



Dora

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DEPARTMENT OF REGULATORY AGENCIES

DIVISION OF REAL ESTATE

POSITION STATEMENT

MB 1.8 – REAL ESTATE BROKERAGE ACTIVITY

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Section 1. Scope and Purpose

In July of 2008, the Housing and Economic Recovery Act of 2008 was signed into law. Title V of the Housing and Economic Recovery Act of 2008 is the S.A.F.E. Mortgage Licensing Act, which defines minimum national licensing standards for mortgage loan originators and requires states to adopt such provisions. Accordingly, the Colorado General Assembly passed House Bill 09-1085 in May of 2009. Governor Bill Ritter Jr. signed the bill into law on May 21, 2009 and it became effective on August 5, 2009. The Director of the Division of Real Estate has received multiple inquiries regarding the potential requirement of licensure as a mortgage loan originator for those real estate brokers that discuss matters related to the financing for a transaction. The purpose of this position statement is to clarify real estate brokerage activities that involve transaction financing matters that are exempt from the Mortgage Loan Originator Licensing Act.

Section 2. Applicability

This position statement concerns those licensed real estate brokers engaged in contract negotiations for the purchase, sale, lease, rental or exchange of real property when a residential mortgage loan is required to complete the transaction.

Section 3. Position Statement

The Director is aware that pursuant to the real estate brokers licensing act, specifically §12-61-801, C.R.S. et seq., licensed Colorado real estate brokers are required to fulfill specific duties and obligations. Many of the duties prescribed by the act address financial matters involved in the contract for a real property transaction. Whether acting as a single agent or a transaction broker, a real estate broker must exercise reasonable skill and care, including but not limited to: 1) accounting for all money and property received in a timely manner; 2) keeping the parties fully informed of the transaction; 3) assisting the parties in complying with the terms and conditions of any contract including closing the transaction; and 4) making disclosures regarding adverse material facts pertaining to a principal's financial ability to perform the



terms of the transaction and the buyer's intent to occupy the property as a principal residence. Without the informed consent of all parties, a transaction broker is prohibited from disclosing that a seller or buyer will agree to financing terms other than those offered. A single agent is prohibited from disclosing whether his or her client(s) will agree to financing terms other than those offered, unless the client consents. The Director is also cognizant that real estate brokers advise on fees relating to homeowner's associations, special assessments, appraisals, surveys, inspections, property insurance, and taxes.

Pursuant to §12-61-902(7.7)(c), C.R.S., the aforementioned activities could be construed as requiring a mortgage loan originator's license since they involve "matters related to financing for the transaction" at the time of contract negotiation. However, the Director has determined these activities are exempt from the mortgage loan originator's licensing act. Specifically, §12-61-902(6)(a), C.R.S. defines a mortgage loan originator as an individual who "takes a residential loan application" or "offers or negotiates terms of a residential mortgage loan." Real estate brokers engaging in these activities are required to be licensed as a mortgage loan originator.

Section 4. Issuance Date

The Director of the Division of Real Estate issues this position statement November 10, 2009.