comply with all requirements of this article ***10*** and any rules promulgated pursuant to this article ***10***; and

(e) To comply with any applicable federal, state, or local laws, rules, ~~regulations,~~ or ordinances including fair housing and civil rights statutes or regulations.

(2) The following information shall not be disclosed by a broker acting as a buyer's or tenant's agent without the informed consent of the buyer or tenant:

(a) That a buyer or tenant is willing to pay more than the purchase price or lease rate for the property;

(b) What the motivating factors are for the party buying or leasing the property;

(c) That the buyer or tenant will agree to financing terms other than those offered;

(d) Any material information about the buyer or tenant unless disclosure is required by law or failure to disclose ~~such~~ THE information would constitute fraud or dishonest dealing; or

(e) Any facts or suspicions regarding circumstances ~~which~~ THAT would psychologically impact or stigmatize any real property pursuant to section 38-35.5-101. ~~C.R.S.~~

(3) (a) A broker acting as a buyer's or tenant's agent owes no duty or obligation to the seller or landlord; except that ~~such~~ THE broker shall disclose to any prospective seller or landlord all adverse material facts actually known by the broker including but not limited to adverse material facts concerning the buyer's or tenant's financial ability to perform the terms of the transaction and whether the buyer intends to occupy the property to be purchased as a principal residence.

(b) A buyer's or tenant's agent owes no duty to conduct an independent investigation of the buyer's or tenant's financial condition for the benefit of the seller or landlord and owes no duty to independently verify the accuracy or completeness of statements made by ~~such~~ THE buyer or tenant or any independent inspector.

(4) A buyer's or tenant's agent may show properties in which the buyer or tenant is interested to other prospective buyers or tenants without breaching any duty or obligation to ~~such~~ THE buyer or tenant. Nothing in this section shall be construed to prohibit a buyer's or tenant's agent from showing competing buyers or tenants the same property and from assisting competing buyers or tenants in attempting to purchase or lease a particular property.

(5) A broker acting as a buyer's or tenant's agent owes no duty to conduct an independent inspection of the property for the benefit of the buyer or tenant and owes no duty to independently verify the accuracy or completeness of statements made by the seller, landlord, or independent

inspectors; except that nothing in this subsection (5) shall be construed to limit the broker's duties and obligations imposed pursuant to subsection (1) of this section.

(6) A broker acting as a buyer's or tenant's agent may cooperate with other brokers but may not engage or create any subagents.

12-10-406. [Formerly 12-61-806]. Dual agent. ~~(1)~~ A broker shall not establish dual agency with any seller, landlord, buyer, or tenant.

~~(2) to (6) (Deleted by amendment, L. 2002, p. 1060, § 6, effective January 1, 2003.)~~

12-10-407. [Formerly 12-61-807]. Transaction-broker. (1) A broker engaged as a transaction-broker is not an agent for either party.

(2) A transaction-broker shall have the following obligations and responsibilities:

(a) To perform the terms of any written or oral agreement made with any party to the transaction;

(b) To exercise reasonable skill and care as a transaction-broker, including, but not limited to:

(I) Presenting all offers and counteroffers in a timely manner regardless of whether the property is subject to a contract for sale or lease or letter of intent;

(II) Advising the parties regarding the transaction and suggesting that ~~such~~ THE parties obtain expert advice as to material matters about which the transaction-broker knows but the specifics of which are beyond the expertise of ~~such~~ THE broker;

(III) Accounting in a timely manner for all money and property received;

(IV) Keeping the parties fully informed regarding the transaction;

(V) Assisting the parties in complying with the terms and conditions of any contract including closing the transaction;

(VI) Disclosing to all prospective buyers or tenants any adverse material facts actually known by the broker including but not limited to adverse material facts pertaining to the title, the physical condition of the property, any defects in the property, and any environmental hazards affecting the property required by law to be disclosed;

(VII) Disclosing to any prospective seller or landlord all adverse material facts actually known by the broker including but not limited to adverse material facts pertaining to the buyer's or tenant's financial ability to perform the terms of the transaction and the buyer's intent to occupy the property as a principal residence; and

(VIII) Informing the parties that as seller and buyer or as landlord and tenant they shall not be vicariously liable for any acts of the transaction-broker;

(c) To comply with all requirements of this article ***10*** and any rules promulgated pursuant to this article ***10***; and

(d) To comply with any applicable federal, state, or local laws, rules, ~~regulations,~~ or ordinances including fair housing and civil rights statutes or regulations.

(3) The following information shall not be disclosed by a transaction-broker without the informed consent of all parties:

(a) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(b) That a seller or landlord is willing to accept less than the

asking price or lease rate for the property;

(c) What the motivating factors are for any party buying, selling, or leasing the property;

(d) That a seller, buyer, landlord, or tenant will agree to financing terms other than those offered;

(e) Any facts or suspicions regarding circumstances ~~which~~ THAT may psychologically impact or stigmatize any real property pursuant to section 38-35.5-101; ~~C.R.S.;~~ or

(f) Any material information about the other party unless disclosure is required by law or failure to disclose ~~such~~ THE information would constitute fraud or dishonest dealing.

(4) A transaction-broker has no duty to conduct an independent inspection of the property for the benefit of the buyer or tenant and has no duty to independently verify the accuracy or completeness of statements made by the seller, landlord, or independent inspectors.

(5) A transaction-broker has no duty to conduct an independent investigation of the buyer's or tenant's financial condition or to verify the accuracy or completeness of any statement made by the buyer or tenant.

(6) A transaction-broker may do the following without breaching any obligation or responsibility:

(a) Show alternative properties not owned by the seller or landlord to a prospective buyer or tenant;

(b) List competing properties for sale or lease;

(c) Show properties in which the buyer or tenant is interested to other prospective buyers or tenants; and

(d) Serve as a single agent or transaction-broker for the same or for different parties in other real estate transactions.

(7) There shall be no imputation of knowledge or information between any party and the transaction-broker or among persons within an entity engaged as a transaction-broker.

(8) A transaction-broker may cooperate with other brokers but shall not engage or create any subagents.

12-10-408. [Formerly 12-61-808]. Broker disclosures. (1) (a) Any NATURAL person, firm, partnership, limited liability company, association, or corporation acting as a broker shall adopt a written office policy that identifies and describes the relationships offered to the public by ~~such~~ THE broker.

(b) A broker shall not be required to offer or engage in any one or in all of the brokerage relationships enumerated in section ~~12-61-804,~~ ~~12-61-805,~~ ***12-10-404, 12-10-405*** or ~~12-61-807~~ ***12-10-407***.

(c) Written disclosures and written agreements required by subsection (2) of this section shall contain a statement to the seller, landlord, buyer, or tenant that different brokerage relationships are available that include buyer agency, seller agency, or status as a transaction-broker. Should the seller, landlord, buyer, or tenant request information or ask questions concerning a brokerage relationship not offered by the broker pursuant to the broker's written office policy enumerated in subsection (1)(a) of this section, the broker shall provide to the party a written definition of that brokerage relationship that has been promulgated by the Colorado real estate commission.

(d) Disclosures made in accordance with this part ~~8~~ ***4*** shall be sufficient to disclose brokerage relationships to the public.

(2) (a) (I) Prior to engaging in any of the activities enumerated in section ~~12-61-101 (2)~~ ***12-10-101 (10)***, a transaction-broker shall disclose in writing to the party to be assisted that ~~such~~ THE broker is not acting as agent for ~~such~~ THE party and that ~~such~~ THE broker is acting as a transaction-broker.

(II) As part of each relationship entered into by a broker pursuant to ~~subparagraph (I) of this paragraph (a)~~ SUBSECTION (2)(a)(I) OF THIS SECTION, written disclosure shall be made ~~which~~ THAT shall contain a signature block for the buyer, seller, landlord, or tenant to acknowledge receipt of ~~such~~ THE disclosure. ~~Such~~ THE disclosure and acknowledgment, by itself, shall not constitute a contract with the broker. If ~~such~~ THE buyer, seller, landlord, or tenant chooses not to sign the acknowledgment, the broker shall note that fact on a copy of the disclosure and shall retain ~~such~~ THE copy.

(III) If the transaction-broker undertakes any obligations or responsibilities in addition to or different from those set forth in section ~~12-61-807 such~~ ***12-10-407***, THE obligations or responsibilities shall be disclosed in a writing ~~which~~ THAT shall be signed by the involved parties.

(b) Prior to engaging in any of the activities enumerated in section ~~12-61-101 (2)~~ ***12-10-101 (10)***, a broker intending to establish a single agency relationship with a seller, landlord, buyer, or tenant shall enter into a written agency agreement with the party to be represented. ~~Such~~ THE agreement shall disclose the duties and responsibilities specified in section ~~12-61-804~~ ***12-10-404*** or ~~12-61-805~~ ***12-10-405***, as applicable. Notice of the single agency relationship shall be furnished to any prospective party to the proposed transaction in a timely manner.

~~(c) (Deleted by amendment, L. 2002, p. 1061, § 8, effective January 1, 2003.)~~

~~(d)~~ ***(c)*** (I) Prior to engaging in any of the activities enumerated in section ~~12-61-101 (2)~~ ***12-10-101 (10)***, a broker intending to work with a buyer or tenant as an agent of the seller or landlord shall provide a written disclosure to ~~such~~ THE buyer or tenant that shall contain the following:

(A) A statement that the broker is an agent for the seller or landlord and is not an agent for the buyer or tenant;

(B) A list of the tasks that the agent intends to perform for the seller or landlord with the buyer or tenant; and

(C) A statement that the buyer or tenant shall not be vicariously liable for the acts of the agent unless the buyer or tenant approves, directs, or ratifies ~~such~~ THE acts.

(II) The written disclosure required pursuant to ~~subparagraph (I) of this paragraph (d)~~ SUBSECTION (2)(c)(I) OF THIS SECTION, shall contain a signature block for the buyer or tenant to acknowledge receipt of ~~such~~ THE disclosure. ~~Such~~ THE disclosure and acknowledgment, by itself, shall not constitute a contract with the broker. If the buyer or tenant does not sign ~~such~~ THE disclosure, the broker shall note that fact on a copy of ~~such~~ THE disclosure and retain ~~such~~ THE copy.

~~(e) (Deleted by amendment, L. 2002, p. 1061, § 8, effective January 1, 2003.)~~

~~(f)~~ ***(d)*** A broker who has already established a relationship with one party to a proposed transaction shall advise at the earliest reasonable opportunity any other potential parties or their agents of ~~such~~ THE established relationship.

~~(g)~~ ***(e)*** (I) Prior to engaging in any of the activities enumerated in section ~~12-61-101 (2)~~ ***12-10-101 (10)***, the seller, buyer, landlord, or tenant shall be advised in any written agreement with a broker that the brokerage relationship exists only with the designated broker, does not extend to the employing broker or to any other brokers employed or engaged by the employing broker who are not so designated, and does not extend to the brokerage company.

(II) Nothing in this ~~paragraph (g)~~ SUBSECTION (2)(e) shall be construed to limit the employing broker's or firm's responsibility to supervise licensees employed by ~~such~~ THE broker or firm nor to shield ~~such~~ THE broker or firm from vicarious liability.

12-10-409. [Formerly 12-61-809]. Duration of relationship. (1) (a) The relationships set forth in this part ~~8~~ ***4*** shall commence at the time that the broker is engaged by a party and shall continue until performance or completion of the agreement by which the broker was engaged.

(b) If the agreement by which the broker was engaged is not performed or completed for any reason, the relationship shall end at the earlier of the following:

(I) Any date of expiration agreed upon by the parties;

(II) Any termination or relinquishment of the relationship by the parties; or

(III) One year after the date of the engagement.

(2) (a) Except as otherwise agreed to in writing and pursuant to ~~paragraph (b) of this subsection (2)~~ SUBSECTION (2)(b) OF THIS SECTION, a broker engaged as a seller's agent or buyer's agent owes no further duty or obligation after termination or expiration of the contract or completion of performance.

(b) Notwithstanding ~~paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION, a broker shall be responsible after termination or expiration of the contract or completion of performance for the following:

(I) Accounting for all ~~moneys~~ MONEY and property related to and received during the engagement; and

(II) Keeping confidential all information received during the course of the engagement ~~which~~ THAT was made confidential by request or instructions from the engaging party unless:

(A) The engaging party grants written consent to disclose ~~such~~ THE information;

(B) Disclosure of ~~such~~ THE information is required by law; or

(C) The information is made public or becomes public by the words or conduct of the engaging party or from a source other than the broker.

(3) Except as otherwise agreed to in writing, a transaction-broker owes no further obligation or responsibility to the engaging party after termination or expiration of the contract for performance or completion of performance; except that ~~such~~ THE broker shall account for all ~~moneys~~ MONEY and property related to and received during the engagement.

12-10-410. [Formerly 12-61-810]. Compensation. (1) In any real estate transaction, the broker's compensation may be paid by the seller, the buyer, the landlord, the tenant, a third party, or by the sharing or splitting of a commission or compensation between brokers.

(2) Payment of compensation shall not be construed to establish an agency relationship between the broker and the party who paid ~~such~~ THE compensation.

(3) A seller or landlord may agree that a transaction-broker or single agent may share the commission or other compensation paid by ~~such~~ THE seller or landlord with another broker.

(4) A buyer or tenant may agree that a single agent or transaction-broker may share the commission or other compensation paid by ~~such~~ THE buyer or tenant with another broker.

(5) A buyer's or tenant's agent shall obtain the written approval of ~~such~~ THE buyer or tenant before ~~such~~ THE agent may propose to the seller's or landlord's agent that ~~such~~ THE buyer's or tenant's agent be compensated by sharing compensation paid by ~~such~~ THE seller or landlord.

(6) Prior to entering into a brokerage or listing agreement or a contract to buy, sell, or lease, the identity of those parties, persons, or entities paying compensation or commissions to any broker shall be disclosed to the parties to the transaction.

(7) A broker may be compensated by more than one party for services in a transaction if those parties have consented in writing to such multiple payments prior to entering into a contract to buy, sell, or lease.

12-10-411. [Formerly 12-61-811]. Violations. The violation of any provision of this part ~~8~~ ***4*** by a broker constitutes an act pursuant to section ~~12-61-113 (1)(k)~~ ***12-10-217 (1)(m)*** for which the real estate commission may investigate and take administrative action against any such broker pursuant to sections ~~12-61-113~~ ***12-10-217*** and ~~12-61-114~~ ***12-10-219***.

PART 5
SUBDIVISIONS

12-10-501. [Formerly 12-61-401]. Definitions. As used in this part ~~4~~ ***5***, unless the context otherwise requires:

(1) "Commission" means the real estate commission established under section ~~12-61-105~~ ***12-10-206***.

~~(2) "Developer" means any person, as defined in section 2-4-401 (8), C.R.S., which participates as owner, promoter, or sales agent in the promotion, sale, or lease of a subdivision or any part thereof.~~

~~(2.5) "HOA" or "homeowners' association" means an association or unit owners' association formed before, on, or after July 1, 1992, as part of a common interest community as defined in section 38-33.3-103, C.R.S.~~

~~(3) (a) "Subdivision" means any real property divided into twenty or more interests intended solely for residential use and offered for sale, lease, or transfer.~~

~~(b) (I) The term "subdivision" also includes:~~

~~(A) The conversion of an existing structure into a common interest community of twenty or more residential units, as defined in article 33.3 of title 38, C.R.S.;~~

~~(B) A group of twenty or more time shares intended for residential use; and~~

~~(C) A group of twenty or more proprietary leases in a cooperative housing corporation, as defined in article 33.5 of title 38, C.R.S.~~

~~(II) The term "subdivision" does not include:~~

~~(A) The selling of memberships in campgrounds;~~

~~(B) Bulk sales and transfers between developers;~~

~~(C) Property upon which there has been or upon which there will be erected residential buildings that have not been previously occupied and where the consideration paid for such property includes the cost of such buildings;~~

~~(D) Lots which, at the time of closing of a sale or occupancy under a lease, are situated on a street or road and street or road system improved to standards at least equal to streets and roads maintained by the county, city, or town in which the lots are located; have a feasible plan to provide potable water and sewage disposal; and have telephone and electricity facilities and systems adequate to serve the lots, which facilities and systems are installed and in place on the lots or in a street, road, or easement adjacent to the lots and which facilities and systems comply with applicable state, county, municipal, or other local laws, rules, and regulations; or any subdivision that has been or is required to be approved after September 1, 1972, by a regional, county, or municipal planning authority pursuant to article 28 of title 30 or article 23 of title 31, C.R.S.;~~

~~(E) Sales by public officials in the official conduct of their duties.~~

~~(4) "Time share" means a time share estate, as defined in section 38-33-110 (5), C.R.S., or a time share use, but the term does not include group reservations made for convention purposes as a single transaction with a hotel, motel, or condominium owner or association. For the purposes of this subsection (4), "time share use" means a contractual or membership right of occupancy (which cannot be terminated at the will of the owner) for life or for a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, or specific or nonspecific segment of real property, annually or on some other periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the property has been divided.~~

12-10-502. [Formerly 12-61-402]. Registration required. (1) Unless exempt under the provisions of section ~~12-61-401 (3)~~ ***12-10-101 (11)***, a developer, before selling, leasing, or transferring or agreeing or negotiating to sell, lease, or transfer, directly or indirectly, any subdivision or any part thereof, shall register pursuant to this part ~~4~~ ***5***.

(2) Upon approval by the commission, a developer who has applied for registration pursuant to section ~~12-61-403~~ ***12-10-503*** may offer reservations in a subdivision during the pendency of ~~such~~ THE application and until ~~such~~ THE application is granted or denied if the fees for ~~such~~ THE reservations are held in trust by an independent third party and are fully refundable.

12-10-503. [Formerly 12-61-403]. Application for registration. (1) Every person who is required to register as a developer under this part ~~4~~ ***5*** shall submit to the commission an application ~~which~~ THAT contains the information described in subsections (2) and (3) of this section. If ~~such~~ THE information is not submitted, the commission may deny the application for registration. If a developer is currently regulated in another state that has registration requirements substantially equivalent

to the requirements of this part ~~4~~ ***5*** or that provide substantially comparable protection to a purchaser, the commission may accept proof of ~~such~~ THE registration along with the developer's disclosure or equivalent statement from the other state in full or partial satisfaction of the information required by this section. In addition, the applicant shall be under a continuing obligation to notify the commission within ten days of any change in the information so submitted, and a failure to do so shall be a cause for disciplinary action.

(2) (a) Registration information concerning the developer shall include:

(I) The principal office of the applicant wherever situate;

(II) The location of the principal office and the branch offices of the applicant in this state;

~~(III) Repealed.~~

~~(IV)~~ ***(III)*** The names and residence and business addresses of all natural persons who have a twenty-four percent or greater financial or ultimate beneficial interest in the business of the developer, either directly or indirectly, as principal, manager, member, partner, officer, director, or stockholder, specifying each such person's capacity, title, and percentage of ownership. If no natural person has a twenty-four percent or greater financial or beneficial interest in the business of the developer, the information required in this ~~subparagraph (IV)~~ SUBSECTION (2)(a)(III) shall be submitted regarding the natural person having the largest single financial or beneficial interest.

(V) The length of time and the locations where the applicant has been engaged in the business of real estate sales or development;

(VI) Any felony of which the applicant has been convicted within the preceding ten years. In determining whether a certificate of registration shall be issued to an applicant who has been convicted of a felony within ~~such~~ THE period of time, the commission shall be governed by the provisions of section 24-5-101. ~~C.R.S.~~

(VII) The states in which the applicant has had a license or registration similar to the developer's registration in this state granted, refused, suspended, or revoked or is currently the subject of an investigation or charges that could result in refusal, suspension, or revocation;

(VIII) Whether the developer or any other person financially interested in the business of the developer as principal, partner, officer, director, or stockholder has engaged in any activity that would constitute a violation of this part ~~4~~ ***5***.

(b) If the applicant is a corporate developer, a copy of the certificate of authority to do business in this state or a certificate of incorporation issued by the secretary of state shall accompany the application.

(3) Registration information concerning the subdivision shall include:

(a) The location of each subdivision from which sales are intended to be made;

(b) The name of each subdivision and the trade, corporate, or partnership name used by the developer;

(c) Evidence or certification that each subdivision offered for sale or lease is registered or will be registered in accordance with state or local

requirements of the state in which each subdivision is located;

(d) Copies of documents evidencing the title or other interest in the subdivision;

(e) If there is a blanket encumbrance upon the title of the subdivision or any other ownership, leasehold, or contractual interest that could defeat all possessory or ownership rights of a purchaser, a copy of the instruments creating ~~such~~ THE liens, encumbrances, or interests, with dates as to the recording, along with documentary evidence that any beneficiary, mortgagee, or trustee of a deed of trust or any other holder of ~~such~~ THE ownership, leasehold, or contractual interest will release any lot or time share from the blanket encumbrance or has subordinated its interest in the subdivision to the interest of any purchaser or has established any other arrangement acceptable to the real estate commission that protects the rights of the purchaser;

(f) A statement that standard commission-approved forms will be used for contracts of sale, notes, deeds, and other legal documents used to effectuate the sale or lease of the subdivision or any part thereof, unless the forms to be used were prepared by an attorney representing the developer;

(g) A true statement by the developer that, in any conveyance by means of an installment contract, the purchaser shall be advised to record the contract with the proper authorities in the jurisdiction in which the subdivision is located. In no event shall any developer specifically prohibit the recording of the installment contract.

(h) A true statement by the developer of the provisions for and availability of legal access, sewage disposal, and public utilities, including water, electricity, gas, and telephone facilities, in the subdivision offered for sale or lease, including whether such are to be a developer or purchaser expense;

(i) A true statement as to whether or not a survey of each lot, site, or tract offered for sale or lease from ~~such~~ THE subdivision has been made and whether survey monuments are in place;

~~(i.5)~~ ***(j)*** A true statement by the developer as to whether or not a common interest community is to be or has been created within the subdivision and whether or not ~~such~~ THE common interest community is or will be a small cooperative or small and limited expense planned community created pursuant to section 38-33.3-116; ~~C.R.S.~~;

~~(j)~~ ***(k)*** A true statement by the developer concerning the existence of any common interest community association, including whether the developer controls funds in ~~such~~ THE association.

~~(3.5)~~ ***(4)*** The commission may disapprove the form of the documents submitted pursuant to ~~paragraph (f) of subsection (3)~~ SUBSECTION (3)(f) of this section and may deny an application for registration until such time as the applicant submits ~~such~~ THE documents in a form that is satisfactory to the commission.

~~(4) Repealed.~~

(5) Each registration shall be accompanied by fees established pursuant to section ~~12-61-111.5~~ ***12-10-215***.

12-10-504. [Formerly 12-61-404] Registration of developers. (1) The commission shall register all applicants who meet the requirements of this part ~~4~~ ***5*** and provide each applicant so registered with a certificate indicating that the developer named therein is registered in

the state of Colorado as a subdivision developer. The developer ~~which~~ THAT will sign as seller or lessor in any contract of sale, lease, or deed purporting to convey any site, tract, lot, or divided or undivided interest from a subdivision shall secure a certificate before offering, negotiating, or agreeing to sell, lease, or transfer before ~~such~~ THE sale, lease, or transfer is made. If ~~such~~ THE NATURAL person or entity is acting only as a trustee, the beneficial owner of the subdivision shall secure a certificate. A certificate issued to a developer shall entitle all sales agents and employees of ~~such~~ THE developer to act in the capacity of a developer as agent for ~~such~~ THE developer. The developer shall be responsible for all actions of ~~such~~ THE sales agents and employees.

(2) All certificates issued under this section shall expire on December 31 following the date of issuance. In the absence of any reason or condition under this part ~~4~~ ***5*** that might warrant the denial or revocation of a registration, a certificate shall be renewed by payment of a renewal fee established pursuant to section ~~12-61-111.5~~ ***12-10-215***. A registration that has expired may be reinstated within two years after ~~such~~ THE expiration upon payment of the appropriate renewal fee if the applicant meets all other requirements of this part ~~4~~ ***5***.

(3) All fees collected under this part ~~4~~ ***5*** shall be deposited in accordance with section ~~12-61-111~~ ***12-10-214***.

(4) With regard to any subdivision for which the information required by section ~~12-61-403 (3)~~ ***12-10-503 (3)*** has not been previously submitted to the commission, each registered developer shall register ~~such~~ THE subdivision by providing the commission with ~~such~~ THE information before sale, lease, or transfer, or negotiating or agreeing to sell, lease, or transfer, any such subdivision or any part thereof.

12-10-505. [Formerly 12-61-405] Refusal, revocation, or suspension of registration - letter of admonition - probation. (1) The commission may impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense; may issue a letter of admonition; may place a registrant on probation under its close supervision on such terms and for such time as it deems appropriate; and may refuse, revoke, or suspend the registration of any developer or registrant if, after an investigation and after notice and a hearing pursuant to the provisions of section 24-4-104, ~~C.R.S.,~~ the commission determines that the developer or any director, officer, or stockholder with controlling interest in the corporation:

(a) Has used false or misleading advertising or has made a false or misleading statement or a concealment in his OR HER application for registration;

(b) Has misrepresented or concealed any material fact from a purchaser of any interest in a subdivision;

(c) Has employed any device, scheme, or artifice with intent to defraud a purchaser of any interest in a subdivision;

(d) Has been convicted of or pled guilty or nolo contendere to a crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising, or dishonest dealing in any court;

(e) Has disposed of, concealed, diverted, converted, or otherwise failed to account for any funds or assets of any purchaser of any interest in a subdivision or any homeowners' association under the control of ~~such~~ THE developer or director, officer, or stockholder;

(f) Has failed to comply with any stipulation or agreement made with the commission;

(g) Has failed to comply with or has violated any provision of this article ***10***, including any failure to comply with the registration requirements of section ~~12-61-403~~ ***12-10-503***, or any lawful rule ~~or regulation~~ promulgated by the commission under this article ***10***;

~~(h) (Deleted by amendment, L. 89, p. 740, § 17, effective July 1, 1989.)~~

~~(i)~~ ***(h)*** Has refused to honor a buyer's request to cancel a contract for the purchase of a time share or subdivision or part thereof if ~~such~~ THE request was made within five calendar days after execution of the contract and was made either by telegram, mail, or hand delivery. A request is considered made if by mail when postmarked, if by telegram when filed for telegraphic transmission, or if by hand delivery when delivered to the seller's place of business. No developer shall employ a contract that contains any provision waiving a buyer's right to such a cancellation period. <{***Should this be updated - possibly in a bill for the statutory review committee - to include electronic mail and to remove telegram and telegraphic transmission references?***}>

~~(j)~~ ***(i)*** Has committed any act that constitutes a violation of the "Colorado Consumer Protection Act", article 1 of title 6; ~~C.R.S.;~~

~~(k)~~ ***(j)*** Has employed any sales agent or employee who violates the provisions of this part ~~4~~ ***5***;

~~(l)~~ ***(k)*** Has used documents for sales or lease transactions other than those described in section ~~12-61-403 (3)(f)~~ ***12-10-503 (3)(f)***;

~~(m)~~ ***(l)*** Has failed to disclose encumbrances to prospective purchasers or has failed to transfer clear title at the time of sale, if the parties agreed that ~~such~~ THE transfer would be made at that time.

~~(1.5)~~ ***(2)*** A disciplinary action relating to the business of subdivision development taken by any other state or local jurisdiction or the federal government shall be deemed to be prima facie evidence of grounds for disciplinary action, including denial of registration, under this part ~~4~~ ***5***. This subsection ~~(1.5)~~ ***(2)*** shall apply only to such disciplinary actions as are substantially similar to those set out as grounds for disciplinary action or denial of registration under this part ~~4~~ ***5***.

~~(2)~~ ***(3)*** Any hearing held under this section shall be in accordance with the procedures established in sections 24-4-105 and 24-4-106. ~~C.R.S.~~

~~(2.5)~~ ***(4)*** When a complaint or investigation discloses an instance of misconduct that, in the opinion of the commission, does not initially warrant formal action by the commission but which should not be dismissed as being without merit, the commission may send a letter of admonition by certified mail, return receipt requested, to the registrant who is the subject of the complaint or investigation and a copy thereof to any person making ~~such~~ THE complaint. ~~Such~~ THE letter shall advise the registrant that he OR SHE has the right to request in writing, within twenty days after proven receipt, that formal disciplinary proceedings be initiated against him OR HER to adjudicate the propriety of the conduct upon which the letter of admonition is based. If ~~such~~ THE request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings. <{***Do we want to maintain the certified mail requirement here?***}>

~~(3)~~ ***(5)*** All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund.

12-10-506. [Formerly 12-61-406] Powers of commission - injunction - rules. (1) The commission may apply to a court of competent jurisdiction for an order enjoining any act or practice ~~which~~ THAT constitutes a violation of this part ~~4~~ ***5***, and, upon a showing that a person is engaging or intends to engage in any such act or practice, an injunction, restraining order, or other appropriate order shall be granted by ~~such~~ THE court, regardless of the existence of another remedy therefor. Any notice, hearing, or duration of any injunction or restraining order shall be made in accordance with the provisions of the Colorado rules of civil procedure.

~~(1.2)~~ ***(2)*** The commission may apply to a court of competent jurisdiction for the appointment of receiver if it determines that ~~such~~ THE appointment is necessary to protect the property or interests of purchasers of a subdivision or part thereof.

~~(1.5)~~ ***(3)*** The commission shall issue or deny a certificate or additional registration within sixty days from the date of receipt of the application by the commission. The commission may make necessary investigations and inspections to determine whether any developer has violated this part ~~4~~ ***5*** or any lawful rule ~~or regulation~~ promulgated by the commission. If, after an application by a developer has been submitted pursuant to section ~~12-61-403~~ ***12-10-503*** or information has been submitted pursuant to section ~~12-61-404~~ ***12-10-504***, the commission determines that an inspection of a subdivision is necessary, it shall complete the inspection within sixty days from the date of filing of the application or information, or the right of inspection is waived and the lack thereof shall not be grounds for denial of a registration.

~~(1.6)~~ ***(4)*** The commission, the director ~~for the commission~~, or the administrative law judge appointed for a hearing may issue a subpoena compelling the attendance and testimony of witnesses and the production of books, papers, or records pursuant to an investigation or hearing of ~~such~~ THE commission. Any such subpoena shall be served in the same manner as for subpoenas issued by district courts.

~~(2)~~ ***(5)*** The commission has the power to make any rules necessary for the enforcement or administration of this part ~~4~~ ***5***.

~~(2.5)~~ ***(6)*** The commission shall adopt, promulgate, amend, or repeal such rules ~~and regulations~~ as are necessary to:

(a) Require written disclosures to any purchasers as provided in subsection ~~(3)~~ ***(7)*** of this section and to prescribe and require that standardized forms be used by subdivision developers in connection with the sale or lease of a subdivision or any part thereof, except as otherwise provided in section ~~12-61-403 (3)(f)~~ ***12-10-503 (3)(f)***; and

(b) Require that developers maintain certain business records for a period of at least seven years.

~~(3)~~ ***(7)*** The commission may require any developer to make written disclosures to purchasers in their contracts of sale or by separate written documents if the commission finds that ~~such~~ THE disclosures are necessary for the protection of ~~such~~ THE purchasers.

~~(4)~~ ***(8)*** The commission or its designated representative may audit the accounts of any ~~homeowner~~ HOMEOWNERS' association, the funds of

which are controlled by a developer.

12-10-507. [Formerly 12-61-406.5]. HOA information and resource center - creation - duties - rules - repeal. (1) There is hereby created, within the division, ~~of real estate,~~ the HOA information and resource center, the head of which shall be the HOA information officer. The HOA information officer shall be appointed by the executive director ~~of the department of regulatory agencies~~ pursuant to section 13 of article XII of the state constitution.

(2) The HOA information officer shall be familiar with the "Colorado Common Interest Ownership Act", article 33.3 of title 38, ~~C.R.S.,~~ also referred to in this section as the "act". No person who is or, within the immediately preceding ten years, has been licensed by or registered with the division ~~of real estate~~ or who owns stocks, bonds, or any pecuniary interest in a corporation subject in whole or in part to regulation by the division ~~of real estate~~ shall be appointed as HOA information officer. In addition, in conducting the search for an appointee, the executive director ~~of the division of real estate~~ shall place a high premium on candidates who are balanced, independent, unbiased, and without any current financial ties to an HOA board or board member or to any NATURAL person or entity that provides HOA management services. After being appointed, the HOA information officer shall refrain from engaging in any conduct or relationship that would create a conflict of interest or the appearance of a conflict of interest.

(3) (a) The HOA information officer shall act as a clearing house for information concerning the basic rights and duties of unit owners, declarants, and unit owners' associations under the act by:

(I) Compiling a database about registered associations, including the name; address; e-mail address, if any; website, if any; and telephone number of each;

(II) Coordinating and assisting in the preparation of educational and reference materials, including materials to assist unit owners, executive boards, board members, and association managers in understanding their rights and responsibilities with respect to:

(A) Open meetings;

(B) Proper use of executive sessions;

(C) Removal of executive board members;

(D) Unit owners' right to speak at meetings of the executive board;

(E) Unit owners' obligation to pay assessments and the association's rights and responsibilities in pursuing collection of past-due amounts; and

(F) Other educational or reference materials that the HOA information officer deems necessary or appropriate;

(III) Monitoring changes in federal and state laws relating to common interest communities and providing information about the changes on the ~~division of real estate's~~ DIVISION'S website; and

(IV) Providing information, including a "frequently asked questions" resource, on the ~~division of real estate's~~ DIVISION'S website.

(b) The HOA information officer may:

(I) Employ one or more assistants as may be necessary to carry out his or her duties; and

(II) Request certain records from associations as necessary to

carry out the HOA information officer's duties as set forth in this section.

(c) The HOA information officer shall track inquiries and complaints and report annually to the director ~~of the division of real estate~~ regarding the number and types of inquiries and complaints received.

(4) The operating expenses of the HOA information and resource center shall be paid from the division of real estate cash fund, created in section ~~12-61-111.5~~ ***12-10-215***, subject to annual appropriation.

(5) The director ~~of the division of real estate~~ may adopt rules as necessary to implement this section and section 38-33.3-401. ~~C.R.S.~~ This subsection (5) shall not be construed to confer additional rule-making authority upon the director for any other purpose.

(6) This section is repealed, effective September 1, 2020. ~~Prior to such~~ BEFORE ITS repeal, the HOA information and resource center and the HOA information officer's powers and duties under this section ~~shall be reviewed~~ IS SCHEDULED FOR REVIEW in accordance with section 24-34-104. ~~C.R.S.~~ <{***These changes align with our modern drafting convention on referencing the sunset review process. See section 12-10-509 below as an example.***}>

~~12-61-406.7. Study of comparable HOA information and resource centers - recommendations - report - repeal. (Repealed)~~

12-10-508. [Formerly 12-61-407] Violation - penalty. Any person who fails to register as a developer in violation of this part ~~4~~ ***5*** commits a class 6 felony and shall be punished as provided in section 18-1.3-401. C.R.S. Any agreement or contract for the sale or lease of a subdivision or part thereof shall be voidable by the purchaser and unenforceable by the developer unless ~~such~~ THE developer was duly registered under the provisions of this part ~~4~~ ***5*** when ~~such~~ THE agreement or contract was made.

12-10-509. [Formerly 12-61-408] Repeal of part. This part ~~4~~ ***5*** is repealed, effective September 1, 2026. Before its repeal, this part ~~4~~ ***5*** is scheduled for review in accordance with section 24-34-104.

~~12-61-501 to 12-61-507. (Repealed)~~

PART 6
REAL ESTATE APPRAISERS

12-10-601. [Formerly 12-61-701] Legislative declaration. The general assembly finds, determines, and declares that sections ~~12-61-702~~ ***12-10-602*** to ~~12-61-723~~ ***12-10-623*** are enacted pursuant to the requirements of the "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, 12 U.S.C. secs. 3331 to 3351. The general assembly further finds, determines, and declares that sections ~~12-61-702~~ ***12-10-602*** to ~~12-61-723~~ ***12-10-623*** are intended to implement the requirements of federal law in the least burdensome manner to real estate appraisers and appraisal management companies. Licensed ad valorem appraisers licensed under this article ***10*** are not regulated by the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, 12 U.S.C. secs. 3331 to 3351.

12-10-702. [Formerly 12-61-702] Definitions. As used in this part

~~7~~ ***6***, unless the context otherwise requires:

~~(1) (a) "Appraisal", "appraisal report", or "real estate appraisal" means a written or oral analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate that is transmitted to the client upon the completion of an assignment. These terms include a valuation, which is an opinion of the value of real estate, and an analysis, which is a general study of real estate not specifically performed only to determine value; except that the terms include a valuation completed by an appraiser employee of a county assessor as defined in section 39-1-102 (2), C.R.S.~~

~~(b) The terms do not include an analysis, valuation, opinion, conclusion, notation, or compilation of data by an officer, director, or regular salaried employee of a financial institution or its affiliate, made for internal use only by the financial institution or affiliate, concerning an interest in real estate that is owned or held as collateral by the financial institution or affiliate and that is not represented or deemed to be an appraisal except to the financial institution, the agencies regulating the financial institution, and any secondary markets that purchase real estate secured loans. An appraisal prepared by an officer, director, or regular salaried employee of a financial institution who is not licensed or certified under this part 7 shall contain a written notice that the preparer is not licensed or certified as an appraiser under this part 7.~~

~~(c) "Appraisal", "appraisal report", or "real estate appraisal" does not include a federally authorized "waiver valuation", as defined in 49 CFR 24.2 (a)(33), as amended.~~ <{***This definition has been added to the common definitions for article 10 in section 12-10-101 (1).***}>

~~(2)~~ ***(1)*** (a) "Appraisal management company" or "AMC" means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor in a consumer credit transaction secured by a consumer's principal dwelling that oversees an appraiser panel or by an underwriter of, or other principal in, the secondary mortgage markets that oversees an appraiser panel to:

(I) Recruit, select, and train appraisers;

(II) Contract with licensed and certified appraisers to perform appraisal assignments;

(III) Manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

(IV) Review and verify the work of appraisers.

(b) "Appraisal management company" does not include:

(I) A corporation, limited liability company, sole proprietorship, or other entity that directly performs appraisal services;

(II) A corporation, limited liability company, sole proprietorship, or other entity that does not contract with appraisers for appraisal services, but that solely distributes orders to a client-selected panel of appraisers; and

(III) A mortgage company, or its subsidiary, that manages a panel of appraisers who are engaged to provide appraisal services on mortgage

loans either originated by the mortgage company or funded by the mortgage company with its own funds.

~~(3)~~ ***(2)*** "Board" means the board of real estate appraisers created in section ~~12-61-703~~ ***12-10-603***.

~~(4)~~ ***(3)*** "Client" means the party or parties who engage an appraiser or an appraisal management company for a specific assignment.

~~(5) Repealed.~~

~~(6)~~ ***(4)*** "Consulting services" means services performed by an appraiser that do not fall within the definition of an "independent appraisal" in subsection ~~(10)~~ ***(6)*** of this section. "Consulting services" includes marketing, financing and feasibility studies, valuations, analyses, and opinions and conclusions given in connection with real estate brokerage, mortgage banking, and counseling and advocacy in regard to property tax assessments and appeals thereof; except that, if in rendering ~~such~~ THE services the appraiser acts as a disinterested third party, the work is deemed an independent appraisal and not a consulting service. Nothing in this subsection ~~(6)~~ ***(4)*** precludes a person from acting as an expert witness in valuation appeals.

~~(7) "Director" means the director of the division of real estate.~~ ***<{This definition has been added to the common definitions for article 10 in section 12-10-101 (3).}>***

~~(8) "Division" means the division of real estate.~~ <{***This definition has been added to the common definitions for article 10 in section 12-10-101 (4).***}>

~~(9)~~ ***(5)*** "Financial institution" means any "bank" or "savings association", as ~~such~~ THOSE terms are defined in 12 U.S.C. sec. 1813, any state bank incorporated under title 11, ~~C.R.S.,~~ any state or federally chartered credit union, or any company that has direct or indirect control over any of those entities.

~~(10)~~ ***(6)*** "Independent appraisal" means an engagement for which an appraiser is employed or retained to act as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in or aspects of identified real estate.

~~(10.5)~~ ***(7)*** (a) "Panel" or "appraiser panel" means a network, list, or roster of licensed or certified appraisers approved by an AMC to perform appraisals as independent contractors for the AMC.

(b) Appraisers on an AMC's appraiser panel include both:

(I) Appraisers accepted by the AMC for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions; and

(II) Appraisers engaged by the AMC to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions.

(c) An appraiser is an independent contractor for purposes of this subsection ~~(10.5)~~ ***(7)*** if the appraiser is treated as an independent contractor by the AMC for purposes of federal income taxation.

~~(11) (a) "Real estate appraiser" or "appraiser" means a person who provides an estimate of the nature, quality, value, or utility of an interest in, or aspect of, identified real estate and includes one who estimates value and who possesses the necessary qualifications, ability, and experience to execute or direct the appraisal of real property.~~

~~(b) "Real estate appraiser" does not include:~~

~~(I) A person who conducts appraisals strictly of personal property;~~

~~(II) A person licensed as a broker pursuant to part 1 of this article who provides an opinion of value that is not represented as an appraisal and is not used for purposes of obtaining financing;~~

~~(III) A person licensed as a certified public accountant pursuant to article 2 of this title, and otherwise regulated, as long as the person does not represent his or her opinions of value for real estate as an appraisal;~~

~~(IV) A corporation, acting through its officers or regular salaried employees, when conducting a valuation of real estate property rights owned, to be purchased, or sold by the corporation;~~

~~(V) A person who conducts appraisals strictly of water rights or of mineral rights;~~

~~(VI) A right-of-way acquisition agent, an appraiser who is licensed and certified pursuant to this part 7, or any other individual who has sufficient understanding of the local real estate market to be qualified to make a waiver valuation when the agent, appraiser, or other qualified individual is employed by or contracts with a public entity and provides an opinion of value that is not represented as an appraisal and when, for any purpose, the property or portion of property being valued is valued at twenty-five thousand dollars or less, as permitted by federal law and 49 CFR 24.102 (c)(2), as amended;~~

~~(VII) An officer, director, or regular salaried employee of a financial institution or its affiliate who makes, for internal use only by the financial institution or affiliate, an analysis, evaluation, opinion, conclusion, notation, or compilation of data with respect to an appraisal so long as the person does not make a written adjustment of the appraisal's conclusion as to the value of the subject real property;~~

~~(VIII) An officer, director, or regular salaried employee of a financial institution or its affiliate who makes an internal analysis, valuation, opinion, conclusion, notation, or compilation of data concerning an interest in real estate that is owned or held as collateral by the financial institution or its affiliate; or~~

~~(IX) A person who represents property owners as an advocate in tax or valuation protests and appeals pursuant to title 39, C.R.S.~~ <{***This definition has been added to the common definitions for article 10 in section 12-10-101 (9).***}>

12-10-603. [Formerly 12-61-703] Board of real estate appraisers - creation - compensation - immunity - legislative declaration - repeal of part. (1) (a) There is hereby created in the division a board of real estate appraisers consisting of seven members appointed by the governor with the consent of the senate. Of the members, three shall be licensed or certified appraisers, one of whom shall have expertise in eminent domain matters; one shall be a county assessor in office; one shall be an officer or employee of a commercial bank experienced in real estate lending; one shall be an officer or employee of an appraisal management company; and one shall be a member of the public at large not engaged in any of the businesses represented by the other members of the board.

(b) Members of the board shall hold office for terms of three 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 has the authority to remove any member for misconduct, neglect of duty, or incompetence.

(2) (a) The board shall exercise its powers and perform its duties and functions under the division as if transferred to the division by a **type 1** transfer, as defined in the "Administrative Organization Act of 1968", article 1 of title 24. ~~C.R.S.~~

(b) The general assembly finds, determines, and declares that the organization of the board under the division as a **type 1** agency will provide the autonomy necessary to avoid potential conflicts of interest between the responsibility of the board in the regulation of real estate appraisers and the responsibility of the division in the regulation of real estate brokers and salespersons. The general assembly further finds, determines, and declares that the placement of the board as a **type 1** agency under the division is consistent with the organizational structure of state government.

(3) Each member of the board shall receive the same compensation and reimbursement of expenses as is provided for members of boards and commissions in the division of professions and occupations 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 division of real estate cash fund provided for in section ~~12-61-705~~ ***12-10-605*.**

(4) Members of the board, consultants, and expert witnesses are immune from liability in any civil action based upon any disciplinary proceedings or other official acts they performed in good faith pursuant to this part 7.

(5) A majority of the board constitutes a quorum for the transaction of all business, and actions of the board require a vote of a majority of the members present in favor of the action taken.

(6) This part ~~7~~ ***6*** is repealed, effective September 1, 2022. ~~Prior to the~~ BEFORE ITS repeal, ~~the department of regulatory agencies shall review the functions of the board of real estate appraisers as provided in~~ THIS PART 6 IS SCHEDULED FOR REVIEW IN ACCORDANCE WITH section 24-34-104. ~~C.R.S.~~

12-10-604. [Formerly 12-61-704] Powers and duties of the board - rules. (1) In addition to all other powers and duties imposed upon it by law, the board has the following powers and duties:

(a) (I) To promulgate and amend, as necessary, rules pursuant to article 4 of title 24 ~~C.R.S.~~, for the implementation and administration of this part ~~7~~ ***6*** and as required to comply with the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, 12 U.S.C. secs. 3331 to 3351, and with any requirements imposed by amendments to that federal law.

(II) The board shall not establish any requirements that are more stringent than the requirements of any applicable federal law.

(III) Licensed ad valorem appraisers are not regulated by the federal "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, 12 U.S.C. secs. 3331 to 3351, but the board shall adopt rules regarding minimum qualifications and standards of practice

for licensed ad valorem appraisers.

(IV) In any list or registry it maintains, the board shall identify or separately account for any appraisal management company that oversees a panel of more than fifteen certified or licensed appraisers in Colorado, or more than twenty-five in all states in which it does business, within a given year.

(b) To charge application, examination, and license and certificate renewal fees established pursuant to section ~~12-61-111.5~~ ***12-10-215*** from all applicants for licensure, certification, examination, and renewal under this part ~~7~~ ***6***. The board shall not refund any fees received from applicants seeking licensure, certification, examination, or renewal.

(c) Through the department ~~of regulatory agencies~~ and subject to appropriations made to the department, ~~of regulatory agencies,~~ to employ administrative law judges, appointed pursuant to part 10 of article 30 of title 24, ~~C.R.S.,~~ on a full-time or part-time basis to conduct any hearings required by this part ~~7~~ ***6***;

(d) To issue, deny, or refuse to renew a license or certificate pursuant to this part ~~7~~ ***6***;

(e) To take disciplinary actions in conformity with this part ~~7~~ ***6***;

(f) To delegate to the director the administration and enforcement of this part ~~7~~ ***6*** and the authority to act on behalf of the board on occasions and in circumstances that the board directs;

(g) (I) To develop, purchase, or contract for any examination required for the administration of this part ~~7~~ ***6***, to offer each examination at least twice a year or, if demand warrants, at more frequent intervals, and to establish a passing score for each examination that reflects a minimum level of competency.

(II) If study materials are developed by a testing company or other entity, the board shall make the materials available to persons desiring to take examinations pursuant to this part ~~7~~ ***6***. The board may charge fees for the materials to defray any costs associated with making the materials available.

(h) In compliance with article 4 of title 24, ~~C.R.S.,~~ to make investigations; subpoena persons and documents, which subpoenas may be enforced by a court of competent jurisdiction if not obeyed; hold hearings; and take evidence in all matters relating to the exercise of the board's power under this part ~~7~~ ***6***;

(i) Pursuant to sec. 1119 (b) of Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", Pub.L. 101-73, to apply, if necessary, for a federal waiver of the requirement relating to certification or licensing of a person to perform appraisals and to make the necessary written determinations specified in ~~said~~ THAT section for purposes of making the application;

(j) If the board has reasonable cause to believe that a person, partnership, limited liability company, or corporation is violating this part ~~7~~ ***6***, to enter an order requiring the individual or appraisal management company to cease and desist the violation; and

(k) To establish classroom education and experience requirements for an appraiser who prepares an appraisal for a conservation easement for which a tax credit is claimed pursuant to section 39-22-522. The requirements must ensure that appraisers have a sufficient amount of training and expertise to accurately prepare appraisals that comply with

the uniform standards of professional appraisal practice and any other provision of law related to the appraisal of conservation easements for which a tax credit is claimed. A tax credit certificate for a conservation easement shall not be given in accordance with sections ~~12-61-1105~~ ***12-15-105*** and ~~12-61-1106~~ ***12-15-106*** unless the appraiser who prepared the appraisal of the easement met all requirements established in accordance with this subsection (1)(k) in effect at the time the appraisal certification is signed.

(2) The board shall maintain or preserve, for seven years, licensing history records of a person licensed or certified under this part ~~7~~ ***6***. Complaints of record in the office of the board and board investigations, including board investigative files, are closed to public inspection. Stipulations and final agency orders are public record and are subject to sections 24-72-203 and 24-72-204. ~~C.R.S.~~

12-10-605. [Formerly 12-61-705] Fees, penalties, and fines collected under part 6. All fees, penalties, and fines collected pursuant to this part ~~7~~ ***6***, not including fees retained by contractors pursuant to contracts entered into in accordance with section ~~12-61-103, 12-61-706,~~ ***12-10-203, 12-10-606,*** or 24-34-101, ~~C.R.S.~~, shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund, created in section ~~12-61-111.5~~ ***12-10-215***.

12-10-606. [Formerly 12-61-706] Qualifications for licensing and certification of appraisers - continuing education - definitions - rules. (1) (a) The board shall, by rule, prescribe requirements for the initial licensing or certification of persons under this part ~~7~~ ***6*** to meet the requirements of the "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, 12 U.S.C. secs. 3331 to 3351, and shall develop, purchase, or contract for examinations to be passed by applicants. The board shall not establish any requirements for initial licensing or certification that are more stringent than the requirements of any applicable federal law; except that all applicants shall pass an examination offered by the board. If there is no applicable federal law, the board shall consider and may use as guidelines the most recent available criteria published by the appraiser qualifications board of the appraisal foundation or its successor organization.

(b) The four levels of appraiser licensure and certification, pursuant to ~~paragraph (a) of this subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION, are defined as follows:

(I) "Certified general appraiser" means an appraiser meeting the requirements set by the board for general certification.

(II) "Certified residential appraiser" means an appraiser meeting the requirements set by the board for residential certification.

(III) "Licensed ad valorem appraiser" means an appraiser meeting the requirements set by the board for ad valorem appraiser certification. Only a county assessor, employee of a county assessor's office, or employee of the division of property taxation in the department of local affairs may obtain or possess an ad valorem appraiser certification. ~~and~~

(IV) "Licensed appraiser" means an appraiser meeting the requirements set by the board for a license.

(c) A county assessor or employee of a county assessor's office who is a licensed ad valorem appraiser may not perform real estate

appraisals outside of his or her official duties.

(d) The board shall transfer ~~persons~~ INDIVIDUALS employed in a county assessor's office or in the division of property taxation in the department of local affairs who are registered appraisers as of July 1, 2013, to the category of licensed ad valorem appraiser. The board shall allow these ~~persons~~ INDIVIDUALS, until December 31, 2015, to meet any additional requirements imposed by the board pursuant to section ~~12-61-704 (1)~~(a) ***12-10-604 (1)(a).*** ~~as amended.~~ <{***I would recommend removing "as amended" here. While we use "as amended" when referencing federal statutes, we do not generally use it when referencing another part of the Colorado Revised Statutes. As such, I'm concerned that its inclusion here, but exclusion almost everywhere else in the statutes, implies that other cross-references in the statutes would not include amendments to those cross-referenced sections.***}>

(2) (a) The board shall, by rule, prescribe continuing education requirements for ~~persons~~ INDIVIDUALS licensed or certified as certified general appraisers, certified residential appraisers, or licensed appraisers as needed to meet the requirements of the "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, 12 U.S.C. secs. 3331 to 3351. The board shall not establish any continuing education requirements that are more stringent than the requirements of any applicable <{***Should the word "federal" be added here as is done in the next sentence?***}> law; except that all ~~persons~~ individuals licensed or certified under this part ~~7~~ ***6*** are subject to continuing education requirements. If there is no applicable federal law, the board shall consider and may use as guidelines the most recent available criteria published by the Appraiser Qualifications Board of the Appraisal Foundation or its successor organization.

(b) The board shall, by rule, prescribe continuing education requirements for licensed ad valorem appraisers.

(3) Notwithstanding any provision of this section to the contrary, the criteria established by the board for the licensing or certification of appraisers pursuant to this part ~~7~~ ***6*** shall not include membership or lack of membership in any appraisal organization.

(4) (a) Subject to section ~~12-61-719 (2)~~ ***12-10-619 (2)***, all appraiser employees of county assessors shall be licensed or certified as provided in subsections (1) and (2) of this section. Obtaining and maintaining a license or certificate under either ~~of said subsections~~ SUBSECTION (1) ~~and~~ OR (2) entitles an appraiser employee of a county assessor to perform all real estate appraisals required to fulfill the ~~person's~~ INDIVIDUAL'S official duties.

(b) Appraiser employees of county assessors who are employed to appraise real property are subject to this part ~~7~~ ***6***; except that appraiser employees of county assessors who are employed to appraise real property are not subject to disciplinary actions by the board on the ground that they have performed appraisals beyond their level of competency when appraising real estate in fulfillment of their official duties. County assessors, if licensed or certified as provided in subsections (1) and (2) of this section, are not subject to disciplinary actions by the board on the ground that they have performed appraisals beyond their level of competency when appraising real estate in fulfillment of their official

duties.

(c) The county in which an appraiser employee of a county assessor is employed shall pay all reasonable costs incurred by the appraiser employee of the county assessor to obtain and maintain a license or certificate pursuant to this section.

(5) The board shall not issue an appraiser's license as referenced in ~~subparagraph (IV) of paragraph (b) of subsection (1)~~ SUBSECTION (1)(b)(IV) of this section unless the applicant has at least twelve months' appraisal experience.

(6) (a) The board shall not issue a license or certification until the applicant demonstrates that he or she meets the fitness standards established by board rule and submits a set of fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. Each person submitting a set of fingerprints shall pay the fee established by the Colorado bureau of investigation for conducting the fingerprint-based criminal history record check to the bureau. Upon completion of the criminal history record check, the bureau shall forward the results to the board. The board may require 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. The board may deny an application for licensure or certification based on the outcome of the criminal history record check and may establish criminal history requirements more stringent than those established by any applicable federal law. At a minimum, the board shall adopt the criminal history requirements established by any applicable federal law.

(b) An applicant for certification as a licensed ad valorem appraiser is not subject to the fingerprinting and criminal background check requirements of ~~paragraph (a) of this subsection (6)~~ SUBSECTION (6)(a) OF THIS SECTION.

12-10-607. [Formerly 12-61-707] Appraisal management companies - application for license - exemptions. (1) An applicant shall apply for a license as an appraisal management company, or as a controlling appraiser, to the board in a manner prescribed by the board.

(2) The board may grant appraisal management company licenses to individuals, partnerships, limited liability companies, or corporations. A partnership, limited liability company, or corporation, in its application for a license, shall designate a controlling appraiser who is actively certified in a state recognized by the appraisal subcommittee of the federal financial institutions examinations council or its successor entity. The controlling appraiser is responsible for the licensed practices of the partnership, limited liability company, or corporation and all ~~persons~~ INDIVIDUALS employed by the entity. The application of the partnership, limited liability company, or corporation and the application of the appraiser designated by it as the controlling appraiser shall be filed with the board. The board has jurisdiction over the appraiser so designated and over the partnership, limited liability company, or corporation.

(3) The board shall not issue a license to any partnership, limited liability company, or corporation unless and until the appraiser designated by the partnership, limited liability company, or corporation as controlling

appraiser and each individual who owns more than ten percent of the entity demonstrates that he or she meets the fitness standards established by board rule and submits a set of fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. Each ~~person~~ INDIVIDUAL submitting a set of fingerprints shall pay the fee established by the Colorado bureau of investigation for conducting the fingerprint-based criminal history record check to the bureau. Upon completion of the criminal history record check, the bureau shall forward the results to the board. The board may require 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. The board may deny an application for licensure or refuse to renew a license based on the outcome of the criminal history record check. The board may require criminal history requirements more stringent than those established by any applicable federal law. At a minimum, the board shall adopt the criminal history requirements established by any applicable federal law.

(4) The board shall not issue a license to any partnership, limited liability company, or corporation if the appraiser designated by the entity as controlling appraiser has previously had, in any state, an appraiser registration, license, or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked. A disciplinary action resulting in refusal, denial, cancellation, surrender in lieu of revocation, or revocation relating to a registration, license, or certification as an appraiser registered, licensed, or certified under this part ~~7~~ ***6*** or any related occupation in any other state, territory, or country for disciplinary reasons is prima facie evidence of grounds for denial of a license by the board.

(5) The board shall not issue a license to any partnership, limited liability company, or corporation if it is owned, in whole or in part, directly or indirectly, by any person who has had, in any state, an appraiser license, registration, or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked. A disciplinary action resulting in refusal, denial, cancellation, surrender in lieu of revocation, or revocation relating to a license, registration, or certification as an appraiser licensed, registered, or certified under this part ~~7~~ ***6*** or any related occupation in any other state, territory, or country for disciplinary reasons is prima facie evidence of grounds for denial of a license by the board.

(6) The board may deny an application for a license for any partnership, limited liability company, or corporation if the partnership, limited liability company, or corporation has previously had a license revoked or surrendered a license in lieu of revocation. A disciplinary action resulting in the surrender in lieu of revocation or the revocation of a license as an appraisal management company under this part ~~7~~ ***6*** or any related occupation in any other state, territory, or country for disciplinary reasons may be deemed to be prima facie evidence of grounds for denial of a license by the board.

(7) Each appraisal management company must maintain a definite place of business. If the appraisal management company is domiciled in another state, the appraiser designated by the appraisal management

company as controlling appraiser is responsible for supervising all licensed activities that occur in Colorado. All licensed actions occurring within the state of Colorado must occur under the name under which the appraisal management company is licensed or its trade name adopted in accordance with Colorado law.

(8) An application that is submitted by an appraisal management company that is:

(a) A partnership must be properly registered with the Colorado department of revenue or properly filed with the Colorado secretary of state and in good standing, proof of which must be included in the application. If an assumed or trade name is to be used, it must be properly filed with the Colorado department of revenue or filed and accepted by the Colorado secretary of state, proof of which must be included with the application.

(b) A limited liability company must be properly registered with the Colorado secretary of state and in good standing, proof of which must be included with the application. If an assumed or trade name is to be used, it must be properly filed with the Colorado secretary of state, proof of which must be included with the application.

(c) A corporation must be registered as a foreign corporation or properly incorporated with the Colorado secretary of state and in good standing, proof of which must be included with the application. If an assumed or trade name is to be used, it must be properly filed with the Colorado secretary of state, proof of which must be included with the application.

(9) Financial institutions and appraisal management company subsidiaries that are owned and controlled by the financial institution and regulated by a federal financial institution regulatory agency are not required to register with or be licensed by the board. This exemption includes a panel of appraisers who are engaged to provide appraisal services and are administered by a financial institution regulated by a federal financial regulatory agency.

12-10-608. [Formerly 12-61-708] Errors and omissions insurance - duties of the division - certificate of coverage - group plan made available - rules. (1) Every licensee under this part ~~7~~ ***6***, except an appraiser who is employed by a state or local governmental entity or an inactive appraiser or appraisal management company, shall maintain errors and omissions insurance to cover all activities contemplated under this part ~~7~~ ***6***. The division shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after a competitive bid process in accordance with article 103 of title 24. ~~C.R.S.~~ A group policy obtained by the division must be available to all licensees with no right on the part of the insurer to cancel any licensee. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the division.

(2) (a) If the division is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable annual premium, as determined by the division, a licensee shall independently obtain the errors and omissions insurance required by this section.

(b) The division shall solicit and consider information and

comments from interested persons when determining the reasonableness of annual premiums.

(3) The division shall determine the terms and conditions of coverage required under this section based on rules promulgated by the board. Each licensee shall be notified of the required terms and conditions at least thirty days before the annual premium renewal date as determined by the division. Each licensee shall file a certificate of coverage showing compliance with the required terms and conditions with the division by the annual premium renewal date, as determined by the division.

(4) In addition to all other powers and duties conferred upon the board by this part ~~7~~ ***6***, the board is authorized and directed to adopt rules it deems necessary or proper to carry out the requirements of this section.

12-10-609. [Formerly 12-61-709] Bond required. (1) Before the board issues a license to an applicant for an appraisal management company license, the applicant shall post with the board a surety bond in the amount of twenty-five thousand dollars. A licensed appraisal management company shall maintain the required bond at all times.

(2) The surety bond shall require the surety to provide notice to the board within thirty days if payment is made from the surety bond or if the bond is cancelled.

12-10-610. [Formerly 12-61-710] Expiration of licenses - renewal - penalties - fees - rules. (1) (a) All licenses or certificates expire pursuant to a schedule established by the director and may be renewed or reinstated pursuant to this section. Upon compliance with this section and any applicable rules of the board regarding renewal, including the payment of a renewal fee plus a reinstatement fee established pursuant to ~~paragraph (b) of this subsection (1)~~ SUBSECTION (1)(b) OF THIS SECTION, the expired license or certificate shall be reinstated. A real estate appraiser's license or certificate that has not been renewed for a period greater than two years shall not be reinstated, and the person must submit a new application for licensure or certification.

(b) A person who fails to renew his or her license or certificate before the applicable renewal date may have it reinstated if the person submits an application as prescribed by the board:

(I) Within thirty-one days after the date of expiration, by payment of the regular renewal fee;

(II) More than thirty-one days, but within one year, after the date of expiration, by payment of the regular renewal fee and payment of a reinstatement fee equal to one-third of the regular renewal fee; or

(III) More than one year, but within two years, after the date of expiration, by payment of the regular renewal fee and payment of a reinstatement fee equal to two-thirds of the regular renewal fee.

(2) If the federal registry fee collected by the board and transmitted to the federal financial institutions examination council is increased prior to expiration of a license or certificate, the board shall collect the amount of the increase in the fee from the holder of the license or certificate and forward the amount to the council annually. The federal registry fee does not apply to licensed ad valorem appraisers licensed under this article ***10***.

(3) (a) If the applicant has complied with this section and any applicable rules of the board regarding renewal, except for the continuing education requirements pursuant to section ~~12-61-706~~ ***12-10-606***, the

licensee may renew the license on inactive status. An inactive license may be activated if the licensee submits written certification of compliance with section ~~12-61-706~~ ***12-10-606*** for the previous licensing period. The board may adopt rules establishing procedures to facilitate reactivation of licenses.

(b) The holder of an inactive license shall not perform a real estate appraisal or appraisal management duties.

(c) The holder of an inactive license shall not hold himself or herself out as having an active license pursuant to this part ~~7~~ ***6***.

(4) At the time of renewal or reinstatement, every licensee, certificate holder, ~~and person~~ or individual <{***I would recommend striking "and person" here since only individuals (and not corporations, partnerships, etc.) can submit fingerprints.*** }> who owns more than ten percent of an appraisal management company shall submit a set of fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation, if the person has not previously done so for issuance of a license or certification by the board. Each ~~person~~ INDIVIDUAL submitting a set of fingerprints shall pay the fee established by the Colorado bureau of investigation for conducting the fingerprint-based criminal history record check to the bureau. The bureau shall forward the results to the board. The board may require 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. The board may refuse to renew or reinstate a license or certification based on the outcome of the criminal history record check.

12-10-611. [Formerly 12-61-711] Licensure or certification by endorsement - temporary practice. (1) The board may issue a license or certification to an appraiser by endorsement to engage in the occupation of real estate appraisal to any applicant who has a license or certification in good standing as a real estate appraiser under the laws of another jurisdiction if:

(a) The applicant presents proof satisfactory to the board that, at the time of application for a Colorado license or certificate by endorsement, the applicant possesses credentials and qualifications that are substantially equivalent to the requirements of this part ~~7~~ ***6***; or

(b) The jurisdiction that issued the applicant a license or certificate to engage in the occupation of real estate appraisal has a law similar to this subsection (1) pursuant to which it licenses or certifies persons who are licensed real estate appraisers in this state.

(2) The board may specify, by rule, what constitutes substantially equivalent credentials and qualifications and the manner in which the board will review credentials and qualifications of an applicant.

(3) Pursuant to section 1122 (a) of Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", Pub.L. 101-73, the board shall recognize, on a temporary basis, the license or certification of an appraiser issued by another state if:

(a) The appraiser's business is of a temporary nature; and

(b) The appraiser applies for and is granted a temporary practice permit by the board.

12-10-612. [Formerly 12-61-712] Denial of license or certificate - renewal - definition. (1) The board may determine whether an applicant for licensure or certification possesses the necessary qualifications for licensure or certification required by this part ~~7~~ ***6***. The board may consider such qualities as the applicant's fitness and prior professional licensure and whether the applicant has been convicted of a crime. As used in this subsection (1), "applicant" includes any individual who owns, in whole or in part, directly or indirectly, an appraisal management company and any appraiser designated as a controlling appraiser by a partnership, limited liability company, or corporation acting as an appraisal management company.

(2) If the board determines that an applicant does not possess the applicable qualifications required by this part ~~7~~ ***6***, or the applicant has violated this part ~~7~~ ***6***, rules promulgated by the board, or any board order, the board may deny the applicant a license or certificate or deny the renewal or reinstatement of a license or certificate pursuant to section ~~12-61-710~~ ***12-10-610***, and, in such instance, the board shall provide the applicant with a statement in writing setting forth the basis of the board's determination that the applicant does not possess the qualifications or professional competence required by this part ~~7~~ ***6***. The applicant may request a hearing on the determination as provided in section 24-4-104 (9). ~~C.R.S.~~

12-10-613. [Formerly 12-61-713] Prohibited activities - grounds for disciplinary actions - procedures. (1) A real estate appraiser is in violation of this part ~~7~~ ***6*** if the appraiser:

(a) Has been convicted of a felony or has had accepted by a court a plea of guilty or nolo contendere to a felony if the felony is related to the ability to act as a real property appraiser. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea is conclusive evidence of the conviction or plea. In considering the disciplinary action, the board shall be governed by the provisions of section 24-5-101. ~~C.R.S.~~

(b) Has violated, or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate this part ~~7~~ ***6***, a rule promulgated pursuant to this part ~~7~~ ***6***, or an order of the board issued pursuant to this part ~~7~~ ***6***;

(c) Has accepted any fees, compensation, or other valuable consideration to influence the outcome of an appraisal;

(d) Has used advertising that is misleading, deceptive, or false;

(e) Has used fraud or misrepresentation in obtaining a license or certificate under this part ~~7~~ ***6***;

(f) Has conducted an appraisal in a fraudulent manner or used misrepresentation in any such activity;

(g) Has acted or failed to act in a manner that does not meet the generally accepted standards of professional appraisal practice as adopted by the board by rule. A certified copy of a malpractice judgment of a court of competent jurisdiction is conclusive evidence of the act or omission, but evidence of the act or omission is not limited to a malpractice judgment.

(h) Has performed appraisal services beyond his or her level of competency;

(i) Has been subject to an adverse or disciplinary action in another

state, territory, or country relating to a license, certificate, or other authorization to practice as an appraiser. A disciplinary action relating to a license or certificate as an appraiser licensed or certified under this part ~~7~~ ***6*** or any related occupation in any other state, territory, or country for disciplinary reasons is prima facie evidence of grounds for disciplinary action or denial of licensure or certification by the board. This ~~paragraph (i)~~ SUBSECTION (1)(i) applies only to violations based upon acts or omissions in the other state, territory, or country that are also violations of this part ~~7~~ ***6***.

(j) Has failed to disclose in the appraisal report the fee paid to the appraiser for a residential real property appraisal if the appraiser was engaged by an appraisal management company to complete the assignment; or

(k) Has engaged in conduct that would be grounds for the denial of a license or certification under section ~~12-61-712~~ ***12-10-612.***

(2) If an applicant, a licensee, or a certified person has violated any provision of this section, the board may deny or refuse to renew the license or certificate, or, as specified in subsections (3) and (6) of this section, revoke or suspend the license or certificate, issue a letter of admonition to a licensee or certified person, place a licensee or certified person on probation, or impose public censure.

(3) When a complaint or an investigation discloses an instance of misconduct by a licensed or certified appraiser that, in the opinion of the board, does not warrant formal action by the board but should not be dismissed as being without merit, the board may send a letter of admonition by certified mail to the appraiser against whom a complaint was made. The letter shall advise the appraiser of the right to make a written request, within twenty days after receipt of the letter of admonition, to the board to begin formal disciplinary proceedings as provided in this section to adjudicate the conduct or acts on which the letter was based. <{***Do we want to maintain the certified mail requirement here?***}>

(4) The board may start a proceeding for discipline of a licensee or certified person when the board has reasonable grounds to believe that a licensee or certified person has committed any act or failed to act pursuant to the grounds established in subsection (1) of this section or when a request for a hearing is timely made under subsection (3) of this section.

(5) Disciplinary proceedings shall be conducted in the manner prescribed by the "State Administrative Procedure Act", article 4 of title 24. ~~C.R.S.~~

(6) As authorized in subsection (2) of this section, disciplinary actions by the board may consist of the following:

(a) **Revocation of a license or certificate.** (I) Revocation of a license or certificate by the board means that the licensed or certified person shall surrender his or her license or certificate immediately to the board.

(II) Any person whose license or certificate to practice is revoked is ineligible to apply for a license or certificate issued under this part ~~7~~ ***6*** until more than two years have elapsed from the date of surrender of the license or certificate. A reapplication after the two-year period is treated as a new application.

(b) **Suspension of a license or certificate.** Suspension of a license or certificate by the board is for a period to be determined by the board.

(c) **Probationary status.** The board may impose probationary status on a licensee or certified person. If the board places a licensee or certified person on probation, the board may include conditions for continued practice that the board deems appropriate to assure that the licensee or certified person is otherwise qualified to practice in accordance with generally accepted professional standards of professional appraisal practice, as specified in board rules, including any or all of the following:

(I) A requirement that the licensee or certified person take courses of training or education as needed to correct deficiencies found in the hearing;

(II) A review or supervision of his or her practice as may be necessary to determine the quality of the practice and to correct deficiencies in the practice; and

(III) The imposition of restrictions upon the nature of his or her appraisal practice to assure that he or she does not practice beyond the limits of his or her capabilities.

(d) **Public censure.** If, after notice and hearing, the director or the director's designee determines that the licensee or certified person has committed any of the acts specified in this section, the board may impose public censure.

(7) In addition to any other discipline imposed pursuant to this section, any person who violates this part ~~7~~ ***6*** or the rules promulgated pursuant to this article ***10*** may be penalized by the board upon a finding of a violation pursuant to article 4 of title 24 ~~C.R.S.,~~ as follows:

(a) In the first administrative proceeding against a person, a fine of not less than three hundred dollars but not more than five hundred dollars per violation;

(b) In any subsequent administrative proceeding against a person for transactions occurring after a final agency action determining that a violation of this part ~~7~~ ***6*** has occurred, a fine of not less than one thousand dollars but not more than two thousand dollars.

(8) A person participating in good faith in making a complaint or report or participating in an investigative or administrative proceeding before the board pursuant to this article ***10*** is immune from any liability, civil or criminal, that otherwise might result by reason of the action.

(9) A licensee or certified person who has direct knowledge that a person has violated this part ~~7~~ ***6*** shall report his or her knowledge to the board.

(10) The board, on its own motion or upon application at any time after the imposition of discipline as provided in this section, may reconsider its prior action and reinstate or restore a license or certificate, terminate probation, or reduce the severity of its prior disciplinary action. The decision of whether to take any further action or hold a hearing with respect to a prior disciplinary action rests in the sole discretion of the board.

12-10-614. [Formerly 12-61-714] Appraisal management companies - prohibited activities - grounds for disciplinary actions - procedures - rules. (1) The board, upon its own motion, may, and upon

a complaint submitted to the board in writing by any person, shall, investigate the activities of a licensed appraisal management company; an appraiser designated as a controlling appraiser by a partnership, limited liability company, or corporation acting as an appraisal management company; or a NATURAL person or entity that assumes to act in that capacity within the state. The board, upon finding a violation, may impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense; censure a licensee; place the licensee on probation and set the terms of probation; or temporarily suspend or permanently revoke a license, when the licensee has performed, is performing, or is attempting to perform any of the following acts:

(a) Failing to:

(I) Exercise due diligence when hiring or engaging a real estate appraiser to ensure that the real estate appraiser is appropriately credentialed by the board and competent to perform the assignment; and

(II) In the case of an AMC, establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of the federal "Truth in Lending Act", 15 U.S.C. sec. 1639e (a) to (i), and regulations adopted pursuant to that act.

(b) Requiring an appraiser to indemnify the appraisal management company against liability, damages, losses, or claims other than those arising out of the services performed by the appraiser, including performance or nonperformance of the appraiser's duties and obligations, whether as a result of negligence or willful misconduct;

(c) Influencing or attempting to influence the development, reporting, result, or review of a real estate appraisal or the engagement of an appraiser through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner. This prohibition does not prohibit an appraisal management company from requesting an appraiser to:

(I) Consider additional, appropriate property information;

(II) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(III) Correct errors in the appraisal report.

(d) Prohibiting an appraiser, in the completion of an appraisal service, from communicating with the client, any intended users, real estate brokers, tenants, property owners, management companies, or any other entity that the appraiser reasonably believes has information pertinent to the completion of an appraisal assignment; except that this ~~paragraph (d)~~ SUBSECTION (1)(d) does not apply to communications between an appraiser and an appraisal management company's client if the client has adopted an explicit policy prohibiting ~~such~~ THE communication. If the client has adopted an explicit policy prohibiting communication by the appraiser with the client, communication by an appraiser to the client must be made in writing and submitted to the appraisal management company.

(e) Altering or modifying a completed appraisal report without the authoring appraiser's knowledge and written consent, and the consent of the intended user, except to modify the format of the report solely for transmission to the client and in a manner acceptable to the client;

(f) Requiring an appraiser to provide to the appraisal management

company access to the appraiser's electronic signature;

(g) Failing to validate or verify that the work completed by an appraiser who is hired or engaged by the appraisal management company complies with state and federal regulations, including the uniform standards of professional appraisal practice, by conducting an annual audit of a random sample of the appraisals received within the previous year by the appraisal management company. The board shall establish annual appraisal review requirements by rule and shall solicit and consider information and comments from interested persons.

(h) Failing to make payment to an appraiser within sixty days after completion of the appraisal, unless otherwise agreed or unless the appraiser has been notified in writing that a bona fide dispute exists regarding the performance or quality of the appraisal;

(i) Failing to perform the terms of a written agreement with an appraiser hired or engaged to complete an appraisal assignment;

(j) Failing to disclose to an appraiser, at the time of engagement, the identity of the client;

(k) Using an appraisal report for a client other than the one originally contracted with, without the original client's written consent;

(l) Failing to maintain possession of, for future use or inspection by the board, for a period of at least five years or at least two years after final disposition of any judicial proceeding in which a representative of the appraisal management company provided testimony related to the assignment, whichever period expires last, the documents or records prescribed by the rules of the board or to produce the documents or records upon reasonable request by the board;

(m) Having been convicted of, or entering a plea of guilty, an Alford plea, or a plea of nolo contendere to, any misdemeanor or felony relating to the conduct of an appraisal, theft, embezzlement, bribery, fraud, misrepresentation, or deceit, or any other like crime under Colorado law, federal law, or the laws of other states. A certified copy of the judgment of a court of competent jurisdiction of the conviction or other official record indicating that a plea was entered is conclusive evidence of the conviction or plea in any hearing under this part ~~7~~ ***6***.

(n) Having been the subject of an adverse or disciplinary action in another state, territory, or country relating to a license, registration, certification, or other authorization to practice as an appraisal management company. A disciplinary action relating to a registration, license, or certificate as an appraisal management company under this part ~~7~~ ***6*** or any related occupation in any other state, territory, or country for disciplinary reasons is prima facie evidence of grounds for disciplinary action or denial of a license by the board. This ~~paragraph (n)~~ SUBSECTION (1)(n) applies only to violations based upon acts or omissions in the other state, territory, or country that would violate this part ~~7~~ ***6*** if committed in Colorado.

(o) Violating the "Colorado Consumer Protection Act", article 1 of title 6; ~~C.R.S.;~~

(p) Procuring, or attempting to procure, an appraisal management company license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, an appraisal management company license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for a license;

(q) Knowingly misrepresenting or making false promises through agents, advertising, or otherwise;

(r) Failing to disclose to a client the fee amount paid to the appraiser hired or engaged to complete the appraisal upon completion of the assignment; or

(s) Disregarding, violating, or abetting, directly or indirectly, a violation of this part ~~7~~ ***6***, a rule promulgated by the board pursuant to this part ~~7~~ ***6***, or an order of the board entered pursuant to this part ~~7~~ ***6***.

(2) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but should not be dismissed as being without merit, the board may send a letter of admonition by certified mail, return receipt requested, to the licensee against whom the complaint was made. The letter shall advise the licensee of the right to make a written request, within twenty days after receipt of the letter of admonition, to the board to begin formal disciplinary proceedings as provided in this section to adjudicate the conduct or acts on which the letter was based. <{***Do we want to maintain the certified mail requirement here?***}>

(3) Disciplinary proceedings must be conducted in the manner prescribed by the "State Administrative Procedure Act", article 4 of title 24. ~~C.R.S.~~

(4) If a partnership, limited liability company, or corporation operating under the license of an appraiser designated and licensed as a controlling appraiser by the partnership, limited liability company, or corporation is guilty of any act listed in subsection (1) of this section, the board may suspend or revoke the right of the partnership, limited liability company, or corporation to conduct its business under the license of the controlling appraiser, whether or not the controlling appraiser had personal knowledge of the violation and whether or not the board suspends or revokes the individual license of the controlling appraiser.

(5) This part ~~7~~ ***6*** does not relieve any person from civil liability or criminal prosecution under the laws of this state.

(6) A licensee or certified person having direct knowledge that a person or licensed partnership, limited liability company, or corporation has violated this part ~~7~~ ***6*** shall report his or her knowledge to the board.

(7) The board, on its own motion or upon application, at any time after the imposition of discipline as provided in this section, may reconsider its prior action and reinstate or restore a license, terminate probation, or reduce the severity of its prior disciplinary action. The decision of whether to take any further action or hold a hearing with respect to the action rests in the sole discretion of the board.

12-10-615. [Formerly 12-61-715] Judicial review of final board actions and orders. Final actions and orders of the board under sections ~~12-61-712, 12-61-713,~~ ***12-10-612, 12-10-613*** and ~~12-61-714~~ ***12-10-614*** appropriate for judicial review are subject to judicial review in the court of appeals in accordance with section 24-4-106 (11). ~~C.R.S.~~

12-10-616. [Formerly 12-61-716] Unlawful acts - penalties. (1) It is unlawful for a person to:

(a) Violate section ~~12-61-713 (1)(c), (1)(e), or (1)(f)~~ ***12-10-613 (1)(c), (1)(e)*** OR ***(1)(f)*** or perform a real estate appraisal without first having obtained a license or certificate from the board pursuant to this part ~~7~~ ***6***;

(b) Accept a fee for an independent appraisal assignment that is contingent upon:

(I) Reporting a predetermined analysis, opinion, or conclusion; or

(II) The analysis, opinion, or conclusion reached; or

(III) The consequences resulting from the analysis, opinion, or conclusion;

(c) Misrepresent a consulting service as an independent appraisal; or

(d) Fail to disclose, in connection with a consulting service for which a contingent fee is or will be paid, the fact that a contingent fee is or will be paid.

(2) Any person who violates any provision of subsection (1) of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501. ~~C.R.S.~~ Any person who subsequently violates any provision of subsection (1) of this section within five years after the date of a conviction for a violation of subsection (1) of this section commits a class 5 felony and shall be punished as provided in section 18-1.3-401. ~~C.R.S.~~

12-10-617. [Formerly 12-61-717] Appraisal management company license required - violations - injunction. (1) Except as provided in section ~~12-61-707 (9)~~ ***12-10-607 (9)***, it is unlawful for any NATURAL person, partnership, limited liability company, or corporation to engage in the business of appraisal management in this state without first having obtained a license from the board. The board shall not grant a license to a NATURAL person, partnership, limited liability company, or corporation until the NATURAL person, partnership, limited liability company, or corporation demonstrates compliance with this part ~~7~~ ***6***.

(2) The board may apply to a court of competent jurisdiction for an order enjoining an act or practice that constitutes a violation of this part ~~7~~ ***6***, and, upon a showing that a NATURAL person, partnership, limited liability company, or corporation is engaging or intends to engage in an act or practice that violates this part ~~7~~ ***6***, the court shall grant an injunction, restraining order, or other appropriate order, regardless of the existence of another remedy for the violation. Any notice, hearing, or duration of an injunction or restraining order shall be made in accordance with the Colorado rules of civil procedure.

(3) Any NATURAL person, partnership, limited liability company, or corporation violating this part ~~7~~ ***6*** by acting as an appraisal management company without having obtained a license or acting as an appraisal management company after the appraisal management company's license has been revoked or during any period for which the license was suspended is guilty of a misdemeanor and, upon conviction thereof:

(a) If a natural person, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both ~~such~~ A fine and imprisonment, for the first violation and, for a second or subsequent violation, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both ~~such~~ A fine and imprisonment; and

(b) If an entity, shall be punished by a fine of not more than five thousand dollars.

12-10-618. [Formerly 12-61-718] Injunctive proceedings. (1) The board may, in the name of the people of the state of Colorado, through the attorney general of the state of Colorado, apply for an injunction in any court of competent jurisdiction to perpetually enjoin a person or appraisal management company from committing an act prohibited by this part ~~7~~ ***6***.

(2) Injunctive proceedings under this section are in addition to and not in lieu of penalties and other remedies provided in this part ~~7~~ ***6***.

(3) When seeking an injunction under this section, the board is not required to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from a continued violation.

12-10-619. [Formerly 12-61-719] Special provision for appraiser employees of county assessors. (1) Except as provided in subsection (2) of this section, unless a federal waiver is applied for and granted pursuant to section ~~12-61-704 (1)(i)~~ ***12-10-604 (1)(i)***, a person acting as a real estate appraiser in this state shall be licensed or certified as provided in this part ~~7~~ ***6***. No person shall practice without a license or certificate or hold himself or herself out to the public as a licensed or certified real estate appraiser unless licensed or certified pursuant to this part ~~7~~ ***6***.

(2) An appraiser employee of a county assessor who is employed to appraise real property shall be licensed or certified as provided in this part ~~7~~ ***6*** and shall have two years from the date of taking office or the beginning of employment to comply with this part ~~7~~ ***6***.

12-10-620. [Formerly 12-61-720] Duties of board under federal law. (1) The board shall:

(a) Transmit to the appraisal subcommittee of the federal financial institutions examinations council or its successor entity, no less than annually, a roster listing individuals and appraisal management companies that have received a certificate or license as provided in this part 7;

(b) Collect and transmit, on an annual basis, to the federal financial institutions examinations council an annual registry fee, as prescribed by the appraisal subcommittee of the federal financial institutions examinations council or its successor entity, from the following individuals and entities:

(I) Individuals and appraisal management companies that are licensed or certified pursuant to this part ~~7~~ ***6***; and

(II) Appraisal management companies that operate as subsidiaries of federally regulated financial institutions; and

(c) Conduct its business and promulgate rules in a manner consistent with Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, Pub.L. 101-73.

(2) The board shall not collect or transmit the information required by this section for licensed ad valorem appraisers.

12-10-621. [Formerly 12-61-721] Business entities. (1) A corporation, partnership, bank, savings and loan association, savings bank, credit union, or other business entity may provide appraisal services if the appraisal is prepared by a certified general appraiser, a certified residential appraiser, or a licensed appraiser. An individual who is not a certified general appraiser, a certified residential appraiser, or a licensed

appraiser may assist in the preparation of an appraisal if:

(a) The assistant is under the direct supervision of a certified or licensed appraiser; and

(b) The final appraisal document is approved and signed by an individual who is a certified or licensed appraiser.

12-10-622. [Formerly 12-61-722] Provisions found not to comply with federal law null and void - severability. (1) If any provision of this part ~~7~~ ***6*** is found by a court of competent jurisdiction or by the appropriate federal agency not to comply with the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, Pub.L. 101-73, the provision is null and void, but the remaining provisions of this part ~~7~~ ***6*** are valid unless the remaining provisions alone are incomplete and are incapable of being executed in accordance with the legislative intent of this part ~~7~~ ***6***.

(2) If the regulation of appraisal management companies is repealed from Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", as amended, Pub.L. 101-73, the board's jurisdiction over these entities is also repealed. Before the repeal, the division shall review the regulation of appraisal management companies as provided in section 24-34-104. ~~C.R.S.~~ If the board's jurisdiction is repealed, the director shall notify the revisor of statutes of the date of the repeal.

12-10-623. [Formerly 12-61-723] Scope of article - regulated financial institutions - de minimis exemption. (1) (a) This article ***10*** does not apply to an appraisal relating to any real estate-related transaction or loan made or to be made by a financial institution or its affiliate if the real estate-related transaction or loan is excepted from appraisal regulations established by the primary federal regulator of the financial institution and the appraisal is performed by:

(I) An officer, director, or regular salaried employee of the financial institution or its affiliate; or

(II) A real estate broker licensed under this article ***10*** with whom ~~said~~ THE institution or affiliate has contracted for performance of the appraisal.

(b) The appraisal must not be represented or deemed to be an appraisal except to the financial institution, the agencies regulating the financial institution, and any secondary markets that purchase real estate secured loans. The appraisal must contain a written notice that the preparer is not licensed or certified as an appraiser under this part ~~7~~ ***6***. Nothing in this subsection (1) exempts a person licensed or certified as an appraiser under this part ~~7~~ ***6*** from regulation as provided in this part ~~7~~ ***6***.

(2) Nothing in this article ***10*** limits the ability of any federal or state regulator of a financial institution to require the financial institution to obtain appraisals as specified by the regulator.

~~**12-61-724. Certification of conservation easement holders - rules - definition - repeal. (Repealed)**~~

~~**12-61-725. Conservation easement oversight commission - created - repeal. (Repealed)**~~

~~**12-61-726. Conservation easement tax credit certificates - rules. (Repealed)**~~

~~**12-61-727. Conservation easement tax credit certificate application process - definitions - rules. (Repealed)**~~

PART 7
MORTGAGE LOAN ORIGINATORS

12-10-701. [Formerly 12-61-901] Short title. THE SHORT TITLE OF this part ~~9~~ ***8*** ~~shall be known and may be cited as~~ IS the "Mortgage Loan Originator Licensing and Mortgage Company Registration Act".

12-10-702. [Formerly 12-61-902] Definitions. As used in this part ~~9~~ ***7***, unless the context otherwise requires:

(1) "Affiliate" means a person who, directly or indirectly, through intermediaries, controls, is controlled by, or is under the common control of another person addressed by this part ~~9~~ ***7***.

~~(1.2)~~ ***(2)*** "Affordable housing dwelling unit" means an affordable housing dwelling unit as defined in section 29-26-102. ~~C.R.S.~~

~~(1.3)~~ ***(3)*** "Board" means the board of mortgage loan originators created in section ~~12-61-902.5~~ ***12-10-703*****.**

~~(1.5)~~ ***(4)*** "Borrower" means any person who consults with or retains a mortgage loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

~~(1.7)~~ ***(5)*** "Community development organization" means any community housing development organization or community land trust as defined by the federal "Cranston-Gonzalez National Affordable Housing Act of 1990" or a community-based development organization as defined by the federal "Housing and Community Development Act of 1974", that is also either a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal "Internal Revenue Code of 1986" pursuant to section 501 (c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (a) and 501 (c), and that receives funding from the United States department of housing and urban development, Colorado division of housing, Colorado housing and finance authority, or United States department of agriculture rural development, or through a grantee of the United States department of housing and urban development, purely for the purpose of community housing development activities.

~~(2)~~ ***(6)*** "Depository institution" has the same meaning as set forth in the "Federal Deposit Insurance Act", 12 U.S.C. sec. 1813 (c), and includes a credit union.

~~(3) "Director" means the director of the division of real estate.~~ <{***This definition has been added to the common definitions in section 12-10-101 (3).*** }>

~~(4) "Division" means the division of real estate.~~ <{***This definition has been added to the common definitions in section 12-10-101 (4).*** }>

~~(4.3)~~ ***(7)*** "Dwelling" shall have the same meaning as set forth in the federal "Truth in Lending Act", 15 U.S.C. sec. 1602 (v).

~~(4.5)~~ ***(8)*** "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, or the federal deposit insurance corporation.

~~(4.6)~~ ***(9)*** "HUD-approved housing counseling agency" means an agency that is either a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal "Internal

Revenue Code of 1986" pursuant to section 501 (c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (a) and 501 (c), and approved by the United States department of housing and urban development, in accordance with the housing counseling program handbook section 7610.1 and 24 CFR 214.

~~(4.7) "Individual" means a natural person.~~ <{***This definition has been added to the common definitions in section 12-10-101 (6).*** }>

~~(4.9)~~ ***(10)*** (a) "Loan processor or underwriter" means an individual who performs clerical or support duties at the direction of, and subject to supervision by, a state-licensed loan originator or a registered loan originator.

(b) As used in this subsection ~~(4.9)~~ ***(10)***, "clerical or support duties" includes duties performed after receipt of an application for a residential mortgage loan, including:

(I) The receipt, collection, distribution, and analysis of information commonly used for the processing or underwriting of a residential mortgage loan; and

(II) Communicating with a borrower to obtain the information necessary to process or underwrite a loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

~~(5)~~ ***(11)*** "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)~~ ***(12)*** "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.

~~(6) (a) "Mortgage loan originator" means an individual who:~~

~~(I) Takes a residential mortgage loan application; or~~

~~(II) Offers or negotiates terms of a residential mortgage loan.~~

~~(b) "Mortgage loan originator" does not include:~~

~~(I) An individual engaged solely as a loan processor or underwriter;~~

~~(II) A person that only performs real estate brokerage or sales activities and is licensed or registered pursuant to part 1 of this article, unless the person is compensated by a mortgage lender or a mortgage loan originator;~~

~~(III) A person solely involved in extensions of credit relating to time share plans, as defined in 11 U.S.C. sec. 101 (53D);~~

~~(IV) An individual who is servicing a mortgage loan; or~~

~~(V) A person that only performs the services and activities of a dealer, as defined in section 24-32-3302, C.R.S.~~ <{***This definition has been added to the common definitions in section 12-10-101 (7).*** }>

~~(6.3)~~ ***(13)*** "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed pursuant to the federal

"Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5101 et seq., to track the licensing and registration of mortgage loan originators and that is established and maintained by:

(a) The Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or their successor entities; or

(b) The secretary of the United States department of housing and urban development.

~~(6.5)~~ ***(14)*** "Nontraditional mortgage product" means a mortgage product other than a thirty-year, fixed-rate mortgage.

~~(7)~~ ***(15)*** "Originate a mortgage" means to act, directly or indirectly, as a mortgage loan originator.

~~(7.5) "Person" means a natural person, corporation, company, limited liability company, partnership, firm, association, or other legal entity.~~ <{***This definition has been added to the common definitions in section 12-10-101 (8).*** }>

~~(7.6)~~ ***(16)*** "Quasi-government agency" means an agency that is either a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal "Internal Revenue Code of 1986" pursuant to section 501 (c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (a) and 501 (c), and was created to operate in accordance with article 4 of title 29 ~~C.R.S.~~, as a public housing authority.

~~(7.7)~~ ***(17)*** "Real estate brokerage activity" means an activity that involves offering or providing real estate brokerage services to the public, including, without limitation:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than matters related to financing for the transaction;

(d) Engaging in an activity for which a person engaged in the activity is required under applicable law to be registered or licensed as a real estate agent or real estate broker; or

(e) Offering to engage in any activity, or act in any capacity related to ~~such~~ THE activity, described in this subsection ~~(7.7)~~ ***(17).***

~~(8)~~ ***(18)*** "Residential mortgage loan" means a loan that is primarily for personal, family, or household use and that is secured by a mortgage, deed of trust, or other equivalent, consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a single-family dwelling or multiple-family dwelling of four or fewer units.

~~(9)~~ ***(19)*** "Residential real estate" means any real property upon which a dwelling is or will be constructed.

~~(9.5)~~ ***(20)*** "Self-help housing organization" means a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal "Internal Revenue Code of 1986" pursuant to section 501 (c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (a) and 501 (c), and that purely originates residential mortgage loans with interest rates no greater than zero percent for borrowers who

have provided part of the labor to construct the dwelling securing the loan or that receives funding from the United States department of agriculture rural development section 502 mutual self-help housing program for borrowers that have provided part of the labor to construct the dwelling securing the loan.

~~(10)~~ ***(21)*** "Servicing a mortgage loan" means collecting, receiving, or obtaining the right to collect or receive payments on behalf of a mortgage lender, including payments of principal, interest, escrow amounts, and other amounts due on obligations due and owing to the mortgage lender.

~~(11)~~ ***(22)*** "State-licensed loan originator" means an individual who is:

(a) A mortgage loan originator or engages in the activities of a mortgage loan originator;

(b) Not an employee of a depository institution or a subsidiary that is:

(I) Owned and controlled by a depository institution; and

(II) Regulated by a federal banking agency;

(c) Licensed or required to be licensed pursuant to this part ~~9~~ ***8***; and

(d) Registered as a state-licensed loan originator with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

~~(12)~~ ***(23)*** "Unique identifier" means a number or other identifier assigned to a mortgage loan originator pursuant to protocols established by the nationwide mortgage licensing system and registry.

12-10-703. [Formerly 12-61-902.5] Board of mortgage loan originators - creation - compensation - enforcement of part after board creation - immunity. (1) (a) 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.

(b) Of the members of the board:

(I) Three must be licensed mortgage loan originators. The general assembly encourages the governor to appoint to at least one of these three positions a licensed mortgage loan originator who is an employee or exclusive agent of, or works as an independent contractor for, a Colorado-based mortgage company.

(II) Two must be members of the public at large not engaged in mortgage loan origination or mortgage lending.

(c) Of the members of the board appointed for terms beginning on and after August 11, 2010, 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.

(d) 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 has the authority to remove any member for misconduct, neglect 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~~ ***7***, 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~~ ***7***. The board has the authority to delegate to the director any enforcement and administrative authority under this part ~~9~~ ***7*** that the board deems necessary and appropriate. If the board delegates any enforcement or administrative authority under this part ~~9~~ ***8*** 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 professions and occupations pursuant to section 24-34-102 (13). Payment for all per diem compensation and expenses shall be made out of annual appropriations from the division of real estate cash fund created in section ~~12-61-111.5~~ ***12-10-215.***

(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~~ ***7***.

(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 August 11, 2010, 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~~ ***7*** and any rules promulgated by the board.

(b) Nothing in this section shall affect any action taken by the director prior to August 11, 2010. No person who, on or before August 11, 2010, holds a license issued under this part ~~9~~ ***7*** shall be required to secure an additional license under this part ~~9~~ ***7***, but shall otherwise be subject to all the provisions of this part ~~9~~ ***7***. A license previously issued shall, for all purposes, be considered a license issued by the board under this part ~~9~~ ***7***.

12-10-704. [Formerly 12-61-903] License required - rules. (1) (a) Unless licensed by the 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)~~ ***(5)*** of this section every calendar year as determined by the board by rule.

~~(c) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1615, § 1, effective August 5, 2009.)~~

~~(1.5)~~ ***(2)*** An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter

unless the independent contractor is a state-licensed loan originator.

~~(2)~~ ***(3)*** An applicant for initial licensing as a mortgage loan originator shall submit to the board the following:

(a) A criminal history record check in compliance with subsection ~~(5)~~ ***(6)*** of this section;

(b) A disclosure of all administrative discipline taken against the applicant concerning the categories listed in section ~~12-61-905 (1)(c)~~ ***12-10-711 (1)(c)***; and

(c) The application fee established by the board in accordance with section ~~12-61-908~~ ***12-10-718***.

~~(3)~~ ***(4)*** (a) In addition to the requirements imposed by subsection ~~(2)~~ ***(3)*** of this section, on or after August 5, 2009, each individual applicant for initial licensing as a mortgage loan originator must have satisfactorily completed:

(I) At least twenty hours of education as administered and approved by the Nationwide Multistate Licensing System and Registry or its successor; and

(II) A written examination approved by the board. For the portion of the examination that represents the state-specific test required in the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5101 et seq., the board may adopt the uniform state test administered through the Nationwide Multistate Licensing System and Registry or its successor.

(b) The 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)~~ SUBSECTION (4)(a) OF THIS SECTION 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 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 board may publish reports summarizing statistical information prepared by the nationwide mortgage licensing system and registry relating to mortgage loan originator examinations.

~~(4)~~ ***(5)*** An applicant for license renewal shall submit to the board the following:

(a) A disclosure of all administrative discipline taken against the applicant concerning the categories listed in section ~~12-61-905 (1)(c)~~ ***12-10-711 (1)(c)***; and

(b) The renewal fee established by the board in accordance with section ~~12-61-908~~ ***12-10-718***.

~~(5)~~ ***(6)*** (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~~ THE 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 board. The 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 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 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)~~ ***(6)*****.**

~~(5.5)~~ ***(7)*** (a) On and after January 1, 2010, in connection with an application for a license as a mortgage loan originator, the applicant shall furnish information concerning the applicant's identity to the nationwide mortgage licensing system and registry. The applicant shall furnish, at a minimum, the following:

(I) Fingerprints for submission to the federal bureau of investigation and any government agency or entity authorized to receive fingerprints for a state, national, or international criminal history record check; and

(II) Personal history and experience, in a form prescribed by the nationwide mortgage licensing system and registry, including submission of authorization for the nationwide mortgage licensing system and registry to obtain:

(A) An independent credit report from the consumer reporting agency described in the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681a (p); and

(B) Information related to any administrative, civil, or criminal findings by a government jurisdiction.

(b) An applicant is responsible for paying all costs arising from a criminal history record check and shall pay ~~such~~ THE costs upon submission of fingerprints.

(c) The 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.

~~(5.7) Repealed.~~

~~(6)~~ ***(8)*** Before granting a license to an applicant, the board shall require the applicant to post a bond as required by section ~~12-61-907~~ ***12-10-717*****.**

~~(7)~~ ***(9)*** The board shall issue or deny a license within sixty days after:

(a) The applicant has submitted the requisite information to the board and the Nationwide Multistate Licensing System and Registry, including the completed application and any necessary supplementary information, the application fee, and proof that the applicant has posted a surety bond and obtained errors and omissions insurance; and

(b) The 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)~~ ***(10)*** (a) The 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 board by rule; except that licensees shall be required

to complete at least eight credit hours of continuing education each year. The 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 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)~~ ***(11)*** (a) The board may require contractors and prospective contractors for services under subsections ~~(3)~~ ***(4)*** and ~~(8)~~ ***(10)*** of this section to submit, for the 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 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)~~ ***(12)*** The board may adopt reasonable rules to implement this section. The 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)~~ ***(13)*** In order to fulfill the purposes of this part ~~9~~ ***7***, the 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~~ ***7***.

~~(12)~~ ***(14)*** The 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.

12-10-705. [Formerly 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~~ ITS 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.

12-10-706. [Formerly 12-61-903.3] License or registration inactivation. (1) The board may inactivate a state license or a registration with the nationwide mortgage licensing system and registry when a licensee has failed to:

(a) Comply with the surety bond requirements of sections ~~12-61-903 (6)~~ ***12-10-704 (8)*** and ~~12-61-907~~ ***12-10-717***;

(b) Comply with the errors and omissions insurance requirement in section ~~12-61-903.5~~ ***12-10-707*** or any rule of the 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~~ ***7*** or by any rule of the board that directly or indirectly addresses ~~such~~ THE requirements;

(d) Respond to an investigation or examination;

(e) Comply with any of the education or testing requirements set forth in this part ~~9~~ ***7*** or in any rule of the board that directly or indirectly addresses education or testing requirements; or

(f) Register with and provide all required information to the nationwide mortgage licensing system and registry.

12-10-707. [Formerly 12-61-903.5] Errors and omissions insurance - duties of the board - certificate of coverage - when required - group plan made available - effect - rules. (1) Every licensee under this part ~~9~~ ***7***, except an inactive mortgage loan originator or an attorney licensee who maintains a policy of professional malpractice insurance that provides coverage for errors and omissions insurance for their activities as a licensee under this part ~~9~~ ***7***, shall maintain errors and omissions insurance to cover all activities contemplated under this part ~~9~~ ***7.*** The division shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after a competitive bid process in accordance with article 103 of title 24. ~~C.R.S.~~ A group policy obtained by the division must be available to all licensees with no right on the part of the insurer to cancel a licensee. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the division.

(2) (a) If the division is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable annual premium, as determined by the division, a licensee shall independently obtain the errors and omissions insurance required by this section.

(b) The division shall solicit and consider information and comments from interested persons when determining the reasonableness of annual premiums.

(3) The division shall determine the terms and conditions of coverage required under this section based on rules promulgated by the board. Each licensee shall be notified of the required terms and conditions at least thirty days before the annual premium renewal date as determined by the division. Each licensee shall file a certificate of coverage showing compliance with the required terms and conditions with the division by the annual premium renewal date, as determined by the division.

(4) In addition to all other powers and duties conferred upon the board by this part ~~9~~ ***7***, the board shall adopt such rules as it deems necessary or proper to carry out this section.

12-10-608. [Formerly 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~~ ***7***, the mortgage loan originator shall:

(a) Continue to meet the minimum standards for issuance of a license pursuant to this part ~~9~~ ***7***;

(b) Satisfy the annual continuing education requirements set forth

in section ~~12-61-903 (8)~~ ***12-10-704 (10)*** and in rules adopted by the board; and

(c) Pay applicable license renewal fees.

(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 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.

12-10-709. [Formerly 12-61-904] Exemptions - definition - rules. (1) Except as otherwise provided in section ~~12-61-905.5~~ ***12-10-713***, this part ~~9~~ ***7*** does not apply to the following, unless otherwise determined by the federal bureau of consumer financial protection <{***Is this meant to refer to the federal consumer financial protection bureau?***}> or the United States department of housing and urban development:

~~(a) (Deleted by amendment, L. 2010, (HB 10-1141), ch. 280, p. 1289, § 10, effective August 11, 2010.)~~

~~(b)~~ ***(a)*** With respect to a residential mortgage loan:

(I) A person, estate, or trust that provides mortgage financing for the sale of no more than three properties in any twelve-month period to purchasers of ~~such~~ THE properties, each of which is owned by ~~such~~ THE person, estate, or trust and serves as security for the loan; or

(II) An individual who acts as a mortgage loan originator, without compensation or gain to the mortgage loan originator, in providing loan financing for not more than three residential mortgage loans in any twelve-month period to a family member of the individual. The board shall define "family member" by rule. For purposes of this exemption only, "compensation or gain" excludes any interest paid under the loan financing provided.

~~(c)~~ ***(b)*** 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;

~~(d)~~ ***(c)*** An attorney who renders services in the course of practice, who is licensed in Colorado, and who is not primarily engaged in the business of negotiating residential mortgage loans;

~~(e) (Deleted by amendment, L. 2007, p. 1716, § 2, effective June 1, 2007, and p. 1734, § 6, effective January 1, 2008.)~~

~~(f)~~ ***(d)*** A person who:

(I) Funds a residential mortgage loan that has been originated and processed by a licensed person or by an exempt person;

(II) Does not solicit borrowers in Colorado for the purpose of making residential mortgage loans; and

(III) Does not participate in the negotiation of residential mortgage loans with the borrower, except for setting the terms under which a person may buy or fund a residential mortgage loan originated by a licensed or exempt person;

~~(g)~~ ***(e)*** A loan processor or underwriter who is not an independent contractor and who does not represent to the public that the individual can

or will perform any activities of a mortgage loan originator. As used in this ~~paragraph (g)~~ SUBSECTION (1)(e), "represent to the public" means communicating, through advertising or other means of communicating, or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual is able to provide a particular service or activity for a consumer.

~~(h)~~ ***(f)*** To the extent that it is providing programs benefitting affordable housing dwelling units, an agency of the federal government, the Colorado government, or any of Colorado's political subdivisions or employees of an agency of the federal government, of the Colorado government, or of any of Colorado's political subdivisions;

~~(i)~~ ***(g)*** Quasi-government agencies, HUD-approved housing counseling agencies, or employees of quasi-government agencies or HUD-approved housing counseling agencies;

~~(j)~~ ***(h)*** Community development organizations or employees of community development organizations;

~~(k)~~ ***(i)*** Self-help housing organizations or employees of self-help housing organizations or volunteers acting as an agent of self-help housing organizations;

~~(l)~~ ***(j)*** A person licensed under part ~~1~~ ***2*** of this article ***10*** who represents a person, estate, or trust providing mortgage financing under ~~paragraph (b) of this subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION.

(2) The exemptions in subsection (1) of this section shall not apply to persons acting beyond the scope of ~~such~~ THE exemptions.

(3) The board may adopt reasonable rules modifying the exemptions in this section in accordance with rules adopted by the federal bureau of consumer financial protection <{***Is this meant to refer to the federal consumer financial protection bureau?***}> or the United States department of housing and urban development.

12-10-710. [Formerly 12-61-904.5] Originator's relationship to borrower - rules. (1) A mortgage loan originator shall have a duty of good faith and fair dealing in all communications and transactions with a borrower. ~~Such~~ THE duty includes, but is not limited to:

(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 relevant information and, after making ~~such~~ THE 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, but the mortgage loan originator shall not be deemed to violate this section if the borrower conceals or misrepresents relevant information; and

(c) The duty not to commit any acts, practices, or omissions in violation of section 38-40-105. ~~C.R.S.~~

(2) For purposes of implementing subsection (1) of this section, the board 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.~~

12-10-711. [Formerly 12-61-905] Powers and duties of the board. (1) The 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 board containing material misstatements of fact or omitted any disclosure required by this part ~~9~~ ***7***;

(b) Within the last five years, been convicted of or pled guilty or nolo contendere to a crime involving fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty, except as otherwise set forth in this part ~~9~~ ***7***;

(c) Except as otherwise set forth in this part ~~9~~ ***7***, 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~~ THE discipline denied the person authorization to practice as:

(I) A mortgage broker or a mortgage loan originator;

(II) A real estate broker, as defined by section ~~12-61-101 (2)~~ ***12-10-101 (10)***;

(III) A real estate salesperson;

(IV) A real estate appraiser, as defined by section ~~12-61-702 (11)~~ ***12-10-101 (9)***;

(V) An insurance producer, as defined by section 10-2-103 (6); ~~C.R.S.;~~

(VI) An attorney;

(VII) A securities broker-dealer, as defined by section 11-51-201 (2); ~~C.R.S.;~~

(VIII) A securities sales representative, as defined by section 11-51-201 (14); ~~C.R.S.;~~

(IX) An investment advisor, as defined by section 11-51-201 (9.5); ~~C.R.S.;~~ or

(X) An investment advisor representative, as defined by section 11-51-201 (9.6); ~~C.R.S.;~~

(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 or originating a mortgage loan;

(e) Been found to have violated the provisions of section ~~12-61-910.2~~ ***12-10-721***;

(f) Been found to have violated the provisions of section ~~12-61-905.5~~ ***12-10-713***;

~~(g) to (i) Repealed.~~

~~(j)~~ ***(g)*** Not demonstrated financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the individual will operate honestly, fairly, and efficiently, consistent with the purposes of this part ~~9~~ ***7***;

~~(k)~~ ***(h)*** Not completed the prelicense education requirements set forth in section ~~12-61-903~~ ***12-10-704*** and any applicable rules of the board; or

~~(l)~~ ***(i)*** Not passed a written examination that meets the requirements set forth in section ~~12-61-903~~ ***12-10-704*** and any applicable rules of the board.

~~(1.5)~~ ***(2)*** The board shall deny an application for a license, refuse

to renew, or revoke the license of an applicant or licensee who has:

(a) (I) Had a mortgage loan originator license or similar license revoked in any jurisdiction.

(II) If a revocation is subsequently formally nullified, the license is not revoked for purposes of this subsection ~~(1.5)(a)~~ ***(2)(a)*****.**

(b) (I) At any time been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

(II) If the individual obtains a pardon of the conviction, the board shall not deem the individual convicted for purposes of this subsection ~~(1.5)(b)~~ ***(2)(b)*****.**

(c) Been convicted of, or pled guilty or nolo contendere to, a felony within the immediately preceding seven years.

~~(2)~~ ***(3)*** The board may investigate the activities of a licensee or other person that present grounds for disciplinary action under this part ~~9~~ ***7*** or that violate section ~~12-61-910 (1)~~ ***12-10-720 (1)***.

~~(3)~~ ***(4)*** (a) If the board has reasonable grounds to believe that a mortgage loan originator is no longer qualified under subsection (1) of this section, the 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 board shall suspend the license of a mortgage loan originator who fails to maintain the bond required by section ~~12-61-907~~ ***12-10-717*** until the licensee complies with ~~such~~ THAT section.

~~(4)~~ ***(5)*** The 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~~ THE hearings shall conform to article 4 of title 24. ~~C.R.S.~~

~~(5)~~ ***(6)*** (a) Except as provided in ~~paragraph (b) of this subsection (5)~~ SUBSECTION (6)(b) OF THIS SECTION, an individual whose license has been revoked shall not be eligible for licensure for two years after the effective date of the revocation.

(b) If the 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 board shall allow the applicant to correct the application. Upon receipt of the corrected and completed application, the board or administrative law judge shall not bar the applicant from being licensed on the basis of the unintentional misstatement or omission.

~~(6)~~ ***(7)*** (a) The 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 board or an administrative law judge. The 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 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 board or an administrative law judge may apply for ~~such~~ AN order.

(c) The licensee or individual who, after an investigation under this part ~~9~~ ***7***, is found to be in violation of a provision of this part ~~9~~ ***7*** shall be responsible for paying all reasonable and necessary costs of the division arising from subpoenas or requests issued pursuant to this subsection ~~(6)~~ ***(7)***, including court costs for an action brought pursuant to ~~paragraph (b) of this subsection (6)~~ SUBSECTION (7)(b) OF THIS SECTION.

~~(7)~~ ***(8)*** (a) If the board has reasonable cause to believe that an individual is violating this part ~~9~~ ***7***, including but not limited to section ~~12-61-910 (1)~~ ***12-10-720 (1)***, the board may enter an order requiring the individual to cease and desist ~~such~~ THE violations.

(b) The board, upon 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~~ ***7***, any individual violating any provision of this part ~~9~~ ***7*** or any rules promulgated pursuant to this article ***10*** may be fined upon a finding of misconduct by the board 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 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)~~ ***(8)*** shall be transferred to the state treasurer, who shall credit them to the division of real estate cash fund created in section ~~12-61-111.5~~ ***12-10-215.***

~~(8)~~ ***(9)*** The board shall keep records of the individuals licensed as mortgage loan originators and of disciplinary proceedings. The records kept by the board shall be open to public inspection in a reasonable time and manner determined by the board.

~~(9) (a)~~ ***(10)*** The board shall maintain a system, which may include, without limitation, a hotline or website, that gives consumers a reasonably easy method for making complaints about a mortgage loan originator.

~~(b) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1621, § 1, effective August 5, 2009.)~~

~~(10)~~ ***(11)*** The 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~~ ***8*** 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)~~ ***(11).***

12-10-712. [Formerly 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~~ THE documents or records upon reasonable request by the board or by an authorized representative of the board;

(c) If the mortgage company employs or contracts with individuals who are required to be licensed pursuant to this part ~~9~~ ***7*** and who are not either:

(I) Licensed; or

(II) In the process of becoming licensed; 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~~ ***7***.

(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 them to the division of real estate cash fund created in section ~~12-61-111.5~~ ***12-10-215***.

(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~~ ***7***.

12-10-713. [Formerly 12-61-905.5] Disciplinary actions - grounds - procedures - rules. (1) The board, upon its own motion, may, or upon the complaint in writing of any person, shall, investigate the activities of any mortgage loan originator. The board has the power to impose an administrative fine in accordance with section ~~12-61-905~~ ***12-10-711***, 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 board finds that the licensee or applicant has performed, is performing,

or is attempting to perform any of the following acts:

(a) Knowingly making any misrepresentation or knowingly making use of any false or misleading advertising;

(b) Making any promise that influences, persuades, or induces another person to detrimentally rely on ~~such~~ THE promise when the licensee could not or did not intend to keep ~~such~~ THE promise;

(c) Knowingly misrepresenting or making false promises through agents, salespersons, advertising, or otherwise;

(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~~ THE act, the board shall revoke the licensee's license;

(e) Acting for more than one party in a transaction without disclosing any actual or potential conflict of interest or without disclosing to all parties any fiduciary obligation or other legal obligation of the mortgage loan originator to any party;

(f) Representing or attempting to represent a mortgage loan originator other than the licensee's principal or employer without the express knowledge and consent of that principal or employer;

(g) In the case of a licensee in the employ of another mortgage loan originator, failing to place, as soon after receipt as is practicably possible, in the custody of that licensed mortgage loan originator-employer any deposit money or other money or fund entrusted to the employee by any person dealing with the employee as the representative of that licensed mortgage loan originator-employer;

(h) Failing to account for or to remit, within a reasonable time, any ~~moneys~~ MONEY coming into his or her possession that ~~belong~~ BELONGS to others, whether acting as a mortgage loan originator, real estate broker, salesperson, or otherwise, and failing to keep records relative to ~~said moneys~~ THE MONEY, which records shall contain such information as may be prescribed by the rules of the board relative thereto and shall be subject to audit by the 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~~ THE 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 keep records relative to the deposit that contain such information as may be prescribed by the rules of the board relative thereto, which records shall be subject to audit by the 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 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 board, for a period of four years, of the documents or records prescribed by the rules of the board or to produce ~~such~~ THE documents or records upon reasonable request by the board or by an authorized representative of the board;

(l) Paying a commission or valuable consideration for performing any of the functions of a mortgage loan originator, as described in this

part ~~9~~ *7*, to any person who is not licensed under this part ~~9~~ *7* or is not registered in compliance with the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5101 et seq.;

(m) Disregarding or violating any provision of this part ~~9~~ *7* or any rule adopted by the board pursuant to this part ~~9~~ *7*; violating any lawful orders of the board; or aiding and abetting a violation of any rule, order of the board, or provision of this part ~~9~~ *7*;

(n) Conviction of, entering a plea of guilty to, or entering a plea of nolo contendere to any crime in article 3 of title 18, ~~C.R.S.~~, in parts 1 to 4 of article 4 of title 18, ~~C.R.S.~~, in article 5 of title 18, ~~C.R.S.~~, in part 3 of article 8 of title 18, ~~C.R.S.~~, in article 15 of title 18, ~~C.R.S.~~, in article 17 of title 18, ~~C.R.S~~., or any other like crime under Colorado law, federal law, or the laws of other states. A certified copy of the judgment of a court of competent jurisdiction of ~~such~~ A conviction or other official record indicating that ~~such~~ A plea was entered shall be conclusive evidence of ~~such~~ THE conviction or plea in any hearing under this part ~~9~~ *7*.

(o) Violating or aiding and abetting in the violation of the Colorado or federal fair housing laws;

(p) Failing to immediately notify the board in writing of a conviction, plea, or violation pursuant to ~~paragraph (n) or (o) of this subsection (1)~~ SUBSECTION (1)(n) OR (1)(o) OF THIS SECTION;

(q) Having demonstrated unworthiness or incompetency to act as a mortgage loan originator by conducting business in such a manner as to endanger the interest of the public;

~~(r) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1625, § 1, effective August 5, 2009.)~~

~~(s)~~ ***(r)*** Procuring, or attempting to procure, a mortgage loan originator's license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, a mortgage loan originator's license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for ~~such~~ THE license;

~~(t)~~ ***(s)*** Claiming, arranging for, or taking any secret or undisclosed amount of compensation, commission, or profit or failing to reveal to the licensee's principal or employer the full amount of ~~such~~ THE licensee's compensation, commission, or profit in connection with any acts for which a license is required under this part ~~9~~ *7*;

~~(u)~~ ***(t)*** Exercising an option to purchase in any agreement authorizing or employing ~~such~~ A licensee to sell, buy, or exchange real estate for compensation or commission except when ~~such~~ THE licensee, prior to or coincident with election to exercise ~~such~~ THE option to purchase, reveals in writing to the licensee's principal or employer the full amount of the licensee's profit and obtains the written consent of ~~such~~ THE principal or employer approving the amount of ~~such~~ THE profit;

~~(v)~~ ***(u)*** Fraud, misrepresentation, deceit, or conversion of trust funds that results in the payment of any claim pursuant to this part ~~9~~ *7* or that results in the entry of a civil judgment for damages;

~~(w)~~ ***(v)*** Any other conduct, whether of the same or a different character than specified in this subsection (1), that evinces a lack of good faith and fair dealing;

~~(x)~~ ***(w)*** Having had a mortgage loan originator's license suspended or revoked in any jurisdiction or having had any disciplinary action taken

against the mortgage loan originator in any other jurisdiction. A certified copy of the order of disciplinary action shall be prima facie evidence of ~~such~~ THE disciplinary action.

~~(y)~~ ***(x)*** Engaging in any unfair or deceptive practice toward any person;

~~(z)~~ ***(y)*** Obtaining property by fraud or misrepresentation;

~~(aa)~~ ***(z)*** Soliciting or entering into a contract with a borrower that provides, in substance, that the mortgage loan originator may earn a fee or commission through the mortgage loan originator's best efforts to obtain a loan even though no loan is actually obtained for the borrower;

~~(bb)~~ ***(aa)*** Soliciting, advertising, or entering into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of the solicitation, advertisement, or contract;

~~(cc)~~ ***(bb)*** Failing to make a disclosure to a loan applicant or a noninstitutional investor as required by section ~~12-61-914~~ ***12-10-725*** and any other applicable state or federal law;

~~(dd)~~ ***(cc)*** Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engaging in bait and switch advertising;

~~(ee)~~ ***(dd)*** Negligently making any false statement or knowingly and willfully omitting a material fact in connection with any reports filed by a mortgage loan originator or in connection with any investigation conducted by the division;

~~(ff)~~ ***(ee)*** In any advertising of residential mortgage loans or any other applicable mortgage loan originator activities covered by the following federal acts, failing to comply with any requirement of the "Truth in Lending Act", 15 U.S.C. sec. 1601 and Regulation Z, 12 CFR 226 and 12 CFR 1026; the "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601 and Regulation X, 12 CFR 1024 et seq.; the "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; Title V, Subtitle A of the "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, 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, 12 CFR 203 and 12 CFR 1003; the "Federal Trade Commission Act" of 1914, 15 U.S.C. sec. 45 (a) and 16 CFR 233; and the "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, as amended. The board may adopt rules requiring mortgage loan originators to comply with other applicable state and federal statutes and regulations.

~~(gg)~~ ***(ff)*** Failing to pay a third-party provider, no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service; or

~~(hh)~~ ***(gg)*** Collecting, charging, attempting to collect or charge, or

using or proposing any agreement purporting to collect or charge any fee prohibited by section ~~12-61-914~~ ***12-10-725*** or ~~12-61-915~~ ***12-10-726.***

~~(2) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1625, § 1, effective August 5, 2009.)~~

~~(3)~~ ***(2)*** Upon request of the 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 board a copy of the complaint, indictment, information, or other initiating pleading and the answer filed, if any, and advise the 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.

~~(4)~~ ***(3)*** This part ~~9~~ ***7*** shall not be construed to relieve any person from civil liability or criminal prosecution under the laws of this state.

~~(5)~~ ***(4)*** Complaints of record in the office of the board and board investigations, including board investigative files, are closed to public inspection. Stipulations and final agency orders are public record and subject to sections 24-72-203 and 24-72-204. ~~C.R.S.~~

~~(6)~~ ***(5)*** When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, the 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 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~~ THE request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings. <{***Do we want to maintain the certified mail requirement here?***}>

~~(7)~~ ***(6)*** All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit them to the division of real estate cash fund created in section ~~12-61-111.5~~ ***12-10-215***.

~~(8)~~ ***(7)*** (a) The board shall not consider an application for licensure from an individual whose license has been revoked until two years after the date of revocation.

(b) If an individual's license was suspended or revoked due to conduct that resulted in financial loss to another person, no new license shall be granted, nor shall a suspended license be reinstated, until full restitution has been made to the person suffering ~~such~~ THE financial loss. The amount of restitution shall include interest, reasonable attorney fees, and costs of any suit or other proceeding undertaken in an effort to recover the loss.

~~(9)~~ ***(8)*** When the 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 board or division shall, in addition to the exercise of its authority under this part ~~9~~ ***7***, refer and transmit ~~such~~ THE 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.

12-10-714. [Formerly 12-61-905.6] Hearing - administrative law judge - review - rules. (1) Except as otherwise provided in this section, all proceedings before the board with respect to disciplinary actions and denial of licensure under this part ~~9~~ ***7***, at the discretion of the board, may be conducted by an authorized representative of the 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 board has its office or in such other place as the board may designate. If the licensee is employed by another licensed mortgage loan originator or by a real estate broker, the 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 board, an authorized representative of the board, or an administrative law judge shall conduct all hearings for denying, suspending, or revoking a license or certificate on behalf of the 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 board has made its decision.

(4) The decision of the 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~~ ***7***, the 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 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 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~~ THE 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~~ THE proceedings.

(6) In any hearing conducted by the board or an authorized representative of the 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 board or its authorized representative shall be governed by section 24-5-101. ~~C.R.S.~~

12-10-715. [Formerly 12-61-905.7] Subpoena - misdemeanor. (1) The board or the administrative law judge appointed for hearings may issue subpoenas, as described in section ~~12-61-905 (6)~~ ***12-10-711 (7)***, 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.

(2) Any person who willfully fails or neglects to appear and testify or to produce books, papers, or records required by subpoena, duly served upon him or her in any matter conducted under this part ~~9~~ *7*, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of one hundred dollars or imprisonment in the county jail for not more than thirty days for each such offense, or by both such fine and imprisonment. Each day ~~such~~ A person so refuses or neglects constitutes a separate offense.

12-10-716. [Formerly 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 board or an administrative law judge pursuant to this part ~~9~~ *7* shall be immune from any liability, civil or criminal, that otherwise might result by reason of ~~such~~ THE action.

12-10-717. [Formerly 12-61-907] Bond required - rules. (1) Before receiving a license, an applicant shall post with the board a surety bond in an amount prescribed by the board by rule. A licensed mortgage loan originator shall maintain the required bond at all times. The surety bond may be held by the individual mortgage loan originator or may be in the name of the company by which the mortgage loan originator is employed. The board may adopt rules to further define surety bond requirements.

(2) The surety shall not be required to pay a person making a claim upon the bond until a final determination of fraud, forgery, criminal impersonation, or fraudulent representation has been made by a court with jurisdiction.

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

12-10-718. [Formerly 12-61-908] Fees. ~~(1)~~ The board may set the fees for issuance and renewal of licenses and registrations under this part ~~9~~ *7*. The fees shall be set in amounts that offset the direct and indirect costs of implementing this part ~~9~~ *7* and section 38-40-105. The money collected pursuant to this section shall be transferred to the state treasurer, who shall credit it to the division of real estate cash fund created in section ~~12-61-111.5~~ ***12-10-215***. <{***Since subsections (2) and (3) have been repealed, leaving only subsection (1), we can remove the reference to subsection (1) here.***}>

~~(2) and (3) (Deleted by amendment, L. 2017.)~~

12-10-719. [Formerly 12-61-909] Attorney general - district attorney - jurisdiction. The attorney general shall have concurrent jurisdiction with the district attorneys of this state to investigate and prosecute allegations of criminal violations of this part ~~9~~ ***7.***

12-10-720. [Formerly 12-61-910] Violations - injunctions. (1) (a) Any individual violating this part ~~9~~ *7* by acting as a mortgage loan originator in this state without having obtained a license or by acting as a mortgage loan originator after that individual's license has been revoked or during any period for which ~~said~~ THE license may have been suspended is guilty of a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501; ~~C.R.S.;~~ except that, if the violator is not a natural

person, the violator shall be punished by a fine of not more than five thousand dollars.

(b) Each residential mortgage loan negotiated or offered to be negotiated by an unlicensed person shall be a separate violation of this subsection (1).

~~(2) (Deleted by amendment, L. 2007, p. 1742, 11, effective January 1, 2008.)~~

~~(3)~~ ***(2)*** The 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~~ THE 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.

~~(4)~~ ***(3)*** A violation of this part ~~9~~ ***7*** shall not affect the validity or enforceability of any mortgage.

12-10-721. [Formerly 12-61-910.2] Prohibited conduct - influencing a real estate appraisal. (1) A mortgage loan originator 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 residential mortgage loan. This prohibition shall not be construed as prohibiting a mortgage loan originator 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.

12-10-722. [Formerly 12-61-910.3] Rule-making authority. The board has the authority to promulgate rules as necessary to enable the board to carry out the board's duties under this part ~~9~~ ***7***.

~~**12-61-910.4. Nontraditional mortgage products - consumer protections - rules - incorporation of federal interagency guidance. (Repealed)**~~

~~**12-61-911. Prohibited conduct - fraud - misrepresentation - conflict of interest - rules. (Repealed)**~~

12-10-723. [Formerly 12-61-911.5] Acts of employee - mortgage loan originator's liability. An unlawful act or violation of this part ~~9~~ ***7*** upon the part of an agent or employee of a licensed mortgage loan originator shall not be cause for disciplinary action against a mortgage loan originator unless it appears that the mortgage loan originator knew or should have known of the unlawful act or violation or had been negligent in the supervision of the agent or employee.

12-10-724. [Formerly 12-61-912] Dual status as real estate broker - requirements. (1) Unless a mortgage loan originator complies with both subsections (2) and (3) of this section, he or she shall not act as a mortgage loan originator in any transaction in which:

(a) The mortgage loan originator acts or has acted as a real estate broker or salesperson; or

(b) Another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson.

(2) Before providing mortgage-related services to the borrower, a mortgage loan originator shall make a full and fair disclosure to the borrower, in addition to any other disclosures required by this part ~~9~~ ***7*** or other laws, of all material features of the loan product and all facts material to the transaction.

(3) (a) A real estate broker or salesperson licensed under part ~~1~~ ***2*** of this article ***10*** who also acts as a mortgage loan originator shall carry on ~~such~~ THE mortgage loan originator business activities and shall maintain ~~such~~ THE person's mortgage loan originator business records separate and apart from the real estate broker or sales activities conducted pursuant to part ~~1~~ ***2*** of this article ***10.*** ~~Such~~ THE activities shall be deemed separate and apart even if they are conducted at an office location with a common entrance and mailing address if:

(I) Each business is clearly identified by a sign visible to the public;

(II) Each business is physically separated within the office facility; and

(III) No deception of the public as to the separate identities of the broker business firms results.

(b) This subsection (3) shall not require a real estate broker or salesperson licensed under part ~~1~~ ***2*** of this article ***10*** 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 board determines that maintaining ~~such~~ THE physical separation would constitute an undue financial hardship upon the mortgage loan originator and is unnecessary for the protection of the public.

~~**12-61-913. Written contract required - effect. (Repealed)**~~

12-10-725. [Formerly 12-61-914] Written disclosure of fees and costs - contents - limits on fees - lock-in agreement terms - rules. (1) (a) 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;

(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~~ *7*.

~~(2) to (4) (Deleted by amendment, L. 2016.)~~

12-10-726. [Formerly 12-61-915] Fee, commission, or compensation - when permitted - amount. (1) Except as otherwise permitted by subsection (2) or (3) of this section, a mortgage loan originator shall not receive a fee, commission, or compensation of any kind in connection with the preparation or negotiation of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed to by the borrower and mortgage loan originator.

(2) If the mortgage loan originator has obtained for the borrower a written commitment from a lender for a loan on the terms and conditions agreed to by the borrower and the mortgage loan originator, and the borrower fails to close on the loan through no fault of the mortgage loan originator, the mortgage loan originator may charge a fee, not to exceed three hundred dollars, for services rendered, preparation of documents, or transfer of documents in the borrower's file that were prepared or paid for by the borrower if the fee is not otherwise prohibited by the federal "Truth in Lending Act", 15 U.S.C. sec. 1601, and Regulation Z, 12 CFR 226, as amended.

(3) A mortgage loan originator may solicit or receive fees for third-party provider goods or services in advance. Fees for any goods or services not provided shall be refunded to the borrower, and the mortgage loan originator may not charge more for the goods and services than the actual costs of the goods or services charged by the third-party provider.

12-10-727. [Formerly 12-61-916] Confidentiality. (1) Except as otherwise provided in the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5111, the requirements under any federal law or law of this state regarding privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court with respect to ~~such~~ THE information or material, shall apply to the information or material after it has been disclosed to the nationwide mortgage licensing system and registry. The information or material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or confidentiality protections provided by federal or state law.

(2) The board may enter into agreements with other government agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, OR ITS SUCCESSOR ORGANIZATION, or other associations representing government agencies as established by rule. <{***When referring to an organization by name, we will often add "or its successor organization" in case the name of the organization changes. Are you comfortable adding that here?***}>

(3) Information or material that is subject to privilege or

confidentiality pursuant to subsection (1) of this section shall not be subject to the following:

(a) Disclosure under a federal or state law governing the disclosure to the public of information held by an officer or agency of the federal government or the respective state; or

(b) Subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to a privilege held by the nationwide mortgage licensing system and registry regarding the information or material, the person to whom the information or material pertains waives the privilege, in whole or in part.

12-10-728. [Formerly 12-61-917] Mortgage call reports - reports of violations. (1) The 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 board may report violations of this part ~~9~~ ***7***, enforcement actions, and other relevant information to the nationwide mortgage licensing system and registry.

12-10-729. [Formerly 12-61-918] Unique identifier - clearly displayed. 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 and any other documents as specified by the board by rule or order.

12-10-730. [Formerly 12-61-919] Repeal of part. (1) This part ~~9~~ ***7*** is repealed, effective September 1, 2029.

(2) ~~Prior to~~ BEFORE its repeal, the ~~department of regulatory agencies shall review~~ the licensing of mortgage loan originators and the registration of mortgage companies IS SCHEDULED FOR REVIEW 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.

PART 8
PREOWNED HOUSING HOME WARRANTY SERVICE CONTRACTS

~~**12-61-601. Short title. (Repealed)**~~

12-10-801. [Formerly 12-61-602]. Definitions. As used in this part 6, unless the context otherwise requires:

~~(1) and (2) Repealed.~~

~~(2.3)~~ ***(1)*** "Home warranty service company", referred to in this part 6 as the "company", means any person who undertakes a contractual obligation on a new or preowned home through a home warranty service contract.

~~(2.5)~~ ***(2)*** (a) "Home warranty service contract" means any contract or agreement whereby a person undertakes for a predetermined fee, with

respect to a specified period of time, to maintain, repair, or replace any or all of the following elements of a specified new or preowned home:

(I) Structural components, such as the roof, foundation, basement, walls, ceilings, or floors;

(II) Utility systems, such as electrical, air conditioning, plumbing, and heating systems, including furnaces; and

(III) Appliances, such as stoves, washers, dryers, and dishwashers.

(b) "Home warranty service contract" does not include:

(I) Any contract or agreement whereby a public utility undertakes for a predetermined fee, with respect to a specified period of time, to repair or replace any or all of the elements of a specified new or preowned home as specified in ~~subparagraph (II) or (III) of paragraph (a) of this subsection (2.5)~~ SUBSECTION (2)(a)(II) OR (2)(a)(III) OF THIS SECTION; or

(II) A builder's warranty provided in connection with the sale of a new home.

~~(3) "Person" includes an individual, company, corporation, association, agent, and every other legal entity.~~ <{***Person is defined for all of article 10 in section 12-10-101 (8).***}>

~~(4)~~ (3) "Preowned" means a single-family residence, residential unit in a multiple-dwelling structure, or mobile home on a foundation that is occupied as a residence and not owned by the builder-developer or first occupant.

~~(5) and (6) Repealed.~~

~~**12-61-603. Registration required - exemption. (Repealed)**~~

~~**12-61-604. Deposit - bond - letter of credit or initial capitalization. (Repealed)**~~

~~**12-61-605. Registration - denial - expiration and renewal. (Repealed)**~~

~~**12-61-606. Grounds for suspension or revocation of registration. (Repealed)**~~

~~**12-61-607. Judgments - distribution. (Repealed)**~~

~~**12-61-608. Order of suspension or revocation of registration. (Repealed)**~~

~~**12-61-609. Annual statement - review. (Repealed)**~~

~~**12-61-610. Reporting of service of process. (Repealed)**~~

12-10-802. [Formerly 12-61-611] Purchase of service contract not to be compulsory. A company selling, offering to sell, or effecting the issuance of a home warranty service contract under this part ~~6~~ ***8*** shall not in any manner require a home buyer or seller, or prospective home buyer or seller, or person refinancing a home to purchase a home warranty service contract.

12-10-803. [Formerly 12-61-611.5] Contract requirements. (1) Every home warranty service contract shall contain the following information:

(a) A specific listing of all items or elements excluded from coverage;

(b) A specific listing of all other limitations in coverage, including the exclusion of preexisting conditions if applicable;

(c) The procedure that is required to be followed in order to obtain repairs or replacements;

(d) A statement as to the time period, following notification to the

company, within which the requested repairs will be made or replacements will be provided;

(e) The specific duration of the home warranty service contract, including an exact termination date that is not contingent upon an unspecified future closing date or other indefinite event;

(f) A statement as to whether the home warranty service contract is transferable;

(g) A statement that actions under a home warranty service contract may be covered by the provisions of the "Colorado Consumer Protection Act" or the "Unfair Practices Act", articles 1 and 2 of title 6, ~~C.R.S.,~~ and that a party to such a contract may have a right of civil action under those laws, including obtaining the recourse or penalties specified in those laws.

12-10-804. [Formerly 12-61-612] Penalty for violation. Any person who knowingly violates any provision of this part ~~6~~ ***8*** commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501. ~~C.R.S.~~ Each instance of violation shall be considered a separate offense.

~~**12-61-613. Rules and regulations. (Repealed)**~~

12-10-805. [Formerly 12-61-614] Prohibitions. It is unlawful for any lending institution to require the purchase of home warranty insurance as a condition for granting financing for the purchase of the home.

12-10-806. [Formerly 12-61-615] Repeal of part. This part ~~6~~ ***8*** is repealed, effective July 1, 2020. ~~Prior to the~~ BEFORE ITS repeal, this part ~~6 shall be reviewed as provided for in~~ ***7*** IS SCHEDULED FOR REVIEW IN ACCORDANCE WITH section 24-34-104. ~~C.R.S.~~

~~**12-61-1001 to 12-61-1014. (Repealed)**~~

ARTICLE 15
DIVISION OF CONSERVATION

12-15-101. [Formerly 12-61-1101] Legislative declaration. (1) The general assembly finds, determines, and declares that:

(a) Colorado's conservation easement program is an important preservation tool used to balance economic needs with natural resources such as land and water preservation. Colorado's conservation easement tax credit and the federal tax deduction have allowed many farmers and ranchers the opportunity to donate their development rights to preserve a legacy of open spaces in Colorado for wildlife, agriculture, and ranching.

(b) Citizens throughout Colorado believe good, sound conservation practices are important to Colorado's quality of life, agriculture, and natural heritage;

(c) Colorado's conservation easement tax credit program was designed to give landowners an incentive to conserve and preserve their land in a predominantly natural, scenic, or open condition;

(d) Creating a division of conservation within the department ~~of regulatory agencies~~ will keep a firewall between professional evaluation and professional discipline, while creating a division to ensure this

program allows landowners to exercise their private property rights while protecting taxpayers from the fraud and abuse that existed in the program prior to 2009;

(e) Establishing the division of conservation to administer the conservation easement tax credit program will:

(I) Allow the division to continue to certify conservation easement holders to identify fraudulent or unqualified organizations and prevent them from holding conservation easements for which tax credits are claimed in the state;

(II) Allow the conservation easement oversight commission to advise the division of conservation and the department of revenue regarding conservation easements for which a tax credit is claimed and to review applications for conservation easement holder certification; and

(III) Ensure that the division of conservation and the department of revenue are sharing relevant information concerning conservation easement appraisals in order to ensure compliance with accepted appraisal practices and other provisions of law.

12-15-102. [Formerly 12-61-1102] Division of conservation - director. (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 of the division of conservation, referred to in this ~~part 11~~ ARTICLE 15 as the "division", who in turn shall employ such deputies, clerks, and assistants as are necessary to discharge the duties imposed by this ~~part 11~~ ARTICLE 15. The division of conservation, which is 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.

(2) It is the duty of the director of the division, personally or his or her designee, to aid in the administration and enforcement of this ~~part 11~~ ARTICLE 15 and to administer, in consultation with the conservation easement oversight commission, the certification of conservation easement holders and issuance of tax credit certificates as provided in this ~~part 11~~ ARTICLE 15.

12-15-103. [Formerly 12-61-1103] Conservation easement oversight commission - created - repeal. (1) There is hereby created in the division a conservation easement oversight commission. The commission shall exercise its powers and perform its duties and functions under the division as if transferred thereto by a **type 2** transfer, as defined in the "Administrative Organization Act of 1968", article 1 of title 24. The commission consists of eight members as follows:

(a) One member representing the great outdoors Colorado program, appointed by and serving as an advisory, nonvoting member at the pleasure of the state board of the great outdoors Colorado trust fund established in article XXVII of the state constitution;

(b) One voting member representing the department of natural resources, appointed by and serving at the pleasure of the executive director of the department of natural resources;

(c) One voting member representing the department of agriculture, appointed by and serving at the pleasure of the ~~executive director~~ COMMISSIONER of ~~the department of~~ agriculture; <{***The head of the***

department of agriculture is the commissioner of agriculture, not an executive director. Are you comfortable with making this change here?}>

(d) Three voting members appointed by the governor as follows:

(I) Two voting representatives of certified conservation easement holders; and

(II) A voting individual who is competent and qualified to analyze the conservation purpose of conservation easements; and

(e) Two voting members of the general public, one appointed by the president of the senate to serve at the pleasure of the president and one appointed by the speaker of the house of representatives to serve at the pleasure of the speaker. Appointments made pursuant to this subsection (1)(e) are for three-year terms and no member shall serve more than two consecutive terms.

(2) In making appointments to the commission, the governor shall consult with the three members of the commission appointed pursuant to subsections (1)(a) to (1)(c) of this section and with appropriate organizations representing the particular interest or area of expertise that the appointees in subsections (1)(d)(I) and (1)(d)(II) of this section represent. Not more than two of the governor's appointees serving at the same time shall be from the same political party. In making the initial appointments, the governor shall appoint one member for a term of two years. All other appointments by the governor are for terms of three years. No member shall serve more than two consecutive terms. 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 may remove any member for misconduct, neglect of duty, or incompetence.

(3) (a) At the request of the division or the department of revenue, the commission shall advise the division and the department of revenue regarding conservation easements for which a state income tax credit is claimed pursuant to section 39-22-522.

(b) The commission shall review conservation easement tax credit certificate applications and requests for optional preliminary advisory opinions in accordance with section ~~12-61-1106~~ ***12-15-106.***

(4) The commission shall meet at least quarterly. The division shall convene the meetings of the commission and provide staff support as requested by the commission. A majority of the voting members of the commission constitutes a quorum for the transaction of all business, and actions of the commission require a vote of a majority of the voting members present in favor of the action taken. The commission may delegate to the director of the division the authority to act on behalf of the commission on occasions and in circumstances that the commission deems necessary for the efficient and effective administration and execution of the commission's responsibilities under this ~~part 11~~ ARTICLE 15.

(5) The commission shall establish a conflict-of-interest policy to ensure that any member of the commission is disqualified from performing an act that conflicts with a private pecuniary interest of the member or from participating in the deliberation or decision-making process for certification for an applicant represented by the member.

(6) The commission shall advise and make recommendations to the director of the division regarding the certification of conservation

easement holders in accordance with section ~~12-61-1104~~ ***12-15-104***.

(7) Commission members are immune from liability in accordance with the provisions of the "Colorado Governmental Immunity Act", article 10 of title 24.

(8) This section is repealed, effective July 1, 2019.

12-15-104. [Formerly 12-61-1104] Certification of conservation easement holders - rules - definition - repeal. (1) The division shall, in consultation with the commission created in section ~~12-61-1103~~ ***12-15-103***, establish and administer a certification program for qualified organizations under section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, that hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522. The purposes of the program are to:

(a) Establish minimum qualifications for certifying organizations that hold conservation easements to encourage professionalism and stability; and

(b) Identify fraudulent or unqualified applicants, as determined under the rules of the division, to prevent them from becoming certified by the program.

(2) The division shall establish and accept applications for certification. The division shall conduct a review of each application and consider the recommendations of the commission before making a final determination to grant or deny certification. In reviewing an application and in granting certification, the division and the commission may consider:

(a) The applicant's process for reviewing, selecting, and approving a potential conservation easement;

(b) The applicant's stewardship practices and capacity, including the ability to maintain, monitor, and defend the purposes of the easement;

(c) An audit of the applicant's financial records;

(d) The applicant's system of governance and ethics regarding conflicts of interest and transactions with related parties as described in section 267 (b) of the federal "Internal Revenue Code of 1986", as amended, donors, board members, and insiders. For purposes of this subsection (2)(d), "insiders" means board and staff members, substantial contributors, parties related to those above, those who have an ability to influence decisions of the organization, and those with access to information not available to the general public.

(e) Any other information deemed relevant by the division or the commission; and

(f) The unique circumstances of the different entities to which this certification applies as set forth in subsection (4) of this section.

(3) At the time of submission of an application, and each year the entity is certified pursuant to this section, the applicant shall pay the division a fee, as prescribed by the division, to cover the costs of the division and the commission in administering the certification program for entities that hold conservation easements for which tax credits are claimed pursuant to section 39-22-522. The division shall have the authority to accept and expend gifts, grants, and donations for the purposes of this section. The state treasurer shall credit fees, gifts, grants, and donations collected pursuant to this subsection (3) to the conservation cash fund created in section ~~12-61-1107~~ ***12-15-107***. On or before each

January 1, the division shall certify to the general assembly the amount of the fee prescribed by the division pursuant to this subsection (3).

(4) The certification program applies to:

(a) Nonprofit entities holding easements on property with conservation values consisting of recreation or education, protection of environmental systems, or preservation of open space;

(b) Nonprofit entities holding easements on property for historic preservation; and

(c) The state and any municipality, county, city and county, special district, or other political subdivision of the state that holds an easement.

(5) The certification program shall contain a provision allowing for the expedited or automatic certification of an entity that is currently accredited by national land conservation organizations that are broadly accepted by the conservation industry.

(6) The commission shall meet at least quarterly and make recommendations to the division regarding the certification program. The division is authorized to determine whether an applicant for certification possesses the necessary qualifications for certification required by the rules adopted by the division. If the division determines that an applicant does not possess the applicable qualifications for certification or that the applicant has violated any provision of this ~~part 11~~ ARTICLE 15, the rules promulgated by the division, or any division order, the division may deny the applicant a certification or deny the renewal of a certification, and, in such instance, the division shall provide the applicant with a statement in writing setting forth the basis of the division's determination. The applicant may request a hearing on the determination as provided in section 24-4-104 (9). The division shall notify successful applicants in writing. An applicant that is not certified may reapply for certification in accordance with procedures established by the division.

(7) The division shall promulgate rules to effectuate the duties of the commission pursuant to article 4 of title 24. ~~Such~~ THE rules shall specifically address the following:

(a) Allowing for the expedited or automatic certification of an entity that is currently accredited by national land conservation organizations that are broadly accepted by the conservation industry;

(b) A streamlined and lower-cost process for conservation easement holders that do not intend to accept new donations of conservation easements for which tax credits would be claimed that focuses on the holder's stewardship capabilities;

(c) The fees charged pursuant to subsection (3) of this section or section ~~12-61-1106 (6)~~ ***12-15-106 (6)***, specifically ensuring that the fees are adequate to pay for administrative costs but not so high as to act as a disincentive to the creation of conservation easements in the state; and

(d) The adoption of best practices, processes, and procedures used by other entities that regularly review conservation easement transactions, including a practice, process, or procedure deeming qualified conservation easement appraisals approved by these entities based on their independent reviews as credible for purposes of the conservation easement tax credit.

(8) A conservation easement tax credit certificate application may be submitted pursuant to section ~~12-61-1106~~ ***12-15-106*** only if the entity

has been certified in accordance with this section at the time the donation of the easement is made. The division shall make information available to the public concerning the date that it commences accepting applications for entities that hold conservation easements and the requirements of this subsection (8).

(9) The division shall maintain and update an online list, accessible to the public, of the organizations that have applied for certification and whether each has been certified, rejected for certification, or had its certification revoked or suspended in accordance with this section.

(10) The division may investigate the activities of any entity that is required to be certified pursuant to this section and to impose discipline for noncompliance, including the suspension or revocation of a certification or the imposition of fines. The division may promulgate rules in accordance with article 4 of title 24 for the certification program and discipline authorized by this section.

(11) The division may subpoena persons and documents, which subpoenas may be enforced by a court of competent jurisdiction if not obeyed, for purposes of conducting investigations pursuant to subsection (10) of this section.

(12) Nothing in this section:

(a) Affects any tax credit that was claimed pursuant to section 39-22-522 before certification was required by this section; or

(b) Requires the certification of an entity that holds a conservation easement for which a tax credit is not claimed pursuant to section 39-22-522.

(13) This section is repealed, effective July 1, 2019.

12-15-105. [Formerly 12-61-1105] Conservation easement tax credit certificates - rules. (1) The division shall receive tax credit certificate applications from and issue certificates to landowners for income tax credits for conservation easements donated on or after January 1, 2011, in accordance with section 39-22-522 (2.5) and this ~~part 11~~ ARTICLE 15. Nothing in this section restricts or limits the authority of the division to enforce this ~~part 11~~ ARTICLE 15. The division may promulgate rules in accordance with article 4 of title 24 for the issuance of the certificates. In promulgating rules, the division may include provisions governing:

(a) The review of the tax credit certificate application pursuant to this ~~part 11~~ ARTICLE 15;

(b) The administration and financing of the certification process;

(c) The notification to the public regarding the aggregate amount of tax credit certificates that have been issued and that are on the wait list pursuant to section 39-25-522 (2.5);

(d) The notification to the landowner, the entity to which the easement was granted, and the department of revenue regarding the tax credit certificates issued; and

(e) Any other matters related to administering section 39-22-522 (2.5) or this ~~part 11~~ ARTICLE 15.

(2) The division shall apply the amount claimed in a completed tax credit certificate application against the annual tax credit limit in the order that completed applications are received. The division shall apply claimed tax credit amounts that exceed the annual limit in any year

against the limit for the next available year and issue tax credit certificates for use in the year in which the amount was applied to the annual limit.

(3) The division shall not issue tax credit certificates that in aggregate exceed the limit set forth in section 39-22-522 (2.5) during a particular calendar year.

12-15-106. [Formerly 12-61-1106] Conservation easement tax credit certificate application process - definitions - rules. (1) For purposes of this section:

(a) "Application" means an application for a tax credit certificate submitted pursuant to section ~~12-61-1105~~ ***12-15-105*** or this section.

(b) "Conservation purpose" means conservation purpose as defined in section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in connection with ~~such~~ THAT section.

(c) "Credibility" means the results are worthy of belief and are supported by relevant evidence and logic to the degree necessary for the intended use.

(d) "Deficiency" means noncompliance with a requirement for obtaining a tax credit certificate that, unless ~~such~~ THE noncompliance is remedied, is grounds for the denial of a tax credit certificate application submitted pursuant to this section.

(e) "Director" means the director of the division of conservation or his or her designee.

(f) "Landowner" means the record owner of the surface of the land and, if applicable, owner of the water or water rights beneficially used thereon who creates a conservation easement in gross pursuant to section 38-30.5-104.

(g) "Tax credit certificate" means the conservation easement tax credit certificate issued pursuant to section ~~12-61-1105~~ ***12-15-105*** and this section.

(2) (a) The division shall establish and administer a process by which a landowner seeking to claim an income tax credit for any conservation easement donation made on or after January 1, 2014, must apply for a tax credit certificate as required by section 39-22-522 (2.5) and (2.7). The purpose of the application process is to determine whether a conservation easement donation for which a tax credit will be claimed:

(I) Is a contribution of a qualified real property interest to a qualified organization to be used exclusively for a conservation purpose;

(II) Is substantiated with a qualified appraisal prepared by a qualified appraiser in accordance with the uniform standards of professional appraisal practice; and

(III) Complies with the requirements of this section.

(b) The landowner has the burden of proof regarding compliance with all applicable laws, rules, and regulations.

(3) For the purpose of reviewing applications and making determinations regarding the issuance of tax credit certificates, including the dollar amount of the tax credit certificate to be issued:

(a) Division staff shall review each application and advise and make recommendations to the director and the commission regarding the application;

(b) The director has authority and responsibility to determine the credibility of the appraisal. In determining credibility, the director shall

consider, at a minimum, compliance with the following requirements:

(I) The appraisal for a conservation easement donation for which a tax credit is claimed pursuant to section 39-22-522 is a qualified appraisal from a qualified appraiser, as defined in section 170 (f) of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in connection with ~~such~~ THAT section;

(II) The appraisal conforms with the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation and any other provision of law;

(III) The appraiser holds a valid license as a certified general appraiser in accordance with part ~~7~~ ***6*** of ~~this article 61~~ ARTICLE 10; and

(IV) The appraiser meets any education and experience requirements established by the board of real estate appraisers in accordance with section ~~12-61-704 (1)(k)~~ ***12-10-604 (1)(k)***.

(c) The director has the authority and responsibility to determine compliance with the requirements of section ~~12-61-1104~~ ***12-15-104.***

(d) The commission has the authority and responsibility to determine whether a conservation easement donation for which a tax credit is claimed pursuant to section 39-22-522 is a qualified conservation contribution as defined in section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in connection with ~~such~~ THAT section.

(4) The department of revenue is not authorized to disallow a conservation easement tax credit based on any requirements that are under the jurisdiction of the division, the director, or the commission pursuant to this section.

(5) A complete tax credit certificate application must be made by the landowner to the division and must include:

(a) A copy of the final conservation easement appraisal;

(b) A copy of the recorded deed granting the conservation easement;

(c) Documentation supporting the conservation purpose of the easement;

(d) Any other information or documentation the director or the commission deems necessary to make a final determination regarding the application; and

(e) The fee required pursuant to subsection (6) of this section.

(6) A landowner submitting an application for a tax credit certificate pursuant to this section or an application for an optional preliminary advisory opinion pursuant to subsection (14) of this section shall pay the division a fee as prescribed by the division. The application fee for an optional preliminary advisory opinion may be a different dollar amount than the application fee for a tax credit certificate. The fees must be adequate to pay for the administrative costs of the division and the commission in administering the requirements of this section, but not so high as to act as a disincentive to the creation of conservation easements in the state. The state treasurer shall credit the fees collected pursuant to this subsection (6) to the conservation cash fund created in section ~~12-61-1107~~ ***12-15-107***. On or before January 1, 2014, and on or before each January 1 thereafter, the division shall certify to the general assembly the amount of any fees prescribed by the division pursuant to this subsection (6).

(7) (a) If, during the review of an application for a tax credit certificate, the director or the commission identifies any potential deficiencies, the director or commission shall document the potential deficiencies in a letter sent to the landowner by first-class mail. The division shall send letters documenting potential deficiencies to landowners in a timely manner so that the number of days between the date a completed application is received by the division and the mailing date of the division's letter to the landowner does not exceed one hundred twenty days.

(b) The landowner has sixty days after the mailing date of the division's letter to address the potential deficiencies identified by the director and the commission and provide additional information or documentation that the director or the commission deems necessary to make a final determination regarding the application.

(c) The director and the commission have ninety days after the date of receipt of any additional information or documentation provided by the landowner to review the information and documentation and make a final determination regarding the application.

(d) The deadlines prescribed by this subsection (7) may be extended upon mutual agreement between the director and the commission and the landowner.

(8) The director or the commission may deny an application if the landowner:

(a) Has not demonstrated to the satisfaction of the director or the commission that the application complies with any requirement of this ~~part 11~~ ARTICLE 15;

(b) Does not provide the information and documentation required pursuant to this ~~part 11~~ ARTICLE 15; or

(c) Fails to timely respond to any written request or notice from the division, the director, or the commission.

(9) If the director reasonably believes that any appraisal submitted in accordance with this section is not credible, the director, after consultation with the commission, may request that the landowner, at the landowner's expense, obtain either a second appraisal or a review of the appraisal submitted with the application from an appraiser who meets the requirements of part ~~7~~ ***6*** of ~~this article 61~~ ARTICLE 10 OF THIS TITLE 12 and is in good standing with the board before making a final determination regarding the application.

(10) If the director and the commission do not identify any potential deficiencies with an application, the director and the commission shall approve the application, and the division shall issue a tax credit certificate to the landowner pursuant to section ~~12-61-1105~~ ***12-15-105*** in a timely manner so that the number of days between the date a completed application is received by the division and the date the tax credit certificate is issued does not exceed one hundred twenty days. Once a tax credit certificate is issued, the landowner may claim and use the tax credit subject to any other applicable procedures and requirements under title 39.

(11) (a) If all potential deficiencies that have been identified are subsequently addressed to the satisfaction of the director and the commission, the director and the commission shall approve the application, and the division shall issue a tax credit certificate to the

landowner pursuant to section ~~12-61-1105~~ ***12-15-105***. Once a tax credit certificate is issued, the landowner may claim and use the tax credit subject to any other applicable procedures and requirements under title 39.

(b) If any potential deficiencies that have been identified are not subsequently addressed to the satisfaction of the director and the commission, the division shall issue a written denial of the application to the landowner documenting those deficiencies that were the specific basis for the denial. The division shall date the written denial and send it by first-class mail to the landowner at the address provided by the landowner on the application. The director may act on behalf of the commission for purposes of administering the process for issuing approvals and denials of applications and for administering subsection (12) of this section.

(12) (a) The landowner may appeal to the director either the director's or the commission's denial of an application, in writing, within thirty days after the issuance of the denial. This written appeal constitutes a request for an administrative hearing.

(b) If the landowner fails to appeal the denial of an application within thirty days after the issuance of the denial, the denial becomes final, and the division shall not issue a tax credit certificate to the landowner.

(c) Administrative hearings must be conducted in accordance with section 24-4-105. At the discretion of the director, hearings may be conducted by an authorized representative of the director or the commission or an administrative law judge from the office of administrative courts in the department of personnel. All hearings must be held in the county where the division is located unless the director designates otherwise. The decision of the director or the commission is subject to judicial review by the court of appeals and is subject to the provisions of section 24-4-106.

(d) In conducting settlement discussions with a landowner, the director and the commission may compromise on any of the deficiencies identified in the application and supporting documentation, including the dollar amount of the tax credit certificate to be issued. The director shall place on file in the division a record of any compromise and the reasons for the compromise.

(e) The director may promulgate rules pursuant to article 4 of title 24 to effectuate the purposes of this subsection (12).

(13) (a) Commencing with the 2014 calendar year, and for each calendar year thereafter, the division shall create a report, which shall be made available to the public, containing the following aggregate information:

(I) The total number of tax credit certificate applications received, approved, and denied in accordance with this section, along with average processing times;

(II) For applications approved in accordance with this section:

(A) The total acreage under easement summarized by the allowable conservation purposes as defined in section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, and any federal regulations promulgated in connection with ~~such~~ THAT section;

(B) The total appraised value of the easements;

(C) The total donated value of the easements; and

(D) The total dollar amount of tax credit certificates issued.

(b) The division may include additional easement-specific information in the public report that, notwithstanding the provisions of this ~~part 11~~ ARTICLE 15 or any other law to the contrary, would otherwise be publicly available.

(c) The director is authorized to share publicly available information regarding conservation easements with a third-party vendor for the purpose of developing and maintaining a registry of conservation easements in the state with a corresponding map displaying the boundaries of each easement in the state relative to county boundaries and other relevant mapping information. Prior to sharing the information, the director shall consult with the commission regarding the appropriate types of information and the methods used for collecting the information. The department ~~of regulatory agencies~~ shall annually report on the information contained in the registry as a part of its presentation to its committee of reference at a hearing held pursuant to section 2-7-203 (2)(a) of the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act". The information to be shared shall include the following:

(I) Any deeds, contracts, or other instruments creating, assigning, or terminating the easement, including the reception numbers on all instruments;

(II) The location and acreage of each easement, delineated by county;

(III) The name of the original grantor of the easement and the name of the original grantee of the easement.

(IV) Whether the holder of the easement is a certified organization pursuant to section ~~12-61-1104~~ ***12-15-104***;

(V) The conservation purposes of the easement; and

(VI) If a tax credit was issued.

(14) (a) In addition to the tax credit certificate application process set forth in this section, a landowner may submit a proposed conservation easement donation to the division to obtain an optional preliminary advisory opinion regarding the transaction. The opinion may address the proposed deed of conservation easement, appraisal, conservation purpose, or other relevant aspect of the transaction.

(b) The division, the director, and the commission shall review the information and documentation provided in a manner consistent with the scope of their authority and responsibilities for reviewing tax credit certificate applications as outlined in subsection (3) of this section and issue either a favorable opinion or a nonfavorable opinion.

(c) The director or the commission may request that the landowner submit additional information or documentation that the director or the commission deems necessary to complete the review and issue an opinion.

(d) A nonfavorable opinion shall set forth any potential deficiencies identified by the director or the commission and that fall within the scope of the director's and the commission's review of the conservation easement transaction. The preliminary opinion is advisory only and is not binding for any purpose upon the division, the director, the commission, or the department of revenue.

(15) The division may promulgate rules to effectuate the purpose,

implementation, and administration of this section pursuant to article 4 of title 24. The authority to promulgate rules includes the authority to define further in rule the administrative processes and requirements, including application processing and review time frames, for obtaining and issuing an optional preliminary advisory opinion pursuant to subsection (14) of this section.

(16) Notwithstanding the provisions of the "Colorado Open Records Act", part 2 of article 72 of title 24, the division, the director, and the commission shall deny the right of public inspection of any documentation or other record related to information obtained as part of an individual landowner's application for a tax credit certificate or an optional preliminary advisory opinion pursuant to the requirements of this section, including documentation or other records related to administrative hearings and settlement discussions held pursuant to subsection (12) of this section. The division, the director, and the commission may share documentation or other records related to information obtained pursuant to this section with the department of revenue.

(17) Nothing in this section affects any tax credit that is claimed or used pursuant to section 39-22-522 for conservation easement donations occurring prior to January 1, 2014.

12-15-107. [Formerly 12-61-1107] Conservation cash fund - repeal. (1) There is hereby created in the state treasury the conservation cash fund, which consists of any ~~moneys~~ MONEY transferred pursuant to ~~section 12-61-1104~~ SECTIONS ***12-15-104*** and ~~12-61-1106~~ ***12-15-106*** and any gifts, grants, and donations provided to carry out the purposes of this ~~part 11~~ ARTICLE 15. All money in the fund shall be used as provided in this ~~part 11~~ ARTICLE 15. Interest earned on the fund shall remain in the fund and shall not be deposited in or transferred to the general fund or any other fund.

(2) (a) As soon as practicable after May 29, 2018, the state treasurer shall transfer to the conservation cash fund any ~~moneys~~ MONEY in the division of real estate cash fund created in the section ~~12-61-111.5~~ ***12-10-215*** that ~~are~~ IS attributable to any fees, gifts, grants, or donations credited to the division of real estate cash fund in accordance with section 12-61-724 (3) or section 12-61-727 that are in the fund immediately prior to the repeal of sections 12-61-724 and 12-61-727.

(b) This subsection (2) is repealed effective July 1, 2019.

Title 12

Comparative Charts

Current Article 61 - New Proposed Article 10

Real Estate

Current Statute Number	Proposed New Statute Number
No current provision	***Part 1 – Common Definitions***
No provision	12-10-101 (new)
Part 1 - Brokers and salespersons	***Part 2 - Brokers and salespersons***
12-61-101	12-10-201
12-61-102	12-10-202
12-61-103	12-10-203
12-61-103.5 (repealed)	N/A
12-61-103.6	12-10-204
12-61-104	12-10-205
12-61-105	12-10-206
12-61-106	12-10-207
12-61-107	12-10-208
12-61-108	12-10-209
12-61-108.5	12-10-210
12-61-109	12-10-211
12-61-110	12-10-212
12-61-110.5	12-10-213
12-61-110.6 (repealed)	N/A
12-61-110.8 (repealed)	N/A
12-61-111	12-10-214

Current Statute Number	Proposed New Statute Number
12-61-111.5	12-10-215
12-61-112	12-10-216
12-61-113	12-10-217
12-61-113.2	12-10-218
12-61-113.5 (repealed)	N/A
12-61-114	12-10-219
12-61-114.5	12-10-220
12-61-115 (repealed)	N/A
12-61-116 (repealed)	N/A
12-61-117	12-10-221
12-61-118	12-10-222
12-61-119	12-10-223
12-61-120	12-10-224
12-61-121	12-10-225
12-61-122	12-10-226
12-61-123	12-10-227
Part 2 - Brokers' Commissions	***Part 3 - Brokers' Commissions***
12-61-201	12-10-301
12-61-202	12-10-302
12-61-203	12-10-303
12-61-203.5	12-10-304
12-61-204	12-10-305
Part 8 – Brokerage Relationships	***Part 4 – Brokerage Relationships***
12-61-801	12-10-401

Current Statute Number	Proposed New Statute Number
12-61-802	12-10-402
12-61-803	12-10-403
12-61-804	12-10-404
12-61-805	12-10-405
12-61-806	12-10-406
12-61-807	12-10-407
12-61-808	12-10-408
12-61-809	12-10-409
12-61-810	12-10-410
12-61-811	12-10-411
Part 4 – Subdivisions	***Part 5 - Subdivisions***
12-61-401	12-10-501
12-61-402	12-10-502
12-61-403	12-10-503
12-61-404	12-10-504
12-61-405	12-10-505
12-61-406	12-10-506
12-61-406.5	12-10-507
12-61-407	12-10-508
12-61-408	12-10-509
Part 7 – Real Estate Appraisers	***Part 6 – Real Estate Appraisers***
12-61-701	12-10-601
12-61-702	12-10-602
12-61-703	12-10-603

Current Statute Number	Proposed New Statute Number
12-61-704	12-10-604
12-61-705	12-10-605
12-61-706	12-10-606
12-61-707	12-10-607
12-61-708	12-10-608
12-61-709	12-10-609
12-61-710	12-10-610
12-61-711	12-10-611
12-61-712	12-10-612
12-61-713	12-10-613
12-61-714	12-10-614
12-61-715	12-100-615
12-61-716	12-10-616
12-61-717	12-10-617
12-61-718	12-10-618
12-61-719	12-10-619
12-61-720	12-10-620
12-61-721	12-10-621
12-61-722	12-10-622
12-61-723	12-10-623
Part 9 – Mortgage loan originators	***Part 7 – Mortgage loan originators***
12-61-901	12-10-701
12-61-902	12-10-702
12-61-902.5	12-10-703

Current Statute Number	Proposed New Statute Number
12-61-903	12-10-704
12-61-903.1	12-10-705
12-61-903.3	12-10-706
12-61-903.5	12-10-707
12-61-903.7	12-10-708
12-61-904	12-10-709
12-61-904.5	12-10-710
12-61-905	12-10-711
12-61-905.1	12-10-712
12-61-905.5	12-10-713
12-61-905.6	12-10-714
12-61-905.7	12-10-715
12-61-906	12-10-716
12-61-907	12-10-717
12-61-908	12-10-718
12-61-909	12-10-719
12-61-910	12-10-720
12-61-910.2	12-10-721
12-61-910.3	12-10-722
12-61-911.5	12-10-723
12-61-912	12-10-724
12-61-914	12-10-725
12-61-915	12-10-726
12-61-916	12-10-727

Current Statute Number	Proposed New Statute Number
12-61-917	12-10-728
12-61-918	12-10-729
12-61-919	12-10-730
Part 6 – Preowned housing home warranty service contracts	***Part 8 – Preowned housing home warranty service contracts***
12-61-602	12-10-801
12-61-611	12-10-802
12-61-611.5	12-10-803
12-61-612	12-10-804
12-61-614	12-10-805
12-61-615	12-10-806

Current Part 11 of Article 61 - New Proposed Article 15

Division of Conservation

Current Statute Number	Proposed New Statute Number
12-61-1101	12-15-101
12-61-1102	12-15-102
12-61-1103	12-15-103
12-61-1104	12-15-104
12-61-1105	12-15-105
12-61-1106	12-15-106
12-61-1107	12-15-107