

DEPARTMENT OF REGULATORY AGENCIES

DIVISION OF REAL ESTATE

MORTGAGE BROKERS

4CCR 725-3

7-1-1 DUAL STATUS DISCLOSURE

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado, and to all persons who have requested to be advised of the intention of the Director of the Colorado Division of Real Estate to promulgate rules.

Section 1.	Authority
Section 2.	Scope and Purpose
Section 3.	Applicability
Section 4.	Rules Regarding 7-1-1 Dual Status Disclosure
Section 5.	Enforcement

Section 1. Authority

The statutory basis for this rule, entitled **7-1-1 Dual Status Disclosure**, is § 12-61-910.3, C.R.S.

The notice proposes to add rule 7-1-1. The rule requires mortgage brokers to inform borrowers if they are also acting as the real estate broker on their transaction.

Section 2. Scope and Purpose

Colorado statutes require mortgage brokers, before providing mortgage services to the borrower, to disclose all facts material to the transaction. The Director has determined that individuals who operate with dual status licenses as real estate brokers and mortgage brokers shall disclose this fact to the borrower. Additionally, this rule creates a new disclosure form that notifies borrowers of an individuals dual status and of their right to shop for alternate services.

The purpose of this rule is to clearly notify mortgage brokers that their dual status as a real estate broker and a mortgage broker must be disclosed to the borrower. Furthermore, this rule establishes a disclosure form mortgage brokers may use to disclose such relevant information.

Section 3. Applicability

This rule applies to all mortgage brokers as that term is defined in § 12-61-902(5), C.R.S. and includes those persons who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker.

Section 4. Rules Regarding 7-1-1 Dual Status Disclosure

1. Colorado law, specifically section 12-61-912, C.R.S., provides that a mortgage broker shall not act as a loan originator in any transaction in which (a) the mortgage broker acts or has acted as a real estate

broker or salesperson; or (b) another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson, unless the mortgage broker first makes a full and fair disclosure to the borrower of all material features of the loan product and all facts material to the transaction, in addition to any other disclosures required by law. Additionally, the mortgage broker must maintain his or her mortgage broker business activities and mortgage broker business records separate and apart from the real estate broker activities.

2. The Director prohibits individuals from acting as a mortgage broker and real estate broker or real estate salesperson, on the same transaction, unless they comply with this rule.
3. The Director has determined that dual status is a material fact to real estate transactions and shall be disclosed to the borrower(s).
4. The Director has created the Colorado Dual Status Disclosure Form to ensure this information is clearly and concisely disclosed. This disclosure may be found on the Division of Real Estate's website at <http://www.dora.state.co.us/real-estate/mortgage/MBForms.htm>. Mortgage brokers shall use this form or an alternate form, if such alternate form clearly includes all information required on the suggested form, as determined by the Director.
5. The Colorado Dual Status Disclosure form shall be completed and disclosed within three (3) business days after receipt of a loan application or any moneys from a borrower.
6. Persons who broker a mortgage, offer to broker a mortgage, act as a mortgage broker, or offer to act as a mortgage broker shall maintain the disclosure form defined by this rule for a period of four years.

Section 5. Enforcement

1. Noncompliance with this rule, whether defined or reasonably implied in the rule, may result in the imposition of any of the sanctions allowable under Colorado law, including, but not limited to:
 - a. Revocation;
 - b. Refusal to renew a license;
 - c. Imposition of fines; and
 - d. Restitution for any financial loss.