

12-61-914. Written disclosure of fees and costs – contents – limits on fees – lock-in agreement terms – rules.

(1) Within three business days after receipt of a loan application or any moneys from a borrower, a mortgage broker shall provide to each borrower a full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan and specifying the fee or fees that inure to the benefit of the mortgage broker. A good-faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not determinable. Except as required by paragraph (c) of subsection (2) of this section, this subsection (1) shall not be construed to require disclosure of the distribution or breakdown of loan fees, discounts, or points between the mortgage broker and any lender or investor.

(2) The written disclosure shall contain the following information:

(a) 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 an increase.

(b) 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;

(c) If applicable, 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;

(d) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, whether the lock-in agreement is guaranteed by the mortgage broker or lender, and, if a lock-in agreement has not been entered, disclosure in a form acceptable to the director that the disclosed interest rate and terms are subject to change;

(e) A statement that, if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days after a written request by the borrower, give copies of each appraisal, title report, and credit report paid for by the borrower to the borrower and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent;

(f) Whether and under what conditions any lock-in fees are refundable to the borrower; and

(g) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

(3) If, after the written disclosure is provided under this section, a mortgage broker enters into a lock-in agreement with a borrower or represents to the borrower that the borrower has entered into a lock-in agreement, then no less than three business days thereafter, including Saturdays, the mortgage broker shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement, which shall include a copy of the disclosure made under paragraph (d) of subsection (2) of this section.

(4) (a) Except as otherwise provided in paragraph (b) of this subsection (4), a mortgage broker shall not charge any fee that inures to the benefit of the mortgage broker and that exceeds the fee disclosed on the written disclosure pursuant to this section unless:

(I) The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and

(II) 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 written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.

(b) If the borrower's closing costs on the final settlement statement, excluding prepaid escrowed costs of ownership as defined by the director by rule, do not exceed the total closing costs in the most recent good-faith estimate, excluding prepaid escrowed costs of ownership, no other disclosures shall be required by this subsection (4).

Source: L. 2007: Entire section added, p. 1720, § 7, effective June 1.

Editor's note: Section 13 of chapter 386, Session Laws of Colorado 2007, provides that the act enacting this section applies to acts or omissions committed on or after June 1, 2007.