



Regulatory Analysis

Section 24-4-103(4.5)(a), Colorado Revised Statutes states that upon the request of any person, at least fifteen days prior to the hearing, the agency shall issue a regulatory analysis of a proposed rule. The regulatory analysis must address specific subjects outlined in section 24-4-103(4.5), Colorado Revised Statutes. The Division of Real Estate received a request for a regulatory analysis on August 12, 2008 regarding the proposed permanent rule 2-1-1, entitled *Grounds for Denial of License Applications or for Sanctions Regarding License Applicants, License Renewals, License Reinstatements and Licensees*.

Department: Department of Regulatory Agencies **Division:** Division of Real Estate

CCR: 4CCR 725-3

Date: August 25, 2008

Rule Title or Subject:

Rule 2-1-1 Grounds for Denial of License Applications or for Sanctions Regarding License Applicants, License Renewals, License Reinstatements and Licensees.

Background:

The Colorado Division of Real Estate is proposing this rule which provides additional clarity to industry professionals and Colorado consumers. This rule will not impact the status quo at the Division of Real Estate regarding the grounds for the denial of licenses or for sanctions regarding license applicants, license renewals, license reinstatements and licensees. The Division of Real Estate has not learned of any controversy caused by this proposed rule. Subsequent to providing notice of the rule-making hearing, the Division of Real Estate has not received any comments or highlighted concerns from industry professionals, associations or consumers. To date, the Division of Real Estate has only received a request for a regulatory analysis. As a result, this regulatory analysis is prepared at the request of a member of the public.

Pursuant to section 24-4-103(4.5)(a), Colorado Revised Statutes, the regulatory analysis shall contain:

1. A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule:
 - a. The classes of persons that may be affected by this rule include individuals required to obtain, maintain and renew mortgage broker licenses pursuant to section 12-61-903, Colorado Revised Statutes. This includes individuals who meet the definition of a mortgage broker, as that term is defined in section 12-61-902(5), Colorado Revised Statutes;
 - b. This also includes individuals who meet the definition of broker a mortgage, as that term is defined in section 12-61-902(2), Colorado Revised Statutes; and
 - c. Colorado consumers.
2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.
 - a. This rule provides clarity to all affected classes and does not impact the status quo at the Division of Real Estate.
 - b. Probable impacts to affected classes of persons are as follows:
 - i. License applicants may benefit from the proposed rule due to the monetary costs associated with mortgage broker licensing. Currently, individuals seeking licensure must acquire a \$25,000.00 surety bond, the requisite errors and omissions insurance, provide the Colorado Bureau of Investigations with a fingerprint card, and pay a \$200.00 application fee. All of these requirements result in costs for the license applicant. These costs vary depending on the type of mortgages they transact and their financial viability, which includes their personal credit history. For some individuals, these costs may be in the hundreds of dollars, but for others, they may be in the thousands. License applicants will benefit from the clarity of this proposed rule in determining how the provisions in sections 12-61-905 and 12-61-905.5, Colorado Revised Statutes affect their ability to acquire a mortgage broker license. As a result, license applicants may better understand the qualifications for acquiring or the criteria for being disqualified from obtaining the requisite license;
 - ii. Licensees and individuals seeking to renew or reinstate a mortgage broker license will be provided additional clarity regarding what provisions affect their license. They should better understand how to comply with Colorado mortgage broker law and will also gain insight regarding possible ramifications for non-compliance; and

- iii. Consumers may benefit from this proposed rule as they will gain clarity in regard to violations of the mortgage broker law. The Colorado Division of Real Estate currently maintains a complaint process where any person may file a grievance. This proposed rule provides Colorado consumers with additional guidance regarding compliance and possible violations of the Mortgage Broker Licensing Act by their mortgage broker. Colorado consumers should better understand when a complaint is applicable and when one is not, based on the jurisdictional authority of the Director of the Division of Real Estate.
3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.
 - a. This rule will cause no additional fiscal impact on the Division of Real Estate. This rule provides clarity to Colorado stakeholders, but does not impact the status quo at the Division of Real Estate. Any and all costs associated with the implementation and enforcement of Colorado mortgage broker provisions were anticipated and included in the fiscal notes prepared and completed for House Bill 07-1322 and Senate Bill 07-203. Both of these bills were proposed and passed by the Colorado General Assembly in 2007.
4. A comparison of the probable cost and benefits of the proposed rule to the probable costs and benefits of inaction.
 - a. The primary benefit of inaction is a reduction in staff time and resources specific to the rulemaking process. For any rule, staff time and resources are necessary in drafting, filing proposed rules with the Colorado Secretary of State, maintaining current information on the Division of Real Estate website, notifying all interested parties, scheduling and holding a permanent rulemaking hearing and final adoption after taking into consideration stakeholder comments. The Director has determined that the value of the clarity provided in this rule outweighs the staff resources necessary for the rulemaking process; and
 - b. Costs associated with inaction include continued uncertainty with industry professionals and consumers. This may result in individuals not seeking a mortgage broker license if they are unsure about which provisions may or may not be applicable. Additionally, some individuals may apply for mortgage broker licensure and pay for the requisite licensing requirements, including the surety bond and errors and omissions insurance, when applicable disqualifiers are included in the statutes. Furthermore, current licensees or individuals seeking to renew or reinstate their license may not understand which provisions apply. The primary cost of uncertainty will fall on Colorado consumers as it will be more difficult for them to determine the jurisdictional

boundaries of the Director of the Division of Real Estate. This may impact their willingness to file a grievance and the Director's ability to investigate possible violations and seek appropriate discipline. In some instances, discipline may include restitution to the borrower for financial losses. Therefore, payment of such restitution is at risk if a person does not understand the requirements of the Mortgage Broker Licensing Act and fails to file a complaint.

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.
 - a. A position statement may be viewed as a method with fewer costs specific to staff time and resources. Position statements do not require complex processes similar to the formal permanent rulemaking process. The Director may issue position statements without receiving or reviewing public commentary or holding a public hearing. As a result, position statements may be perceived as intrusive as this process does not mandate a forum for stakeholder input. Accordingly, the additional cost of staff time and resources does not outweigh the benefit of a permanent rulemaking process which allows and solicits industry, association and consumer input.
6. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.
 - a. Alternative methods for achieving the purpose of the proposed rule that were seriously considered include a position statement or a legislative update;
 - b. The issuance of a position statement was evaluated as a possible solution to provide clarity to the mortgage industry and to Colorado consumers. The notion of a position statement was rejected primarily because public commentary and a public hearing are not part of this process. By proposing Rule 2-1-1, the Director is soliciting input and providing a public forum for all affected classes;
 - c. Legislative updates were also considered and evaluated as a possible means to provide such clarity. Legislative updates were rejected as the Director wanted to provide clarity to affected classes sooner than the legislative process would allow. While the legislative session begins in January of 2009, legislative updates generally take effect towards the end of the session. As a result, affected classes would likely have to wait much longer for possibly the same result; and
 - d. While these other methods were seriously considered for achieving the purpose of the proposed rule, the permanent rulemaking process ensures a

forum for stakeholders to provide comments, address concerns, while ensuring an efficient and effective process.