

DEPARTMENT OF REGULATORY AGENCIES

DIVISION OF REAL ESTATE

Emergency Rule

MORTGAGE BROKER REGISTRATION

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**Section 1 Authority**

The Colorado Division of Real Estate adopts the following emergency rule according to its authority as found in §§ 12-61-901, *et seq.*, and 24-4-104(6), C.R.S.

**Section 2 Scope and Purpose**

The Colorado Division of Real Estate finds that immediate adoption of this rule is imperatively necessary for the preservation of public health, safety or welfare and that compliance with the rulemaking requirements of § 24-4-103, C.R.S., would be contrary to public interest.

Section 12-61-904(1)(e), C.R.S. (2006), provides an exemption for Federal Housing Administration approved mortgagees or an appointed Federal Housing Administration correspondents, acting through officers, partners, members, exclusive agents, contractors, or employees of such entities when making or brokering any mortgage loan. HB07-1322, § 12-61-901, *et seq.*, repeals this exemption effective June 1, 2007. The repeal of the exemption creates an unrealistic timeline to register those affected mortgage brokers. Additionally, the repeal of this provision instantly prevents anyone previously exempted by the above-referenced section in the 2006 statute from brokering a mortgage. There are approximately 12,000 brokers who were previously exempted by this provision and who will be affected by the change. To prevent them from brokering a mortgage until fully compliant with the provisions of the revised statute would cause severe and grave economic harm to them and, potentially, to the entire real estate industry in the State of Colorado. Accordingly, the Division must promulgate a rule that allows both for immediate temporary registration of any mortgage broker who had previously been exempted and adequate time for these affected persons to become compliant with mortgage broker registration.

Without the immediate adoption of this emergency rule, the public's interest is not served. Wherefore, the Colorado Division of Real Estate, pursuant to § 24-4-103(6), C.R.S. has an obvious and stated need to adopt this rule.

### **Section 3      Applicability**

This emergency rule governs individuals who broker a mortgage or act as a mortgage broker and is not intended for individuals who remain exempt from registration pursuant to § 12-61-904, C.R.S. (2007).

### **Section 4      Definitions**

A.      "Good-Faith Effort" is defined as complying with the provisions as set forth below in this rule.

### **Section 5.      Rules Regarding Registration**

Mortgage Broker – Temporary Registration

Temporary Registration

1.      Each and every mortgage broker including those who made a good-faith effort to comply with or who were exempt from the previous registration law, HB 06-1161, §§ 12-61-901 to 911, C.R.S. is hereby granted immediate, temporary registration through and including September 1, 2007, or until such date as the broker demonstrates a good-faith effort to comply with the requirements of HB07-1322, § 12-61-901, *et seq.*, C.R.S., or whichever date is earlier, with the following exceptions:
  - a.      Mortgage brokers denied registration shall not receive temporary registration under this rule.
  - b.      Mortgage brokers who have not demonstrated a good-faith effort to become registered under the previous registration law, HB 06-1161, §§ 12-61-901 to 911, C.R.S. shall not receive temporary registration under this rule.
  
2.      Mortgage brokers demonstrating to the Director a good-faith effort to comply with newly enacted HB07-1322, § 12-61- 901, *et seq.*, C.R.S. shall be issued a Good-Faith Temporary Registration upon compliance with the requirements set forth below.
  - A. Prior to submitting an application, a set of fingerprints for a criminal history record check must be submitted to the Colorado Bureau of Investigation (CBI);
  - B. Acquisition of a \$25,000.00 surety bond as required by § 12-61-907, C.R.S.;
  - C. Completion of the mortgage broker application; and
  - D. Payment of the \$200.00 application fee.

3. Good-Faith Temporary Registrations will expire upon determination by the Director that the requirements of the law have not been met. Applicants shall be notified via e-mail, fax or US mail to the contact information provided to the Division of Real Estate in the applicant's application.
4. Good-Faith Temporary Registrations issued by the Director will remain in effect until December 31, 2007, unless the Director issues the applicant a full registration upon the applicant's compliance with all terms of the applicable registration law, or unless the Director determines the registration to be expired for failure to comply with the requirements to obtain a Good Faith Temporary Registration, as set forth in this regulation.
5. Any temporary registration issued by the Director shall have the same force and effect of the registration required by § 12-61-901, *et seq.*, for the period of time it is in effect.
6. Once the applicant fully complies with the terms of the new law as determined by the Director, the Director shall register the applicant in accordance with § 12-61-903, C.R.S. The date this occurs will be the applicant's anniversary date for purposes of compliance with the licensing and education requirements of § 12-61-903, C.R.S.

**Section 6. Effective Date**

This emergency rule is effective upon signature, by the Governor of the State of Colorado, of HB07-1322.