

CHAPTER 117

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 16-1306

BY REPRESENTATIVE(S) Williams, Arndt, Court, Melton, Moreno, Ryden, Salazar, Kagan;
also SENATOR(S) Holbert, Scott, Woods.

AN ACT

CONCERNING REVISION OF THE STATE STATUTES GOVERNING MORTGAGE LOAN ORIGINATORS TO CONFORM MORE CLOSELY TO APPLICABLE FEDERAL LAW, AND, IN CONNECTION THEREWITH, AMENDING, RELOCATING, AND REPEALING PROVISIONS IN ACCORDANCE WITH THE FEDERAL "SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008".

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

SECTION 1. In Colorado Revised Statutes, 6-1-105, **amend** (1) (bbb) as follows:

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

(bbb) Violates any provision of section ~~12-61-911~~ 12-61-905.5, C.R.S.;

SECTION 2. In Colorado Revised Statutes, 12-61-903, **amend** (3) (a) as follows:

12-61-903. License required - rules. (3) (a) In addition to the requirements imposed by subsection (2) of this section, on or after August 5, 2009, each individual applicant for initial licensing as a mortgage loan originator ~~shall~~ **MUST** have satisfactorily completed a mortgage lending fundamentals course approved by the board and consisting of at least nine hours of instruction in subjects related to mortgage lending. In addition, the applicant ~~shall~~ **MUST** have satisfactorily completed 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**

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

TEST ADMINISTERED THROUGH THE NATIONWIDE MORTGAGE LICENSING SYSTEM OR ITS SUCCESSOR.

SECTION 3. In Colorado Revised Statutes, 12-61-904, **amend** (1) introductory portion and (1) (b) as follows:

12-61-904. Exemptions - rules. (1) Except as otherwise provided in section ~~12-61-911~~ 12-61-905.5, this part 9 does not apply to the following, unless otherwise determined by the federal bureau of consumer financial protection or the United States department of housing and urban development:

(b) 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 properties, each of which is owned by such person, estate, or trust and serves as security for the loan; OR

(II) A PARENT WHO ACTS AS A LOAN ORIGINATOR IN PROVIDING LOAN FINANCING TO HIS OR HER CHILD.

SECTION 4. In Colorado Revised Statutes, 12-61-905, **amend** (1) (f) as follows:

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:

(f) Been found to have violated the provisions of section ~~12-61-911~~ 12-61-905.5;

SECTION 5. In Colorado Revised Statutes, 12-61-905.5, **amend** (1) introductory portion; and **add** (1) (y), (1) (z), (1) (aa), (1) (bb), (1) (cc), (1) (dd), (1) (ee), (1) (ff), (1) (gg), and (1) (hh) as follows:

12-61-905.5. Disciplinary actions - grounds - procedures - rules. (1) The board, upon its own motion, ~~or~~ MAY, OR upon the complaint in writing of any person, ~~may~~ 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, 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:

(y) ENGAGING IN ANY UNFAIR OR DECEPTIVE PRACTICE TOWARD ANY PERSON;

(z) OBTAINING PROPERTY BY FRAUD OR MISREPRESENTATION;

(aa) 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) 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) FAILING TO MAKE A DISCLOSURE TO A LOAN APPLICANT OR A NONINSTITUTIONAL INVESTOR AS REQUIRED BY SECTION 12-61-914 AND ANY OTHER APPLICABLE STATE OR FEDERAL LAW;

(dd) 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) 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) 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) 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) 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 OR 12-61-915.

SECTION 6. In Colorado Revised Statutes, 12-61-907, **amend** (1) as follows:

12-61-907. Bond required - rules. (1) Before receiving a license, an applicant shall post with the board a surety bond in ~~the amount of twenty-five thousand dollars or such other~~ AN amount as may be 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.

SECTION 7. In Colorado Revised Statutes, **repeal** 12-61-911 as follows:

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

~~(a) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;~~

~~(b) Engage in any unfair or deceptive practice toward any person;~~

~~(c) Obtain property by fraud or misrepresentation;~~

~~(d) Solicit or enter 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;~~

~~(e) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting from a lender with whom the mortgage loan originator maintains a written correspondent or loan agreement under section 12-61-913;~~

~~(f) Fail to make a disclosure to a loan applicant or a noninstitutional investor as required by section 12-61-914 and any other applicable state or federal law;~~

~~(g) Make, 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 engage in "bait and switch" advertising;~~

~~(h) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage loan originator or in connection with any investigation conducted by the division;~~

~~(i) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest;~~

~~(j) Fail to comply with any requirement of the federal "Truth in Lending Act", 15 U.S.C. sec. 1601 and Regulation Z, 12 CFR 226; the "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601 and Regulation X, 24 CFR 3500; the "Equal Credit Opportunity Act", 15 U.S.C. sec. 1691 and Regulation B, 12 CFR~~

~~202.9, 202.11, and 202.12; Title V, Subtitle A of the financial services modernization act of 1999 (known as the "Gramm-Leach-Bliley Act"), 12 U.S.C. secs. 6801 to 6809; the federal trade commission's privacy rules, 16 CFR 313-314, mandated by the "Gramm-Leach-Bliley Act"; the "Home Mortgage Disclosure Act of 1975", 12 U.S.C. sec. 2801 et seq. and Regulation C, home mortgage disclosure, 12 CFR 203; the "Federal Trade Commission Act", 15 U.S.C. sec. 45(a); the "Telemarketing and Consumer Fraud and Abuse Prevention Act", 15 U.S.C. secs. 6101 to 6108; and the federal trade commission telephone sales rule, 16 CFR 310, as amended, in any advertising of residential mortgage loans or any other applicable mortgage loan originator activities covered by the acts. The board may adopt rules requiring mortgage loan originators to comply with other applicable federal statutes and regulations.~~

~~(k) Fail 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~~

~~(l) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by section 12-61-914 or 12-61-915.~~

~~(m) Repealed.~~

SECTION 8. In Colorado Revised Statutes, 38-40-105, **amend** (1) (e) as follows:

38-40-105. Prohibited acts by participants in certain mortgage loan transactions - unconscionable acts and practices - definitions. (1) The following acts by any mortgage broker, mortgage originator, mortgage lender, mortgage loan applicant, real estate appraiser, or closing agent, other than a person who provides closing or settlement services subject to regulation by the division of insurance, with respect to any loan that is secured by a first or subordinate mortgage or deed or trust lien against a dwelling are prohibited:

(e) To knowingly facilitate the consummation of a mortgage loan transaction that violates, or that is connected with a violation of, section ~~12-61-911~~ 12-61-905.5, C.R.S.

SECTION 9. In Colorado Revised Statutes, **repeal** 12-61-910.4 and 12-61-913.

SECTION 10. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is

filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable effective date of the act.

Approved: April 21, 2016