

STATE OF COLORADO

Division of Real Estate
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Department of Regulatory Agencies
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Department of Regulatory Agencies

Division of Real Estate

Position Statement

MLO 1.5 – Loan Modifications

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Section 1. Scope and Purpose

The Director of the Division of Real Estate finds that a position statement regarding loan modifications is necessary in order to provide clarity to the industry. The Director has learned of individuals negotiating loan modification terms for borrowers and has received many inquiries regarding the applicability of current mortgage loan originator licensing law. Specifically, individuals are communicating directly with borrowers and borrowers' lenders in order to negotiate terms of a loan modification. In many instances, Colorado consumers are being charged high up front fees regardless of services rendered. The Director has also learned that consumers are being advised to cease making mortgage payments, even when already delinquent on payments. Additionally, there are existing loan modification services that are offered by U.S. Department of Housing and Urban Development (HUD) approved non-profit 501(c)3 agencies which employ housing counselors around the State of Colorado. Such HUD-approved services are offered by housing counselors for free and are not associated with any compensation or other benefit from the borrower to the housing counselor. The purpose of this position statement is to clearly notify loan modifiers (those who engage in the act of directly or indirectly negotiating a loan modification) of the applicability of Colorado mortgage broker law.

Section 2. Definitions

1. Short sale - A short sale is the sale of a real property for less than the mortgage loan balance. In the settlement of the short sale transaction the existing mortgage is extinguished. Any deficiency created from the settlement of the transaction may be transformed into a promissory note, charged off, forgiven, or pursued as a judgment against the previous owner.

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2. Loan modification - A Loan Modification is a permanent change in one or more of the terms of a mortgagor's existing loan, allows the loan to be reinstated, and often results in a more affordable mortgage payment. The borrower retains ownership of the real property and the mortgage note and deed of trust remain intact.

Section 3. Applicability

This position statement concerns individuals who originate a mortgage, offer to originate a mortgage, act as a mortgage loan originator, or offer to act as a mortgage loan originator.

Section 4. Position Statement – MLO 1.5 – Loan Modifications

1. Section 12-61-902(7), C.R.S. defines originate a mortgage as to act directly or indirectly as a mortgage loan originator. It is the Director's position that individuals offering or negotiating loan modifications are, at a minimum, indirectly acting as mortgage loan originators. Pursuant to section 12-61-903(1)(a), Colorado Revised Statutes, all persons who meet the definition of originate a mortgage are required to be licensed. As a result, persons who directly or indirectly negotiate, originate or offer or attempt to negotiate or originate loan modifications are currently required to be licensed as mortgage loan originators and are required to be licensed as state-licensed loan originators by July 31, 2010.
2. Additionally, persons who directly supervise individuals who negotiate, originate, or offer or attempt to negotiate or originate loan modifications for a commission or other thing of value are required to be licensed as mortgage loan originators.
3. In addition to the licensing requirements, all individuals who directly or indirectly negotiate loan modifications for borrowers and their direct supervisors are required to comply with all other provisions of Colorado mortgage loan originator licensing law and Director rules. This includes, but is not limited to:
 - a. A duty of good faith and fair dealing in all communications and transactions with borrowers;
 - b. A prohibition against making any promise that influences, persuades, or induces another person to detrimentally rely on such promise when the licensee could not or did not intend to keep such promise;

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- c. A prohibition against 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; and
 - d. 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. section 1601, and Regulation Z, 12 CFR 226, as amended.
4. The Director's position on this matter shall not be construed to include employees of non-profit HUD-approved housing counseling agencies as long as such individuals receive neither compensation nor anything of value for participation in loan modifications.
 5. The Director's position on this matter shall not be construed to include employees of mortgage loan servicing companies operating on behalf of mortgage lenders.
 6. Licensed Real Estate Brokers engaged in licensed activities when performing services within the above defined short sale transactions do not need to maintain a license as a mortgage loan originator. If a real estate broker engages in the activities of providing loan modification services (those not included in the activities of short sales) as defined above, loan modification services are defined as outside the scope of licensed real estate broker activities and as such separate licensure as a mortgage loan originator as defined in MLO 1.5 Position Statement.
 7. As set forth in section 12-61-904(1)(d), C.R.S., 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 or loan modifications is not required to be licensed as a mortgage loan originator, but is required to comply with all non-licensing provisions of current mortgage loan originator law set forth in sections 12-61-901 through 12-61-915, C.R.S.
 8. Noncompliance may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:

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- e. Imposition of fines;
- f. Restitution for any financial loss;
- g. Refusal to renew a license;
- h. Refusal to grant a license; and
- i. Revocation.

Section 5. Issuance Date

The Director of the Division of Real Estate issues this position statement November 19, 2008.

The Director of the Division of Real Estate revised this position statement December 11, 2008.

The Division of Real Estate revised this position statement and re-issued this position statement Friday, September 11, 2009.