

STATE OF COLORADO

Department of Regulatory Agencies
D. Rico Munn
Executive Director



DIVISION OF BANKING
Richard Fulkerson
State Bank Commissioner

Bill Ritter, Jr.
Governor

ADVISORY BULLETIN

TO: State Chartered Banks and Industrial Banks

FROM: Richard Fulkerson *RF*
State Bank Commissioner

DATE: February 13, 2008

RE: Division of Real Estate Position Statement
MB 1.4 – Applicability of Colorado Mortgage Broker Licensing Law to
Employees and Exclusive Agents of Federal and State Financial
Institutions

The Department of Regulatory agencies has concluded that certain provisions of the Mortgage Brokers Licensing Act (Act), Sections 12-61-901 to 915, C.R.S., are applicable to financial institution employees who negotiate, originate, or offer to negotiate or originate a residential mortgage loan for a borrower. The attached position statement, issued by the Director of the Division of Real Estate, sets forth the statutory criteria, clarifies that insured financial institutions are exempt from the Act, defines mortgage broker, and outlines the sections of the Act that apply to financial institution employees. Although institutions are exempt from the Act, the Division of Banking would expect bank lending policies to include sufficient guidance to ensure that lending personnel do not violate Section 12-61-911, Prohibited Conduct

Please direct questions to the Division of Real Estate at 303-894-2166.

Attachment

STATE OF COLORADO

Division of Real Estate

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Division of Real Estate

Position Statement

MB 1.4 – Applicability of Colorado Mortgage Broker Licensing Law to Employees and Exclusive Agents of Federal and State Financial Institutions

- Section 1. Scope and Purpose
- Section 2. Applicability
- Section 3. Position Statement
- Section 4. Issuance Date

Section 1. Scope and Purpose

The purpose for this position statement is to clarify the applicability of the Mortgage Broker Licensing Act (the “Act”), §§ 12-61-901 to 915, C.R.S., to employees and exclusive agents of banks, savings banks, savings and loan associations, building and loan associations, industrial banks, industrial loan companies, credit unions and bank or savings association holding companies, and their subsidiaries and affiliates, identified in § 12-61-904(1)(c), C.R.S. (“Financial Institution Employees”) Over the last two months, various banking and credit union association members contacted the Department of Regulatory Agencies, the Division of Real Estate, the Division of Banking and the Division of Financial Services seeking clarification concerning applicability of the Act. The association members provided written opinions to the Department and the Divisions. In addition, association members met with several Division heads separately, and with the Executive Director and Division heads on February 5, 2008 seeking clarification on the Act’s applicability.

Section 2. Applicability

This position statement concerns all individuals who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker, as those terms are defined in § 12-61-902, C.R.S.

Section 3. Position Statement

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It is the position of the Director of the Division of Real Estate that the Mortgage Broker Licensing Act applies to all individuals who broker a mortgage, as defined in § 12-61-902(2), C.R.S. Accordingly, among others, the Act and all rules promulgated pursuant to the Act apply to Financial Institution Employees who broker mortgages, regardless of whether their employer is state or federally chartered, except that those individuals are exempt from the licensing requirements in § 12-61-903 and 903.5, C.R.S.

Section 12-61-902(5), C.R.S. defines a mortgage broker as one who negotiates, originates, or offers or attempts to negotiate or originate for a borrower a residential mortgage loan. Section 12-61-902(2), C.R.S. further defines brokering a mortgage to include directly or indirectly acting as a mortgage broker. It is the position of the Director of the Division of Real Estate that Financial Institution Employees are mortgage brokers, even where their employer funds its own loans. Such individuals are directly or indirectly acting as mortgage brokers for a borrower.

Section 12-61-904(1)(c), C.R.S. exempts a “bank, savings bank, savings and loan association, building and loan association, industrial bank, industrial loan company, credit union, or bank or savings association holding company ...subject to regulation and supervision by a federal banking agency, or an operating subsidiary or affiliate of such entities, or an employee or exclusive agent of any of such entities” from the provisions of the Act “[e]xcept as otherwise provided in section 12-61-911.” Section 12-61-911, C.R.S. applies to mortgage brokers “otherwise exempted from this part 9 by section 12-61-904(1)(b) or (1)(c).” Therefore, it is the Director’s position that the financial entities themselves are exempt from the Act. Further, it is the Director’s position that section 904 exempts the Financial Institution Employees only from the licensing requirements of § 12-61-903 and 903.5, C.R.S. and rules promulgated under parts 903 and 903.5.

Section 4. Issuance Date

The Director of the Division of Real Estate issues this position statement February 13, 2008.