

DEPARTMENT OF REGULATORY AGENCIES

DIVISION OF REAL ESTATE

Emergency Rule

Mortgage Broker Disclosures

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Section 1. Authority

The Director of the Division of Real Estate adopts the following emergency rule entitled, **Mortgage Broker Disclosures**, according to her authority as found in §§ 12-61-910.3 and 24-4-104(6), C.R.S.

Section 2. Scope and Purpose

The Colorado Division of Real Estate finds that immediate adoption of this rule is imperatively necessary for the preservation of public health, safety or welfare and that compliance with the rulemaking requirements of § 24-4-103(6), C.R.S. would be contrary to the public interest.

Section 12-61-914, C.R.S. requires mortgage brokers, within three business days after receipt of a loan application or any moneys from a borrower, to disclose specific details of a loan transaction to the borrower. Some of these details include, but are not limited to: the annual percentage rate; finance charge; amount financed; total amount of all payments; third party costs; terms of a lock-in agreement; transfer of documents; and that moneys paid by the borrower are held in a trust account. The Director has learned that uncertainty exists in the mortgage industry regarding how and when to provide these details.

The purpose of this rule is to ensure that all required disclosures, set forth in § 12-61-914, C.R.S., are met and that borrowers are provided with accurate and clear disclosures regarding their mortgage loan transaction.

Section 3. Definitions

- A. “Truth-in-Lending Disclosure” means the disclosure form established by the Truth in Lending Act, specific to regulation Z, appendices H-2, H-3, H-4(a), (b), (c) and (d).
- B. “Good Faith Estimate Disclosure” means the disclosure form established in the Real Estate Settlement Procedures Act, part 3500, appendix C.
- C. “Rate” means the payment or interest rate used to determine a borrower’s monthly payment.
- D. “Payment Type” means principal and interest, interest only or negative amortization.
- E. “Fixed Term” means the length of time an interest or payment rate is fixed and will not adjust.
- F. “Index” means the index for the adjustable rate mortgage.
- G. “Initial Adjustment Cap” means the limit on how much the interest or payment rate can change at the first adjustment period.
- H. “Life Cap” means the limit on how much the interest or payment rate can change over the life of the loan.
- I. “Front End Compensation” means compensation charged to the borrower that inures to the benefit of the mortgage broker and the mortgage company for which the mortgage broker is an officer, partner, member, contractor, independent contractor, exclusive agent or employee.
- J. “Back End Compensation” means the compensation paid by the funding lender that inures to the benefit of the mortgage broker and the mortgage company for which the mortgage broker is an officer, partner, member, contractor, independent contractor, exclusive agent or employee.

Section 4. Applicability

This emergency rule governs individuals who broker a mortgage or act as a mortgage broker pursuant to §§ 12-61-902(2) and (5), C.R.S.

Section 5. Rules Regarding Mortgage Broker Disclosures

Mortgage Broker – Disclosures

1. Section 12-61-914 (1), C.R.S., requires that specific disclosures, set forth in § 12-61-914(2), C.R.S., be disclosed within three (3) business days after receipt of a loan application or any moneys from a borrower.

2. Section 12-61-914 (2)(a), C.R.S., states the written disclosures shall contain the annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest, and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan. If the interest rate is variable, the written disclosure shall clearly describe the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from such an increase.
 - a. The Director has determined that the Truth in Lending Disclosure form is an acceptable manner in which to disclose the requirements set forth in § 12-61-914(2)(a), C.R.S.
 - b. Regarding non-traditional mortgage products with multiple payment options, the requirements set forth in § 12-61-914(2)(a), C.R.S. shall be disclosed for each payment or interest rate option available.
 - c. Requirements defined in § 12-61-914(2)(a), C.R.S., shall be disclosed:
 - i. Within three (3) business days after receipt of a loan application or any moneys from a borrower;
 - ii. If, after the written disclosure is provided, a mortgage broker enters into a lock-in agreement, then no less than three business days thereafter, including Saturdays; and
 - iii. If the annual percentage rate varies from the annual percentage rate disclosed earlier by more than 1/8 of 1 percentage point, within three (3) business days of such change and prior to the borrower signing loan closing documents.
3. Section 12-61-914(2)(b), C.R.S. states the disclosure shall contain the itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan.
 - a. The Director has determined the Good Faith Estimate Disclosure form is an acceptable manner in which to disclose the requirements set forth in § 12-61-914(2)(b), C.R.S.
 - b. Requirements defined in § 12-61-914(2)(b), C.R.S., shall be disclosed:
 - i. Within three (3) business days after receipt of a loan application or any moneys from a borrower;

- ii. If, after the written disclosure is provided, a mortgage broker enters into a lock-in agreement, then no less than three business days thereafter, including Saturdays; and
 - iii. If the annual percentage rate varies from the annual percentage rate disclosed earlier by more than 1/8 of 1 percentage point, within three (3) business days of such change and prior to the borrower signing loan closing documents.
 - c. A mortgage broker shall not charge any fee that exceeds the fee disclosed on the written disclosure unless the mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear and written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.
- 4. Section 12-61-914(2)(c), C.R.S. states that mortgage brokers shall disclose the amount of any commission or other compensation to be paid to the mortgage broker, including the manner in which such commission or other compensation is calculated and the relationship of such commission or other compensation to the cost of the loan received by the borrower.
 - a. Mortgage brokers shall disclose to the borrower all of the front end and back end compensation for the transaction. Annual salaries are not required to be disclosed.
 - b. Only when the dollar amount of compensation cannot be determined, may mortgage brokers disclose a range. Such range shall be disclosed in a dollar amount and the range shall not exceed one (1) percentage point of the loan amount for the transaction. [e.g., on a \$100,000.00 loan, mortgage brokers may disclose \$1,000.00 to \$2,000.00, \$1,800.00 to \$2,800.00, or \$3,000.00 to \$4,000.00. This is not meant as a compensation cap and is only provided as an example of the range.]
 - c. The Director has created the Colorado Compensation Disclosure Form to ensure this information is clearly and concisely disclosed. This disclosure may be found on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm>. Mortgage brokers shall use this form or an alternate form, if such alternate form clearly includes all information required on the suggested form, as determined by the Director.
 - i. Compensation disclosure shall be completed and disclosed:
 - 1. Within three (3) business days after receipt of a loan application or any moneys from a borrower;

(3) business days of such change and prior to the borrower signing loan closing documents.

6. Individuals who broker a mortgage or act as a mortgage broker are required to keep records of the disclosures required in this rule, for a period of four years, for the purposes of inspection by the Director or authorized representative of the Director.

Section 6. Effective Date

This emergency rule is effective October 26, 2007.