

## Summaries of Bills Enacted in 2007 of Interest to Public Trustees

**NOTE:** These summaries were taken from the 2007 Digest of Bills produced by the Office of Legislative Legal Services

### **HB 1157**

#### **CONCERNING REAL ESTATE FORECLOSURES.**

By Representative Garcia and Senator Veiga

Requires a court in an action for unlawful detention of real property following a foreclosure sale (sale) to dispense with appearances by the plaintiff and a hearing in certain circumstances. States that the acts of a deputy public trustee shall have the same effect as though performed by the public trustee. Entitles a public trustee to receive a \$100 fee for processing a rescission of a sale and a \$50 fee for rescheduling a sale after a rescission. Changes the time by which a public trustee or sheriff (officer) processing a foreclosure shall send notice of the foreclosure to persons on an amended mailing list provided by the holder of the evidence of debt from 60 to 45 days before the actual date of sale. Specifies that certain persons may cure a default in the terms of a lien being foreclosed, unless a court determines that there is a reasonable probability that a default other than nonpayment of sums due has occurred. States that the use of a good faith estimate shall not change or extend the period or effective date of a statement of all sums necessary to cure a default. Allows a bid submitted for a sale to be modified orally at the time of the sale only if the person amending the bid is physically present at the sale and modifies and reexecutes the bid. Changes the maximum period by which the officer may continue a sale for good cause or at the request of the holder of the evidence of debt from 9 to 12 months. States that a lienor who accepts a redemption amount less than the full amount of a lien or a holder of an evidence of debt who accepts a redemption amount less than the amount bid at sale before the redemption periods expire shall not be entitled to any excess proceeds from the sale. Directs a public trustee or sheriff to establish written policies for determining how the public trustee or sheriff shall accept documents or records in electronic form by July 1, 2007. If the successful bidder at a sale is the holder of the evidence of debt foreclosing the deed of trust or other lien, allows the successful bidder, the bidder's attorney or assignee, or the assignee's attorney to rescind the sale without a court order within 8 business days after the sale. Requires the public trustee to confirm the reinstatement by an indorsement that substantially meets a specified form. Allows the holder of the evidence of debt to direct the public trustee to reschedule a sale that was rescinded. Limits claims by a person arising from a rescission of a sale to actual damages. Specifies that moneys payable as a refund for overpayment of a cure or default or for overpayment of a redemption that remain unclaimed for one year are presumed abandoned and shall be paid to the state treasurer in accordance with the "Unclaimed Property Act". Shortens the period during which a lienor who wishes to redeem a property shall file a notice of intent to redeem from 10 to 8 business days after the sale. Changes the deadline for the holder of a certificate of purchase to provide a statement of all sums necessary to redeem and per diem interest from 14 to 13 business days after the sale. Shortens the maximum redemption period for the junior lienor with the most senior recorded lien from 20 to 19 business days after the sale. Clarifies the interest rate that a redeeming lienor is required to pay on the amount of the sale. Requires an officer to attach to the certificate of purchase issued following the sale a copy of the court order authorizing the sale and a copy of the mailing lists for notice of the sale. Specifies the information that a separate assignment of a certificate of purchase or redemption shall contain. States that the lien represented by a certificate of purchase shall have the same priority as the deed of trust or other lien foreclosed. States that the indemnity granted by a holder of an original

evidence of debt that requests the release of a deed of trust without producing or exhibiting the original evidence of debt is limited to actual economic loss, along with court costs and reasonable attorney fees, and does not cover special, incidental, consequential, reliance, expectation, or punitive damages. Increases the amount of the corporate surety bond provided by a holder who requests the release of a deed of trust without producing or exhibiting the original evidence of debt from one to 1.5 times the original principal amount of the deed of trust. Changes the effective date of certain provisions of House Bill 06-1387 from July 1, 2007, to January 1, 2008.  
PORTIONS EFFECTIVE June 1, 2007 and January 1, 2008

**HB 1187**

CONCERNING THE PUBLICATION OF INFORMATION ON THE SALARIES OF COUNTY EMPLOYEES BY THE BOARD OF COUNTY COMMISSIONERS.

By Representative Vaad and Senator Kester

Requires that county employees be identified by title only rather than by name and title when the board of county commissioners publishes information on the salaries of county employees twice annually in a legal newspaper in the county.

EFFECTIVE March 26, 2007

**HB 1195**

CONCERNING THE AUTHORITY OF THE GOVERNING BODY OF A LOCAL GOVERNMENT THAT PARTICIPATES IN A LOCAL GOVERNMENT RETIREMENT SYSTEM TO DETERMINE THE CONTRIBUTION RATES FOR THE SYSTEM IN WHICH IT PARTICIPATES.

By Representative Gagliardi and Senator Boyd

Specifies that a retirement plan that was established pursuant to a law other than the county, municipal, and political subdivision officers' and employees' retirement systems (retirement system) law may elect not to be covered under the retirement system law. Eliminates the limitation on the percentage of an employee's basic salary or wage that the employee shall be required to contribute to a retirement system in which the employee is a participant. Eliminates the provision that authorizes the governing body of a county, municipality, political subdivision, or other entity (governing body) that has employees that participate in a retirement system to make contributions out of federal revenue-sharing funds under certain circumstances. Specifies that each governing body shall establish the percentage of the employees' basic salary or wage that the governing body contributes to the retirement system. States that the contribution shall not be less than 3% of the employees' basic salary or wage.

EFFECTIVE August 3, 2007

**HB 1265**

CONCERNING THE FORM OF A REQUEST TO A PUBLIC TRUSTEE TO RELEASE A LIEN OF A DEED OF TRUST.

By Representative McNulty and Senator Tochtrop

Specifies the form that may be used to make a written request to a public trustee to release a lien of a deed of trust.

EFFECTIVE July 1, 2007

**HB 1322**

CONCERNING MEASURES TO PREVENT MORTGAGE FRAUD, AND, IN CONNECTION

THEREWITH, EXTENDING THE PROHIBITION AGAINST CERTAIN ACTS TO INCLUDE MORTGAGE LENDERS, MORTGAGE LOAN APPLICANTS, REAL ESTATE BROKERS, REAL ESTATE AGENTS, REAL ESTATE APPRAISERS, AND CLOSING AGENTS; PROHIBITING CERTAIN PRACTICES; CHANGING THE MENTAL STATE REQUIRED TO BE PROVEN AS AN ELEMENT OF A VIOLATION; AND MAKING AN APPROPRIATION.

By Representative Marshall and Senator Groff

Adds definitions of the terms "borrower" and "residential mortgage loan" to the statutes governing mortgage brokers. Clarifies the application of the "Mortgage Broker Registration Act" to residential mortgage loans. Eliminates the exemption for federal housing administration (FHA)-approved mortgagees and appointed FHA correspondents. Specifies that a mortgage broker has a duty of good faith and fair dealing in all communications and transactions with a borrower. Prohibits a mortgage broker from recommending or inducing the borrower to enter into a transaction that does not have a reasonable, tangible net benefit to the borrower, as defined by rules of the director of the division of real estate (director). Gives the director additional rule-making authority and the authority to assess administrative fines of up to \$1,000 for a first offense and \$2,000 for subsequent offenses. Requires a mortgage broker to make an inquiry about, and to take into consideration, the borrower's current and prospective income and other factors prior to recommending, brokering, or originating a residential mortgage loan. Requires certain disclosures and prohibits the use of specified acts or practices, including those deemed unconscionable. Incorporates requirements of federal laws, including the "Real Estate Settlement Procedures Act". Establishes rules of conduct for situations in which a person acts as both a mortgage broker and a real estate broker or salesperson. Limits fees. In provisions relating to false and deceptive inducements to the creation of a mortgage loan by a mortgage broker or mortgage originator, adds mortgage lenders, mortgage loan applicants, real estate appraisers, and closing agents to the persons to whom the prohibitions apply. Reduces the mental state required to be proven in an action for violation of anti-fraud provisions from "knowingly" to "knew or reasonably should have known". Invokes the authority of the attorney general under the "Colorado Consumer Protection Act" to investigate and punish misconduct by mortgage brokers. Allows the attorney general to seek injunctions against persons violating anti-fraud provisions, prohibiting them from conducting further business for up to 5 years. Appropriates \$495,084 and 2.5 FTE to the division of regulatory agencies and \$383,206 and 4.0 FTE to the department of law for implementation of the act. Appropriates \$297,288 and 1.7 FTE to the department of public safety, Colorado bureau of investigation, from fingerprint processing fees for expenses related to criminal history record checks.

EFFECTIVE June 1, 2007

## **SB 85**

CONCERNING ADDITIONAL CONSUMER PROTECTIONS RELATING TO REAL ESTATE TRANSACTIONS.

By Senator Veiga and Representative Massey

Prohibits a mortgage broker from improperly influencing a real estate appraisal and makes such improper influencing a deceptive trade practice. Specifies criminal penalties for such misconduct. Authorizes the director of the division of registrations in the department of regulatory agencies to promulgate rules and to revoke a mortgage broker's registration when the broker has improperly influenced a real estate appraisal or has, in the previous 5 years, been enjoined by a court in any state from brokering a mortgage. Authorizes public trustees to rerecord a notice of election and demand and proceed with foreclosure proceedings after missing

a notice deadline. Authorizes public trustees to correct errors contained in documents prepared by the public trustee by filing a scrivener's error affidavit. Exempts reverse mortgages from mortgage brokers' and mortgage originators' duty to consider a consumer's ability to repay a mortgage. Appropriates \$56,696 and 0.3 FTE to the department of regulatory agencies for the implementation of the act. Makes certain provisions contingent on the passage of Senate Bill 07-216.

EFFECTIVE June 1, 2007

**NOTE:** Senate Bill 07-216 was signed by the governor June 1, 2007.

### **SB 203**

**CONCERNING THE REGULATION OF PERSONS PARTICIPATING IN MORTGAGE LOAN TRANSACTIONS, AND, IN CONNECTION THEREWITH, REQUIRING MORTGAGE BROKERS TO BE LICENSED, SPECIFYING PROHIBITED ACTS AND GROUNDS FOR DISCIPLINE OF LICENSEES, AND MAKING AN APPROPRIATION.**

By Senator Groff and Representative Marshall

Changes the regulatory framework for mortgage brokers from registration to licensing. Requires mortgage brokers to be bonded and to maintain errors and omissions insurance coverage. Establishes education and examination requirements for persons seeking licensure. Defines the grounds for denial, revocation, or suspension of a license. Eliminates the exemption for federal housing administration (FHA) approved mortgagees and appointed FHA correspondents. Authorizes the director of the division of real estate (director) to adopt rules as necessary to carry out the director's duties under the statute. Defines the procedure for administrative hearings, including the issuance of subpoenas by the director or an administrative law judge. Allows the director to seek and obtain injunctions in a court of law, to issue letters of admonition, to place licensees on probation, to suspend or revoke licenses, and to assess administrative fines of up to \$1,000 for a first offense and \$2,000 for subsequent offenses. Establishes grounds for such actions. Where a mortgage broker is employed by a brokerage firm, allows the director to discipline the firm for the employee's wrongful acts. Requires draft copies of documents relating to a mortgage loan on residential real estate to be provided to the borrower at least one business day before closing. Appropriates \$363,164 and 1.8 FTE to the division of real estate and \$245,648 and 2.8 FTE to the department of law for implementation of the act. Appropriates \$379,064 to the department of public safety, Colorado bureau of investigation, from fingerprint processing fees for expenses related to criminal history record checks. Applies the act to acts and omissions occurring, and mortgage broker licenses issued or renewed, on or after January 1, 2008.

EFFECTIVE January 1, 2008

### **SB 210**

**CONCERNING THE ESTABLISHMENT OF THE INDEPENDENT ETHICS COMMISSION AS REQUIRED BY ARTICLE XXIX OF THE STATE CONSTITUTION, AND MAKING AN APPROPRIATION THEREFOR.**

By Senator McElhany and Representative Marshall

Implements article XXIX of the state constitution, concerning ethics in government (article XXIX), enacted by the voters at the 2006 general election, in the following respects:

\* Establishes the independent ethics commission (commission) in the office of administrative courts in the department of personnel. Specifies requirements pertaining to the appointment and terms of commission members, the reimbursement of expenses incurred by commission members, and the powers and duties of the commission. Specifies that the member

appointed by the senate shall be appointed by the president of the senate with the approval of two-thirds of the members elected to the senate, and the member appointed by the house of representatives shall be appointed by the speaker of the house of representatives with the approval of two-thirds of the members elected to the house of representatives. Specifies that the member appointed by the house of representatives shall not be affiliated with the same political party as the person appointed by the senate.

- \* Requires the major political parties to have equal numbers of members appointed to the commission.

- \* Requires the commission to prepare a response to a request for an advisory opinion from a public officer, member of the general assembly, local government official, or government employee as to whether particular action by such individual satisfies the requirements of article XXIX not more than 20 business days after the request is made to the commission. Permits any individual who is not a public officer, member of the general assembly, local government official, or government employee to submit a request to the commission for a letter ruling concerning whether potential conduct of the person making the request satisfies the requirements of article XXIX. In such case, requires the commission to issue a response to the request as soon as practicable.

- \* Specifies that each advisory opinion or letter ruling, as applicable, issued by the commission shall be a public document and requires each such document to be promptly posted on a website that shall be maintained by the commission; except that, in the case of a letter ruling, requires the commission to redact the name of the person requesting the ruling or other identifying information before it is posted on the website.

- \* Requires the commission to dismiss as frivolous any complaint filed under article XXIX that fails to allege that a public officer, member of the general assembly, local government official, or government employee has accepted or received any gift or other thing of value for private gain or personal financial gain. For purposes of the act, defines "private gain" or "personal financial gain" to mean any money, forbearance, forgiveness of indebtedness, gift, or other thing of value given or offered by a person seeking to influence an official act that is performed in the course and scope of the public duties of a public officer, member of the general assembly, local government official, or government employee.

- \* Requires the commission to adopt reasonable rules as may be necessary for the purpose of administering and enforcing the provisions of article XXIX and any other standards of conduct and reporting requirements as provided by law. Requires any such rules to be promulgated in conformity with the "State Administrative Procedure Act".

- \* Authorizes the commission to employ staff.

- \* Specifies that no subpoena requiring the attendance of a witness or the production of documents shall be issued by the commission unless a motion to issue any such subpoena has been made by one member of the commission and approved by no fewer than 4 members of the commission.

- \* Specifies that any final action of the commission concerning a complaint is to be subject to judicial review by the district court for the city and county of Denver.

For the 2007-08 fiscal year:

- \* Appropriates \$121,986 from the general fund to the department of personnel and administration, executive office, for the provision of legal services to the division of administrative courts, for the implementation of the act.

- \* Appropriates \$98,010 and 1.8 FTE from the general fund to the department of personnel and administration, division of administrative courts, for the implementation of the act.

\* Appropriates \$121,986 and 0.9 FTE to the department of law, for the provision of legal services to the department of personnel and administration, division of administrative courts, related to the implementation of the act. Specifies that said sum shall be from cash funds exempt received from the department of personnel and administration, executive office, out of the appropriation made in the act.

\* Adjusts the appropriation made in section 21 of the annual general appropriation act by decreasing the general fund appropriation to the controlled maintenance trust fund by \$219,996.  
EFFECTIVE April 26, 2007

## **SB 216**

### **CONCERNING ADDITIONAL CONSUMER PROTECTIONS IN RESIDENTIAL MORTGAGE LOAN TRANSACTIONS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

By Senator Veiga and Representative Marshall

Creates a duty of good faith and fair dealing for mortgage brokers in their communications and transactions with borrowers, including the duty not to recommend or induce the borrower to enter into a transaction that does not have a reasonable, tangible net benefit to the borrower. Specifically lists acts and practices that are deemed unconscionable when committed by mortgage brokers or mortgage originators. In regard to such acts and practices, waives the otherwise applicable requirement that there be evidence of bad faith overreaching or unequal bargaining power before a court may find an act or practice unconscionable. Directs the banking board and the director of the division of real estate to adopt rules incorporating appropriate provisions of the "Interagency Guidance on Nontraditional Mortgage Product Risks" promulgated by the United States department of the treasury and other federal agencies. Removes the existing \$200 limit on mortgage broker registration fees. Appropriates \$392,242 and 1.5 FTE to the department of regulatory agencies, of which \$48,456 is allocated for the purchase of legal services from the department of law, for the implementation of the act. Appropriates an additional \$265,085 and 3.0 FTE to the department of law, consumer protection division, for the implementation of the act.  
EFFECTIVE July 1, 2007