

# STATE OF COLORADO

**Division of Real Estate**  
**Erin Toll**  
Director

1560 Broadway, Suite 925  
Denver, Colorado 80202  
Telephone (303) 894-2166  
FAX (303) 894-2683  
[www.dora.state.co.us/real-estate](http://www.dora.state.co.us/real-estate)

**Department of Regulatory Agencies**  
D. Rico Munn  
Executive Director



Bill Ritter, Jr.  
Governor

## Department of Regulatory Agencies

### Division of Real Estate

#### Position Statement

#### MB 1.5 – Loan Modifications

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

#### 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 broker 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. Applicability

This position statement concerns individuals who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker.

#### Section 3. Position Statement – MB 1.5 – Loan Modifications

# STATE OF COLORADO

**Division of Real Estate**  
**Erin Toll**  
Director

1560 Broadway, Suite 925  
Denver, Colorado 80202  
Telephone (303) 894-2166  
FAX (303) 894-2683  
[www.dora.state.co.us/real-estate](http://www.dora.state.co.us/real-estate)

**Department of Regulatory Agencies**  
D. Rico Munn  
Executive Director



Bill Ritter, Jr.  
Governor

1. Section 12-61-902(2), C.R.S. defines brokering a mortgage as meaning to directly or indirectly act as a mortgage broker. It is the Director's position that individuals offering or negotiating loan modifications are, at a minimum, indirectly acting as mortgage brokers. Pursuant to section 12-61-903(1)(a), Colorado Revised Statutes, all persons who meet the definition of broker 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 for a borrower, and for a commission or other thing of value are required to be licensed as mortgage brokers.
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 brokers.
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 broker 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;
  - c. A prohibition against soliciting or entering into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower; and
  - d. If the mortgage broker 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 broker, and the borrower fails to close on the loan through no fault of the mortgage broker, the mortgage broker 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

# STATE OF COLORADO

**Division of Real Estate**  
**Erin Toll**  
Director

1560 Broadway, Suite 925  
Denver, Colorado 80202  
Telephone (303) 894-2166  
FAX (303) 894-2683  
[www.dora.state.co.us/real-estate](http://www.dora.state.co.us/real-estate)

**Department of Regulatory Agencies**  
D. Rico Munn  
Executive Director



Bill Ritter, Jr.  
Governor

- 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 no 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. Noncompliance may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:
    - a. Imposition of fines;
    - b. Restitution for any financial loss;
    - c. Refusal to renew a license;
    - d. Refusal to grant a license; and
    - e. Revocation.

## Section 4. Issuance Date

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