

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
NATIONWIDE MODIFICATION CENTER, INC.

STATE OF COLORADO ATTORNEY GENERAL'S OFFICE CONSUMER PROTECTION SECTION	
In re: NATIONWIDE MODIFICATION CENTER, INC. Respondent: NATIONWIDE MODIFICATION CENTER, INC., a California corporation.	
JOHN W. SUTHERS, Attorney General ANDY P. McCALLIN, First Assistant Attorney General JENNIFER MINER DETHMERS, Assistant Attorney General 1525 Sherman Street, 7 th Floor Denver, CO 80203 Phone: (303) 866-5079 Fax: (303) 866-4916 Email: jennifer.dethmers@state.co.us	
ASSURANCE OF VOLUNTARY COMPLIANCE AND DISCONTINUANCE WITH NATIONWIDE MODIFICATION CENTER, INC.	

This Assurance of Voluntary Compliance and Discontinuance ("Assurance") is entered into between the State of Colorado, ex rel. John W. Suthers, Attorney General, Respondent Nationwide Modification Center, Inc. ("Respondent" or "Nationwide"). This Assurance is entered into pursuant to the Attorney General's powers under § 6-1-110(2), C.R.S. (2008), and is being agreed to by the parties in lieu of the Attorney General filing a complaint against Respondent for the conduct described below.

I. PARTIES

1. John W. Suthers is the duly elected Attorney General for the State of Colorado ("Attorney General") and has express jurisdiction to investigate and prosecute violations of

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
NATIONWIDE MODIFICATION CENTER, INC.

the Colorado Consumer Protection Act ("CCPA"), §§ 6-1-101, *et seq.*, C.R.S. (2008).

2. Respondent Nationwide Modification Center, Inc. is a California corporation with its principal place of business at 7595 Irvine Center Drive, Irvine, California 92618.

Nationwide's agent for service of process is Joe Rad at 26 Chicory Way, Irvine, California 92612. Nationwide is not registered with the Colorado Secretary of State as a foreign entity.

3. Nationwide and its employees, independent contractors, brokers, salespersons, or agents have negotiated or originated loans for Colorado consumers; offer to negotiate or originate loan modifications for Colorado consumers; and generate leads of Colorado consumers wishing to refinance or modify their existing mortgage loans.

II. FACTUAL BACKGROUND

4. Pursuant to the CCPA, Colorado Attorney General John W. Suthers has conducted an investigation into the advertising activities of Respondent.

5. The Attorney General contends that Respondent sent misleading and deceptive direct mail solicitations to Colorado consumers.

A. Respondent's Direct Mail Solicitation Appears To Come From the Recipient's Lender.

6. Respondent's direct mail solicitation, a copy of which is attached hereto as Exhibit A, purports to be an official "Eligibility Notice." The top of the direct mail solicitation contains the words "FORM 892 ELIGIBILITY NOTICE" near the name of the consumer's lender. The solicitation assigns a disbursement code to the recipient and states that it is the "Final Notice." (*See Ex. A.*)

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
NATIONWIDE MODIFICATION CENTER, INC.

7. The name of the consumer's lender appears in large font in all capital letters in the upper left hand corner of and at various other places throughout the solicitation. While the name of the consumer's lender appears in all capital letters five (5) times in the solicitation, the only indication that this "Eligibility Notice" is coming from Respondent appears in a footnote in small font at the bottom of the solicitation. (*Id.*) Respondent does not indicate its address anywhere on the direct mail solicitation.

8. Respondent does not have the permission of the consumers' lenders to use the lenders' names in its advertising.

9. The Attorney General contends that direct mail solicitation sent by Respondent to Colorado consumers in the form of Exhibit A is misleading and deceptive in that it appears to come from the consumer's lender instead of the Respondent.

B. Respondent's Direct Mail Solicitation Contains a Misleading Payment Rate and Does Not Comply With Regulation Z.

10. The Respondent's solicitation claims that the borrower is "Pre-Qualified for a **MODIFICATION** to a 30 yr. fixed rate mortgage with a payment of only \$700.00 a month" on a loan amount of \$240,000. The Respondent also promotes interest rates between 3.5% and 5%. (*Id.*)

11. The monthly principal and interest payment for a \$235,571 loan at a 30-year fixed interest rate at 3.5% is \$1,077.71. The monthly principal and interest payment for a \$235,571 loan at a 30-year fixed interest rate at 5.0% is \$1,288.37. The \$700.00 monthly payment advertised in the direct mail solicitation, however, is for an interest-only loan at an

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
NATIONWIDE MODIFICATION CENTER, INC.

interest rate of 3.5%. Once the interest-only period expires, this monthly payment will increase to the fully-amortized payment.

12. The solicitation fails to disclose that the \$700.00 monthly payment (1) is an interest-only payment, (2) will increase once the interest-only period expires, and (3) does not include taxes and insurance.

13. Additionally, despite the fact that the direct mail solicitation advertises interest rates, it does not contain an Annual Percentage Rate ("APR") in violation of Regulation Z, 12 C.F.R. § 226.24.

14. The Attorney General contends that the direct mail solicitation sent by Respondent to Colorado consumers in the form of Exhibit A is misleading and deceptive in that it fails to disclose that the advertised monthly payment was an interest-only payment instead of a 30-year fully amortized payment and fails to state an APR.

C. Respondent's Direct Mail Solicitation Improperly Offers to Modify the Recipient's Loan.

15. The Respondent offers to modify the recipient's loan when it states: "This offer to modify the current terms of your mortgage could **REDUCE your monthly payments by 30% - 50%**" and requests that the recipient "[c]all today to discuss how we can **help you save your home.**" (*Id.*)

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
NATIONWIDE MODIFICATION CENTER, INC.

16. The direct mail solicitation contains a footnote in very small print with the following statements:

This is not a formal offer as eligibility depends on individual company information. No terms are implied and this is simply an offer for more information. . . . This is not an offer for a loan.

(Id.)

17. The Attorney General contends that the direct mail solicitation sent by Respondent to Colorado consumers in the form of Exhibit A is misleading and deceptive in that Respondent offers to modify the recipient's mortgage loan in the text of the solicitation, but then attempts to disclaim that offer in a footnote. A person cannot represent one thing in the text of an advertisement and then directly contradict that representation in a footnote in small print.

D. Respondent's Agents Acted as Mortgage Brokers Without Proper Licenses.

18. The Director of the Division of Real Estate has determined that "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." (Ex. B, Division of Real Estate, Position Statement MB 1.5 – Loan Modifications, Nov. 19, 2008.) 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." *(Id.)*

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
NATIONWIDE MODIFICATION CENTER, INC.

19. Respondent's agents negotiated loan modifications for approximately twenty (20) consumers in Colorado.

20. Additionally, through these direct mail solicitations, Respondent's agents offered to negotiate or originate loan modifications for Colorado borrowers.

21. Respondent, however, does not have employees or independent contractors who are licensed as mortgage brokers by the Colorado Division of Real Estate.

22. As such, the Attorney General contends that Respondent and its agents negotiated, originated, or offered to negotiate or originate loan modifications without mortgage broker licenses in violation of §§ 6-1-105(1)(z) and 12-61-903(1)(a), C.R.S. (2008).

E. Summary

23. The Attorney General contends that the above misrepresentations and omissions of material facts are misleading and deceptive, may have caused significant financial harm to Colorado consumers, and have the potential to continue.

24. The Attorney General contends that these advertising and sales practices violate the CCPA, including but not limited to §§ 6-1-105(1)(b), (c), (e), (i), (u), (z), (uu), & (bbb) C.R.S. (2008).

III. CONSIDERATION

25. Respondent enters this Assurance as a compromise and settlement of the Attorney General's allegations herein. This Assurance shall not be considered an admission of violation for any purpose. Respondent expressly denies liability under the CCPA and is

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
NATIONWIDE MODIFICATION CENTER, INC.

entering into this Assurance to avoid further costs and litigation.

26. The Attorney General intends that this Assurance will finally and fully resolve all of the disputes between the Attorney General and Respondent arising out of the conduct alleged in Section II, Factual Background, of this Assurance.

IV. DEFINITIONS

27. "Advertising Material" shall mean all advertisements, marketing or promotional materials issued by Respondent, including but not limited to, newspaper and magazine advertisements, direct mail, flyers, brochures, emails, faxes, websites, telemarketing, billboards and banner or pop-up advertising that is disseminated electronically.

28. "Clear and Conspicuous" or "Clearly and Conspicuously" as used herein shall mean that the information must be disclosed with Equal Prominence and in Close Proximity to the term or phrase that triggers the Clear and Conspicuous disclosure requirement.

29. "Close Proximity" shall mean that the information to be disclosed must be immediately adjacent or above the term or phrase that triggers the disclosure requirement.

30. "Credit score" means a numerical value that ranks a borrower's credit risk based upon a statistical evaluation of the borrower's credit history as determined by the Fair Isaac Corporation.

31. "Easily Readable Print" shall mean that the information to be disclosed shall be readable without the aid of magnification or the assistance of other devices. A disclosure shall not be deemed easily readable if it is located in a footnote, in small print, on the side or

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
NATIONWIDE MODIFICATION CENTER, INC.

back of the Advertising Material, or in an unreadable font size or typeface.

32. "Equal Prominence" shall mean that the information to be disclosed must have the same contrast and be in the same font size and typeface as the term or phrase that triggers the disclosure requirement.

33. "Loan to Value ratio" means the relationship between the loan amount and the value of the property (the lower of the appraised value or sales price), expressed as a percentage of the property's value.

34. "Nontraditional Mortgage" means any residential mortgage loan product that allows the borrower to defer repayment of principal (in a manner different than an amortizing fixed rate mortgage) or interest. This includes all interest only products, payment option ARMs and negative amortization mortgages, with the exception of reverse mortgages and home equity lines of credit, other than a simultaneous second-lien loan.

35. A "Traditional 3/1, 5/1 or 7/1 ARM" shall mean a hybrid ARM, with a fixed rate for an initial period, but then changes at regular intervals after this initial period based on an index and margin. For example, a Traditional 5/1 ARM has a fixed rate for five years and then after the fifth year changes each year thereafter. The change in interest rate is based on changes in an index rate, such as the rate for Treasury securities, the London Interbank Offered Rate or the Cost of Funds Index plus a margin.

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
NATIONWIDE MODIFICATION CENTER, INC.

V. ASSURANCES

36. Respondent will not target advertisements directly to Colorado consumers unless it complies with all provisions of this Assurance. The advertising standards set forth in this section V shall apply to all Advertising Material issued by Respondent.

A. Compliance with State and Federal Laws

37. Respondent shall comply with the CCPA as now constituted or as may be amended in conducting business in the State of Colorado; the federal Truth in Lending Act, 15 U.S.C. §§ 1601, *et seq.* ("TILA"); the Uniform Consumer Credit Code, §§ 5-1-101 through 5-13-105, C.R.S. (2008) ("UCCC"); and the Colorado Mortgage Broker Licensing Act, §§ 12-61-101, *et seq.*, C.R.S. (2008).

38. Respondent shall comply with all applicable rules and regulations implementing the laws set forth in the preceding paragraph as well as any Position Statements issued by the Director of the Division of Real Estate.

B. Specific Undertakings

39. Respondent shall not imply that an advertisement is a document from the consumer's lender unless it has the consumer's lender's written permission to use the name in its advertising.

40. Respondent shall not imply that an advertisement is a document from a government entity.

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
NATIONWIDE MODIFICATION CENTER, INC.

41. Respondent shall not negotiate, originate, or offer or attempt to negotiate or originate loan modifications unless it complies with all provisions of the Colorado Mortgage Broker Licensing Act, §§ 12-61-101, *et seq.*, C.R.S. (2008), its rules and regulations, and any Position Statement issued by the Director of the Colorado Division of Real Estate.

C. Advertising Requirements Regardless of Future Revisions to Regulation Z

42. When creating any Advertising Material for any mortgage loan products, Respondent shall follow the advertising standards set forth in Regulation Z, 12 C.F.R. § 226.24 and staff commentary, including any future revisions to either.

43. The following terms shall apply to Respondent's Advertising Material regardless of any revisions that may be made to Regulation Z:

- a) Respondent shall not advertise any Nontraditional Mortgages;
- b) Respondent shall not advertise an interest rate lower than the rate at which interest is accruing on the loan;
- c) Use of the term "fixed" may only refer to a traditional 15-year or 30-year fixed rate mortgage;
- d) Advertising Material for loans featuring no closing costs, no payments for a set time period, no document loans or reduced documentation or that income need not be verified shall also contain Clear and Conspicuous disclosures that such features will cause the borrower to finance a greater amount or pay a higher interest rate, if that is the case; and

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
NATIONWIDE MODIFICATION CENTER, INC.

- e) Any Advertising Material that Respondent runs which offer free appraisals or no appraisal fees must Clearly and Conspicuously state the conditions for receiving the free appraisal. For example, if the borrower must pay for the appraisal at the time of appraisal and the Respondent reimburses or credits the appraisal fee to the borrower at a later time, and only if the loan closes, then the Advertising Material must state as such.

D. Advertising Standards Pending Revisions to Regulation Z

44. The following terms shall govern Respondent's advertising of rates and payments. These terms shall take effect upon the execution of this Assurance. The Federal Reserve Board has proposed revisions to Regulation Z that would apply to the advertising of rates and payments. See 73 Fed. Reg. 1672, 1722 – 1724 (January 9, 2008) (proposed new rule found at 12 C.F.R. 226.24). On July 15, 2008, the Federal Reserve Board adopted the proposed revisions to Regulation Z, which will become effective on October 1, 2009. See 73 Fed. Reg. 44522, 44607-44610. Until these proposed revisions to Regulation Z become effective, Respondent must follow the standards as set forth below. Once the revisions to Regulation Z become effective on October 1, 2009, Respondent shall follow Regulation Z as revised and need not follow the standards set forth below.

45. When advertising the rate for a loan, Respondent may advertise a rate based either on: (1) a traditional 15-year or 30-year fixed rate mortgage; or (2) a Traditional 3/1, 5/1 or 7/1-year ARM.

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
NATIONWIDE MODIFICATION CENTER, INC.

46. When advertising the rate for a traditional 15-year or 30-year fixed rate mortgage,

Respondent shall satisfy the following requirements:

- a) Respondent must have verifiable evidence that the rate advertised was actually available at the time of dissemination of the Advertising Material; and
- b) The Advertising Material must disclose in Close Proximity to the rate and in Easily Readable Print at least the following criteria, if applicable, that must be satisfied for a borrower to obtain the rate:
 - i.) Whether the mortgage is a 15-year or 30-year mortgage;
 - ii.) Whether or not the mortgage will come due with an unpaid balance that requires the borrower to pay the remaining principal balance at a date certain and, if so, the amount of the "balloon payment" and the date the balloon payment will be due;
 - iii.) The loan amount;
 - iv.) The Loan-to-Value ratio, using that term;
 - v.) The minimum Credit Score;
 - vi.) The buy down required; and
 - vii.) The amount of any prepayment penalty.

47. When advertising the rate for a Traditional 3/1, 5/1 or 7/1 ARM, Respondent shall satisfy the following requirements:

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
NATIONWIDE MODIFICATION CENTER, INC.

- a) Respondent must have verifiable evidence that the rate advertised was actually available at the time of dissemination of the Advertising Material;
- b) The Advertising Material must Clearly and Conspicuously disclose the APR for the loan and, if the Advertising Material also discloses an initial rate, then the Advertising Material must Clearly and Conspicuously state the term during which this initial rate will apply;
- c) If the rate will increase after the initial term, the Advertising Material must disclose in Close Proximity to the initial rate and in Easily Readable Print that the new rate will be based on an index plus a margin; and
- d) The Advertising Material must disclose in Close Proximity to the rate and in Easily Readable Print at least the following criteria, if applicable, that must be satisfied for a borrower to obtain the rate:
 - i.) The loan amount;
 - ii.) The Loan-to-Value ratio, using that term;
 - iii.) The minimum Credit Score;
 - iv.) The buy down required;
 - v.) Whether the loan includes a balloon payment and, if so, the amount and due date of the balloon payment; and
 - vi.) The amount of any prepayment penalty.

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
NATIONWIDE MODIFICATION CENTER, INC.

48. When advertising the amount of a payment on a loan, Respondent shall satisfy the following requirements:

- a) Respondent must have verifiable evidence that the payment amount advertised was actually available at the time of dissemination of the Advertising Material;
- b) The payment amount may be based only on a traditional 15-year or 30-year fixed rate mortgage;
- c) The Advertising Material must disclose in Close Proximity to the payment amount and in Easily Readable Print at least the following criteria, if applicable, that must be satisfied for a borrower to obtain the payment:
 - i.) The rate, including the APR, using that term;
 - ii.) Whether the mortgage is a 15-year or 30-year mortgage;
 - iii.) Whether the loan includes a balloon payment and, if so, the amount and due date of the balloon payment, and
 - iv.) The loan amount;
 - v.) The Loan-to-Value ratio, using that term;
 - vi.) The minimum Credit Score;
 - vii.) The buy down required; and
 - viii.) The amount of any prepayment penalty; and

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
NATIONWIDE MODIFICATION CENTER, INC.

- d) If the payment amount advertised does not include an escrow for taxes or insurance, a Clear and Conspicuous disclosure shall be made in Close Proximity to the to the payment amount that it does not include taxes and insurance.

VI. ENFORCEMENT

49. The obligations set forth in this Assurance are continuing under this Assurance.

50. A violation of any of the terms of this Assurance shall constitute a prima facie violation of the CCPA in accordance with § 6-1-110(2), C.R.S. (2008). Upon a violation of any of the terms of this Assurance by Respondent, the Attorney General shall be entitled to file a civil action under the CCPA in any court of competent jurisdiction and to seek an injunction or other appropriate order from such court to enforce the provisions of this Assurance.

51. In addition to any remedies provided under the CCPA, the Attorney General shall be entitled to apply for and seek from a court of competent jurisdiction an order converting this Assurance into a permanent injunction against Respondent as if the parties had fully litigated all issues contained herein, upon a showing by the Attorney General of a violation by a Respondent of this Assurance. In such event, Respondent agrees to waive any and all defenses and counterclaims it may have had to such an action, except as to claims or defenses related to the alleged violation of this Assurance or as to the need for injunctive relief.

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
NATIONWIDE MODIFICATION CENTER, INC.

52. This Assurance shall not be construed to affect the rights of any private party to pursue remedies pursuant to § 6-1-113, C.R.S. (2008), or under any other statutes through claims or actions in common law.

53. Nothing in this Assurance shall be construed to release claims held by any other governmental authority.

54. Pursuant to § 6-1-110(2), C.R.S. (2008), this Assurance shall be a matter of public record.

55. This Assurance may be executed in one or more counterparts, each of which shall be deemed to be an original, but which together shall constitute the Assurance.

56. The person who signs this Assurance in a representative capacity for Respondent warrants that he or she is duly authorized to do so. Respondent acknowledges that it has had a full opportunity to review this Assurance and consult with legal counsel regarding same. Respondent agrees and represents that it has read and understands this Assurance, that it accepts the legal consequences involved in signing it, and that there are no other representations, agreements or understandings between Respondent and the Attorney General that are not stated in writing herein.

57. Respondent and its principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, assigns, contractors, and any person acting on behalf of Respondent agree to cooperate with all investigations and other proceedings that the Attorney General may bring to enforce the terms of this Assurance or to

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
NATIONWIDE MODIFICATION CENTER, INC.

enforce the CCPA against any other entity. Included within this cooperation agreement are the obligations to:

- a) Appear for hearings, depositions or provide testimony in any form, including affidavits. All such testimony shall be truthful;
- b) Produce documents, records, electronic records, or any other tangible things in response to a subpoena or other written request issued by the Attorney General; and
- c) Accept a subpoena from the Attorney General without the need for service of process.

58. Any notices, complaints or other documents required by this Assurance (including any request or subpoena) shall be sent to the following individuals at the address, email or fax set forth below:

To Respondent Nationwide Modification
Center, Inc.:

Nina Momayez

7595 Irvine Center Dr. Ste 170

Irvine, CA 92612

Email: NMomayez@gmail.com

Phone: 949 379-1300

Fax: 949 379-1166

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
NATIONWIDE MODIFICATION CENTER, INC.

To The Attorney General at:

Jennifer Miner Dethmers
Assistant Attorney General
Antitrust, Tobacco, and Consumer Protection Unit
Consumer Protection Section
1525 Sherman Street – 7th Floor
Denver, CO 80203
Email: jennifer.dethmers@state.co.us
Phone: (303) 866-5079
Fax: (303) 866-4916

Dated: 7-2-09

RESPONDENT NATIONWIDE MODIFICATION CENTER, INC.

By: *[Signature]*
Nima Monagaza President
Print Name and Title

Dated: 6-25-09

JOHN W. SUTHERS
Attorney General

[Signature]
JENNIFER MINER DETHMERS
Assistant Attorney General
Consumer Protection Section

RE: REED MORTGAGE CORP
ORIGINAL LOAN AMOUNT: \$240,000

STATUS:	Final Notice
DISBURSEMENT CODE:	107232
ASSIGNED:	Negotiation Dept.

PROGRAM: 30yr FIXED RATE MORTGAGE – FINAL NOTICE

Dear Max Brandt,

Your first mortgage, originally funded by REED MORTGAGE CORP has been **Pre-Qualified** for a **MODIFICATION** to a 30 yr. fixed rate mortgage with a **payment of only \$700.00** a month.

No other notices will be issued and no phone calls will be made to you regarding this notice.

Based on public records, our staff has reviewed your property information and determined that you are in a severely declining market in terms of value. This offer to modify the current terms of your mortgage could **REDUCE your monthly payments by 30% - 50%**. **No Equity is needed, No Minimum Credit Scores, Late payments on your Mortgage are not a problem and No Appraisal is needed.**

Rates are between 3.5% - 5%

Please give us a call today to discuss how we can help you save your home.

1-866-643-1716

Please have your disbursement code ready when you call.

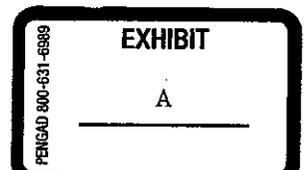
NOTICE EXPIRATION DATE: May 21, 2009

Open 9 a.m. - 7 p.m. Monday through Friday and 10 a.m. - 2 p.m. Saturday



Information obtained from public record sources and not by REED MORTGAGE CORP. Nationwide Modification Center, Inc. is not sponsored by or affiliated with REED MORTGAGE CORP and this solicitation is not authorized by REED MORTGAGE CORP. This is not a formal offer as eligibility depends on individual company information. No terms are implied and this is simply an offer for more information. This is not a government agency letter, nor should it be construed as such. This is not an offer for a loan.

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STATE OF COLORADO

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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. Definitions
- Section 3. Applicability
- Section 4. Position Statement
- Section 5. 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. 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.

STATE OF COLORADO

Division of Real Estate

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Director

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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 broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker.

Section 4. Position Statement – MB 1.5 – Loan Modifications

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;

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- 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 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 broker. 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 broker as defined in MB 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 broker, but is required to comply with all non-licensing provisions of current mortgage broker 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:
 - e. Imposition of fines;

STATE OF COLORADO

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Executive Director



Bill Ritter, Jr.
Governor

- 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.