

## CHAPTER 20 - QUESTIONS

1. Does the sale of a business opportunity always require a real estate license? \_\_\_\_\_
2. When is a license required? \_\_\_\_\_
3. May an unlicensed person receive compensation for the portion of the sale that does not involve real estate? \_\_\_\_\_
4. There are numerous items to be ascertained when listing, selling and closing a business opportunity transaction. List six of the most important:
  - a. \_\_\_\_\_;
  - b. \_\_\_\_\_;
  - c. \_\_\_\_\_;
  - d. \_\_\_\_\_;
  - e. \_\_\_\_\_;
  - f. \_\_\_\_\_.
5. If a liquor license is to be transferred with the sale of a business opportunity, list the main requirements of the law:
  - a. \_\_\_\_\_;
  - b. \_\_\_\_\_;
  - c. \_\_\_\_\_;
  1. \_\_\_\_\_;
  2. \_\_\_\_\_;
  3. \_\_\_\_\_;
  4. \_\_\_\_\_.
6. In order to check the \_\_\_\_\_ income and the \_\_\_\_\_ income, income tax forms and CPA reports should be checked.
7. A covenant not to \_\_\_\_\_ is often a necessity when a going business is sold. It should be limited as to \_\_\_\_\_ and \_\_\_\_\_ in order to make it enforceable at law.
8. The Uniform Commercial Code repeals the past laws on \_\_\_\_\_ mortgages. The law requires a \_\_\_\_\_ agreement between the parties.
9. A \_\_\_\_\_ statement must be filed with the Secretary of State.
10. The four requirements of a financing statement are:
  - a. \_\_\_\_\_;
  - b. \_\_\_\_\_;
  - c. \_\_\_\_\_;
  - d. \_\_\_\_\_;

11. The instrument is effective for the maturity date plus \_\_\_\_\_ days if it is for less than five years. If the date is longer than five years, the instrument is effective for five years from date of filing. A continuation date may be filed to extend the period.
12. The Colorado Use Tax is payable on the \_\_\_\_\_ of furniture, equipment, etc. The obligation to pay this tax is placed on the \_\_\_\_\_.
13. RESPA prohibits anyone from receiving a fee or \_\_\_\_\_ for the referral of any settlement service associated with a mortgage loan. The purpose of the law is to \_\_\_\_\_ from unnecessary fees.
14. When one (parent) company owns several businesses that provide different \_\_\_\_\_, all those businesses are called “\_\_\_\_\_”. This also applies to other relationships used to refer settlement business, such as family members, partners or contractors. Real estate brokers, lenders and \_\_\_\_\_ companies must inform the party, when referring (suggesting or arranging) them for settlement service to a company with which they already have an “affiliated \_\_\_\_\_ relationship”.
15. Consumers are \_\_\_\_\_ required to use the affiliate, and can choose their own service providers. In other words, they can close and get title insurance at any title company they wish, as well as whichever lender or appraiser, etc.
16. The company with whom the broker or lender has an affiliated business arrangement must be an actual provider of \_\_\_\_\_ services. It is illegal to refer a consumer to a \_\_\_\_\_ controlled business arrangement. (For example, it would be a violation of Colorado’s Affiliated Business Arrangements laws for a broker to “refer” a buyer/borrower to another company - and have the consumer pay a fee – for “document review”, if that company does not actually review documents *or* such document review is unnecessary or not actually performed.)
17. Real Estate licensees are required to use any Colorado Real Estate Commission-approved \_\_\_\_\_ to disclose affiliated business arrangements.

### **Federal RESPA Act**

18. Not only does RESPA prohibit receiving a kickback for \_\_\_\_\_ of a settlement service associated with a loan, but that law also says that no one shall receive a fee for a settlement service that was not actually \_\_\_\_\_.
19. But RESPA does allow payment of a fee to:
- \_\_\_\_\_;
  - to \_\_\_\_\_ companies for title insurance;
  - \_\_\_\_\_ for making a loan;
  - for \_\_\_\_\_ or facilities actually furnished or services actually performed;
  - \_\_\_\_\_ arrangements between real estate agents;
  - \_\_\_\_\_ business arrangements, as long as disclosure is made and the borrower is given an \_\_\_\_\_ of the charges.
20. Penalties for violations of RESPA’s affiliated business arrangements laws:

Fine of not more than \_\_\_\_\_ or prison for not more than \_\_\_\_\_, or *both*.

If there is more than one person/company convicted, then they are all \_\_\_\_\_ and severally (means “equally”) liable to the victims for \_\_\_\_\_ times the amounts charged for the settlement service.

But they will *not* be liable if they can prove that the consumer’s damages were \_\_\_\_\_ or due to a bona fide (legitimate) error.

### Colorado’s “Affiliated Business Arrangement” Laws

21. Similar to the Federal RESPA laws, Colorado has similar statutes regarding affiliated business arrangements, which is defined as: A provider of settlement services that has a relationship with *or* a direct ownership interest of more than \_\_\_\_\_ percent - in another provider of settlement services... AND the provider refers business to *or* influences the selection of – another provider.

22. “Associate” is someone who has one of the following relationships with the provider of settlement services:

\_\_\_\_\_, parent, or child of the provider;

Corporation or other business entity that controls – or is controlled by – or is under common \_\_\_\_\_ of such person;

Employer, officer, director, partner, franchiser, or franchisee of such person, including a real estate broker acting as an independent \_\_\_\_\_; or

Anyone who has an agreement with such person to refer settlement services *and* will financially benefit from the \_\_\_\_\_.

23. Settlement Services include: title \_\_\_\_\_; attorneys; surveys; credit \_\_\_\_\_ or appraisals; home \_\_\_\_\_; real estate brokers; pest and \_\_\_\_\_ inspection; loan origination, applications, processing, funding or \_\_\_\_\_; or closings.

24. Affiliated Business Arrangements are allowed if it does *not* otherwise violate these provisions, *or* where the person referring the business gets paid *only* from a return on their \_\_\_\_\_ (i.e., shareholder dividends) in that affiliated business.

### Colorado Real Estate Commission Rules regarding Affiliated Business Arrangements

#### Rule E-22

25. No broker shall pay or accept a fee or incentive for title insurance or closing services to or from a \_\_\_\_\_ service provider for the \_\_\_\_\_ of business in a real estate transaction involving a federally related mortgage \_\_\_\_\_.

26. However, real estate brokers are always allowed to pay a referral fee to another licensed \_\_\_\_\_ if reasonable cause exists.

27. Rule E-22 does NOT prohibit someone from receiving a legitimate salary, commission or other compensation for \_\_\_\_\_ or as a return on their ownership interest in an \_\_\_\_\_ business.

**Rule E-46**

28. A licensee or employing broker must disclose the existence of an affiliated business arrangement, by using and having their client sign the Affiliated Business Arrangement \_\_\_\_\_ Statement.

29. Sham affiliated business arrangements are prohibited. Factors used in determining if an ABA with a title company is legitimate:

Broker operates with a good faith effort to \_\_\_\_\_ to real estate laws;

Title company maintains a \_\_\_\_\_ physical location;

\_\_\_\_\_ are shared;

Broker performs core title services (such as performing closing);

What settlement services broker has contracted to *other* sources.

**MORTGAGE BROKERS****Mortgage Broker Registration (Licensing) Act**

30. “Mortgage Broker” is defined as someone who negotiates or \_\_\_\_\_ for a commission a residential mortgage loan funded by a mortgage \_\_\_\_\_.

31. “Mortgage Lender” is defined as a lender in the business of making \_\_\_\_\_ mortgage loans, if:

Lender is the payee on the promissory \_\_\_\_\_;

Loan proceeds are from lender’s own funds or a line of credit available from a \_\_\_\_\_ that regularly loans money to lenders for the purpose of funding mortgage loans;

32. “Originate” means to submit a loan \_\_\_\_\_ to a lender to obtain a residential mortgage loan;

**Requirements for obtaining and maintaining a mortgage broker’s license**

33. A licensed mortgage broker must apply for license renewal every \_\_\_\_\_ years;

34. An applicant for a mortgage broker license must submit:

Criminal history \_\_\_\_\_ check;

\_\_\_\_\_ fee;

Submit \_\_\_\_\_ for a criminal history background check;

Post a \_\_\_\_\_.

Real Estate Commission shall approve or deny license within \_\_\_\_\_ days after receiving the full application with all above requirements.

(As of 1/1/09) Completion within the three years immediately preceding, a mortgage lending fundamentals course of at least \_\_\_\_\_ hours of classroom instruction, and a written examination.

35. An applicant for mortgage broker license *renewal* must submit:

A disclosure of all administrative \_\_\_\_\_;

Renewal \_\_\_\_\_.

36. Continuing Education will soon be imposed, and shall be no more than \_\_\_\_\_ hours in any 3 year period.

### **Errors and Omissions Insurance required**

37. Every actively-licensed mortgage broker shall be required to maintain a policy of \_\_\_\_\_ and omissions insurance.

### **Exemptions (Those who do *not* need mortgage broker's license)**

38. Entities who conduct the following activities are *not* required to have a mortgage broker's license:

Government employees;

The owner of real property who gives the buyer a seller-carry-back ("owner will carry") loan;

Banks;

\_\_\_\_\_ not primarily in the business of granting residential mortgage loans;

Entity that funds a loan *and* does not solicit borrowers in Colorado *and* does not participate in the \_\_\_\_\_ of loans.

### **Mortgage Broker's Ethical Duties to their Borrower**

39. A Mortgage Broker's relationship with borrowers requires Duty of \_\_\_\_\_ Faith and Fair Dealing, which includes:

Duty to not recommend a transaction that does not have a reasonable, \_\_\_\_\_ net benefit to the borrower;

Duty to make a reasonable inquiry concerning borrower's current and prospective \_\_\_\_\_;

Duty not to commit any \_\_\_\_\_ act.

### **Powers of the Director to impose penalties**

40. The Director of the Real Estate Commission shall deny, refuse to renew, or revoke the license of an applicant who has:

Filed their application with \_\_\_\_\_ misstatements of fact, or omissions of required disclosures;

Within previous \_\_\_\_\_ years, been convicted of or pled guilty or nolo contendere to a \_\_\_\_\_ of any type of fraud, theft or breach of misrepresentation;

Within previous 5 years, had any professional \_\_\_\_\_ revoked or suspended for any type of fraud, theft or breach of misrepresentation.

41. Director shall suspend the license of a mortgage broker who fails to maintain a \_\_\_\_\_.

42. Director or Administrative Law \_\_\_\_\_ shall conduct disciplinary hearings concerning mortgage brokers.

43. If a license has been revoked, that person shall not be eligible for licensure again for \_\_\_\_\_ years after the effective date of revocation.

44. If the misstatement is determined to be due to an \_\_\_\_\_ error, the Director shall allow the applicant to correct the application.

45. If the Director believes a mortgage broker licensee to be violating any of these provisions, the Director may:

Order that licensee to cease and \_\_\_\_\_;

Investigate the licensee's \_\_\_\_\_;

Impose a fine: First administrative hearing - not more than \_\_\_\_\_ per act.  
Second or subsequent administrative hearing: No *less* than \$1000 and no *more* than \_\_\_\_\_ per act.

All fines shall be transferred to the state treasurer to the "mortgage broker licensing cash fund".

46. Director shall maintain a system that allows consumers an easy method to log a complaint, such as a hotline or \_\_\_\_\_.

47. Director may grant \_\_\_\_\_ licenses to unlicensed mortgage brokers while their application is being processed.

### **Penalties that may be imposed for mortgage broker violations**

48. List the penalties that the Director can impose for a violation of the Mortgage Broker laws:

Fine

Censure

Probation

Suspension of License

\_\_\_\_\_ of License

### **Grounds for Disciplinary Actions (penalties)**

49. List the activities a Mortgage Broker could conduct that would merit those penalties:

False \_\_\_\_\_;

Making a promise that induces another to rely to their \_\_\_\_\_, when licensee did not \_\_\_\_\_ to keep such promise;

Making false promises through \_\_\_\_\_;

Violating the "Colorado \_\_\_\_\_ Protection Act";

Acting for more than one party in a transaction without disclosing the \_\_\_\_\_ of interest;

Representing (working for) another employing mortgage broker without consent of first \_\_\_\_\_ broker;

Employee of employing broker B failing to place – as soon as possible – any deposit money entrusted to them by employee of employing mortgage broker A;

Failing to account for or to remit – within a reasonable time – money belonging to \_\_\_\_\_, or failing to keep \_\_\_\_\_ of such moneys;

Converting funds belonging to others; \_\_\_\_\_ funds of others with licensee's own funds; failing to keep funds of others in an \_\_\_\_\_ account;

Failing to provide the parties to a loan with required \_\_\_\_\_;

Failing to maintain records for \_\_\_\_\_ years;

Paying a commission (fee splitting) to a person not \_\_\_\_\_ in Colorado. (Except a mortgage broker may pay a finder's fee to a mortgage broker licensed in *another* state or country.)

Conviction of, entering a plea of guilty to, or pleading *nolo contendere* to a \_\_\_\_\_ of dishonesty;

Violating Federal or Colorado \_\_\_\_\_ Housing laws;

Failing to notify the Director in writing of a \_\_\_\_\_, plea or violation of the previous two subsections above;

Demonstrating unworthiness or \_\_\_\_\_ as a mortgage broker;

Procuring a mortgage broker's license by \_\_\_\_\_;

Taking a \_\_\_\_\_ compensation, or failing to reveal to the licensee's principal or employer the full amount of licensee's compensation;

Exercising an \_\_\_\_\_ to purchase real estate without revealing in writing to the licensee's principal or employer the licensee profit;

Fraud that results in the payment of a claim or entry of a civil damage judgment;

Any other conduct that shows lack of good \_\_\_\_\_ and fair dealing;

Having had a mortgage broker's license suspended or revoked in another jurisdiction.

50. If the mortgage broker is a company, and an \_\_\_\_\_ is guilty of any of the above acts, the Director may suspend or revoke the company's right to conduct business as a mortgage brokerage, whether or not the employing broker had actual \_\_\_\_\_ of the violation.

51. When any mortgage broker is a party to any suit, he or she must supply to the Director a copy of the \_\_\_\_\_, any pleadings, and the final judgment.

52. When the director receives a complaint and investigation determines that the conduct does not deserve formal action, the Director may issue a Letter of \_\_\_\_\_.

## Immunity

53. Any consumer filing a good faith complaint with the Commission against a mortgage broker is \_\_\_\_\_ from either civil or criminal liability.

### **Bond Required**

54. Before receiving a license, an applicant must obtain a surety bond of \_\_\_\_\_. The surety is not required to pay on the bond until a final court determination is made.

### **Mortgage Broker prohibited conduct**

55. A mortgage broker may not \_\_\_\_\_ an appraiser.

56. Some more mortgage broker prohibited conduct under 12-61-911. Mortgage brokers shall not:

Mislead borrowers or lenders;

Engage in any unfair or \_\_\_\_\_ practice;

Obtain property by fraud;

Enter into a contract that provides that the mortgage broker will be paid for *merely* the broker's "\_\_\_\_\_ efforts", even though no loan is actually obtained;

Enter into a contract with the borrower for a certain interest rate and other financing terms, *unless* such terms are actually \_\_\_\_\_;

Fail to make a \_\_\_\_\_ as required by law;

Make a false statements regarding financing or engaging in "\_\_\_\_\_ and switch" advertising;

Make false statements in \_\_\_\_\_ filed in connection with a Division investigation;

Advertise the interest rate without disclosing the actual cost of the loan in terms of the \_\_\_\_\_ Percentage Rate (APR);

Failure to comply with the "\_\_\_\_\_ in Lending Act", RESPA, ECOA, or any other Federal lending act;

Failure to pay a third-party provide within \_\_\_\_\_ days.

### **Acts of employee – mortgage broker's liability**

57. A violation by an employee of a mortgage brokerage is not cause for disciplinary action against the brokerage or employing broker, unless it is shown that they \_\_\_\_\_ or should have known of the act.

### **Dual Status as a real estate broker and mortgage broker**

58. A mortgage broker shall not act as such in any transaction where they are *also* the \_\_\_\_\_ broker. Before the loan is made, the mortgage broker must completely \_\_\_\_\_ all features of the loan.

59. A real estate broker who is also a licensed mortgage broker must keep \_\_\_\_\_ records for the two activities. The two businesses may operate in the same \_\_\_\_\_ with a common entrance if: Each business is clearly identified by a \_\_\_\_\_, and they are \_\_\_\_\_ separated. This broker need no maintain separate locations for the



separate activities if shown that it would cause undue financial \_\_\_\_\_ or is unnecessary for the protection of the public.

### **Written Disclosure of Fees**

60. Within \_\_\_\_\_ days of a loan application or money received from a borrower, the mortgage broker must provide borrower a full written disclosure of all fees will pay with the loan, and specifying which fees the mortgage broker will get. A good-faith \_\_\_\_\_ of expected fees shall be provided if the broker does not know the exact amounts. This does not require a full disclosure to the borrower of the fees the \_\_\_\_\_ will pay the mortgage broker.

### **Mortgage Broker fees paid in advance**

61. Any advance fees paid to mortgage broker to be paid on loan closing shall be held in \_\_\_\_\_. It is unlawful for broker to appropriate those fees before earned at closing of the loan. To withdraw the funds prior to the loan being secured is considered \_\_\_\_\_, and the mortgage broker shall be liable to the borrower for \_\_\_\_\_ plus actual damages, costs and attorney fees.

62. A mortgage broker may not coerce an \_\_\_\_\_.

### **Disclosure of costs**

63. Any mortgage broker must provide to a loan applicant for a first-mortgage on a one-to-four family dwelling with a good faith \_\_\_\_\_.

### **Theft by Mortgage Broker**

64. If a person is convicted or pleads guilty or *nolo contendere* to the crime of theft by deception regarding a mortgage loan, a minimum fine in the amount of financial harm resulting from the theft is \_\_\_\_\_. A court will only accept such pleas if accompanied by an order of \_\_\_\_\_ to the victim to compensate them for what they have lost due to the theft.

### **Civil actions for theft**

65. A victim of mortgage broker theft of funds has a \_\_\_\_\_ right to sue, even if the broker was not convicted of a crime.

### **Dual Contracting**

66. It is a class \_\_\_\_\_ misdemeanor for a mortgage broker to create dual contracts for a sale (one with the true amount and another in a greater amount to influence the lender to loan more).

## CHAPTER 20 - QUIZ

1. When is a real estate license required when selling a business opportunity?
  - a. Always
  - b. Never
  - c. Only when securities are involved
  - d. When a lease is involved
  
2. Which of the following would be considered intangibles in the sale of a business?
  - a. Blue Sky
  - b. Good Will
  - c. Both of the above
  - d. None of the above
  
3. Which of the following is true of a financing statement under the Uniform Commercial Code?
  - a. Supersedes the laws pertaining to chattel mortgages
  - b. May not have a maturity date exceeding five years
  - c. Is filed with the Clerk and Recorder of the County where the property is located;
  - d. None of the above
  
4. The filing of a financing statement give rise to:
  - a. Actual notice
  - b. Constructive notice
  - c. No notice
  - d. Both a. and b.
  
5. The following statements concerning the Colorado Use tax are all untrue, except:
  - a. the burden to pay the tax is placed on the buyer
  - b. the burden to pay the tax is placed on the seller
  - c. the tax is placed on the goodwill of a business
  - d. it is a transfer tax on the sale of real estate
  
6. When several businesses that offer different settlement services are owned by a common company, these businesses are called:
  - a. title companies
  - b. subsidiaries
  - c. kickbacks
  - d. affiliates

7. RESPA prohibits:
  - a. payment of a fee to attorneys for services rendered
  - b. payment of a bona fide salary for services rendered
  - c. fee for a business referral involving a federally related mortgage loan
  - d. compensation by a lender to an agent for services performed in making a loan
  
8. Which of the following is not required in order to be granted an initial mortgage broker's license?
  - a. fingerprints and background check
  - b. disclosure of any administrative discipline against the applicant
  - c. a surety bond
  - d. continuing education
  
9. Who is not exempted from the Colorado Mortgage Broker Registration Act?
  - a. Spanky is an owner of a property who gives a second mortgage loan to his buyer
  - b. Alfalfa is an attorney who negotiates a residential purchase loan for his client
  - c. Darlene negotiates for buyer a first mortgage loan with a lender
  - d. Buckwheat Savings and Loan
  
10. The Director of the Real Estate Commission may not impose which of the following penalties if a mortgage broker violations a provision of the Colorado Consumer Protection Act?
  - a. Issue Cease and Desist Order
  - b. Revoke the mortgage broker's license
  - c. Administer a fine of \$2,000 for the third occurrence in four years
  - d. Prison sentence of less than one year
  
11. Which of the following is not grounds upon which the Director may place a mortgage broker on probation for violating?
  - a. Acting for more than one party in a transaction with disclosure to parties regarding potential conflicts of interest
  - b. Failing to place money belonging to others in a the possession of an escrow account
  - c. Depositing money belonging to others in the mortgage broker's operating account
  - d. Neglecting to inform her employer of accepting a fee from a home warranty company for the sale of a policy to the broker's client
  
12. Which of the following is acceptable conduct for a mortgage broker?
  - a. Persuading a borrower to make a loan application with a lender when the broker knew the borrower's income was insufficient for that particular loan product
  - b. Entering into a contract with a borrower that ensures payment to the mortgage broker based on their "best efforts" if the loan is not obtainable
  - c. Paying the surveyor within 30 days following closing
  - d. Advertising loan products and terms that are unavailable at that time

